

bringing an action under the Consumer Legal Remedies Act:

- (1) Notify the person of the alleged violations of Section 1770.
- (2) Demand that such person correct, repair, replace or otherwise rectify the goods or services alleged to be in violation of Section 1770.

Such notice shall be in writing and shall be sent by certified or registered mail, return receipt requested.

#### **SPECIAL JURY INSTRUCTION NO. 14**

“As is” is not a defense to the two causes of action in this case.

#### **SPECIAL JURY INSTRUCTION NO. 15**

##### *Continued Use of the Vehicle*

The fact that Plaintiff continued to use the vehicle after reporting a condition or bringing this lawsuit does not constitute a waiver of right to obtain relief in this action. *Ibrahim v. Ford Motor Co.* (1989) 214 Cal. App. 3d 878, 897–898.

#### **SPECIAL JURY INSTRUCTION NO. 16**

##### *Burden of Proof and Clear and Convincing Evidence*

For purposes of assessing punitive damages only, the plaintiff has the burden of proving by clear and convincing evidence all of the facts necessary to establish that INSURANCE AUTO ACTIONS acted with fraud, oppression or malice towards the plaintiff.

“Clear and convincing” evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact[s] for which it is offered as proof. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence.

You should consider all of the evidence bearing upon every issue regardless of who produced it.

#### **SPECIAL JURY INSTRUCTION NO. 17**

##### *Punitive Damages—Recovery of—(Bifurcated Trial—First Phase)*

If you find that plaintiff suffered actual injury, harm, or damage as a result of either the fraud or Consumer Legal Remedies causes of action, you must decide in addition whether by clear and convincing evidence you find that there was oppression, malice and/or fraud in the conduct on which you base your finding of liability.

“Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.

“Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

“Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

## **G.8 Jury Instructions in Wrecked Car Case<sup>14</sup>**

**INSTRUCTION NO. A:** Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because *all* are important. This is true even though some of those I gave you during trial are not repeated here.

The instructions I am about to give you now, as well as those I gave you earlier, are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, *all* instructions, whenever given and whether in writing or not, must be followed.

**INSTRUCTION NO. B:** In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness’ intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness’ memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time or during the course of testifying, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

**INSTRUCTION NO. C:** Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

During this trial I have occasionally asked questions of witnesses in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions related.

**INSTRUCTION NO. D:** In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim or defense depends upon the fact. The party who has the burden of proving a fact must prove it by the preponderance of the evidence. To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. It is determined by

<sup>14</sup> These jury instructions were provided by Bernard Brown a private attorney specializing in auto fraud in Kansas City, MO.

A set of jury instructions for Magnuson-Moss Act warranty claims is found in *Consumer Law Pleadings With Disk*, Number Five § 6.3 (1999).

considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

**INSTRUCTION NO. E:** Your verdict must be for the plaintiff and against a defendant company or individual on plaintiff's claim of fraudulent concealment and misrepresentation if you believe:

*First*, personally or as a participant the defendant misrepresented or concealed by silence the condition or history of the 1984 GMC "Jimmy" vehicle or misrepresented the meaning or effect of the towaway affidavit, intending that a purchaser rely upon such misrepresentation or concealment in purchasing the motor vehicle, and

*Second*, any such representation was false, and defendant knew that the representation was false at the time that it was made, or did not know whether it was true or false, or

*Third*, any concealment of the prior wreck was made with knowledge of physical conditions indicating wreck repair, and

*Fourth*, the representation or concealment was material to the purchase by plaintiff of the motor vehicle, and

*Fifth*, plaintiff relied on the representation or concealment in making the purchase, and in so doing acted reasonably, and

*Sixth*, as a direct result of such representation or concealment the plaintiff was damaged,

unless you believe plaintiffs not entitled to recover by reason of Instruction No. G.

**INSTRUCTION NO. E2:** Your verdict must be for the plaintiff and against a defendant company or individual on plaintiff's claim for violation of Missouri's Merchandising Practices Act if you believe plaintiff was damaged by a defendant's use of misrepresentation or the concealment or omission of any material fact in connection with the sale of the vehicle. Such misconduct is declared to be an unlawful practice.

**INSTRUCTION NO. F:** A person or company that actively encourages or assists in wrongful conduct with knowledge of ongoing or planned misconduct is responsible for the conduct as a participant.

