

2000

# John Watson Chevrolet v. Buick Motors Division, Genral Motors Corporation : Brief of Appellee

Utah Court of Appeals

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R. Brent Stephens; Snow, Christensen and Martineau; Carol H. Lesnek-Cooper; Attorneys for Appellee.

David E. Bean; Emilie A. Bean; Bean and Smedley; Attorneys for Appellant.

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IN THE UTAH COURT OF APPEALS

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JOHN WATSON CHEVROLET,

Plaintiff/Appellant,

vs.

BUICK MOTORS DIVISION,  
GENERAL MOTORS CORPORATION,

Defendant/Appellee.

Appellate Court No. 20000351-CA

Priority No. 15

---

ADDENDUM TO BRIEF OF APPELLEE

---

APPEAL FROM THE SECOND DISTRICT  
WEBER COUNTY  
JUDGE STANTON M. TAYLOR

---

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Utah Court of Appeals

DEC 11 2000

Paulette Stagg  
Clerk of the Court

2

IN THE UTAH COURT OF APPEALS

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## Contents

1. Complaint
2. Deposition of John Watson

Tab 1

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Telephone: (801) 544-4221

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY  
STATE OF UTAH

JOHN WATSON, and JOHN  
WATSON CHEVROLET, INC.,

Plaintiffs,

vs.

BUICK MOTOR DIVISION,  
GENERAL MOTORS CORPORATION,

Defendant.

C O M P L A I N T

*state*  
*Judge, Taylor*

Civil No. 920900580

Plaintiffs complain of defendants and for cause of action  
allege:

GENERAL ALLEGATIONS

1. John L. Watson (hereinafter "Watson") is a stockholder,  
director, and secretary of John Watson Chevrolet, Inc., and  
resides at Ogden, Weber County, State of Utah.

2. John Watson Chevrolet, Inc. is a Delaware corporation  
(hereinafter "Watson Chev"), doing business only in the State of  
Utah with main offices at 3535 Wall Avenue, Ogden, Utah.

3. Defendant, General Motors Corporation is a corporation  
organized and existing under the laws of the State of Delaware

with main offices at Detroit, Michigan, and Buick Motor Division has main offices at Flint, Michigan.

4. Buick Motor Division, a division of General Motors Corporation (hereinafter "Buick"), sells new motor vehicles to its appointed dealers in the State of Utah, and has been so engaged in interstate commerce for a period in excess of 50 years.

5. At the instance of Buick Motor Division, as a condition precedent to the sale of new Buick automobiles by any person or entity, such dealer is required to execute a Sales and Service Agreement with Buick Motor Division under the terms of which the dealer has the nonexclusive right to sell new Buick automobiles within a defined area or location as the "franchise dealer."

6. The Sales and Service Agreement is presented by Buick Motor Division to the dealer without negotiation or amendment, and Buick Motor Division requires that the Agreement be renewed every five years. Further, said Agreement is drafted by counsel for Buick Motor Division and dealer has no input into the form of the Agreement, and if the dealer desires to hold the Buick franchise, he must sign the Agreement drafted by attorneys for Buick Motor Division as presented.

7. The most recent draft of the Buick Motor Division Sales and Service Agreement contains a clause in paragraph 12.3, granting to Buick a right of first refusal if the dealer elects to sell his dealership.

8. On or about the 10th day of February, 1990, the

defendant Buick Motor Division executed a Sales and Service Agreement appointing Helsco, Inc. doing business as Sierra Buick the sole and exclusive Buick dealer at Ogden, Utah, a copy of said Agreement is attached hereto marked Exhibit "A" and by this reference made a part hereof as if fully set forth.

9. Helsco, Inc., dba Sierra Buick continued in business at 3520 Wall Avenue, Ogden, Utah, until approximately May, 1992, at which time it failed to open its doors for business. Under the terms of Article 14 of the Sales and Service Agreement designated Exhibit "A," Buick Motor Division advised Helsco, by letter, that the Sales and Service Agreement would be terminated on a date certain.

10. Before closing its dealership, Helsco attempted to sell the dealership to Rick Warner Enterprises and entered into a Buy and Sell Agreement dated the 2nd day of April, 1992, a copy of which is attached hereto as Exhibit "B" and by this reference made a part hereof as if fully set forth.

