

1998

James K. Rawson and Rebecca R. Rawson v. Kim Edward Conover and Karen Jane Conover : Brief of Appellant

Utah Court of Appeals

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JAMES K. RAWSON, Trustee, and
REBECCA R. RAWSON, Trustee,

Plaintiffs/Appellants,

vs.

KIM EDWARD CONOVER and
KAREN JANE CONOVER, a Utah
General Partnership, dba K & K SALES;
KIM EDWARD CONOVER dba K & K
SALES; K & K SALES, INC., a
Corporation; KIM EDWARD
CONOVER, dba K & K SALES, INC.;
PAUL W. CLARK; and OLD
REPUBLIC SURETY CO., a
Corporation,

Defendants/Appellees.

APPEAL FROM ORDER ON DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, DATED OCTOBER 14, 1996; AND FROM ORDER
ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, DATED
MAY 28, 1998

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ORAL ARGUMENT AND PUBLISHED DECISION IS REQUESTED.

FILED
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POINT I

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STATEMENT SHOWING JURISDICTION

The Utah Court of Appeals has jurisdiction in this matter under Section 78-2a-3(j) Utah Code Annotated (1953).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

(Including standards of appellate review and supporting authority.)

ISSUE ON APPEAL: DID THE TRIAL COURT ERR IN DISMISSING PLAINTIFFS' COMPLAINT, CLAIMS AND CAUSES OF ACTION WHERE THE DEFENDANTS ADMIT TO MULTIPLE CIVIL AND CRIMINAL VIOLATIONS OF THE UTAH MOTOR VEHICLE ACT AND OTHER LAWS RESPECTING COMMERCE IN MOTOR VEHICLES.

Applicable Standard of Appellate Review: The material facts of this case are not significantly disputed, therefore the Trial Courts' interpretation of those facts are questions of law. The conclusions of law drawn from the Trial Courts' interpretations are reviewed by the Court of Appeals for correctness and afforded no deference. *Woodhaven Apt v. Washington*, 942 P.2d 918 (Utah 1997); *Diversified Equities v. American Sav. & Loan*, 739 P.2d 1133 (Utah App. 1987) and *Reed v. Alvey*, 616 P.2d 1374 (Utah 1980). The legal effect of particular facts is within the province of the Appellate Court and no deference is given to the Trial Courts' determinations. *Drake v. Industrial Com'n of Utah*, 939 P.2d 177 (Utah 1997)

Questions of contract interpretation, not requiring resort to extrinsic evidence, are matters of law and on such questions the Appellate Court accords the Trial Courts' interpretation no presumption of correctness. *Sackler v. Savin*, 897

P.2d 1217 (Utah 1995); *Zions First Nat'l Bank v. National Am. Title Ins. Co.*, 749 P.2d 651 (Utah 1988). When a trial court's rulings are based upon a misunderstanding or misapplication of the law, where a correct one would have produced a different result, the party adversely affected is entitled to have the error rectified in a proper adjudication under correct principle of law. *Reed*, 616 P.2d 1374 (Utah 1980); *Farris v. Jennings*, 595 P.2d 857 (Utah 1979) and *Cummings v. Nielson*, 42 Utah 157, 129 Pac. 619 (1912).

Preservation of Issue: The plaintiffs complaint alleged that the defendants violated the Utah Consumer Sales Practices Act, the Utah Motor Vehicle Act and the Utah Uniform Commercial Code.

STATUTES INTERPRETATIONS WHICH ARE OF DETERMINATIVE AND CENTRAL IMPORTANCE ON THE APPEAL

The plaintiffs seek an interpretation and application of the statutes cited herein to the facts of their case. The statutes that require interpretation are the Utah Consumer Sales Practices Act, the Utah Motor Vehicle Act, and the Utah Uniform Commercial Code. These statutes are reproduced in Addendum A of this brief, as recognized by Rule 24 Briefs (a) (6) and (11), Utah Rules of Appellate Procedure:

The Utah Consumer Sales Practices Act sections requiring interpretation are: Sections 13-11-2, 13-11-3 (2) and (6), 13-11-4 (1), (2)(a-j), 13-11-5, 13-11-19 (1), (2) and (5) and 13-11-23, Utah Code Annotated (1953).

The Utah Motor Vehicle Act sections requiring interpretation are: Sections 41-1a-102 (13, 33, 40, 46, 50, & 66), 41-3-102 (8, 17, 22, & 24), 41-3-201, 41-3-202, 41-3-205 (1, 2, & 3), 41-3-208, 41-3-210 (1)(a, b, c, d, l, m, n), 41-3-404, 41-3-701, 41-3-702 (1)(b)(ii), 41-3-702 (1)(b)(iv), 41-3-702 (1)(c)(iv), 41-3-702 (1)(c)(vii), 41-3-702 (3), (4) & (5), Utah Code Annotated (1953).

Utah Uniform Commercial Code sections requiring interpretation are: Sections 70A-1-102, 70A-1-103, 70A-1-106, 70A-1-201(3, 10, 11, 19, 25 & 27), 70A-1203, 70A-2-103 (1)(a, b, & d), 70A-2-104(1), 70A-2-302 (1) & (2), 70A-2-313 (1)(a & b), (2), 70A-2-314 (1), (2) and (3), 70A-2-315, 70A-2-513 (1 – 4), 70A-2-714, 70A-2-715 and 70A-2-719 (1 – 3), Utah Code Annotated 1953).

STATEMENT OF THE CASE

Nature of the Case

This case involves the Plaintiffs/Appellants James K. Rawson, trustee, and Rebecca R. Rawson, Trustee, (“Plaintiffs”), efforts to recover damages against the Defendants/Appellees, Kim Edward Conover, Karen Jane Conover, a Utah general partnership, dba K& K Sales, K & K Sales Inc., Kim Edward Conover, dba K & K Sales Inc., Paul W. Clark and Old Republic Surety Co (“Defendants”). Kim Edward Conover (“Conover”) was a licensed and bonded motor vehicle dealer doing business under the various assumed names listed and identified above. Old Republic Surety Co. (“Old Republic”) is Conover’s bonding company. Plaintiffs seek recovery of the damages they sustained based upon the defendants’ multiple

admissions concerning violations of both the civil and criminal provisions of the Utah Motor Vehicle Act and other laws respecting commerce in motor vehicles.

On or about October 14, 1992 the defendants Conover and Clark, acting in concert with one another and using Conover's license as a motor vehicle dealer, purchased the motor vehicle ("subject vehicle") which is the subject of these proceedings from Western Auto Wrecking, Inc. At the time they purchased the subject vehicle they knew the same had been declared a total loss salvage motor vehicle. Following their purchase of the subject vehicle, Clark and Conover undertook to repair substantial and significant frame and body damage thereto, but such repairs were incomplete, improper or unprofessionally preformed and as a consequence the subject vehicle was unsafe to operate.

Plaintiffs' complaint sought relief for Clark's and Conover's misrepresentations and omissions undertaken and carried out with an intent to defraud (Count I); thgough tortuous misrepresentation (Count II); and deceptive and unconscionable acts and practices, (Count III). Clark's and Conover's breach of express and implied warranties (Count IV); breach of the covenant of good faith and fair dealing (Count V); the liability of Old Republic Surety Co., (Count VI); punitive damages (Count VII); and equitable estoppel (Count VIII) were likewise sought. (R. 95 - 112.)

The defendants admit selling the subject vehicle to on or about August 3, 1993 to plaintiffs (R. 12, 5, 35.) They denied knowing the subject vehicle was

improperly, unprofessionally or incompletely repaired and alleged that the plaintiffs knowingly and willingly purchased the subject vehicle by acknowledging that the same was a rebuilt salvage (R. 6, 35.) The defendants also asserted that the plaintiffs assumed any and all risks concerning the subject vehicle in that they had "...inspected the vehicle to [their] satisfaction and purchases the vehicle as is" (R. 39.)

Plaintiffs' appeal from the Trial Court's Order On Defendants' Motion For Summary Judgment, dated October 4, 1996 (R. 287 – 291) and Order On Defendants' Motion For Summary Judgment, dated May 28, 1998 (R. 423 -425.)

Course of Proceedings and Trial Court Disposition

Defendants' Motion For Summary Judgment, dated May 31, 1996 (R. 163 – 165) was briefed, opposed (R. 214 – 242) and argued before Judge Pat B. Brian on August 2, 1996 (R. 274.) Plaintiff's Notice Of Objections To Proposed Order On Defendants' Motion For Summary Judgment, dated August 28, 1996 (R. 275 – 283) precipitated re-argument of Defendants Motion For Summary Judgment before the Court on October 4, 1996 (R. 292 - 293.) Based upon the Court's admitted predisposition with respect to the material issues which were the subject of these proceeding, plaintiffs also objected to the Court's ruling on the issues which were the subject of the proposed Order On Defendants' Motion For Summary Judgment. On November 1, 1996 the Court recused itself from this case and the matter was assigned to Judge Glen K. Iwasaki (R. 294 – 295.)

Defendants' Motion For Summary Judgment, dated March 9, 1998 (R. 341 – 343) was likewise briefed (R. 344 – 354, 372 – 407), opposed and argued before the Court on April 16, 1998 (R. 413.) Plaintiffs' Notice Of Objections To Order On Defendants' Motion For Summary Judgment, dated May 6, 1998 (R. 417 – 420) and Plaintiffs' Notice Of Objections To Defendants' Bill Of Costs, dated May 6, 1998 (R. 415 – 416) were duly filed with the Court and served herein. On June 23, 1998 plaintiffs filed their Notice of Appeal (R. 413 - 433.)

STATEMENT OF FACTS

A. The following facts relevant to the issue presented for review are established by the record herein.

1. Conover was at all material times herein:

a) A licensed and bonded, motor vehicle dealer with many years of experience in the repair and sale of salvage and non-salvage motor vehicles (R. 2, 60.)

b) A partner with his wife, co-defendant Karen Jane Conover ("K.J. Conover"), in a general partnership doing business as K & K Sales ("K & K Sales"), engaged in business as a licensed motor vehicle dealer (R. 60.)

c) A co-owner with co-defendant Paul W. Clark ("Clark"), K.J. Conover and K & K Sales in a general partnership, joint venture and common enterprise ("Joint Enterprise") that repaired, advertised, displayed and sold the subject vehicle, VIN 1FMDA31U5KZBO4673 to plaintiff (R. 373.)

d) An owner of K & K Sales, Inc., a corporation (“K & K Inc.”) having its principle office and place of business in Salt Lake County, State of Utah, engaged in the business of a motor vehicle dealer (R. 120.)

e) One of the owners of the subject vehicle at all material times prior to plaintiffs’ purchase of the same (R. 185.)

2. K.J. Conover was at all material times herein:

a) A partner with her husband, co-defendant Conover, in K & K Sales (R. 407.)

b) A co-owner of K & K Inc (R. 233.)

3. Clark was at all material times herein:

a) An unlicensed, unbonded, motor vehicle salesman for Conover, K.J. Conover, K & K Sales and K & K Inc (R. 391.)

b) A co-owner in the Joint Enterprise of repairing, marketing and selling the subject vehicle to plaintiffs (R. 201.)

c) The person who personally financed, repaired, advertised, displayed and acted as the salesman for the Joint Enterprise in connection with the sale of the subject vehicle to plaintiffs (R. 201, 251 - 253.)

d) The person who advanced the purchase money used to acquire the subject vehicle and one of its owners prior to selling it to plaintiffs (R. 201.)

4. Old Republic Surety Co., (“Old Rebuplic”) was at all material times herein duly qualified to transact business as a surety company in the State of Utah.

Old Republic issued the dealer bond for K & K Sales, which was in full force and effect at all material times herein (R. 3, 61.)

5. The defendants, through and by means of their Joint Enterprise, jointly acted as (a) a "Supplier" under the Utah Consumer Sales Practices Act ("Sales Practices Act"), and (b) a "Merchant" under the Utah Uniform Commercial Code ("Commercial Code") (R. 2, 33, 201.)

6. Plaintiffs were induced by the defendants to purchase the subject vehicle by the defendants placement of an advertisement in a local newspaper to which plaintiffs responded by contracting Clark at Clark's home where the subject vehicle was displayed, driven and sold to plaintiffs (R. 251 - 251.)

