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3.9.4.8 Single Interest Insurance (VSI)

Addition to notes 690, 698, 700.

690 *Add to end:*

Challenging whether the insurance was voluntary invokes the same principles as in the credit life context. *See* § 3.9.4.5.2.3, *supra*. The Fourth Circuit recently refused to look behind the language on the contract to prove that she could not purchase VSI insurance from an insurer of her choosing. *Hicks v. Star Imports, Inc.*, 2001 U.S. App. LEXIS 3443 (4th Cir. Mar. 7, 2001).

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698 *Replace citation to NCLC's Cost of Credit with:* National Consumer Law Center, *The Cost of Credit: Regulation and Legal Challenges* §§ 8.5.3.3.3, 8.5.4.4 (2d ed. 2000 and Supp.).700 *Replace citation to NCLC's Cost of Credit with:* National Consumer Law Center, *The Cost of Credit: Regulation and Legal Challenges* §§ 7.3.1, 8.3.6 (2d ed. 2000 and Supp.).**3.9.5 Real Estate and Residential Mortgage Transaction Charges: 15 U.S.C. § 1605(e); Reg. Z § 226.4(c)(7)****3.9.5.2 Classes of Real Estate Closing Charges: What's Excludable; What's Not**

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3.9.5.2.1 Overview

Addition to note 722.

722 *Replace citation to Layell v. Home Loan & Investment Bank with:* 244 B.R. 345 (E.D. Va. 1999), *appeal dismissed as interlocutory*, 211 F.3d 1265 (4th Cir. 2000).

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3.9.5.2.2 Real property, title-related fees

Delete text after "reasonable standard" in subsection's last sentence. Retain note 726.

3.9.5.2.3 Document fees

Addition to notes 728–731.

728 *See* *Brannam v. Huntington Mortgage Co.*, 287 F.3d 601 (6th Cir. 2002) (this exclusion covers not only documents related to the transfer of title but all documents; court construed Reg. Z § 226.4(c)(7)(ii)).729 *Replace citation to Layell v. Home Loan & Investment Bank with:* 244 B.R. 345 (E.D. Va. 1999), *appeal dismissed as interlocutory*, 211 F.3d 1265 (4th Cir. 2000).730 *Replace citation to NCLC's Cost of Credit with:* National Consumer Law Center, *The Cost of Credit: Regulation and Legal Challenges* § 11.3.1 (2d ed. 2000 and Supp.).731 *Add to end of Vandebroek cite: aff'd on other grounds*, 210 F.3d 696 (6th Cir. 2000).

Add to text at end of section:

Pleading an allegation that a document preparation fee in a real estate transaction constitutes a finance charge is not difficult. The consumer need only allege that the fee was not reasonable as it exceeded the actual cost of preparing the documents.^{733.1} The Sixth Circuit specifically rejected a lender's argument that the consumer must allege facts showing the lender's charges differed from those of other local businesses.

733.1 *Inge v. Rock Fin. Corp.*, 281 F.3d 613 (6th Cir. 2002).

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3.9.5.2.4 Closing agent/attorney fees

Addition to notes 735, 741.

735 *See* *Weil v. Long Island Sav. Bank, FSB*, 77 F. Supp. 2d 313 (E.D.N.Y. 1999), *class certification granted by* 200 F.R.D. 164 (E.D.N.Y. May 7, 2001) (RICO claim) (allegation that lender paid kickbacks to its CEO from attorney fee charges listed on the HUD-1 Settlement Statement which were not disclosed as finance charges on the TILA disclosure stated a claim under TILA), *settlement approved*, 188 F. Supp. 2d 258 (E.D.N.Y. 2002).741 *Replace citation to Layell v. Home Loan & Investment Bank with:* 244 B.R. 345 (E.D. Va. 1999), *appeal dismissed as interlocutory*, 211 F.3d 1265 (4th Cir. 2000).