11. Pursuant to the terms of Exhibit "B," Ray Norda, an officer and director, or investor, of Rick Warner Enterprises made application to be appointed the Buick dealer for Ogden, Utah, and his appointment as dealer/operator was confirmed by Buick Motor Division on or about the 1st day of July, 1992. Buick Motor Division did not exercise its right of first refusal under paragraph 12.3 of Exhibit "A."

12. Shortly before Rick Warner Enterprises executed the Buy and Sell Agreement designated Exhibit "B," the former Buick



dealer, James Whetton, filed suit against Helsco, Inc. David Koch, Jr. and Henry Nixon as the owners and operators of Sierra Buick, and obtained a temporary injunction preventing Helsco from selling any of its assets, and Rick Warner Enterprises was thereafter determined to be an ineligible purchaser of the Jeep/Eagle franchise for the selected location.

13. Because Buick Motor Division had approved Rick Warner Enterprises and Ray Norda as a single point Buick dealer for the Ogden, Utah area, and had given no indication to Helsco that it would exercise its right of first refusal as to the sale of the Helsco assets, and because Helsco desired to sell its assets to a buyer who could readily qualify as a Buick dealer/operator before the October 22, 1992 termination date, Henry Nixon for Helsco, and John Watson for John Watson Chevrolet, Inc. began to negotiate a Buy and Sell Agreement, with a firm understanding that John Watson would arrange to get the Whetton vs. Helsco, et al lawsuit dismissed. Said Agreement is attached hereto as Exhibit "C" and by this reference incorporated herein.

14. Buick Motor Division was made aware of the negotiations between John Watson and Henry Nixon and knew that a substantial part of the consideration flowing from John Watson Chevrolet to Helsco, Inc. was the dismissal of the Whetton lawsuit, and Buick Motor Division further knew that John Watson had twice before been appointed dealer/operator of a new car Buick franchise and would qualify in every respect to be appointed as the successor Buick dealer for Ogden, Utah in place of Helsco, Inc. and David

Koch, Jr.

15. After Buick Motor Division was informed that the Agreement between John Watson Chevrolet, Inc. and Helsco, Inc. had been signed, they forwarded appropriate application documents to John Watson to make application for the Buick franchise pursuant to the terms of paragraphs 3 and 4(d) of Exhibit "C," and at no time did Buick Motor Division or Helsco intimate to John Watson that as soon as the lawsuit and the temporary injunction barring sale or disposition of Helsco assets was dismissed, Buick Motor Division intended to exercise its right of first refusal, and in fact, on the 24th day of September, 1992, Helsco's attorney, Jay Peck, made a conference call to counsel for John Watson Chevrolet specifically for the purpose of determining why the Whetton lawsuit had not been dismissed and suggesting that the failure of John Watson to arrange for the dismissal of said law suit constituted a breach of the terms upon which exhibit "C" was negotiated.

16. Exhibit "C" was drafted and structured by counsel for Helsco specifically to permit Helsco to file bankruptcy on all other obligations, and Henry Nixon as an investor and authorized agent of Helsco continually advised plaintiffs that Helsco intended to file bankruptcy proceedings under 11 U.S.C.

17. Plaintiffs believe and therefore allege that some time after the 31st day of August, 1992, Buick Motor Division discussed with Henry Nixon, as agent for Helsco, Inc. a plan whereby Buick Motor Division would withdraw its notice of

termination, and would instead invoke its right of first refusal if Helsco would agree not to file bankruptcy, thus to avoid placing the disposition of the Buick franchise under the supervision and control of a bankruptcy trustee.

18. Plaintiffs further believe and therefore allege that Henry Nixon as agent for Helsco wrote or caused to be written, a letter to Buick to the effect that if Buick withdrew its termination letter and extended the time for termination suitable to Helsco, that Helsco would not file a petition in bankruptcy under 11 U.S.C., and at the time said letter was written, Helsco knew that Buick intended to withdraw its letter of termination and instead exercise its right of first refusal under paragraph 12.3 of its Sales and Service Agreement.

19. On or about September 1, 1992, John Watson submitted to Buick Motor Division his application to be appointed the franchise dealer of new Buick motor vehicles at Ogden, Utah, as set forth in Exhibit "D" attached hereto and by this reference made a part hereof. *signed on Aug. 31*

20. Under date of October 15, 1992, Buick wrote a letter to Helsco and Henry Nixon advising that General Motors Corporation would exercise its right of first refusal to the Sales and Service Agreement with Helsco, Inc., (Exhibit "A") and that Helsco should advise John Watson accordingly, a copy of which was received by Watson Chevrolet.