7. Prior to its sale to plaintiffs, the subject vehicle was purchased by and titled in the name of K & K Sales. All repairs to the Subject Vehicle were performed in the name of K & K Sales in order for the Joint Enterprise to avoid paying any Utah State sales tax relating to Clark's purchase of the subject vehicle as required by law (R. 201.)

8. Notwithstanding the fact that the subject vehicle had been involved in a serious accident that resulted in it being declared a salvage motor vehicle prior to the defendants' purchase and repair of the same, the Joint Enterprise failed to safely, completely, adequately or professionally repair the damage. (R. 245, 366, 402 - 203.) The subject vehicle was subsequently sold to plaintiffs with the incomplete, improper and unprofessional repairs were concealed by the exterior

skin and bodywork the Joint Enterprise caused to be performed on the subject vehicle prior to its sale to plaintiffs. (R. 245, 402 – 403.)

9. Clark failed to inform plaintiffs of the facts concerning the subject vehicle's unsafe, inadequate and incomplete repairs. Clark however offered his personal guarantee that he had properly repaired the subject vehicle and that the same was fit for use as a passenger car and for plaintiffs particular purposes (R. 370.)

10. Defendants knew or should have known the subject vehicle's crush zones, collapse zones and structural integrity were not properly repaired or restored by reason of the minimal repairs they caused to be performed on the same. The costs the defendants incurred in connection with their repairs and the fact that the nature and extent of the defective repairs were hidden under the subject vehicle's outer skin evidence the defendants failures to re-manufacture, re-construct and restore the subject vehicle to meet industry and manufacturer's standards and specifications. (R. 201, 245, 402 – 403.)

11. Clark personally financed, advertised, displayed and sold the subject vehicle from Clark's home in violation of the provisions of the Utah Motor Vehicle Act (R. 360.)

12. Following plaintiffs decision to purchase the subject vehicle, Conover prepared all of the purchase documents which falsely reflected that the subject vehicle was owned only by K & K Sales, that it was part of K & K Sales'

dealer inventory and wholly failed to reflect Clark's ownership interest therein (R. 370.)

13. Following plaintiffs purchase of the subject vehicle the plaintiffs were involved in an accident. When repairs resulting from the accident were attempted, the magnitude of the incomplete, inadequate, unprofessional and unsafe repairs made by or at the direction of the Joint Enterprise became obvious when the subject vehicle's outer skin was removed (R. 370 - 371.)

14. After the subject vehicle was disassembled, it was inspected by the repair shop it had been taken to, by plaintiffs' insurance adjuster, by an investigator from the Motor Vehicle Enforcement Division of the Utah State Tax Commission and others. Each person who inspected the subject vehicle concluded that the repairs made by or at the direction of the Joint Enterprise were defective and unsafe and that the cost of restoring the subject vehicle to safe operation exceeded its fair market value. (R. 245, 401 – 402.)

15. Plaintiffs were forced to sell the subject vehicle for salvage parts and did so after notifying the defendants of plaintiffs intent to sell the same. (R. 403.)

16. Defendants refused to return plaintiffs purchase price or to perform the needed and required repairs to the subject vehicle so that it could be operated safely consistent with Clark's personal guarantee. (R. 366.)

17. Defendants' refusal to take corrective action concerning their breaches of civil and criminal provisions of the Utah Motor Vehicle Act, their

contractual duties owed by each of them to plaintiffs and their breaches of the laws respecting commerce in motor vehicles. As a result plaintiffs filing of this lawsuit in order to obtain the remedies provided by law.

SUMMARY OF ARGUMENT

Utah has adopted a comprehensive set of laws respecting commerce in motor vehicles. The purpose of these laws is to insure, among other things, that motor vehicle dealers (“dealers”) will act responsibly, honestly and fairly towards their customers. These laws include:

1. The Utah Motor Vehicle Act (“Motor Vehicle Act”).
2. The Utah Consumer Sales Practices Act (“Sales Practices Act”), and
3. The Utah Uniform Commercial Code (“Commercial Code”).

The Motor Vehicle Act imposes upon each dealer the following requirements: (a) That the dealer be licensed (§ 41-3-201). (b) That the dealer be bonded, (§ 41-3-205) by the form of bond approved by the Utah Attorneys’ General (“Dealer’s Bond”) (§ 41-3-205(1)(c)). (c) That the dealer fully, fairly and timely disclose to each purchaser all relevant facts concerning the physical condition and mileage of each vehicle a dealer sells. (§ 41-3-1310; *Haynes v. Manning*, 917 F.2d 450 452- 453 (10 Cir. 1990). (d) That a dealer fully, fairly and timely disclose to each purchaser all relevant facts concerning any financing arrangements relating to the sale of a motor vehicle (§ 41-3-401). (e) That a dealer deal honestly, fairly and in good faith with its customers (§ 41-3-210). And (f)

that dealers not commit any fraud or fraudulent representations or violate any other provisions of the Motor Vehicle Act or any law, rule or regulation respecting commerce in motor vehicles (§ 41-3-404(1)(a)).

The provisions of the motor vehicle Act are further strengthened by application of the provisions of (a) the Utah Administrative Code that interprets and underpins some of the Motor Vehicle Act's provisions. (b) The express terms of the Dealer Bonds, and (c) the terms of the parties' written contracts which are required by the Motor Vehicle Act to disclose certain specified information (§ 41-3-401). The provisions of the Motor Vehicle Act are to be construed broadly to protect person, such as the plaintiffs, who do business with motor vehicle dealers. *Western Sur. Co. v. Redding*, 626 P.2d 437 (Utah 1981); § 70A-2-714.

It is significant that the Motor Vehicle Act imposes criminal sanctions for its violation (§ 41-3-701), in addition to civil liability (§§ 41-3-702(5) and 41-3-404(1)).

The Sales Practices Act, which applies to transactions involving commerce in motor vehicles, *Wilkinson v. B. & H. Auto*, 701 F.Supp. 201 (D. Utah 1989), renders a dealer liable for deceptive or unconscionable acts and practices committed "knowingly or intentionally" or "with an intent to deceive" (§§ 13-11-4, 13-11-5 and 13-11-19.) The application, provisions and remedies afforded by the Sales Practices Act are in addition to remedies otherwise available for the same conduct under other state law (§ 13-11-23.)

The Commercial Code imposes upon all parties, particularly dealers, obligations of good faith and fair dealing (70A-1-203) as well as duties of being honest in fact (70A-1-103). The provisions, purposes and remedies provided under the Commercial Code are also to be liberally administered to the end that the aggrieved party be put in as good a position as if the other party had fully performed (§ 70A-1-106).

The defendants admit to having committed multiple violations of the civil and criminal provisions of the Motor Vehicle Act. The Trial Court totally ignored the defendants civil and criminal violations, the defendants' violations of the Sales Practices Act and the duties imposed upon the defendants under the Commercial Code, the Sales Contract and the Dealer's Bond. The Trial Court's rulings were apparently premised upon the erroneous assumption and interpretation that the aforementioned facts and statutes constitute and support only dependent causes of action and not the independent causes of action the plaintiffs alleged in their Complaint based upon the aforementioned laws.

ARGUMENT

POINT I

THE DISTRICT COURT ERRED IN DISMISSING PLAINTIFFS' CLAIMS AND CAUSES OF ACTION WHERE THE DEFENDANTS ADMITTED COMMITTING MULTIPLE CIVIL AND CRIMINAL VIOLATIONS OF THE UTAH MOTOR VEHICLE ACT AND OTHER LAWS RESPECTING COMMERCE IN MOTOR VEHICLES.

In construing the Sales Practices Act, the Motor Vehicle Act, the Commercial Code, the Sales Contract and the defendants' bond it should be remembered that these Acts and undertakings be construed with the stated purpose of keeping Utah law consistent with federal and sister states' consumer protection standards. In the absence of any language to the contrary, these Acts should be construed in a manner consistent with that given similar federal and sister states laws. U.C.A. §§ 13-11-2, 70A-1-102(2).

A. Interpretation And Application Of The Statutes:

These Acts, contracts and Dealer's Bonds are to be liberally and broadly construed. U.C.A. §§ 13-11-2, 70A-1-106, *Western Sur. Co. v. Redding*, 626 P.2d 437 (Utah 1981) (This section should be construed broadly to protect persons doing business with motor vehicle dealers.) The intent and purpose of these laws is to protect consumers and require suppliers to abandon use of deceptive and unconscionable practices. In the case of licensed and bonded motor vehicle dealers, Utah law goes even further and imposes upon them the requirement that they post a bond of motor vehicle dealer, salesman and crusher. The Dealer Bond herein states:

“...if the above bounded principal . . . 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 Ann. (1953, as amended), and indemnify persons, firms and corporations in accordance with Chapter 3, Title 41, Utah Code Ann. (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 Chapter 3, Title 41, Utah Code Ann. (1953, as amended), or any law respecting commerce in motor vehicles or rule respecting commerce in motor vehicles promulgated by a licensing or regulating authority* so that the total aggregate annual liability on the bond to all persons making claims may not exceed \$20,000.00 -----, as set forth in Chapter 3, Title 41, Utah Code Ann. (1953, as amended) *on account of fraud or fraudulent representations or for any violation or violations of said laws or rules during the time of said license and all renewals thereof, then the above obligation shall be null and void*, otherwise to remain in full force and effect. Said bonded Principal shall also pay reasonable attorney's fees in cases successfully prosecuted or settled against the Surety or Principle if the bond has not been depleted"

(Emphasis added)(R. 233 - 236, Addendum B). The Plaintiffs argued to the Trial Court that the defendants multiple admitted violations of both civil and criminal provisions of the Motor Vehicle Act constituted per se deceptive and unconscionable acts and practices. (R. 445, p. 22 –23.) The defendants' civil and criminal violations also breached the Commercial Code, the express and implied provisions of the Sales Contract, the warranties given by the defendants as well as the duties and conditions set forth in the defendants' Dealer Bond.

The 1995 legislature amended the Sales Practices Act, § 13-11-4(2), by removing the requirement of "intent to deceive" and replacing it "knowingly or intentionally." This change brings the Sales Practices Act's imposition of liability into harmony with the standard federal courts impose for violations of the federal odometer act's requirements of "intent to defraud" found at 49 U.S.C. § 32710(a). By eliminating one's casual indifference to the truth of his representation, which is something less than a deliberate lie, the legislature has determined that the

appropriate standard of conduct is to disclose what one knows. Common sense and sound public policy support this interpretation for imposing liability. A per se civil or criminal violation of the laws respecting commerce in motor vehicles constitutes not only deceptive acts per se but should also be deemed to constitute unconscionable acts per se as well.

The Commercial Code's provisions and multiple references to "good faith," (§§ 70A-1-102(3), 70A-1-201(19), 70A-1-203, 70A-2-103(1)(b)) demonstrate an unwavering duty that "honesty in fact" in one's conduct and observance of reasonable and fair dealings be maintained. One's obligations of good faith, diligence, reasonableness and care may not be disclaimed or avoided. The Commercial Code's duties are consistent with the changes made in the Sales Practices Act. Utah has long recognized that a seller, whether he or she is a "merchant" (§ 70A-2-104), a "supplier" (§ 13-11-3(6)), a "dealer" (§ 41-1a-102(13) & 41-3-102(8)), or a layperson is presumed to know the material facts concerning that which it is that he or she sells. *Howe v. Michelson*, 225 P.2d 735 (Utah 1951). A contract for sale allows no more than slight and unimportant differences from those specified or described in the contract. *Norrington v. Wright*, 115 U.S. 188 (1885).

Legislative and judicial abandonment of the doctrine of caveat emptor is consistent with the changes in the Sales Practices Act and other provisions of the Commercial Code. U.C.A. § 70A-313(a) and (b) specifically does away with

“buyer beware” by making affirmations of fact and descriptions that become a part of the basis of the bargain or contract express warranties that the goods will conform with the affirmations or promises. The doctrine of caveat emptor is also incompatible with prevailing trends in consumer law, product’s liability law, and the law of torts. *Wade v. Jobe*, 818 P.2d 1006, 1010 (Utah 1991).

Of particular concern to plaintiffs and their claims and causes of action are the defendants’ admissions that they violated multiple provisions of the Motor Vehicle Act. The plaintiffs contend that the Motor Vehicle Act recognizes and provides them with independent causes of action for the defendants’ breaches thereof. The alternative is that the Motor Vehicle Act’s causes of action are dependant upon or derived from some other source, such as the administrative agency charged with the Act’s enforcement. If the Motor Vehicle Act’s causes of action are dependent, the Trial Court’s decisions should be affirmed and the Motor Vehicle’s Act’s limitations set forth in a published decision.