Add to text after sentence containing note 746:

Finally, to survive a motion to dismiss, the consumer should, at a minimum, identify the services provided for the questionable fee and why the activity is non-excludable.^{746.1}
746.1 Inge v. Rock Fin. Corp., 281 F.3d 613 (6th Cir. 2002).

3.9.5.2.5 Notary, appraisal, and credit report fees

Addition to note 749.

749 See *Riopta v. Amresco Residential Mortgage Corp.*, 101 F. Supp. 2d 1326 (D. Haw. 1999) (court found that overcharge on the property appraisal did not exceed the tolerance of \$35 for foreclosure cases without any analysis of whether the entire fee or only the overcharge is a finance charge; and because the lender relied upon an oral representation of the cost, which later turned out to be too low).

Add to text after sentence containing note 750:

Credit report fees have come under some scrutiny of late. An article in the Washington Post reported that the vast majority of lenders pay as little as \$2.50 for a single person for an electronic “infile.” An infile is a quick compilation of all the relevant information about a consumer on file at one of the three major credit bureaus—Experian, Equifax, or Trans Union. A merged infile (information from all three repositories) for a married couple costs about \$15. Many creditors charge \$45–\$60 on the HUD-1 settlement statement.^{750.1} Credit report fees of that magnitude are not reasonable in light of the actual cost. However, the next issue is whether the applicable finance charge tolerance triggers liability.^{750.2}

750.1 Kenneth R. Harney, *Some Lenders Overcharge for Credit Reports*, Washington Post, Apr. 21, 2001, at H1.

750.2 See § 4.6.3.2, *infra*.

3.9.5.2.6 Escrow costs

Addition to notes 762, 763.

762 *Add: See Williams v. Chartwell Fin. Serv.*, 204 F.3d 748 (7th Cir. 2000) (payday lender required the consumer to deposit \$250 with the lender in order get a \$500 loan; court held that the deposit must be held by a federally-insured institution; placing the money in the creditor’s general operating account did not satisfy the court because the borrower’s deposit was not segregated nor was an account established in the borrower’s name); *Sharp v. Chartwell Fin. Servs., Ltd.*, 2000 U.S. Dist. LEXIS 3143 (N.D. Ill. Mar. 6, 2000) (same). *Replace the first Rohner cite with: Ralph J. Rohner and Fred H. Miller, Truth In Lending ¶ 6.04(2)(a) (2000). Replace second Rohner cite with: Replace Rohner cite with Ralph J. Rohner and Fred H. Miller, Truth In Lending ¶ 5.05(18) (2000).*

763 *Replace citation to NCLC’s Cost of Credit with: National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges § 7.4.4 (2d ed. 2000 and Supp.).*

3.9.5.3 The Charges Must Be Bona Fide and Reasonable

Addition to notes 770.

770 See also *Brannam v. Huntington Mortgage Co.*, 287 F.3d 601 (6th Cir. 2002) (no clear evidence that document preparation fee was charged for services other than preparing documents); Ralph J. Rohner and Fred H. Miller, *Truth In Lending ¶ 3.03(2)(a) (2000)*.

Add note 770.1 to end of third sentence after sentence containing 770.

770.1 See *Brannam v. Huntington Mortgage Co.*, 287 F.3d 601 (6th Cir. 2002) (court rejected an argument that charges for document preparation services offered on the Internet are relevant in determining “reasonableness”; the cheapest fee is not the standard; rather, a fee is reasonable given the prevailing practices in the relevant market).

Addition to note 773.

773 *Replace citation to NCLC’s Cost of Credit with: National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges § 11.3.1 (2d ed. 2000 and Supp.).*

Add to text at end of subsection:

Another issue that can significantly impact on liability is whether the *entire* fee that is not bona fide and reasonable should be disclosed in the finance charge, or only the difference between the amount that is bona fide and reasonable and the amount that was charged. Given the tolerances built into TILA via the 1995 Amendments,^{780.1} correctly assessing the amount of the undisclosed finance charge could make the difference between liability and exoneration. With respect to the real estate transaction charges, the wording of Regulation Z provides

the answer. Section 226.4(c)(7) provides an *exclusion* for the entire amount of the fee if it is bona fide and reasonable. It stands to reason that the entire amount of the fee ought to be included in the finance charge if the fee does not meet the bona fide and reasonable test. Indeed, the plain language supports this analysis.^{780.2} Other subsections within Regulation Z § 226.4 illuminate this point. For example, the special rules for charges for third parties and closing agents explicitly calculate the amount of the finance charge to be the portion of the third party fee retained by the creditor, rather than the full amount of the fee imposed on the consumer.^{780.3}

780.1 See the discussion of the applicable tolerances in § 4.6.3.2, *infra*.

780.2 “The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount. . . .” Reg. Z § 226.4(c)(7). *But see* Holman v. Rock Fin. Corp., 2000 U.S. Dist. LEXIS 5015 (W.D. Mich. Apr. 11, 2000) (the court looked at the language in 15 U.S.C. § 1605(f)(1)(A) regarding the \$100 tolerance for damages actions to mean that only the difference between the actual and accurate charge constitutes a finance charge. This holding misconstrues that provision which simply means that the difference between the amount disclosed and the actual finance charge must be greater than \$100. It does not define “actual finance charge” to include only the excess. The “actual finance” is defined earlier in § 1605(a)–(e) and in Regulation Z. With the exceptions identified in Reg. Z §§ 226.4(a)(1) and 226.4(a)(2), the statute and the regulation define finance charges in an “it’s all in” or “it’s all out” manner.), *rev’d on other grounds and remanded sub nom.*, Inge v. Rock Fin. Corp., 281 F.3d 613 (6th Cir. 2002) (appellate court did not address this issue, though district court ruling dismissing the complaint was reversed; it is arguable that the district court holding is no longer good law); Riopla v. Amresco Residential Mortgage Corp., 101 F. Supp. 2d 1326 (D. Haw. 1999) (court found that overcharge on the property appraisal did not exceed the tolerance of \$35 for foreclosure cases without any analysis of whether the entire fee or only the overcharge is a finance charge; and because the lender relied upon an oral representation of the cost, which later turned out to be too low); Mayo v. Key Fin. Servs., 2 Mass. L. Rptr. 269 (1994) (court found that the difference between the actual charge and the reasonable cost should have been included in the finance charge).

780.3 Reg. Z §§ 226.4(a)(1), 226.4(a)(2). These provisions were added following the 1995 Amendments.

3.9.6 Security Interest Charges; Filing and Recording Fees: 15 U.S.C. § 1605(d); Reg. Z 226.4(e)

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Addition to notes 793, 794.

3.9.6.2 Taxes; Recording and Filing Fees Prescribed by Law

793 *Add after Fielder parenthetical: vacated on other grounds*, 188 F.3d 1031 (8th Cir. 1999) (state law claims vacated on jurisdictional grounds), *reconsideration*, 98 F. Supp. 2d 1104 (W.D. Mo. 2000) (only TILA issue discussed was assignee liability).

794 *Mayberry v. Ememessay, Inc.*, 2002 U.S. Dist. LEXIS 7828 (W.D. Va. Apr. 2, 2002) (if, however, the dealer keeps the excess in both cash and credit transactions, the fee is excluded from the finance charge; *see* § 3.6.5, *supra*; issue arose in this case where the fee was charged in both cash and credit sales but was kept in credit sales when the financing fell through and where the dealer offered to refund if alternate financing was not found); *Ferrari v. Howard*, 2002 Ohio App. LEXIS 3632 (Ohio App. July 11, 2002) (creditor must show that it charges the same documentary service charge to both cash and credit customers in order to take advantage of this exclusion from the finance charge).

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Addition to notes 814, 816, 817.

3.9.6.3 Nonfiling Insurance

814 *Add: In re Consolidated “Non-Filing Insurance” Fee Litigation*, 195 F.R.D. 684 (M.D. Ala. 2000) (nationwide class action against Beneficial Corporation is certified; merits not reached). *Replace citation to NCLC’s Cost of Credit with: National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges* § 8.5.4.5 (2d ed. 2000 and Supp.).