21. John Watson meets all of the qualifications established by Buick Motor Division to be appointed the franchise dealer for

Buick automobiles at Ogden, Utah, and his application for such appointment has never been rejected by Buick Motor Division.

FIRST CAUSE OF ACTION

EQUITABLE AND PROMISSORY ESTOPPEL

22. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 21 as if again fully stated.

23. At the time that Buick Motor Division issued its letter of termination to Helsco, Inc., said defendant knew that in the normal course of dealing within the trade and business of automobile dealerships, Helsco would immediately attempt to sell its assets to a person or entity who could qualify as the successor Buick dealer, and that any prospective purchaser would also rely on the letter of termination to assure that Helsco would negotiate in good faith and to determine the time within which a Buy and Sell Agreement had to be negotiated between said prospective purchaser and Helsco, Inc. and the time within which the prospective purchaser would have to submit an application for appointment as the Buick dealer, together with all ancillary documents including an executed Buy and Sell Agreement with Helsco.

24. Buick Motor Division was aware that one of the reasons that Rick Warner Enterprises backed out of the Buy and Sell Agreement it had executed with Helsco was that a temporary injunction was in place in a suit brought by James Whetton against Helsco in the District Court of Weber County, preventing Helsco from selling any of its assets, and all negotiations to

get that temporary injunction dismissed or dissolved had failed.

25. By failing to exercise its right of first refusal as to the Buy and Sell Agreement between Helsco, Inc. and Rick Warner Enterprises, Buick led Helsco, Inc. and any other prospective purchaser, including Watson and Watson Chev, Inc., to believe that Buick did not intend to exercise its right of first refusal. This belief was reinforced and confirmed when Buick failed to exercise its right of first refusal after the Agreement between Helsco, Inc. and Rick Warner Enterprises was nullified, and Buick then sent application forms to Watson to make application after said defendant was apprised of the execution of the Buy and Sell Agreement between Watson Chev and Helsco, Inc.

26. After the execution of the Agreement for sale of assets, Exhibit "C," and after John Watson had submitted his application for appointment as the franchise Buick dealer at Ogden, Utah, Helsco immediately began to pursue Watson to get the temporary injunction lifted in James Whetton's pending lawsuit against Helsco, and on the 24th day of September, 1992, Nixon and Helsco's attorney, Jay Peck, made a phone call to counsel for Watson Chev claiming that Helsco's lawsuit with Jim Whetton had not been dismissed as provided in the Buy Sell Agreement and subsequent documents, and that John Watson's failure to get that lawsuit dismissed timely would be a breach of the "Buy Sell" Agreement, based on the understanding and agreements of said parties.

27. Watson Chev through its influence on James Whetton,

was able to get the Temporary Restraining Order lifted and the lawsuit between Whetton and Helsco dismissed, and said lawsuit was dismissed only on the presumption by Whetton and Helsco that John Watson would be approved by Buick as the successor Buick dealer at Ogden, Utah, and the dismissal of said lawsuit was a substantial consideration for the Agreement marked Exhibit "C," the net effect of which was the ability of Helsco to sell the Jeep/Eagle and Buick assets and not take them into bankruptcy.

28. Defendant Buick intentionally led Helsco and Watson Chev to believe that Buick would not exercise its right of first refusal, and is therefore estopped under principle of equitable and promissory estoppel from exercising such right

29. Buick is further estopped from exercising its right of first refusal because only Watson Chev was able to get the Jim Whetton lawsuit against Helsco dismissed and the temporary injunction dissolved, and though Buick Motor Division had the Agreement between Helsco and Watson Chev (Exhibit "C") in its possession, along with Watson's application for approximately six weeks, said defendant did not exercise its right of first refusal until after Watson got the Whetton lawsuit dismissed. Because Buick cannot provide the same consideration as Watson Chev, said defendant is thereby estopped from claiming the exercise its right of first refusal.

30. Buick has wrongfully exercised its right of first refusal and plaintiffs have been damaged thereby in the sum of 7.5 million dollars.

SECOND CAUSE OF ACTION

INTENTIONAL INTERFERENCE WITH CONTRACT RELATIONS

31. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 30 as if again fully stated.