B. The Motor Vehicle Act:

Other than one’s home, the average consumer spends more of his hard earned income on motor vehicles than any other single purchase over the consumer’s lifetime. Due to the serious and often dire financial consequence to consumers who purchase motor vehicles from dealers who then fail or refuse to honor their commitments, both state and federal laws have been enacted protecting consumers. The sale of new and used motor vehicle is heavily legislated,

involving hundreds of pages of laws, rules and regulations by both the State of Utah and the Federal government.

Utah specifically defines the persons licensed and engaged in the business of buying, selling, repairing or replacing new and used motor vehicle parts or in restoring of vehicles to sound working condition. These statutes also define one's ownership interests in a particular motor vehicle. §§ 41-1a-102(13), (33), (40), (46) and (50). §§41-3-102(8), (22), and (24) further define the conduct, activities, locations and persons subject to licensing and bonding when selling motor vehicles (§§ 41-3-201(1 & 2), 41-3-202(2), (5), (6) and (11) and 41-3-204(1)). The defendants violated these and numerous other provisions of the Motor Vehicle Act in their advertising, displaying, offering for sale and selling the subject vehicle to plaintiffs from Clark's home.

For example, it was illegal for Clark to personally advertise the subject vehicle, as his personal – family vehicle while the subject vehicle was licensed, titled, and included in the dealership's used car inventory (§ 41-3-210(1)(a)). (R. 251 – 253.) It was illegal for Clark to advertise the subject vehicle as his personal – family vehicle without identifying the dealer as the seller or using the dealer's license number in the advertisement (§ 41-3-210(1)(b)). (R. 251 – 253.) It was illegal for the defendants to violate the Motor Vehicle Act (§ 41-3-210(1)(c)). It was illegal for the defendants to violate state law respecting commerce in motor vehicles or any rule respecting commerce in motor vehicles (§ 41-3-210(1)(d)). It

was illegal for the defendants to remanufacture, assemble or reconstruct the subject vehicle without meeting construction, safety standards (§§ 41-3-210(1)(l), 78-15-6). It was illegal for the defendants to allow Clark to act as a salesperson by displaying, contacting prospective customers or promoting the sale of the dealership's vehicles (§ 41-3-210(1)(m)). And it was illegal for the defendants to display for sell, offer for sale or sell the subject vehicle from Clark's home (§§ 41-3-210(1)(n); 41-3-102(22)).

Contrary to the rulings of the two Trial Court judges that interpreted the Motor Vehicle Act as providing no independent cause of action or remedy to the plaintiffs, §§ 41-3-404 and 41-3-702(5) must be construed as providing independent and individual rights of action against dealers, salespersons and their surety bonds. In order for one to maintain a cause of action, one must suffer a loss or damage due to fraud, fraudulent misrepresentations, or a violation of the laws respecting commerce in motor vehicles (§ 41-3-404(1)). A Dealer Bond, issued on a form approved by the Attorneys' General office, obligates the dealer's surety to indemnify persons who suffer losses by reason of a dealer's misconduct under § 41-3-404. When one suffers a loss, particularly a consumer, due to a dealer's fraud, fraudulent representations or violation of any law, rule or regulation respecting commerce in motor in motor vehicles, the consumer is protected by being able to recover from the dealer's surety *Betenson v. Call Auto Equip. Sales Inc.*, 645 P.2d 684 (Utah 1982).

The legislature has given consumers additional protections by granting to those consumers who must pursue a remedy in court the right to recover the consumer's costs and attorneys fees as a matter of law (§§ 13-11-19(5), 41-3-205(3) and 41-3-702 (4)(b)). The Dealer's Bond at issue in these proceedings expressly provides that the "Principal shall also pay reasonable attorneys' fees in cases successfully prosecuted or settled against the Surety or Principal if the bond has not been depleted." (R. 233 – 236.)

The Motor Vehicle Act provides for both civil and criminal penalties for the defendants' admitted violations herein (§§ 41-3-701 and 41-3-702). The defendants' violation of § 41-3-702(1)(b)(ii) are evidenced by Clark's personal advertisement that he placed and paid for in order to sell the subject vehicle in violation of §§ 41-3-210(1)(a), (b), (m) and (n). The defendants' multiple admitted breaches of the Motor Vehicle Act demonstrate their omissions and tortuous misrepresentations that they made in order to induce the plaintiffs purchase of the subject vehicle. (R. 245. 366, 402 – 403.) The defendants' tortuous misrepresentations also induced the plaintiffs into believing they were dealing with a regular layperson who sought to sell his personal – family vehicle (R. 251 – 253.) It was not until after the plaintiffs' had agreed to purchase the subject vehicle that they learned that the subject vehicle was in fact being sold by a dealership and not Clark personally. (R. 370.)

The defendants' violations of § 41-3-702 (1)(b)(iv) were admitted when the defendants failed to insure that the subject vehicle, which was a total loss salvage motor vehicle, was remanufactured, assembled and reconstructed in compliance with the manufacturer's construction and safety standards. (R. 245, 402 – 403.) The defendants' gross negligence in not replacing or repairing the subject vehicle's crush zones, collapse zones, accident/ energy absorbing components and in not properly mounting the subject vehicle's seat belt mounts were contrary to §§ 41-3-210(1)(l) and 41-3-702(1)(b)(iv). (R. 245, 402 – 403.)

The defendants violations of § 41-3-702(1)(c)(iv) were shown by the defendants' advertising, offering for sale, displaying and selling the subject vehicle from Clark's home in direct violation of §§ 41-3-210(1)(m) and (n) and 41-3-102(22). (R. 251 – 253.) And the defendants violation of § 41-3-702(1)(c)(vii) was admitted by the defendants use of Clark as an unlicensed salesperson in connection with the sale of the subject vehicle which vehicle was part of the dealership's motor vehicle inventory. (R. 360.) The defendants' conduct is contrary to §§ 41-3-201, 41-3-202(5), 41-3-208, and 41-3-210(m) and (n) and was undertaken and carried out for the obvious and apparent purpose of defrauding the State of Utah of tax revenue. Clark is the one who financed the acquisition, repairs and sale of the subject even though the subject vehicle was purchased, titled and repaired in the dealership's name, under the dealership's license and under the dealer's control. (R. 251 – 253, 360.)

The civil penalty for violating § 41-3-702(1) is “not less than a \$1,000.00, or treble the actual damages caused by the person, which ever is greater; and reasonable attorney’s fees and costs of the action” (§ 41-3-702(4)). § 41-3-702(5) states that a “civil action may be maintained by a purchaser or the administrator.” This section supplements and reinforces Plaintiffs claims that the Motor Vehicle Act authorizes independent causes of action contrary to the Trial Court’s interpretation that the plaintiffs had no claim or cause of action under the law or facts cited and argued to the Trial Court (§§ 41-3-404 and 41-3-702(5)).

Defendants’ Dealer Bond reinforces plaintiffs’ claims that their causes of action are independent and not dependent. The language of the Dealer Bond (R. 233 – 236) states that the surety will indemnify persons, firms and corporations for losses suffered by reason fraud or fraudulent representations made or through violation of any law respecting commerce in motor vehicles. In addition to indemnifying persons who suffer losses as outlined above the surety agrees to pay the reasonable attorney’s fees in cases successfully prosecuted or settled. The reality and practical effect of virtually every consumer related lawsuit is that the cost of litigating consumer claims often exceeds the value of the matters disputed. If it were not for the Sales Practices Act’s (§ 13-11-19(5)) the Motor Vehicle Act’s (§§ 41-3-205(3), 41-3-702(5)) the Dealer’s Bond and the Commercial Code’s recognition of consequential damages (§§ 70A-2-715 and 70A-2-719) and which provide for an award attorneys fees and costs, consumers simply could not afford

to pursue any claim. This would make the consumer protection provisions of Utah law illusory and of no value.

The statutes providing for minimal damages (§§ 13-11-19(2), 41-3-702(4)), actual damages (§ 13-11-19(2)), or treble damages (§ 41-3-702(4)) in addition to costs and attorneys fees does not make litigating consumer protection matters worthwhile without assurances of compensation. The attorneys' fees and value of legal services required to protect consumers is a matter of public interest and therefore left to the court to decide. Legal time spent pursuing issues of fact and law that ultimately are not litigated or upon which a plaintiff does not prevail does not preclude such fees from being awarded. *Fleet Investment Co. Inc. v. Rogers*, 620 F.2d 782 (10th Cir. 1980); *Gurule v. Wilson*, 635 F.2d 782 (10th Cir. 1980).

The Motor Vehicle Act's requirement that there be a surety bond financially guarantees that judgments will be paid to the extent of the face amount of a bond. *Betenson v. Call Auto Equip. Sales Inc.*, 645 P.2d 684 (Utah 1982). It is ironic in that in many instances the dealer bond is insufficient to fully compensate the victimized consumer even though the intent of the dealer's bond is to protect all persons doing business with those acting as a licensed motor vehicle dealer. *Lawrence v. Ward*, 5 Utah 2d 257, 300 P.2d 619 (1956);

C. The Sales Practices Act:

The Sales Practices Act imposes upon "suppliers" (§ 13-11-3(6)) the duty and legal requirement that they refrain from deceptive acts and practices. § 13-11-

4 lists some 14 different examples of acts or practices that the legislature has established as being deceptive. Consumers need and are afforded protection from deceptive and unconscionable acts committed by car dealers, such as the defendants, when buying cars. *Woodhaven*, 942 P.2d 924. Of concern to the plaintiffs' claims are Clark's personal guarantee that he had properly repaired the subject vehicle. It was only after the plaintiffs had been involved in a minor fender bender and the subject vehicle's outer skin was removed that the falsity of Clark's performance characteristics were made known (§ 13-11-4(a)).

Clark's personal guarantee and assurances that the subject vehicle had been properly repaired and was safe for use as plaintiffs family car (§ 70A-2-313) and particular purposes (§ 70A-2-314), claiming he had used the subject vehicle himself for such uses himself, were knowing and intentional misrepresentations concerning the subject vehicle. (R. 370.) The defendants' knew that the repairs they had caused to be made were inadequate, incomplete, unsafe and unprofessional in that they hide and concealed their shoddy repairs under the subject vehicle's outer skin, interior furnishings and floor coverings. (R. 201, 254, 402 – 403.) Clark's misrepresented the subject vehicle's quality, grade and the fact that the subject vehicle met a particular standard when it did not (§ 13-11-4(b)). (R. 370.) The defendants knowingly and intentionally misrepresented the extent of the subject vehicle's prior damage and repairs. These were materially

facts concerning the subject vehicle's use and the extent to which it had previously been damaged in violation of § 13-11-4(c).

The defendants' representations (R. 370) that the subject vehicle had been properly and professionally repaired, when it had not, and was fit for the plaintiffs intended use and particular purpose, when it was not, breached § 13-11-4(e). A dealer or its agent violates the consumer protection statutes, which impose no requirement of evil intent or actual knowledge, when the dealer or agent represents to the consumer that a defacto damaged and incompletely repaired motor vehicle has been properly repaired when it has not. *Bell v. Kent-Brown Chevrolet Co.*, 561 P.2d 907 (Kan App. 1972). A dealer who was on notice of the true facts about a motor vehicle but who did not report them accurately to its buyer was held to have violated a consumer practices act in *Brandywine Volkswagen, Ltd. v. State Dept. of Comm. Affairs*, 312 A.2d 632 (Del Sup. 1973).

The facts of this case are even more compelling given the defendants knowledge that the subject vehicle was a total loss salvage and required extensive repairs that the defendants personally undertook to perform. The defendants' failure or refusal to spend the money sufficient to replace or repair the subject vehicle's damaged crush and collapse zones or seat belt mounting brackets was negligent, tortuous, unconscionable and illegal. The defendants hiding their incomplete, unsafe and shoddy repairs under the subject vehicle's outer skin, interior furnishing and floor coverings were intentional acts, tortuous acts,

unconscionable act and acts that violated the aforementioned provisions of the Motor Vehicle Act and Sale Practices Act. (§§ 13-11-4 and 41-3-210.) The defendants failure to state the true status of the subject vehicle, while misrepresenting it condition and concealing the facts which would render the subject vehicle unacceptable or substantially less desirable to the plaintiffs was negligent, tortuous, seriously lacking in good faith and a cardinal breach of the applicable acts. *Testo v. Russ Dunmire Oldsmobile, Inc.*, 554 P.2d 394 (Wash. 1976).