816 *Replace citation to NCLC’s Cost of Credit with: National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges* § 8.5.4.4 (2d ed. 2000 and Supp.).

817 *Replace citation to NCLC’s Cost of Credit with: National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges* §§ 7.3.1, 8.5.4.5, 8.7 (2d ed. 2000 and Supp.).

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3.10 Hidden Finance Charges in the Cash Price of Goods or Services

Addition to note 828.

828 See also State *ex rel.* Brady v. 3-D Auto World, Inc., 2000 Del. Super. LEXIS 17 (Del. Super. Ct. Jan. 19, 2000)(UDAP enforcement action in which court granted summary judgment to the state on the issue of whether a “carrying charge” of 20% of the outstanding balance at purchase with 0% financing constituted a hidden finance charge; court used TILA definitions to support its holding; dealer admitted to the charges.).

Add note 828.1 to end of first sentence of subsection’s fourth paragraph.

828.1 See, e.g., State *ex rel.* Brady v. 3-D Auto World, Inc., 2000 Del. Super. LEXIS (Del. Super. Ct. Jan. 19, 2000)(in this UDAP enforcement action, car dealer admitted he charged credit customers a “carrying charge” of 20% of the outstanding balance at purchase, if the purchased included “0%” financing; court used TILA definitions to support its holding that these charges constituted a finance charge.).

Addition to note 830.

830 Car dealers commonly pay a flat fee when they sell the loan to the lender. If the dealer passes this “acquisition fee” on to the consumer directly, then it is a finance charge. See § 3.7.3.1, *supra*. Such a fee should be listed in the itemization of the amount financed, if one was provided. The dealer agreement with the lender will discuss the amount and purpose of this fee. On the other hand, the dealer may simply jack up the cash price to cover the cost. If the dealer engages in this practice only with credit customers (which would logically be the case since the fee is imposed on the dealer only when selling the loan), then the charge is a finance charge. See § 3.6.5, *supra*. The consumer can prove this by obtaining the dealer agreement to show there was such a fee imposed by the lender and the recap sheet for the transaction. This document should reveal if the fee was actually passed onto the consumer. Further discovery as to the practice of the lender in cash transaction is necessary to refute any claim that the dealer passes the fee on to all customers.

Add to text after sentence containing note 831:

In another car financing case, this time involving an “increased risk charge” imposed by the assignee, the Seventh Circuit reversed the dismissal of the complaint finding that the consumer need only plead that the dealer added the extra cost to the price of only to the financed cars.^{831.1}

831.1 Balderos v. City Chevrolet, 214 F.3d 849 (7th Cir. 2000).

Addition to note 832.

832 Add after the Walker cite and parenthetical: Irby-Greene v. M.O.R., Inc., 79 F. Supp. 2d 630 (E.D. Va. 2000) (adopting the Walker standard but dismissing case against the assignee holding that the discount was not apparent on the face of the documents assigned; see § 7.3.7.2, *infra*). Replace cite to Taylor with: 1998 U.S. Dist. LEXIS 5095 (N.D. Ill. Apr. 13, 1998). Add to end of Hoffman cite: , summary judgment for dealer *aff’d*, 218 F.3d 680 (7th Cir. 2000)(see discussion in subsequent text in this section). Replace Sampler cite and parenthetical with: Sampler v. City Chevrolet Buick Geo, Inc., 2000 U.S. Dist. LEXIS 2322 (N.D. Ill. Feb. 24, 2000), *rev’g*, 10 F. Supp. 2d 934 (N.D. Ill. 1998)(adopted the Walker pleading standard). Add Taylor v. Bob O’Connor cite: , motion to dismiss state law claims denied in part and granted in part, 2000 U.S. Dist. LEXIS 11486 (N.D. Ill. June 26, 2000).

Addition to note 833.

833 Add Taylor v. Bob O’Connor cite: , motion to dismiss state law claims denied in part and granted in part, 2000 U.S. Dist. LEXIS 11486 (N.D. Ill. June 26, 2000).