32. Buick knew that it could not get the Whetton suit against Helsco dismissed, and waited until after that was done to exercise its right of first refusal. Because Buick had in its possession a copy of the Agreement for the sale of assets executed by Helsco, Inc. and Watson Chev, Inc., said defendant knew that in exercising its right of first refusal, it would unjustly and improperly prevent Watson Chev from receiving the benefits of its contract with Helsco, and the economic benefits that would flow to plaintiffs by reason thereof.

33. Watson had twice before been approved and appointed as a Buick dealer, and his qualifications to be appointed as the Buick dealer at Ogden, Utah were equal to or greater than the qualifications of Ray Norda, who was appointed as the stand alone single point Buick dealer for Ogden, Utah (for Rick Warner Enterprises) on or about the 1st day of July, 1992, and Buick therefore had no basis upon which to reject the application of John Watson for the Buick franchise in question, and Buick has never suggested that but for its exercise of its right of first refusal, John Watson could not qualify to the same extent and on the same basis that Ray Norda qualified.

34. Further, plaintiffs allege on information and belief that Buick has seldom, if ever, exercised its right of first

refusal on a qualified application (including an acceptable Buy and Sell Agreement) that was pending. The right of first refusal was not included in Buick Motor Division Sales and Service Agreements with dealers until approximately 1984 and the dealers had no alternative but to accede to the provision, because it is an adhesion-type contract.

35. By exercising its right of first refusal in its contract with Helsco, Buick Motor Division knew that it would cause great and irreparable loss and John Watson doing business as John Watson Chevrolet, Inc. has been damaged in an amount not less than 7.5 million dollars, the exact amount to be proved at the time of trial.

### THIRD CAUSE OF ACTION

#### INTENTIONAL INTERFERENCE WITH FUTURE ECONOMIC RELATIONS

36. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 35 as if again fully stated.

37. Buick knew that by withdrawing or extending its termination date for Helsco and invoking its right of first refusal, Helsco would not perform under its agreement with Watson Chev.

38. By negotiating additional terms, including a covenant from Helsco that it would not file bankruptcy, in exchange for an extension of the termination date, Buick intentionally interfered with existing or potential economic relations between Helsco and plaintiffs or either of them, for an improper purpose or by improper means resulting in damage to plaintiffs or either of



them in a sum not less than 7.5 million dollars, the exact amount to be proved at the time of trial.

39. Because said acts by Buick were intentional and calculated to deceive plaintiffs and obtain the necessary performance by plaintiffs to make Buick's first right of refusal operative, and did in fact deceive plaintiffs to their damage, punitive damage should be assessed against Buick in a sum not less than 2 million dollars.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED CONTRACT - GOOD FAITH AND FAIR DEALING

40. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 39 as if again fully stated.

41. Buick Motor Division of General Motors Corporation knew that by serving Helsco with a notice of termination, it would force Helsco to either negotiate a sale, file a petition in bankruptcy, or forfeit the Buick franchise within the specified period.

42. Buick further knew that it had the right to approve Helsco's purchaser, but that such approval cannot be unreasonably withheld as provided in 13-14-3(1)(b)(i) U.C.A., 1953 if the applicant meets all of Buick Motor Division's qualifications, and proper notice is given.

43. Watson met all of the qualifications that Ray Norda met for his appointment as the Buick dealer.

44. The failure of Buick Motor Division to exercise its right of first refusal at the time of the Helsco, Inc. - Rick

Warner Enterprises' Buy and Sell Agreement, Exhibit "B," or to exercise its right of first refusal when said Agreement was made void; and the failure of Buick Motor Division to exercise its right of first refusal when the Agreement between Helsco, Inc. and Watson Chevrolet, Inc. was first negotiated, and the exercise of said right of first refusal only after Watson Chev had fulfilled its agreement to arrange for dismissal of the Jim Whetton lawsuit was unreasonable and in bad faith and in violation of its implied covenant of good faith and fair dealing implicit in every contract and said statute, including the contract between Buick Motor Division and Helsco, Inc. marked Exhibit "A," and Helsco's contract with Watson Chev marked Exhibit "B," and plaintiffs have been damaged thereby in a sum not less than 7.5 million dollars, the exact amount to be proved at the time of trial.

FIFTH CAUSE OF ACTION

CONSPIRACY

45. Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 44 as if again fully stated.