The defendants' use of a preprinted federal Buyers Guide in an attempt to disclaim all of Clark's personal guarantees is inconsistent with the Commercial Code's imposition of warranties as found in §§ 13-11-4(j), 70A-2-313(a) and (b), 70A-2-314 and 70A-2-315. In addition to the laundry list set forth in § 13-11-4, § 13-11-5, allow the court to independently consider whether or not a supplier's acts or practices are unconscionable. As presented above in the Argument Summary, it was and is plaintiffs' position that the defendants' civil or criminal violation of the laws respecting commerce in motor vehicles constituted per se deceptive acts and practices as well as being per se unconscionable. Plaintiffs' argument was presented to both of the trial judges but was rejected in both instances out of hand. (R. 287 – 291, 423 – 425.)

D. The Commercial Code:

The defendants breached their duties of good faith, honesty in fact, diligence, reasonableness, care, due diligence, duty to supply goods that conformed to the contract, and engaged in deceptive and unconscionable conduct in performing their obligations under their contract with plaintiffs. The Commercial Code exacts higher and more exact standards from those individuals “who deal in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction...” (§ 70A-2-104(1). § 70A-2-313(1) and (2) outline the creation of express warranties by recognizing that “any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes a part of the basis of the bargain creates an express warranty that the goods shall conform.” Subsection (2) recognizes that it “is not necessary to the creation of an express warranty that the seller use formal words such as ‘warrant’ or ‘guarantee’ or that he have a specific intent to make a warranty....”

Clark’s affirmations and representations that he had repaired the subject vehicle, and the fact that the subject vehicle was sold by and through a dealership, establishes the requisite skill and peculiar knowledge sufficient to make the defendants “merchants” under the Commercial Code. The defendants’ pronouncement and portrayal were a description of the goods that were made a basis of the bargain and created a warranty if their natural tendency was to induce

a buyer to purchase and the buyer thus induced did purchase. *Nielson v. Hermansen*, 166 P.2d 536 (Utah 1946).

Even though *Nielson* predates the Commercial Code, the Commercial Code nevertheless adopts *Nielson* as the appropriate commercial standard. Additionally, where the sellers/defendants made certain representations that induced and culminated in a sale, both Utah statutes and decisional law make the sellers jointly responsible for their representations. A positive affirmation of fact that tends to induce a bargain is a warranty and the fact that the seller did not intend to warrant is no defense. *Park v. Moorman Mtg. Co.*, 241 P.2d 914, 917 (Utah 1952); *Studebaker v. Bros. Co. v. Anderson* 167 Pac. 663 (Utah 1917).

Oral representations of fact are recognized in other jurisdictions as warranties as well and not as “mere puffing.” See *Chrysler – Plymouth City Inc. v. Guerrero*, 620 SW 2d 700 (Tex Civ. App. 4th Dist. 1981). In *Hackett v. Lewis*, 173 Pac. 111 (Cal. App. 1918), the court held that the simple principle is that any distinct assertion of quality or character made by the seller and intended to be relied upon to induce a purchase is a warranty. Even a representation made after a sale, to promote the sale by inviting reliance respecting the goods may be actionable as express warranties. *Downie v. Abex Corp.*, 741 F.2d 1235 (10th Cir. 1984). Defendants’ refusal to inform plaintiffs of the true status of the subject vehicle’s unsafe and incomplete repairs and flat refusal to honor Clark’s personal guarantees, which were defacto terms of the Sales Contract (R. 196 –197),

breached the express warranties that induced plaintiffs purchase of the subject vehicle.

Whether an affirmation of fact, a promise, or a description of the goods is a warranty is determined by what a reasonable person would have taken from the statement. *State of Utah, By Div. of Consumer Protection v. GAFF Corp.*, 760 P.2d 310 (Utah 1988). An express warranty is created when a reasonable person would have entered into the transaction based on the particular statement. *Id.*, 3 R. Anderson, *Anderson on the Uniform Commercial Code* § 2-313:50 at 40 (3d Id. 1983). Actual reliance need not be shown, as in this case, only that the statement formed a “part of the bargain.” § 70A-2-313, *Jensen v. Seigel Mobil Homes Group*, 668 P.2d 65, 71 (Idaho 1983), *Autzen v. John C. Taylor Lumber Sales*, 572 P.2d 1322, 1324-25 (Oregon 1977).

Both Trial Court judges erred in dismissing plaintiffs claims under the Commercial Code for the defendants breach of express warranty. Whether or not the plaintiffs acted as reasonable people when they relied upon Clark’s personal guarantee was a question for the jury to decide, not the Trial Court judges. The defendants persuaded the Trial Court that only the written contract and related documents should be considered and that Clark’s representations and promises had no effect. Defendants’ arguments are contrary to Utah law (§ 70A-2-313) and the Official Comment No. 9 to § 70A-2-513 concerning a “Buyer’s Right to inspection of Goods:”

‘Inspection’ under this section has to do with the buyer’s check-up on whether the seller’s performance is in accordance with a contract previously made and is not to be confused with ‘examination’ of the goods or a sample or model of them at the time of contracting which may affect the warranties involved in the Contract.

It is simply bad law to insist that once a buyer buys, it is assumed that she knew what she was buying. *Baker v. Latser*, 206 Pac. 553 (Utah 1922); Official Comment No. 9 to § 2-215. Utah has long recognized that a party may justifiably rely on positive assertions of fact without an independent investigation. *Conder v. Williams* 739 P.2d 634, 638 (Utah App. 1987). Today’s motor vehicles are sophisticated and complex. They are also difficult and expensive to maintain and in many instances require a particular expertise, special education and specialized tools to properly inspect, diagnose, maintain, or repair or them. It is contrary to the authority cited herein to hold that a buyer is presumed to know what she bought. The Trial Court’s interpretation of the Commercial Code appears to have mixed and confused the rules applicable to sales of real property with the rules of law that apply to the sale of goods.

As pointed out to both judges of the Trial Court §§ 70A-2-314 and 70A-2-315 impose duties of merchantability and fitness upon the defendants. For goods to be merchantability they must at least “pass without objection in the trade . . . [or be] fit for the ordinary purpose for which such goods are used . . .” The undisputed testimony of the Utah Motor Vehicle enforcement Inspector and the auto body professional who initially identified the unsafe, incomplete, dangerous,

shoddy and unprofessional repairs were that the repairs the defendants caused to be performed on the subject vehicle would not have passed in the trade and made the subject vehicle unfit for its ordinary purpose. (R. 245, 402 – 403.)

The defendants' multiple admitted breaches of the express contract terms and warranties are unconscionable under § 70A-2-302. The Commercial Code's nonwaivable, inescapable duties were ignored by the defendants who had more knowledge than anyone concerning the subject vehicle. As merchants dealing with lay customers they did not have the right or privilege to use their superior knowledge and skill to hide the material facts concerning the ownership, incomplete repairs, dangerous and unsafe condition the subject vehicle was in when they sold it to plaintiffs. Such conduct is unconscionable and ridiculous in the extreme.

Defendants' unconscionable conduct and flat out refusal to honor their express warranties precludes them from limiting the effect of their misrepresentation and warranties. *Schurtz v. BMW of North America, Inc.*, 814 P.2d 1108 (Utah 1991). Under *Schurtz*, a disparity in a consumer's bargaining power defeats a seller's attempts to limit its warranty liability through the use of preprinted documents that restrict the consumer's remedies. The consumer is entitled to seek incidental and consequential damages because it would be unconscionable to enforce disclaimer clauses in transaction documents which purport to deny any and all remedies otherwise available to the consumer.

Unconscionability results from the inequality of the sellers extracting from the buyer a payment for goods that were not delivered, that the buyer cannot use or fully use. *Irving Leasing Corp. v. M & H Tire Co.*, 475 NE 2d 127 (Ohio App. 1984) and cases cited in *Annot. Unconscionability Under UCC § 2-302 or 2-719(3) of Disclaimer of Warranties or Limitations or Exclusions of Damages in Contract Subject to UCC Article 2 (Sales)* 38 ALR 4th 25.

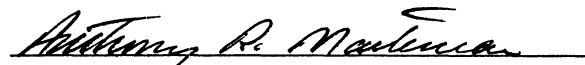
CONCLUSION

The Trial Court, notwithstanding the defendants' admitted multiple violations of the provisions of the Sales Practices Act, the Motor Vehicle Act, and the Commercial Code, granted the defendants summary judgment with respect to all of plaintiffs' claims based upon such violations. The defendants violated these provisions knowingly and intentionally thereby enabling them to induce the plaintiffs' to purchase the subject vehicle at a significantly inflated purchase price and in a serious and unsafe condition. The safeguards intended by the legislature to preclude the kind of conduct in which the defendants' engaged in their dealings with the plaintiffs were thus subverted and rendered wholly ineffective.

This Court should rule: (A) That the defendants had a positive non-abandonable legal duty to know the physical condition of the subject vehicle at the time it was sold by them to the plaintiff's and to honestly, fully, fairly and timely advise plaintiffs of all relevant facts concerning such condition. (B) That the plaintiffs are entitled to pursue each and all of the rights and remedies which are

expressly afforded them by the Sales Practices Act, the Motor Vehicle Act, the Commercial Code, the Utah Administrative Code, the Dealer's Bond and the Sales Contract. (C) That the Trial Court's award of costs was in error and (d) that the aforementioned Acts are to be construed liberally and broadly in plaintiffs' favor to insure that the rights and remedies for the plaintiffs as members of the consuming public are safe guarded and rendered effective and meaningful.

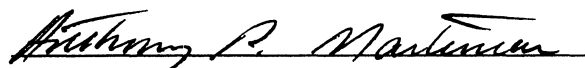
RESPECTFULLY SUBMITTED this 17th day of December, 1998.


Ray G. Martineau
Anthony R. Martineau
Attorneys for Plaintiffs/Appellants

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Appellant's Brief was served upon the following individual by mailing a copy thereof, postage prepaid, to said individual at the following address this 17th day of December, 1998.

T. Richard Davis
CALLISTER NEBEKER & McCULLOUGH
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Salt Lake City, UT 84133



ADDENDUM A

STATUTES DETERMINATIVE AND OF CENTRAL IMPORTANCE TO THE APPEAL:

Utah Consumer Sales Practices Act:

13-11-2. Construction and purposes of act.

This act shall be construed liberally to promote the following policies:

- (1) to simplify, clarify, and modernize the law governing consumer sales practices;
- (2) to protect consumers from suppliers who commit deceptive and unconscionable sales practices;
- (3) to encourage the development of fair consumer sales practices;
- (4) to make state regulation of consumer sales practices not inconsistent with the policies of the Federal Trade Commission Act relating to consumer protection;
- (5) to make uniform the law, including the administrative rules, with respect to the subject of this act among those states which enact similar laws; and
- (6) to recognize and protect suppliers who in good faith comply with the provisions of this act.

13-11-3. Definitions.

(2) "Consumer transaction" means a sale, lease, assignment, award by chance, or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance), to a person for primarily personal, family, or household purposes, or for purposes that relate to a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis and in which he has not been previously engaged, or a solicitation or offer by a supplier with respect to any of these transfers or dispositions. It includes any offer or solicitation, any agreement, any performance of an agreement with respect to any of these transfers or dispositions, and any charitable solicitation as defined in this section.

(6) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.

13-11-4. Deceptive act or practice by supplier.

(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;

(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;

(c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or has been used to an extent that is materially different from the fact;

(j) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false;

13-11-5. Unconscionable act or practice by supplier.

(1) An unconscionable act or practice by a supplier in connection with a consumer transaction violates this act whether it occurs before, during, or after the transaction.

(2) The unconscionability of an act or practice is a question of law for the court. If it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination.

(3) In determining whether an act or practice is unconscionable, the court shall consider circumstances which the supplier knew or had reason to know.

13-11-19. Actions by consumer.

(1) Whether he seeks or is entitled to damages or otherwise has an adequate remedy at law, a consumer may bring an action to:

(a) obtain a declaratory judgment that an act or practice violates this chapter; and

(b) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is likely to violate this chapter.

(2) A consumer who suffers loss as a result of a violation of this chapter may recover, but not in a class action, actual damage or \$2,000, whichever is greater, plus court costs.