Replace section’s final three paragraphs with:

Where consumers could not make these specific allegations, their cases were dismissed under TILA,⁸³⁵ though, at the motion to dismiss stage, the Seventh Circuit held that it is adequate to allege that the dealer passed the cost of the discount onto credit customers only and failed to disclose it as a finance charge.⁸³⁶ In a subsequent opinion, the court articulated what proof will be necessary to survive a summary judgment motion where the dealer presents evidence as to its pricing.⁸³⁷ There, the court found the consumer’s general proof that the dealer, on average, charged subprime-credit customers a higher price for the car than it charged its other customers was insufficient where the creditor came forward with proof that it used a uniform pricing system for its credit and cash customers as beginning negotiation price. Because the salespeople earn commissions based on the net profit to the dealership, they have an incentive to get as much as possible for any given car. The dealership defined net profit as the difference between the actual sales price and the sum of the cost of the car to the dealership, the cost of repairs, \$700 for overhead, and, in the case of subprime

transactions, a \$400 holdback, *i.e.*, a fee the finance company imposed on the dealer for purchasing subprime paper. Ignoring the fact that salespeople are always going to negotiate a sales price that includes these fixed costs, the court found that the dealer did not separately impose the \$400 where the salespeople tried to stick all customers for as much as possible to enhance their commissions. The court also noted that the evidence presented revealed that, on average, *prime*-credit customers also paid higher prices than cash purchasers even though the finance company did not charge a holdback fee in these cases.

On the other hand, the Sixth Circuit determined that summary judgment to the dealer is not appropriate where the disparity in the markup of the “cash price” (the difference between the acquisition price and the base price) was four to five times higher for credit customers than for cash customers.^{837.1} In coming to this conclusion, the court relied upon a study the consumer conducted of the transaction “jackets” produced through discovery. When the evidence reveals a *consistent* difference between the base prices for credit and cash customers, legitimate reasons for the individual price differences fade, especially where the disparity in the markup is stark.^{837.2}

Even where some sellers utilize a unitary pricing scheme, the sale price may, nonetheless, include a hidden finance charge if the seller in fact has very few cash customers.⁸³⁸ For example, in *In re Stewart*⁸³⁹ an enterprising entrepreneur advertised the availability of goods on credit from a local store. His customers chose the goods they wanted from the store and the seller filled out the credit contract. The transactions were financed by a third party creditor working closely with the seller, though the seller appeared on the loan documents as the creditor. In Mr. Stewart’s case, the sale price on the credit contract was over \$1000 more than the price of the same goods. The court held that the differential was a hidden finance charge, thus making the APR over 80%, instead of the disclosed 18%.⁸⁴⁰ (Note that the assignee of this contract was held liable for the TIL violation despite the argument that it was not apparent from the face of the documents.⁸⁴¹ The court held the assignee was liable for the TIL claim under the contract provision required by the FTC Preservation of Claims and Defenses Rule⁸⁴² and also hinted that nominal assignees can be so closely connected as to be liable in the same manner as direct parties to the contract.⁸⁴³ These additional holdings are not currently the majority rule.⁸⁴⁴)

Another twist involves car dealer rebate programs. In this scenario, the dealer may offer a rebate to customers who pay in cash or offer a lower interest rate to those who finance the sale. In this situation, where the sales price is inflated by the amount of the rebate only in credit transactions (that is, the sales price is higher than the sales price in a cash sale by the amount of the rebate), the rebate amount constitutes a finance charge.^{844.1}

Establishing the *amount* of a hidden finance charge (as opposed to whether it was imposed separately) can be done in a number of ways. Comparing the cash price as defined by Regulation Z § 226.2(a)(9) with the cash price disclosed in the credit contract should establish the amount of a hidden finance charge where the seller has a differential pricing structure. (Or, the dealer’s operations manuals or similar documents may explicitly state what the mark-up will be.) As noted above, some hidden finance charge cases involving car sales have either used or authorized the use of market guides or expert witnesses to establish the actual value of the goods sold.⁸⁴⁵ In health spa cases involving unitary pricing systems, the amount of the assignment discount was considered.⁸⁴⁶