46. On or about the 29th day of October, 1992, Helsco, Inc., by and through its agent Henry Nixon, stated to James Whetton that he (Nixon) had suggested to Buick Motor Division that they (Buick) exercise its right of first refusal and thus make void the Agreement between Helsco and Watson Chev to avoid having to give the Buick franchise to John Watson.

47. Buick was fearful that Helsco would file bankruptcy and

therefore agreed with Helsco that Buick would exercise its right of first refusal but only if Helsco would in writing agree not to file bankruptcy.

48. Helsco agreed in writing not to file bankruptcy and immediately thereafter Buick Motor Division gave written notice of its intent to exercise its right of first refusal.

49. Buick Motor Division illegally and unlawfully conspired with Helsco to avoid the affect of the Agreement for sale of assets, Exhibit "C," executed by Helsco and Watson Chev knowing that Watson Chev would be damaged thereby.

50. Watson Chev was damaged as a result of said conspiracy in a sum not less than 7.5 millions dollars, the exact amount to be proved at the time of trial.

51. The actions of Buick Motor Division in exercising its right of first refusal, together with all of the circumstances surrounding the exercise of said right were done with intent to lead plaintiffs to believe that they would be appointed as the successor Buick dealer at Ogden, Utah, and that they would be able to purchase the assets of Helsco, Inc. with the approval of Buick, and in reliance thereon, plaintiffs signed the Agreement for sale of assets with Helsco, Inc., paid the sum of \$120,000.00 into escrow for Helsco's benefit, filed a proper and acceptable application with Buick, to be appointed the Buick dealer at Ogden, Utah, and succeeded in getting the temporary injunction dissolved and the lawsuit between Whetton and Helsco dismissed. Buick then entered into a separate agreements with Helsco, and

exercised its right of first refusal, thereby acting with malice and absolute disregard to plaintiffs' rights under the Agreement with Helsco, Exhibit "C." and the application of plaintiff Watson to be appointed the Buick dealer, Exhibit "D," knowing at the time that plaintiffs would be grossly damaged thereby and defendant Buick Motor Division should be assessed punitive damages for its bad faith and unconscionable dealing in the sum of 2 million dollars.

WHEREFORE, plaintiffs pray for judgment as follows:

FIRST CAUSE OF ACTION

For judgment in favor of plaintiffs and against defendant, Buick Motor Division, in the sum of 7.5 million dollars or such other sum as may be proved at the time of trial.

SECOND CAUSE OF ACTION

For damages in favor of plaintiffs and against defendant, Buick Motor Division, in the sum of 7.5 million dollars or such other sum as may be proved at the time of trial, and for punitive damages in a sum not less than 2 million dollars.

THIRD CAUSE OF ACTION

For damages in favor of plaintiffs and against defendant, Buick Motor Division, in the sum of 7.5 million dollars or such other sum as may be proved at the time of trial, and for punitive damages in a sum not less than 2 million dollars.

FOURTH CAUSE OF ACTION

For judgment in favor of plaintiffs and against defendant, Buick Motor Division, in the sum of 7.5 million dollars or such


other sum as may be proved at the time of trial.

FIFTH CAUSE OF ACTION

For judgment in favor of plaintiffs and against defendant, Buick Motor Division, in the sum of 7.5 million dollars or such other sum as may be proved at the time of trial.

DATED this 24<sup>th</sup> day of November, 1992.

BEAN & SMEDLEY

  
DAVID E. BEAN  
Attorneys for Plaintiffs


Plaintiff's Address:  
3535 Wall Avenue  
Ogden UT 84401

V E R I F I C A T I O N

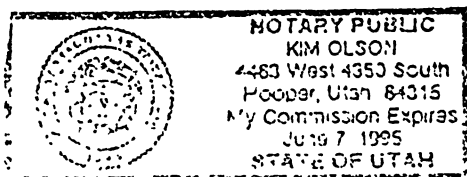
STATE OF UTAH     )  
                          ) ss.  
County of Weber )

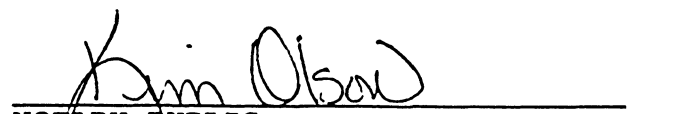
JOHN WATSON being first duly sworn upon his oath deposes and says:

That he is one of the plaintiffs above-named and has first hand knowledge of the facts set forth in the foregoing Complaint, all of which are true, except as to those made on information and believe, and as to such, he believes them to be true.