(5) Except for services performed by the enforcing authority, the court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:

- (a) the consumer complaining of the act or practice that violates this chapter has brought or maintained an action he knew to be groundless; or a supplier has committed an act or practice that violates this chapter; and
- (b) an action under this section has been terminated by a judgment or required by the court to be settled under Subsection 13-11-21(1)(a).

13-11-23. Other remedies available—Class action only as prescribed by act.

The remedies of this act are in addition to remedies otherwise available for the same conduct under state or local law, except that a class action relating to a transaction governed by this act may be brought only as prescribed by this act.

Utah Motor Vehicle Dealer Act:

41-1a-102. Definitions.

(13) "Dealer" means a person engaged or licensed to engage in the business of buying, selling, or exchanging new or used vehicles, vessels, or outboard motors either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise or who has an established place of business for the sale, lease, trade, or display of vehicles, vessels, or outboard motors.

(33) (a) "Motor vehicle" means a self propelled vehicle intended primarily for use and operation on the highways.

(b) "Motor vehicle" does not include an off-highway vehicle.

(40) (a) "Owner" means a person, other than a lienholder, holding title to a vehicle, vessel, or outboard motor whether or not the vehicle, vessel, or outboard motor is subject to a security interest.

(b) If a vehicle is the subject of an agreement for the conditional sale or installment sale or mortgage of the vehicle with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or mortgagor, or if the vehicle is the subject of a security agreement, then the conditional vendee, mortgagor, or debtor is considered the owner for the purposes of this chapter.

(c) If a vehicle is the subject of an agreement to lease, the lessor is considered the owner until the lessee exercises his option to purchase the vehicle.

(46) “Reconstructed vehicle” means every vehicle of a type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(50) “Repair or replacement” means the restoration of vehicles, vessels, or outboard motors to a sound working condition by substituting any inoperative part of the vehicle, vessel, or outboard motor, or by correcting the inoperative part.

(66) “Vehicle” includes a motor vehicle, trailer, semitrailer, off-highway vehicle, manufactured home, and mobile home.

41-3-102. Definitions.

(22) “Principal place of business” means a site or location in this state:

(a) devoted exclusively to the business for which the dealer, manufacturer, remanufacturer, transporter, dismantler, crusher, or bond shop is licensed, and businesses incidental to them;

(b) Sufficiently bounded by fence, chain, posts, or otherwise marked to definitely indicate the boundary and to admit a definite description with space adequate to permit the display of three or more new, or new and used, or used motor vehicles; and

(c) that includes a permanent enclosed building or structure large enough to accommodate the office of the establishment and to provide a safe place to keep the books and other records of the business, at which the principal portion of the business is conducted and the books and records kept and maintained.

(24) “Salesperson” means an individual who for a salary, commission, or compensation of any kind, is employed either directly, indirectly, regularly, or occasionally by any new motor vehicle dealer or used motor vehicle dealer to sell, purchase, or exchange or to negotiate for the sale, purchase, or exchange of motor vehicles.

41-3-201. Licenses required.

(1) A person may not act as any of the following without having procured a license issued by the administrator: a dealer, salesperson, manufacturer, transporter, dismantler, distributor, factory branch and representative, distributor branch and representative, crusher, remanufacturer, and body shop.

(2) A supplemental license shall be secured by a dealer, manufacturer, remanufacturer, transporter, dismantler, crusher, or body shop for each additional place of business maintained by him.

41-3-202. Licenses — Classes and scope.

- (1) A new motor vehicle dealer's license permits the licensee to:
 - (a) offer for sale, sell, or exchange new motor vehicles if the licensee possesses a franchise from the manufacturer of the motor vehicle offered for sale, sold, or exchanged by the licensee;
 - (b) offer for sale, sell, or exchange used motor vehicles;
 - (c) operate as a body shop; and
 - (d) dismantle motor vehicles.
- (2) A used motor vehicle dealer's license permits the licensee to:
 - (a) offer for sale, sell, or exchange used motor vehicles;
 - (b) operate as a body shop; and
 - (c) dismantle motor vehicles.
- (3) A new motorcycle and small trailer dealer's license permits the licensee to:
 - (a) offer for sale, sell, or exchange new motorcycles or small trailers if the licensee possesses a franchise from the manufacturer or the motorcycle or small trailer offered for sale, sold, or exchanged by the licensee;
 - (b) offer for sale, sell, or exchange used motorcycles or small trailers; and
 - (c) dismantle motorcycles or small trailers.
- (4) A used motorcycle and small trailer dealer's license permits the licensee to:
 - (a) offer for sale, sell, or exchange used motorcycles and small trailers; and
 - (b) dismantle motorcycles or small trailers.
- (5) A salesperson's license permits the licensee to act as a motor vehicle salesperson and is valid for employment with only one dealer at a time.
- (6)
 - (a) A manufacturer's license permits the licensee to construct or assemble motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, at an established place of business and to remanufacture motor vehicle.
 - (b) Under rules of the division of licensee may issue and install vehicle identification numbers on manufactured motor vehicles.
- (7) A transporter's license permits the licensee to transport or deliver motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act from a manufacturing, assembling, or distributing point or from a dealer, to dealers, distributors, or sales agents of a manufacturer or remanufacturer, to or from detail or repair shops, and to financial institutions or places of storage from points of repossession.
- (8) A dismantler's license permits the licensee to dismantle motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reselling parts or for salvage, or selling dismantled or salvage vehicles to a crusher or other dismantler.

(9) A distributor or factory branch and distributor branch's license permits the licensee to sell and distribute new motor vehicles, parts, and accessories.

(11) (a) (i) A remanufacturer's license permits the licensee to construct, reconstruct, assemble, or reassemble motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from used or new motor vehicles or parts.

(ii) Evidence of ownership of parts and motor vehicles used in remanufacturer shall be available to the division upon demand.

(b) Under rules of the administrator, the licensee may issue and install vehicle identification numbers on remanufactured motor vehicles.

(12) A crusher's license permits the licensee to engage in the business of crushing or shredding motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reducing the useable materials and metals to a more compact size of recycling.

(13) A body shop's license permits the licensee to rebuild, restore, repair, or paint primarily the body of motor vehicles damaged by collision or natural disaster, and to dismantle motor vehicles.

(14) A special equipment dealer's license permits the licensee to:

(a) buy incomplete new motor vehicles with a gross vehicle weight of 12,000 or more pounds from a new motor vehicle dealer and sell the new vehicle with the special equipment installed without a franchise from the manufacturer;

(b) offer for sale, sell, or exchange used motor vehicles;

(c) operate as a body shop; and

(d) dismantle motor vehicles.

41-3-205. Licenses—Bonds required—Maximum liability—Action against surety—

(1) (a) Before a dealer's, special equipment dealer's, crusher's, or body shop's license is issued the applicant shall file with the administrator a corporate surety bond in the amount of:

(i) \$20,000 for a motor vehicle dealer's license or special equipment dealer's license;

(b) The corporate surety shall be licensed to do business within the state.

(c) The form of the bond:

(i) shall be approved by the attorney general;

(ii) shall be conditioned upon the applicant's conducting business as a dealer without fraud or fraudulent representation and without violating this chapter; and

(iii) may be continuous in form.

(d) The total aggregate annual liability on the bond to all persons making claims may not exceed the amount of the bond.

(2) A cause of action under Subsection (1) may not be maintained against a 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 was filed with the administrator.

(3) A person making a claim on the bond shall be awarded attorneys' fees in cases successfully prosecuted or settled against the surety or principal if the bond has not been depleted.

41-3-208. Salesperson's license — Relinquishment upon loss or change of employment — Notice to salesperson — New license required.

(1) If a sales person is discharged from or leaves his employer, the dealer who last employed the salesperson shall return the salesperson's license to the administrator.

(2) The salesperson shall be notified at his last known place of residence that his license has been returned to the administrator.

(3) A person may not act as a motor vehicle salesperson until a new license is procured.

41-3-210. License holders—Prohibitions.

(1) The holder of any license issued under this chapter may not:

(a) intentionally publish, display, or circulate any advertising that is misleading or inaccurate in any material fact or that misrepresents any of the products sold, manufactured, remanufactured, handled, or furnished by a licensee;

(b) intentionally publish, displace, or circulate any advertising without identifying the seller as the licensee by including in the advertisement the full name under which the licensee is licensed or the licensee's number assigned by the division;

(c) violate this chapter or the rules made by the administrator;

(d) violate any law of the state respecting commerce in motor vehicles of any rule respecting commerce in motor vehicles made by any licensing or regulating authority of the state.

(l) as a manufacturer or remanufacturer assemble a motor vehicle that does not comply with construction, safety, or vehicle identification number standards fixed by law or rule of any licensing or regulating authority;

(m) as anyone other than a salesperson licensed under this chapter, be present on a dealer display space and contact prospective customers to promote the sale of the dealer's vehicles;

(n) sell, displace for sale, or offer for sale motor vehicles at any location other than the principal place of business or additional places of business licensed under this chapter; this provision is construed to prevent dealers, salespersons, or any other representative of a dealership from selling, displaying, or offering motor vehicles for sale from their homes or other unlicensed locations.

41-3-404. Right of action against dealer, salesperson, crusher, body shop, or surety on bond.

(1) A person may maintain an action against a dealer, crusher, or body shop on the corporate surety bond if:

(a) the person suffers a loss or damage because of:

(i) fraud;

(ii) fraudulent representation; or

(iii) a violation of:

(A) this chapter;

(B) any law respecting commerce in motor vehicles; or

(C) a rule respecting commerce in motor vehicle made by a licensing or regulating authority; and

(b) the loss or damage results from the action of:

(i) a licensed dealer;

(ii) a licensed dealer's salesperson action on behalf of the dealer or within the scope of the salesperson's employment;

(iii) a licensed crusher; or

(iv) a body shop.

(2) Successive recovery against a surety on a bond is permitted, but the total aggregate annual liability on the bond to all persons making claims may not exceed the amount of the bond.

(3) A cause of action may not be maintained against any surety under any bond required under this chapter except as provided in Section 41-3-205.

41-3-701. Violations as misdemeanors.

(1) Except as otherwise provided in this chapter any person who violates this chapter or any rule made by the administrator is guilty of a class B misdemeanor.

(2) A person who violates Section 41-3-201 is guilty of a class A misdemeanor.

(3) A person who violates Section 41-3-301 is guilty of a class A misdemeanor unless the selling dealer complies with the requirements of Section 41-3-403.

41-3-702. Civil penalty for violation.

(1) The following are civil violations under this chapter and are in addition to criminal violations under this chapter:

(b) Level II:

(ii) advertising violation;

(iv) manufacturing without meeting construction or vehicle identification number standards; and

(c) Level III:

(iv) selling from an unlicensed location;

(vii) assisting an unlicensed dealer or salesperson in sales of motor vehicles.

(3) The following are civil violations in addition to criminal violations under Section 41-1a-1008:

(a) knowingly selling a salvage vehicle, as defined in Section 41-1a-1001, without disclosing that the salvage vehicle has been repaired or rebuilt;

(b) knowingly making a false statement on a vehicle damage disclosure statement, as defined in Section 41-1a-1001; or

(c) fraudulently certifying that a damaged motor vehicle is entitled to an unbranded title, as defined in Section 41-1a-1001, when it is not.

(4) The civil penalty for a violation under Subsection (1) is:

(a) not less than \$1,000, or treble the actual damages caused by the person, whichever is greater; and

(b) reasonable attorneys' fees and costs of the action.

(5) A civil action may be maintained by a purchaser or by the administrator.

Utah Uniform Commercial Code:

70A-1-102. Purposes—Rules of construction—Variation by agreement.

(1) This act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this act are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this act may be varied by agreement, except as otherwise provided in this act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this act may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

70A-1-103. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

70A-1-106. Remedies to be liberally administered.

(1) The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this act or by other rule of law.

(2) Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.

70A-1-201. General definitions.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in Sections 70A-1-205 and 70A-2-208. Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts as provided in Section 70A-1-103. Compare the definition of "contract" in Subsection (11).

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this title and any other applicable rules of law. Compare the definition of "agreement" in Subsection (3).

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(25) (a) A person has "notice" of a fact when:

- (i) he has actual knowledge of it;
- (ii) he has received a notice or notification of it; or
- (iii) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

- (b) A person “knows” or has “knowledge” of a fact when he has actual knowledge of it.
- (c) “Discover” or “learn” or a word or phrase of similar import refers to knowledge rather than to reason to know.
- (d) The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

(27) Notice, knowledge of a notice, or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

70A-1-203. Obligation of good faith.

Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement.

70A-1-205. Course of dealing and usage of trade.

(1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

70A-2-102. Scope—Certain security and other transactions excluded from this chapter.

Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

70A-2-103. Definitions and index of definitions.

(1) In this chapter unless the context otherwise requires

- (a) “Buyer” means a person who buys or contracts to buy goods.
- (b) “Good faith” in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
- (d) “Seller” means a person who sells or contracts to sell goods.

70A-2-104. Definitions—“Merchant”

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

70A-2-105. Definitions—“Goods”

(1) “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (chapter 8) and things in action.

70A-2-106. Definitions—“Contract”—“Agreement”—“Contract for sale”—“Sale”—“Present sale”—“Conforming” to contract—

(1) In this chapter unless the context otherwise requires “contract” and “agreement” are limited to those relating to the present or future sale of goods. “Contract for sale” includes both a present sale of goods and a contract to sell goods at a future time. A “sale” consists in the passing of title from the seller to the buyer for a price (Section 70A-2-401). A “present sale” means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are “conforming” or conform to the contract when they are in accordance with the obligations under the contract.

70A-2-301. General obligations of parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

70A-2-302. Unconscionable contract or clause.

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

70A-2-313. Express warranties by affirmation, promise, description, sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.

70A-2-314. Implied warranty—Merchantability—Usage of trade.

(1) Unless excluded or modified (Section 70A-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, or even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 70A-2-316) other implied warranties may arise from course of dealing or usage of trade.

70A-2-315. Implied warranty—Fitness for particular purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

70A-2-316. Exclusion or modification of warranties—

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (Section 70A-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to Subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

70A-2-507. Effect of seller's tender — Delivery on condition of payment.

(1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

70A-2-513. Buyer's right to inspection of goods.

(1) Unless otherwise agreed and subject to Subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right

before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (Subsection (3) of Section 70A-2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; and

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery of or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

9. "Inspection" under this section has to do with the buyer's check-up on whether the seller's performance is in accordance with a contract previously made and is not to be confused with the "examination:" of the goods or of a sample or model of them at the time of contracting which may affect the warranties involved in the contract.

70A-2-714. Buyer's damages for breach in regard to accepted goods.

(1) Where the buyer has accepted goods and given notification (Subsection (3) of Section 70A-2-607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

Other Statutes:

78-15-6. Defect or defective condition making product unreasonably dangerous — Rebuttable presumption.

In any action for damages for personal injury, death, or property damage allegedly caused by a defect in a product:

(1) No product shall be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a defect or defective condition in the product which made the produce unreasonably dangerous to the user or consumer.

(2) As used in this act. “unreasonably dangerous” means that the product was dangerous to an extent beyond which would be contemplated by the ordinary and prudent buyer, consumer or user of that produce in that community considering the product’s characteristics, propensities, risks, dangers and uses together with any actual knowledge, training, or experience possessed by that particular buyer, user or consumer.

(3) There is a rebuttable presumption that a product is free from any defect condition where the alleged defect in the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were in conformity with government standards established for the industry which were in existence at the time the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were adopted.

78-2a-3. Court of Appeals jurisdiction.

(2) (j) cases transferred to the Court of Appeals from the Supreme Court.

78-27-56. Attorney’s fees — Award where action or defense in bad faith — Exceptions.

(1) In civil actions, the court shall award reasonable attorney’s fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

(2) The Court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if the Court:

(a) Finds the party has filed an affidavit of impecuniosity in the action before the court; or

(b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).

49 United States Code

49 § 32710. Civil actions by private persons

(a) Violation and amount of damages. — A person that violates this chapter or a regulation prescribed or order issued under this chapter, with intent to defraud, is liable for 3 times the actual damages or \$1,500, whichever is greater.

ADDENDUM B

**PORTIONS OF RECORD ON APPEAL OF CENTRAL IMPORTANCE TO
ITS DETERMINATION**

1. Motor Vehicle Contract of Sale 1 & 2
2. Buyers Guide 3 & 4
3. Dealer Registration Record 5
4. Bond of Motor Vehicle Dealer, Saleman, or Crusher 6 - 9
5. Reassignment of Title – Owner(s) Transferor and Odometer Disclosure .10

SELLER:

231

K&K SALES2852 So. Redwood Rd. #B-1
West Valley City, UT 84119

PURCHASER:

Purchaser's Name

Street Address

City

State

Zip Code

Home Telephone

Business Telephone

Purchaser(s) hereby orders from K&K Sales (hereafter K&K) and agree to purchase from K&K, subject to all terms, conditions and agreements contained herein, used vehicle:

☐ NEW☒ USED☐ DEMO YEAR

MAKE

SERIES

BODY TYPE

COLOR

VIN NO.

STOCK NO

DEL.

DATE

CASH SELLING PRICE

\$8,500.00

ACCESSORIES

\$

USED TRADE-IN AND/OR OTHER CREDITS

MAKE OF TRADE-IN

MILES

YEAR

BODY TYPE

SERIES

VIN NO.

BALANCE OF \$

OWED TO

TO BE PAID BY PURCHASER

ADDRESS

GOOD

VERIFIED

UNTIL

BY

DATE

USED VEHICLE ALLOWANCE

\$

BALANCE OWED ON VEHICLE

NET ALLOWANCE ON USED VEHICLE

DEPOSIT

CASH WITH ORDER

TOTAL CREDIT (Transfer to Left Column)

(\$

OTHER TERMS AGREED TO:

Purchaser acknowledges receiving the following documents in addition to an executed copy of this agreement:

1. Odometer statement
2. FTC warranty statement window sticker
3. Other

SUB TOTAL

TRADE ALLOWANCE

TAXABLE AMOUNT

UTAH SALES TAX

5.31 25

LICENSE & REGISTRATION

PROPERTY TAX DUE

TOTAL OF ABOVE ITEMS

\$

TOTAL CREDITS (Transferred from Right Column)

(\$

BALANCE DUE

\$

(X) James K. Rawson
Purchaser

(X) James K. Rawson, Junior 4 Aug 93
Purchaser's Signature Date

ACCEPTED BY

Dealer or Sales Manager

FURTHER UNDERSTOOD & MUTUAL AGREED:

agreement on the reverse side hereof is subject to the following terms and conditions which have been mutually agreed upon

Purchaser warrants that he has inspected the vehicle to his satisfaction and purchases the vehicle "AS IS" If purchaser has not inspected the vehicle, he waives his right to do so

The purchaser agrees to deliver the original bill of sale and the title to any used vehicle traded herein along with the delivery of such vehicle in the same condition and containing the same equipment as when appraised, reasonable wear and tear excepted, and the buyer warrants such used vehicle to be his property free and clear of all liens and encumbrances except as otherwise noted on the reverse side hereof

Upon the failure or refusal of the purchaser to complete said purchase for any reason other than on account of an increase in price, the cash deposit may be retained as liquidated damages. In the event a used vehicle has been taken in trade K&K may sell said used vehicle and K&K shall be entitled to reimburse itself out of the proceeds of such sale for its expenses and losses incurred or suffered as the result of purchaser's failure to complete said purchase, including a selling commission of 15% of the sale price of the trade in and additional expenses incurred in storing, insuring, conditioning or advertising the trade-in vehicle for sale. Any remaining proceeds from the sale of a trade-in vehicle, after deducting the expenses listed above, shall be returned to the purchaser

K&K shall not be liable for delays caused by repairs to the vehicle performed by third-parties, accidents, sureties, fires or other causes beyond the control of K&K

NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, ARE MADE BY K&K WITH RESPECT TO THE USED MOTOR VEHICLE OR MOTOR VEHICLE CHASSIS FURNISHED HEREUNDER EXCEPT AS MAY BE EXPRESSED IN WRITING BY K&K FOR SUCH USED MOTOR VEHICLE OR MOTOR CHASSIS, WHICH WARRANTY, IF SO EXPRESSED IN WRITING IS INCORPORATED HEREIN AND MADE A PART HEREOF.

The vehicle covered by this agreement may be a rebuilt or restored vehicle as defined by U.C.A. § 41-1-36.5 (1) (a) and § 41-1-36.6 (9). Purchaser acknowledges that this has been disclosed and that purchaser has seen the previous title or salvage certificate.

The purchase price indicated on the reverse side may include rebates to be refunded to purchaser and may include amounts to be used for repairs to the vehicle, said repairs to be completed by persons not parties to this agreement. If amounts to be used for repairs to the vehicle are returned or rebated to the purchaser, purchaser agrees to indemnify and hold harmless K&K against any claims asserted by anybody for damages resulting from the purchaser's failure to use the funds for the repairs

K&K makes no warranty or representation as to the extent the vehicle covered by this agreement has been used, regardless of the mileage shown on the odometer of said used vehicle other than representations contained in the odometer statement.

As part of the consideration given by the parties for this agreement, purchaser and K&K have agreed to submit any dispute that may arise from this agreement, transaction or communications incident thereto to mandatory binding arbitration. Should a dispute arise, a party must demand arbitration by written notice to the other party. Within 30 days following the date of the written notice, each party shall select an arbitrator. The two arbitrators selected by the parties shall then select a third arbitrator. The arbitrator shall proceed under Utah Code Annotated § 78-31a-1 through 20. The arbitration hearing shall take place before expiration of 60 days following the date of the written notice to arbitrate. A decision shall be rendered by the arbitrators within 15 days following the arbitration hearing. A decision of the 3 arbitrators shall be a valid, binding decision. Each party shall bear the cost of its selected arbitrator. All other costs shall be borne by the non-prevailing party. The parties agree that any arbitration award shall be limited to the purchase price, as stated on the reverse side hereof.

Purchaser agrees to secure all necessary inspections to facilitate licensing and restoration of the vehicle. Purchaser agrees to indemnify and hold harmless K&K from any damages that may arise from the failure of purchaser to secure inspections. The vehicle is sold "AS IS" and purchaser is solely responsible for obtaining necessary inspections

Purchaser has obtained finances to purchase the vehicle and a lender is using the vehicle as collateral, purchaser represents that he/she has disclosed to his/her lender that the vehicle requires repairs, if the vehicle is damaged as of the date of this purchase agreement. Purchaser acknowledges that he/she has provided or will provide a copy of this purchase agreement to this purchase agreement to his/her lender.

As of the date of this purchase, all risk of loss to the vehicle passes to purchaser. If purchaser leaves vehicle in possession of K&K for more than 30 days, K&K may charge purchaser storage fees of \$10.00 per day beginning the day of purchase.

The vehicle described in this purchase agreement requires repairs, K&K makes no representation regarding the timing of the repairs or when the repairs may be completed. Purchaser acknowledges that K&K does not perform any repair work to vehicles and purchaser buys the vehicle "AS IS".

The vehicle described in this agreement is damaged, purchaser acknowledges the application for a new title may be delayed until the repairs are completed. Purchaser acknowledges that K&K has tendered the title to purchaser in lieu of completing a temporary 30 day permit. Purchaser agrees to have the previous title or other ownership documents in possession of K&K for safe keeping until such time as purchaser either personally applies for a title and registration or completed a temporary 30 day permit following completion of repairs.

If the purchaser applies for a Utah Certificate of Title and Registration, the title issued for the vehicle described in this agreement will or will not indicate that the vehicle is a rebuilt or restored vehicle as defined in Utah Code Annotated § 41-1-36.5 (1) (a) and § 41-1-36.6 (9).


ABILITY INSURANCE COVERAGE FOR BODILY INJURY AND DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS AGREEMENT.

PURCHASER REPRESENTS that he/she is 18 years of age or older

Title to the vehicle is to remain vested with K&K until purchase price is paid in full, including applicable taxes and licensing fees. Purchaser grants K&K a security interest superior to any other security interest, in the subject vehicle to secure payment in full. To perfect the security interest granted under this section, K&K may retain possession of the vehicle or regain possession of vehicle from any bailee of purchaser.

Any agreement, verbal or otherwise, not contained in writing in this agreement on this document will be recognized.