Advocates should note that hiking the cash price to cover the discount or other charges might also be stated as a fraud⁸⁴⁷ or UDAP claim.^{847.1} UDAP claims may also be plead to address the failure of the dealer to tell the consumers that they are paying a higher cash price in order to cover a discount.^{847.2}

835 Walker v. Wallace Auto Sales, Inc., 1997 WL 598149 (N.D. Ill. 1997), *rev’d*, 155 F.3d 927 (7th Cir. 1998); Balderos v. Illinois Vehicle Premium Finance Co., 1997 WL 627650 (N.D. Ill. 1997), *rev’d*, 214 F.3d 849 (7th Cir. 2000)(in light of *Walker*). *See also* Chancellor v. Gateway Lincoln-Mercury, Inc., 502 S.E.2d 799 (Ga. App. 1998) (in non-TILA case, court found that discount was not separately imposed because there was no allegation of an inflated sales price, the seller never increased the purchase price to recoup the discount; court was influenced by fact that subsequent to the execution of a buyer’s order fixing the sale price at \$4,450, the seller lowered the price to \$4,254.50).

836 Walker v. Wallace Auto Sales, Inc., 155 F.3d 927 (7th Cir. 1998).

- 837 Hoffman v. Grossinger Motor Corp., 218 F.3d 680 (7th Cir. 2000). *See also* Sampler v. City Chevrolet Buick Geo, Inc., 2000 U.S. Dist. LEXIS 2322 (N.D. Ill. Feb. 24, 2000)(decided before *Hoffman* but the court grappled with the issue of the type of proof necessary to show that the cost of the discount is separately imposed. It decided that the borrower may prevail on this TILA claim if she can prove: (1) the dealer set the negotiated price of cars it anticipates will be purchased on credit high enough to cover the cost of the discount; (2) the dealer does not similarly raise the prices of cars sold for cash; (3) the dealer does not disclose the discount to credit customers; (4) the dealer anticipated a discount when negotiating the price of the borrower's car; (5) the dealer did not disclose the discount to this particular borrower. Because these elements, in the court's mind, were akin to proving discrimination, it further found that the borrower could prove by direct or indirect evidence that: (1) the dealer deducts the price of discounts from its profits on subprime cars but not on cash cars; (2) statistics demonstrate that the dealer's profits on cars bought with subprime credit are equal to or higher than the dealer's profits on cars bought with cash; (3) the dealer's sales managers knew that a particular customer is going to require subprime financing prior to setting a final price for the car. The proof presented by the consumer was sufficient to create a dispute of material fact because: (1) the discounts are listed on manager sheets as a cost of subprime cars and not on cash cars, showing that the cost is imposed only on credit customers; (2) the profit margin is higher on subprime cars than on cash cars; (3) the dealer knows the general rates of discount charged by subprime lenders and can reasonably approximate the amount to holdback in a particular transaction). *But see* Ringenback v. Crabtree Cadillac-Oldsmobile, Inc. 99 F. Supp. 2d 199 (D. Conn. 2000) (no allegation of differential pricing; claim was based upon the N.A.D.A. Bluebook value; court, nevertheless, denied summary judgment).
- 837.1 Cornist v. B.J.T. Auto Sales, Inc., 272 F.3d 322 (6th Cir. 2001).
- 837.2 *Id.* at 327. The court distinguished the decision in Gibson v. Bob Watson Chevrolet-Geo, Inc., 112 F.3d 283 (7th Cir. 1997) to the extent that it may require a showing of a "systematic" disparity. "[W]e emphasize that the 'systematic' disparity requirement is not an element of a TILA cause of action for undisclosed finance charges, but a manner in which circumstantial evidence can be used to prove that a seller is burying the cost of credit in the price of goods sold." *Id.* at 328.