  
JOHN WATSON

SUBSCRIBED AND SWORN to before me this 25 day of November, 1992.



  
NOTARY PUBLIC  
Residing at Ogden  
My Commission Expires: June 7, 1995

Tab 2

IN THE SECOND JUDICIAL DISTRICT COURT

WEBER COUNTY, STATE OF UTAH

\* \* \*

JOHN WATSON CHEVROLET, INC., )

PLAINTIFF, )

VS. )

BUICK MOTOR DIVISION, GENERAL )

MOTORS CORPORATION, )

DEFENDANT. )

CASE NO. 920900580

DEPOSITION OF:

**JOHN WATSON**

JUDGE STANTON TAYLOR

\* \* \*

BE IT REMEMBERED THAT ON THE 3RD DAY OF MAY, 1995  
THE DEPOSITION OF JOHN WATSON, PRODUCED AS A WITNESS  
HEREIN AT THE INSTANCE OF THE DEFENDANT HEREIN, IN THE  
ABOVE-ENTITLED ACTION NOW PENDING IN THE ABOVE-NAMED  
COURT, WAS TAKEN BEFORE DAWN M. DAVIS, A CERTIFIED  
SHORTHAND REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE  
OF UTAH, COMMENCING AT THE HOUR OF 9:50 A.M. OF SAID DAY  
AT THE BUSINESS OFFICE OF JOHN WATSON CHEVROLET, 3535  
WALL AVENUE, OGDEN, UTAH.

THAT SAID DEPOSITION WAS TAKEN PURSUANT TO NOTICE.

\* \* \*

**CERTIFIED COPY**



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1 (DEPOSITION EXHIBIT NO. 7 WAS MARKED  
2 FOR IDENTIFICATION.)

3 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
4 EXHIBIT 7 AND ASK IF YOU HAVE EVER SEEN THAT DOCUMENT  
5 BEFORE.

6 A I HAVE SEEN THIS.

7 Q WAS MR. WHETTON OFFICING HERE AT THIS TIME,  
8 AUGUST 12, 1992? HERE BEING YOUR DEALERSHIP.

9 A I'M NOT SURE. HE LEFT MY OFFICE AND MOVED  
10 BACK ACROSS THE STREET AND I CAN'T GIVE YOU THE TIME  
11 FRAME OF THAT, ALTHOUGH IT JUST MAKES SENSE THAT HE  
12 DIDN'T MOVE BACK IN ACROSS THE STREET UNTIL SIERRA HAD  
13 MOVED COMPLETELY OUT, AND SO I WOULD SAY, YES, HE WAS  
14 STILL HERE AT THIS TIME.

15 Q THAT IS, HE WAS HERE AT THE DEALERSHIP?

16 A I BELIEVE SO.

17 Q NOW AS YOU UNDERSTOOD IT, BASED UPON YOUR  
18 EXPERIENCE, THE PROCEDURE FOR APPLYING OR OBTAINING A  
19 DEALERSHIP AND A DEALER SALES AND SERVICE AGREEMENT  
20 INVOLVING AN EXISTING DEALER WHO WANTS TO SELL THE ASSETS  
21 OF THAT DEALERSHIP -- THE NORMAL PROCEDURE WOULD BE AS  
22 FOLLOWS; THAT YOU WOULD NEGOTIATE -- THAT IS, THERE WOULD  
23 BE ANNOUNCEMENTS BY THE DEALER THAT THEY WANT TO SELL THE  
24 DEALERSHIP ASSETS AND THAT YOU WERE FREE THEN TO  
25 NEGOTIATE WITH THE DEALER THE TERMS AND CONDITIONS UPON



1       WHICH THAT ASSET PURCHASE WILL BE DONE WHICH RESULTS IN A  
2       BUY-SELL AGREEMENT WHICH THEN IS FORWARDED TO THE  
3       APPROPRIATE DIVISION OF GENERAL MOTORS CORPORATION WITH A  
4       PROPOSAL FOR APPROVAL, CHANGES OR DISAPPROVAL, ISN'T THAT  
5       CORRECT?

6           A       YES.

7           Q       SO YOU UNDERSTOOD THAT THE EXISTING DEALER  
8       CANNOT TRANSFER THE DEALER SALES AND SERVICE AGREEMENT TO  
9       YOU AS PART OF THE ASSETS SALE. YOU UNDERSTOOD THAT AS  
10      WELL?