This agreement is Non-Transferable

 James K. Rawson, Jr.
Purchaser

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE	MODEL	YEAR	VIN NUMBER
Ford	AGOSTAL	1989	1FMDA31USKZB04673

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

☒ **AS IS - NO WARRANTY**

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☐ WARRANTY

☐ **FULL** ☐ **LIMITED WARRANTY.** The dealer will pay _____ % of the labor and _____ % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

~~SECRET~~

~~CONFIDENTIAL~~

Vehicle is a
rebuilt Salvage Title
by [unclear]

$\frac{1}{2} + \frac{1}{2} = 1$
 1.05×10
 1.05
 $1.05 \times 10 = 10.5$

☐ **SERVICE CONTRACT.** A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

ow is a list of some major defects that may occur in used motor vehicles.

Engine & Body

Time-cracks corrective welds or rusted through
gt. cracks—bent or twisted frame

Oil

leakage excluding normal seepage

icked block or head

its missing or inoperable

ocks or misses related to camshaft lifters and

ush rods

ormal exhaust discharge

Transmission & Drive Shaft

roper fluid level or leakage excluding normal seepage

icked or damaged case which is visible

ormal noise or vibration caused by faulty transmission

r drive shaft

roper shifting or functioning in any gear

usual clutch slips or chatters

Oil

roper fluid level or leakage excluding normal seepage

icked or damaged housing which is visible

ormal noise or vibration caused by faulty differential

Engine System

kage including radiator

roperly functioning water pump

Electrical System

ery leakage

roperly functioning alternator generator battery or starter

Engine

le leakage

Other Accessories

ges or warning devices

onditioner

lar & Defroster

Brake System

Failure warning light broken

Pedal not firm under pressure (DOT spec.)

Not enough pedal reserve (DOT spec.)

Does not stop vehicle in straight line (DOT spec.)

Hoses damaged

Drum or rotor too thin (Mfr. Specs)

Lining or pad thickness less than 1/32 inch

Power unit not operating or leaking

Structural or mechanical parts damaged

Steering System

Too much free play at steering wheel (DOT specs.)

Free play in linkage more than 1/4 inch

Steering gear binds or jams

Front wheels aligned improperly (DOT specs.)

Power unit belts cracked or slipping

Power unit fluid level improper

Suspension

Ball joint seals damaged

Structural parts bent or damaged

Stabilizer bar disconnected

Spring broken

Shock absorber mounting loose

Radius rod damaged or missing

Rubber bushings damaged or missing

Shock absorber leaking or functioning improperly

Tires

Tread depth less than 2/32 inch

Sizes mismatched

Visible damage

Wheels

Visible cracks, damage or repairs

Mounting bolts loose or missing

Exhaust System

Leakage

KHK Sales

1652 2652 To Redwood Rd

SLC

1 COMPLAINTS

KNOWLEDGE RECEIPT OF A COPY OF THIS BUYERS GUIDE.

James K. Rawson, Trustee

CUSTOMER SIGNATURE

4 Aug 93

DATE

IMPORTANT The information on this form is part of any contract to buy this vehicle. Removal of this label before
mer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).

1. CAR TRUCK TRAILER MOTORCYCLE SNOWMOBILE OFF-H

2. OWNER INFORMATION PLEASE PRINT OR TYPE SHADED AREA FOR OFFICIAL USE ON

NAME James K. Lawson Twiss EXPIRATION MONTH/YEAR NEW PLATE N

REBECCA K. LAWSON TWISS JAN FEB MAR **6571**

272 Front St. APR MAY JUN

STANBURY UT 84303 JUL AUG **94** SEP PREVIOUS RE

STANBURY COUNTY DUGES OCT NOV DEC JTAH PLATE = 84

3. VEHICLE INFORMATION OPEN SOLD EXPIRATION DATE

MODEL Ford YEAR 1990 VIN 1FMDA31USKZ04673 EVIDENCE OF OWNERSHIP

1990 Ford TITLE NO 50035278

1990 Ford TITLE NO 50035278

1990 Ford TITLE NO 50035278

1990 Ford TITLE NO 50035278

4. ODOMETER DISCLOSURE STATEMENT

Enter odometer reading exactly as shown in seller's disclosure on current title.

50000 CHECK ONE

X Actual Mileage

50000 Mileage exceeds mechanical limits

50000 Not Actual Mileage

5. FOR LEASED VEHICLES ONLY

LEASEE NAME

ADDRESS

CITY STATE ZIP COUNTY

6. FOR VEHICLES FINANCED BY LOAN

FINANCER NAME

ADDRESS

CITY STATE ZIP COUNTY

7. FOR FLEET VEHICLES ONLY

ACQUISITION NUMBER FLEET NUMBER

CHECK IF APPOINTMENT INTRASTATE EXEMPT

8. PURCHASE AFFIDAVIT

TOTAL PURCHASE PRICE \$

LESS ALLOWANCE FOR TRADE-IN VEHICLE \$

NET PURCHASE PRICE \$

TRADE-IN VIN OR SERIAL NO

IF EXEMPT STATE REASON

9. AFFIDAVIT OF OWNER(S)

Each owner must sign below

SUBSCRIBED AND SWORN BEFORE ME THIS DAY OF

COMMISSION EXPIRES

EXAMINING OFFICER NUMBER

EXPIRATION MONTH/YEAR NEW PLATE N

JAN FEB MAR **6571**

APR MAY JUN

JUL AUG **94** SEP PREVIOUS RE

OCT NOV DEC JTAH PLATE = 84

OPEN SOLD EXPIRATION DATE

EVIDENCE OF OWNERSHIP

UTAH TITLE NO 50035278

1990 Ford

1990 Ford

1990 Ford

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BOND NO. ULT-1081508**BOND OF MOTOR VEHICLE DEALER, SALESPERSON, OR CRUSHER**KNOW ALL PERSONS BY THESE PRESENTS: That we, Kim and Karen Conover dab: K&K Sales

of (Street Address), 2852 So. Redwood Rd., Salt Lake City, UT
(City), County of Salt Lake, Utah, as Principal, and
Old Republic Surety Company, 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 sum of Twenty Thousand and no/100----- Dollar
(\$20,000.00-----), as required by Chapter 3, Title 41, Utah Code Ann. (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 on this bond to all persons making claims may not exceed \$20,000.00-----, as set forth
in Chapter 3, Title 41, Utah Code Ann. (1953, as amended).

THE CONDITION OF THIS OBLIGATION IS SUCH, That,

WHEREAS, the above bounden Principal has applied for a license to do business as a Used
Motor Vehicle Dealer 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
Used Motor Vehicle Dealer 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 Ann. (1953, as amended), and
indemnify persons, firms and corporations in accordance with Chapter 3, Title 41, Utah Code Ann. (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 Chapter
Title 41, Utah Code Ann. (1953, as amended) or any law respecting commerce in motor vehicles or rule respecting commerce in
motor vehicles promulgated by a licensing or regulating authority so that the total aggregate annual liability on the bond to all
persons making claims may not exceed \$20,000.00-----, as set forth in Chapter 3, Title 41, Utah
Code Ann. (1953, as amended), on account of fraud or fraudulent representation or for any violation or violations of said laws or rule
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 attorneys' fees in cases successfully prosecuted or settled
against the Surety or Principal if the bond has not been depleted.

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 Enforcement Division
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 or rules 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
judgement before the lapse of sixty days.

Signed and Sealed this 22 day of January, 19 93K&K Sales

Principal

OLD REPUBLIC SURETY COMPANY, Sure

By

Attorney-in-Fact

Mvrel G. Mitchell

INDIVIDUAL ACKNOWLEDGEMENT OF PRINCIPAL

STATE OF UTAH

SS

COUNTY OF _____

On this _____ day of _____, in the year _____, before me personally appeared _____ to me known and known to me to be the person, and described in, and who executed the foregoing instrument, and acknowledged to me executed the same.

(SEAL)

Notary Public

PARTNERSHIP OR FIRM ACKNOWLEDGEMENT OF PRINCIPAL

STATE OF UTAH

SS

COUNTY OF _____

On this _____ day of _____, in the year _____, before me personally appeared _____ to me known and known to me to be one of the firm of _____ described in, and who executed the same as and for the act and deed of said firm.

(SEAL)

Notary PublicCORPORATE ACKNOWLEDGEMENT OF PRINCIPAL
(TO BE COMPLETED BY CORPORATION WITH CORPORATE SEAL)

STATE OF UTAH

SS

COUNTY OF _____

On this _____ day of _____, in the year _____, before me personally appeared _____ to me known, who, being by me duly sworn, did depose and say: That he resides in _____ that he is _____ of the _____, the corporation de in and which executed the above instrument; that he knew the seal of said corporation, and that he signed his name thereto by like order.

(CORPORATE SEAL)

(NOTARY SEAL)

Notary PublicCORPORATE ACKNOWLEDGEMENT OF PRINCIPAL
(TO BE COMPLETED BY CORPORATION WITHOUT CORPORATE SEAL)

STATE OF UTAH

SS

COUNTY OF _____

On this _____ day of _____, in the year _____, before me personally appeared _____ to me known, who, being by me duly sworn, did depose and say: That he resides in _____ that he is the _____ of the _____, the corporation executed the above instrument and which is described therein; that he signed the above mentioned instrument on behalf of said corporation; that authorized to do so by Article _____ of the Articles of Incorporation of the said corporation, and by order of the of Directors of said corporation, and that his signature as it thus appears in the above instrument is binding upon the corporation.

(SEAL)

Notary Public

AFFIDAVIT OF QUALIFICATION

STATE OF UTAH

SS

COUNTY OF Salt Lake

Myrel G. Mitchell being first duly sworn, on oath and says that he is the Attorney-in-Fact of said company, and that he is duly authorized to execute and deliver the foregoing obligations; that said company is authorized to execute the same and has complied in all respects with the Utah in reference to becoming sole surety upon bonds, undertakings and obligations.



Old Republic

"Company" means as interest(s) may appear, the Old Republic Surety Company, any and/or all subsidiary(ies), and/or all parent company(ies) of Old Republic Surety Company, and/or any affiliated company(ies) within the Old Republic International General Insurance Group, as well as/or any and/or all reinsuring sure co-surety(ies) and any surety(ies) which have been procured to execute the bond(s), their successors or assigns.

ALL E.....

SUPERIOR INSURANCE SERVICE 1401 East 3900 South, Suite E Salt Lake City, Utah 84124	AGENCY CODE NO.	BOND NO. <u>ULI 108.150</u>
--	-----------------	--------------------------------

I. APPLICATION FOR MISCELLANEOUS BOND

Application is hereby made to the Company for a bond of suretyship, in the penalty of \$ 20,000
for the term of 1 year beginning Jan 21, 93
in favor of State of Utah
to cover USED car dealership
1. Name of applicant Kim Conover Social Security No. 52886-348
2. Business Address 2852 So Redwood Rd SLC ut. Zip 84119 Business Tel. No. 573 532
Residence Address 2629 Oak Grove Dr. Sandy ut. Zip 84092 Residence Tel. No. 571 967
3. Description of applicant's business USED car dealer Employer SELF
How long engaged therein? 10 years
4. Financial statement of applicant as of Jan 21 19 93

II. WHERE REQUIRED, ATTACH CURRENT FINANCIAL STATEMENT OR COMPLETE THE FOLLOWING

ASSETS		LIABILITIES	
Cash in <u>Guardian Bank</u> Bank	<u>20,432.00</u>	Notes payable <u>United Savings</u> Bank	<u>119,200</u>
Cash in <u>United Savings</u> Bank	<u>2350.00</u>	Due <u>20yr</u> How secured? <u>mortgage</u>	
Cash in office, including check for deposit	<u>3,200.00</u>	Notes payable _____ Bank	
Stocks, bonds, etc. (market value) consisting of _____		Due _____ How secured? _____	
Notes receivable _____		Other notes payable _____	
Due _____ How secured? _____		Due _____ How secured? _____	
Accounts receivable _____		Borrowed or due on stock and bonds _____	
Less than 30 days old \$ _____		Accounts payable _____	
30-60 days old \$ _____		Not past due \$ _____	
Over 60 days old \$ _____		Past due \$ _____	
Merchandise, inventories, etc. (at cost) _____	<u>187,000.00</u>	Reserve for income and excess profits taxes _____	
Equipment (conservative value) _____	<u>22,000.00</u>	Other liabilities, if any, consisting of <u>Credit Card</u>	<u>6,000</u>
Real estate (give location, description and appraised value of each parcel)		Mortgage(s) on equipment _____	
1. <u>2629 Oak Grove Dr.</u>	<u>305,000.00</u>	Real estate mortgages (give amount on each parcel)	
2. _____		1. <u>Home</u>	<u>119,200</u>
3. _____		2. _____	
Other assets, if any, consisting of _____		Total Liabilities	<u>125,000</u>
		Capital stock _____	
		Surplus and undivided profits _____	
		Net Worth (if individual or partnership)	
Total Assets		Total Equity	<u>539,982</u>
		Total Liabilities & Equity	<u>419,982</u>