- 838 Kriger v. European Health Spa, Inc., 363 F. Supp. 334, 338 (E.D. Wis. 1973). *See also* Joseph v. Norman's Health Club, 532 F.2d 86, 93-94 (8th Cir. 1976) (too few cash customers for that to be "a sale in the ordinary course of business" and thus that is not the ordinary "cash price": the cash received by the seller through the discount sale of the paper to assignees is the "ordinary course of business price." Though the cost is obviously passed along to customers, some increase in charges may have been absorbed as a reduction in profit, lower court should explore that on remand); Berryhill v. Rich Plan of Pensacola, 578 F.2d 1092 (5th Cir. 1978) (compulsory service plan was finance charge despite its allegedly being required of cash and credit customers; since so few cash customers, it was incidental to the extension of credit). *NOTE:* These cases interpreted Old Reg. Z § 226.4(a)(8), which is the equivalent of New Reg. Z § 226.4(b)(6).
- 839 93 B.R. 878 (Bankr. E.D. Pa. 1988).
- 840 Actually, it is not clear from the court's decision whether the creditor was considered to have a unitary pricing scheme which clearly had a financing charge because he had no cash customers to absorb the cost, whether the degree of cooperation from the store with the creditor made it a differential pricing situation, or whether the whole set-up was so obviously a rip-off for credit customers that it prima facie was the sort of evasive device envisioned when the Supreme Court upheld the four installment rule. Any of these analyses would have led to the same conclusion. Advocates should note that the court also held the hidden finance charge created a violation of the state usury and UDAP laws, 93 B.R. at 886-887.
- 841 *Cf.* 15 U.S.C. § 1641(a); § 7.3.7.2, *infra*.
- 842 16 C.F.R. § 433.2. *See also* Cox v. First Nat'l Bank of Cincinnati, 633 F. Supp. 236 (S.D. Ohio 1986); § 7.3.7.4, *infra*; National Consumer Law Center, Unfair and Deceptive Acts and Practices § 5.1.5 (4th ed. 1997 and Supp.).
- 843 93 B.R. at 888 n.6.
- 844 *See* § 7.3.7.2, *infra*.
- 844.1 Coelho v. Park Ridge Oldsmobile, Inc., 2001 U.S. Dist. LEXIS 14652 (N.D. Ill. Sept. 19, 2001); Slee v. Don McCue Chevrolet Geo, Inc., 2001 U.S. Dist. LEXIS 14059 (N.D. Ill. Sept. 10, 2001) (cash rebate of \$1000 if the customer pays in cash equals a finance charge for credit customers at the motion to dismiss stage), *class cert. denied*, 2001 U.S. Dist. LEXIS 13956 (N.D. Ill. Sept. 7, 2001).
- 845 *See, e.g.,* Killings v. Jeff's Motors, Inc., 490 F.2d 865 (5th Cir. 1974); Vines v. Hodges, 422 F. Supp. 1292 (D.D.C. 1976); Thomas v. Upton, No. 78 CVD 1650 (N.D. Dist. Ct. 1979). *See also* Yazzie v. Reynolds, 623 F.2d 638 (10th Cir. 1980), *cert. denied*, 449 U.S. 982 (1980); Lawson v. Reeves, 537 So. 2d 15 (Ala. 1988); Rowe Auto & Trailer Sales, Inc. v. King, 517 S.W.2d 946 (Ark. 1975); National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges § 7.4.6 (2d ed. 2000 and Supp.) and cases cited therein; National Consumer Law Center, Automobile Fraud § 9.9.1.4 (1998 and Supp.) *Cf.* Ward v. Quality Homes Co. & Greentree Financial, Clearinghouse No. 49,960, Civ. No. 1:92-CV-2644 (N.D. Ga. 1993) (plaintiff alleged \$17,500 home improvement contract included a hidden finance charge, offering on motion for summary judgment affidavit of expert witness stating fair market value was \$10,900, and salesman's deposition that cash price had \$4000 overhead and profit added; court held it was inappropriate issue for summary judgment, requiring weighing of testimony and credibility).