11          A       YES.

12          Q       SO IT'S A TWO-PART STAGE; YOU NEGOTIATE THE  
13      ASSETS PURCHASE WITH THE EXISTING DEALER AND THEN YOU  
14      PROVIDE A PROPOSAL TO GENERAL MOTORS CORPORATION OR ONE  
15      OF ITS DIVISIONS AND THEY EITHER REJECT, ASK YOU TO  
16      MODIFY OR DENY THE PROPOSAL.

17          A       OR ACCEPT.

18          Q       OR ACCEPT.

19          A       YES.

20          Q       LET ME SHOW YOU WHAT WILL BE MARKED AS  
21      DEPOSITION EXHIBIT NUMBER 8 AND ASK IF YOU HAVE EVER SEEN  
22      THAT DOCUMENT BEFORE.

23                   (DEPOSITION EXHIBIT NO. 8 WAS MARKED  
24                   FOR IDENTIFICATION.)

25          A       YES, I HAVE SEEN THAT.

1 Q SO APPARENTLY WE HAVE FOUR COMMUNICATIONS WITH  
2 SOMEBODY AT BUICK PRIOR TO AUGUST 15, 1992; THE PREVIOUS  
3 FAX WHICH WAS DATED AUGUST 15, 1992, THIS FAX APPARENTLY  
4 YOU SENT TO MR. GAROVE ON AUGUST 12 OF 1992 WITH  
5 CORRESPONDENCE DATED AUGUST 12, 1992 TO YOURSELF FROM  
6 GARY HOWE AND THE TWO CONVERSATIONS THAT WERE HAD, IS  
7 THAT CORRECT?

8 A I WOULD SAY YES.

9 Q DURING ALL OF THESE COMMUNICATIONS THAT YOU  
10 HAD WITH MR. GAROVE, MR. GAROVE DID NOT IN ANY WAY  
11 INDICATE, UP TO AND INCLUDING AUGUST 15 OF 1992, THAT YOU  
12 WOULD BE A SUITABLE CANDIDATE OR THAT YOUR APPLICATION OF  
13 PROPOSAL WOULD BE ACCEPTED BY BUICK MOTOR DIVISION.

14 A NO.

15 Q THAT'S CORRECT, IS IT NOT?

16 A YES.

17 Q BETWEEN AUGUST 15 OF 1992 AND AUGUST 31 OF  
18 1992 YOU APPARENTLY DO NEGOTIATE AN AGREEMENT FOR SALE  
19 AND PURCHASE OF THE ASSETS BY AND BETWEEN HELSCO, INC.  
20 WHICH, AGAIN, IS A DBA OF SIERRA BUICK, AND JOHN WATSON  
21 CHEVROLET-BUICK, ISN'T THAT CORRECT?

22 A YES.

23 (DEPOSITION EXHIBIT NO. 9 WAS MARKED  
24 FOR IDENTIFICATION.)

25 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS

1           A       YES, SIR.

2           Q       WOULD IT HAVE BEEN SENT TO BUICK ON SEPTEMBER

3       1 OF '92?