5. Are you liable as endorser or surety for others? No
6. Are there any lawsuits, judgments or liens pending against you? yes
7. Are you interested in any other line of business? No
8. What surety company previously executed your bonds? Western Surety 8a. Reason for change? NOT renewable
9. Have you applied to any other surety company for this bond? no If so, give full particulars

III. INDEMNITY AGREEMENT

The undersigned Applicant and Indemnitors, hereby certify and represent the information and statements contained in this application to be true and request the Company to be Surety for and furnish the above bond and such other bond(s) as may now or hereafter be requested on behalf of the named Applicant including any continuation, substitution, extension or alteration thereof, hereby authorizes and requests banks, materialman or other individual, firm or corporation, including governmental entities, to furnish any information requested concerning any transaction with the undersigned, and specifically waives any confidentiality requirements whether internal or imposed by statute, regulation, etc. Should the Company execute said bond(s), the undersigned agree as follows: (1) To pay the Company the premium as long as liability shall continue under the bond and until evidence of termination of liability is furnished satisfactory to the Company. (2) To indemnify the Company and hold it harmless against all loss, liability, costs, claim damages, and expense, internal or external of whatever kind and nature including but not limited to investigative, accounting, engineering, the fee and disbursement of counsel whether on salary, retainer or otherwise, the Company may sustain or incur for or by reason of said Company writing said bond(s) to enforce the right of the Company to any collateral taken specifically or otherwise requested, to place the Company in funds immediately to meet any claim or demand before the Company shall be required to make payment. (4) The undersigned, and each of its assign, transfer and convey to the Company all rights, title, interest and estate in and to all property, real, personal or mixed, tangible or intangible, wherever situated or of whatever nature and all interests and rights now owned and hereafter acquired and if sold the proceeds therefrom, the foregoing personal and mixed property to include but not be limited to all goods, consumer or otherwise, all commercial paper, negotiable or otherwise; all monies, bank accounts and deposits, checking, saving or otherwise; all warehouse receipts of lading and other documents of title; all securities, investments or otherwise; all accounts, receivable or otherwise; all contract rights; all equipment, machines, tools and parts; all furniture and fixtures; all general intangibles; all farm products; all inventory and all property described in Article 9 of the Uniform Commercial Code in which the undersigned presently or hereafter acquire an interest, the assignment being effective as of the date hereof, unless there is no abandonment of, breach of, delay or default in the performance of obligations contracted in or covered in such bond or of this agreement or any other agreement with the Company and no failure of the undersigned to promptly pay, discharge or satisfy any and all obligations which might constitute a claim under such bond. (5) To authorize the Company and its representatives, without notice to make schedules of all property assets under this agreement and to attach the same thereto at any time and when attached shall by reference be incorporated herein; and in addition, shall be authorized to file or refile this agreement and attachments or a copy thereof under any provision of law governing such; this document constitutes a financial statement in accordance with the Uniform Commercial Code with such additions as needed to permit its filing under such Code. (6) To irrevocably nominate and appoint the Company and its authorized representatives as attorney-in-fact with the right, but not the obligation to exercise all rights assigned, transfer and set over to the Company and in the name of the undersigned to make, execute and deliver, but be obligated, additional documents deemed necessary to give full effect to the assignment. (7) To authorize the Company to adjust, settle or compromise any claim, demand, or judgment upon said bond(s) and defend such suit and appeal such judgment or at its election to have the case, cross-action or proceeding, or any part of it or them dismissed or any appeal, writ or error, certiorari or any part thereof dismissed and to fill in any blank or blanks left in this application and Indemnity Agreement. (8) To accept as prima facie evidence voucher(s) and itemized statement(s) sworn to by officer of the Company in the event of payment by the Company. (9) To waive all right or claim to property including homestead exempt from levy, execution, sale or legal process under the law of any State(s) including any specific law or statute limiting the liability of the undersigned. (10) At the Company's option, monies due or to become due the undersigned from any Company in Old Republic International General Insurance Group, through insurance proceeds or bonding payment may be utilized to pay or help pay obligations incurred under this agreement as an offset. (11) In the event of any payment by the Company, Indemnitors agree to pay the Company interest at the prime rate plus 2% (unless prohibited by law, then at the maximum rate allowed) as determined by First National Bank of Chicago, Illinois.

The Company may decline to become surety on any bond of the Applicant and in case it does act as surety shall have the right to withdraw or cancel same whenever it shall fit, without disclosing the reason on which its act is based and the Company shall not be responsible for any loss or damage that may be sustained by reason of such action. Separate actions may be brought as they accrue and that bringing of suit or recovery of judgment shall not prejudice or bar other suits on other causes of action whether therefore or here arising. Nothing shall be construed to waive or abridge any rights or remedies which the Company might have if this instrument were not executed. The Applicant and Indemnitors shall continue to be bound under this agreement even though Surety may accept or release other Agreements of Indemnity.

The Applicant agrees that this Application shall be deemed to have been made in the State of Incorporation of the Company and that the Company's acceptance thereof and performance of the Company's obligations in respect thereof shall be deemed to have taken place in the said State of Incorporation. The Company shall be entitled to enforce the Indemnity Agreement herein contained by an action, arbitration or proceeding brought in the said State of Incorporation or in the State where the Company's principal office is located, and the Applicant/Indemnitors agree that, in any such action, arbitration or proceeding he will be subject to the jurisdiction of any court of competent jurisdiction in the said State of Incorporation and in the State where the Company's principal office is located, and service of process may be made on the Applicant/Indemnitor in any manner then permitted under applicable law, and that venue shall be proper and convenient in the County in which the Company's principal office may be located. Interpretation and enforcement of the said Indemnity Agreement at the Company's option shall be governed by laws of the said State of Incorporation (excluding conflict of laws principles). For the purposes of this paragraph the principal office for the Company shall be deemed to be located in Brookfield, Waukesha County, Wisconsin.

If any provision(s) or sub-part of any provision of this Agreement is held to be void or unenforceable under the laws of the place governing its construction or enforcement, this Agreement shall not be void or unenforceable thereby, but shall continue as though such provision or sub-part of such provision were omitted.

This Agreement shall bind the undersigned, the heirs, executors, administrators, successors and assigns of the undersigned, jointly and severally.

AGREEMENT

FAIR CREDIT REPORTING ACT NOTICE This notice is given to comply with the Federal Fair Credit Reporting Act (Public law 91-508) and any similar state law which is applicable. As part of our underwriting procedure, a routine inquiry may be made which will provide information concerning character, general reputation, personal characteristics and credit history. Upon request, additional information as to the nature and scope of the report, if one is made, will be provided.

Please be sure application is dated, witnessed or attested, signed and notarized in full.

The Agreement shall be effective this 21 day of Jan 19 93

Witness or Attest:

Elizabeth Potts

State of Utah

County of Salt Lake

APPLICANT

By Kim Conover

SS



ELIZABETH POTTS
2230 South Romeale Dr.
Sandy, Utah 84070
My Commission Expires
August 29, 1995

Subscribed and sworn to before me this _____ day of _____ 19 _____

In consideration of the Company executing the bond or instrument herein applied for, the undersigned join or joins in the foregoing Indemnity Agreement, and agree or agrees jointly and severally bound thereunder, and by all of the terms, covenants, and conditions thereof, the undersigned admits and declares that it has a material, substantial, and financial interest in the performance of the obligation which the bond or instrument applied for is given to secure, or in execution of the bond or instrument applied for, and asserts that corporation or a partnership is fully empowered to obligate itself hereby.

WITNESS: _____

WITNESS: _____

WITNESS: _____

INDEMNITORS:

Kim Conover
2689 Oak Grove Dr Sandy UT 84070
Kim Conover
(same as above)

32370378160
REASSIGNMENT OF TITLE - OWNER(S) TRANSFER AND ODOMETER DISCLOSURE
FEDERAL AND STATE LAW REQUIRE THE SELLER STATE THE MILEAGE UPON TRANSFER OF OWNERSHIP OF A VEHICLE. FAILURE TO COMPLETE A STATEMENT, OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

Year 89 Make Ford Model Arcadia VIN 1FMDA2145K2004673
I (we) the undersigned owner(s) hereby transfer, convey and assign all rights, title and interest in the vehicle described herein to the new owner named in the last assignment block completed below and warrant the title to be free and clear of all encumbrances, except a lien in favor of the person identified below within that block as new lienholder, if any.

FIRST REASSIGNMENT OF TITLE - OWNER(S) TRANSFER AND ODOMETER DISCLOSURE

I (we) certify that on the date of this statement the odometer on the above described vehicle reads the mileage here recorded and that to the best of my/our knowledge and belief the odometer reading (check one of the following):
() reflects the actual mileage for this vehicle;
() reflects the amount of mileage in excess of the odometer mechanical limits.
() is not the actual mileage for this vehicle. WARNING ODOMETER DISCREPANCY

ODOMETER READING

63,500

Print Name of Owner(s)/Transferor or Company K & K Sales Print Name of Authorized Agent Kim Conover
Address 2852 So. Redwood Rd City SLC State Ut Zip 841

X [Signature] Date 10
Signature of Transferor(s) in ink (must be notarized)

Subscribed and Sworn to this 19 day of 19

Notary Seal

Notary Public or M/V Examining Officer

NEW OWNER (Name must be printed)

NAME JAMES K. KAWEN

ADDRESS 37 S. FLINT ST

CITY LAUREL

X [Signature]

Signature of Purchaser (New Owner)

NEW LIENHOLDER (Name must be printed)

NAME

ADDRESS

CITY ST ZIP

X

Signature of Owner/Authorized Agent

LIEN RELEASE

X

Signature of Lienholder Releasing Interest

Date

Title

SECOND REASSIGNMENT OF TITLE - OWNER(S) TRANSFER AND ODOMETER DISCLOSURE

I (we) certify that on the date of this statement the odometer on the above described vehicle reads the mileage here recorded, and that to the best of my/our knowledge and belief the odometer reading (check one of the following):
() reflects the actual mileage for this vehicle;
() reflects the amount of mileage in excess of the odometer mechanical limits.
() is not the actual mileage for this vehicle. WARNING ODOMETER DISCREPANCY

ODOMETER READING

Print Name of Owner(s)/Transferor or Company Print Name of Authorized Agent miles (no tenths)

Address City State Zip

X Date 10

Signature of Transferor(s) in ink (must be notarized)

Subscribed and Sworn to this 19 day of 19

Notary Seal

Notary Public or M/V Examining Officer

NEW OWNER (Name must be printed)

NAME

ADDRESS

CITY

X

Signature of Purchaser (New Owner)

NEW LIENHOLDER (Name must be printed)

NAME

ADDRESS

CITY ST ZIP

X

Signature of Owner/Authorized Agent

LIEN RELEASE

X

Signature of Lienholder Releasing Interest

Date

Title

THIRD REASSIGNMENT OF TITLE - OWNER(S) TRANSFER AND ODOMETER DISCLOSURE

I (we) certify that on the date of this statement the odometer on the above described vehicle reads the mileage here recorded, and that to the best of my/our knowledge and belief the odometer reading (check one of the following):
() reflects the actual mileage for this vehicle;
() reflects the amount of mileage in excess of the odometer mechanical limits.
() is not the actual mileage for this vehicle. WARNING ODOMETER DISCREPANCY

ODOMETER READING

Print Name of Owner(s)/Transferor or Company Print Name of Authorized Agent miles (no tenths)

Address City State Zip

X Date 19

Signature of Transferor(s) in ink (must be notarized)

Subscribed and Sworn to this 19 day of 19

Notary Seal

Notary Public or M/V Examining Officer

NEW OWNER (Name must be printed)

NAME

ADDRESS

CITY

X

Signature of Purchaser (New Owner)

NEW LIENHOLDER (Name must be printed)

NAME

ADDRESS

CITY ST ZIP

X

Signature of Owner/Authorized Agent

LIEN RELEASE

X

Signature of Lienholder Releasing Interest

Date