4           A       YES.

5           Q       VIA REGULAR MAIL?

6           A       I BELIEVE SO.

7           Q       NOW YOU ARE AWARE THAT EVERY APPLICATION FOR A

8       GENERAL MOTORS CORPORATION DEALER SALES AND SERVICE

9       AGREEMENT, AS INDICATED ON EXHIBIT 11, HAS THE WORDING,

10       NOTABLY IN PARAGRAPH 3, THAT "NEITHER I NOR THE DEALER

11       COMPANY WHICH I MAY PROPOSE WILL BE ENTITLED TO RELY UPON

12       ANY REPRESENTATION OR STATEMENT INDICATING APPROVAL OF

13       THIS APPLICATION MADE TO ME OR ANYONE ELSE BY ANY

14       REPRESENTATIVE OR EMPLOYEE OF DIVISION OR ANY OTHER

15       PERSON WHATSOEVER PRIOR TO RECEIPT OF A DEALER AGREEMENT

16       OR AN APPROPRIATE 'LETTER OF INTENT' EXECUTED BY

17       DIVISION."

18                YOU WERE AWARE OF THAT TERM AT THE TIME YOU

19       SIGNED THAT AGREEMENT, WERE YOU NOT?

20          A       YES.

21          Q       IN FACT, ACCORDING TO YOUR TESTIMONY YOU HAD

22       NOT RECEIVED ANY REPRESENTATION BY ANY EMPLOYEE OR

23       REPRESENTATIVE OF BUICK MOTOR DIVISION OR GENERAL MOTORS

24       CORPORATION INDICATING THAT YOU WOULD BE APPROVED AS A

25       BUICK DEALER PURSUANT TO THIS APPLICATION, EXHIBIT 11.

1           A        THAT'S CORRECT.

2           Q        YOU WERE AWARE OF THE POSSIBILITY THAT YOUR  
3       APPLICATION COULD BE REJECTED.

4           A        YES, SIR.

5           Q        YOU WERE ALSO AWARE OF THE PROVISION IN THE  
6       DEALER SALES AND SERVICE AGREEMENT THAT PURSUANT TO THE  
7       STANDARD DEALER SALES AND SERVICE AGREEMENT, WHICH YOUR  
8       CHEVROLET AGREEMENT WOULD BE THE SAME AS THE BUICK  
9       AGREEMENT THAT WOULD BE ISSUED, HAD A -- THE HELSCO  
10      AGREEMENT THAT IT HELD WITH BUICK HAD A RIGHT OF FIRST  
11      REFUSAL WHICH GRANTED TO GM THE RIGHT TO PURCHASE THE  
12      DEALERSHIP ASSETS IN THE EVENT THAT THE DEALER SUBMITTED  
13      A PROPOSAL FOR CHANGE OF OWNERSHIP, REGARDLESS OF WHETHER  
14      THE PROPOSED BUYER WAS QUALIFIED TO BE A DEALER.

15                   YOU WERE AWARE OF THAT TERM AND CONDITION OF  
16      THE DEALER SALES AND SERVICE AGREEMENT THAT WOULD HAVE  
17      BEEN IN THE HELSCO DEALER SALES AND SERVICE AGREEMENT,  
18      WERE YOU NOT?

19           A        I WAS AWARE OF THAT. I ALSO WAS AWARE THAT,  
20      AS I STATED EARLIER, I WAS THE ONLY PARTY TO TRY TO  
21      RESOLVE LITIGATION THAT EXISTED WHICH WAS A STUMBLING  
22      BLOCK FOR THAT FIRST RIGHT OF REFUSAL TO TAKE PLACE.

23           Q        WELL, HADN'T GENERAL MOTORS CORPORATION ASKED  
24      YOU TO DO ANYTHING ABOUT --

25           A        NO, SIR.

1           A       THIS WAS AN AGREEMENT THAT WAS EXECUTED SO  
2       THAT WE COULD --  
3           Q       I'M SORRY.  
4           A       THAT'S OKAY.  
5                    THIS IS AN AGREEMENT THAT WAS EXECUTED SO WE  
6       COULD GET A REFUND OF MONIES THAT HAD BEEN PUT INTO  
7       ESCROW AND I BELIEVE THIS IS SOMETHING THAT THEIR LEGAL  
8       STAFF DESIRED TO HAVE ON FILE WHEN THEY GAVE US OUR MONEY  
9       BACK.  
10          Q       SO YOU DID RECEIVE YOUR ESCROW FUNDS BACK?  
11          A       WE DID.  
12          Q       EXHIBIT 15 WAS EXECUTED BY HELSCO, MIXON  
13       INDIVIDUALLY AND JOHN WATSON CHEVROLET, INC.  
14          A       YES. YOU NOTICE THE DATE OF NOVEMBER 3RD ON  
15       THAT WAS A COUPLE WEEKS AFTER WE HAD BEEN NOTIFIED.  
16          Q       SO YOU LOST NO MONIES IN THE AGREEMENT THAT  
17       YOU HAD EXECUTED WITH HELSCO EARLIER TO PURCHASE THE SALE  
18       OF ASSETS?  
19          A       NO.  
20          Q       EXCEPT FOR THE BUSINESS OPPORTUNITY THAT YOU  
21       MAY HAVE LOST BY NOT BEING AWARDED THE BUICK DEALER SALES  
22       AND SERVICE AGREEMENT, YOU ARE NOT OUT OF POCKET ANY  
23       MONIES AT ALL, ARE YOU?  
24          A       NO, SIR.  
25          Q       IT'S JUST THE LACK OF BUSINESS OPPORTUNITY