You should not consider the question of personal responsibility of Tom Ridings as a participant on any aspect of this case except the alleged practice of using a towaway agreement with knowledge that buyers are not buying vehicles for junk, salvage or rebuilding, and failing to inspect such vehicles. This limiting instruction does not suggest how the court believes you should decide the claim against Mr. Ridings or any claim against any other defendant.

**INSTRUCTION NO. G:** If you find that defendants or any one of them have been engaged in inappropriate or illegal practices of whatever nature or description, but that such a practice was not a substantial factor in causing damage in connection with the purchase of the 1984 GMC Jimmy automobile from Blue Springs Ford Wholesale Outlet, you cannot return a verdict in favor of plaintiff based on such misconduct.

**INSTRUCTION NO. G2:** Under the Missouri Merchandising Practices Act you are advised that selling a vehicle without an inspection, believing the purchaser is not buying the vehicle for junk, salvage or rebuilding is an unfair practice and an unlawful

practice, regardless of whether the seller induces the buyer to sign a towaway agreement.

**INSTRUCTION NO. G3:** You are instructed there is no evidence that any defendant intended to defraud plaintiff under the odometer laws when she bought the vehicle, and plaintiff therefore has no claim based on the failure to supply an odometer certificate.

**INSTRUCTION NO. H:** If you find in favor of plaintiff, then you must award plaintiff such actual damages as you believe was the difference between the fair market value of the vehicle when plaintiff discovered or should have discovered it did not conform to representations made or facts that had been concealed and its fair market value had there been no concealment and the vehicle had been as represented by defendant, plus such sum as you believe will fairly and justly compensate plaintiff for any other damage plaintiff sustained as a direct result of misrepresentation or concealment of the condition or history of the vehicle.

Award zero damages if you believe that no actual damages were incurred.

**INSTRUCTION NO. I:** If you find the issues in favor of plaintiff, and if you believe the conduct of defendant as submitted in Instruction No. E or E2 was outrageous because of evil motive or reckless indifference to the rights of others, you may award plaintiff an additional amount as punitive damages in such sum as you believe will serve to punish defendant and to deter defendant and others from like conduct.

In assessing punitive damages you may include sums for aggravation; that is, on items where you found actual damages you may consider additional injuries for mental anguish, if any, which you did not include in actual damages. You may also consider mitigating circumstances, if any. You should not, however, consider attorneys' fees as a factor in assessing punitive damages because the court has authority to assess attorneys' fees if you find for plaintiff.

**INSTRUCTION NO. J:** If punitive damages are assessed against more than one defendant, the amounts assessed against such defendants may be the same or they may be different.

**INSTRUCTION NO. J2:** There are two corporate defendants, Blue Springs Ford Sales (BSFS), Blue Springs Ford Wholesale Outlet (BSFWO), and four employees of BSFWO. A corporation is responsible for the conduct of its employees. In filling out the verdict form you may use the corporate initials and the last names only of the four individual defendants.

**INSTRUCTION NO. K:** In conducting your deliberations and returning your verdict, there are certain rules you must follow.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision

simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

*Fourth*, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Finally*, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

If more than one form was furnished, you will bring the unused forms in with you.

## G.9 Special Verdict Form in Wrecked Car Case<sup>15</sup>

IN THE UNITED STATES DISTRICT  
COURT WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

\_\_\_\_\_) )  
VICKI GRABINSKI, )  
Plaintiff, )  
) )  
v. )  
) )  
BLUE SPRINGS FORD )  
SALES, INC., et al., )  
Defendants. )  
\_\_\_\_\_) )

### SPECIAL VERDICT

1. Did any defendant conceal from plaintiff or Blue Springs Ford Wholesale Outlet known wreck damage or state the vehicle had no prior wreck damage?

Yes No

2. If you answered “yes,” which defendant or defendants concealed or participated in concealing such known damage, or stated or participated in stating the vehicle had no such damage?

3. Did any defendant misrepresent to plaintiff or Blue Springs Ford Wholesale Outlet the general condition of the vehicle?

Yes No

4. If you answered “yes,” which defendant or defendants so misrepresented or participated in misrepresenting the condition of the vehicle?

5. Did any defendant tell plaintiff the vehicle had only one prior owner?

Yes No

6. If you answered “yes,” which defendant or defendants so told plaintiff, or participated in making such a statement?

7. Did any defendant tell plaintiff the towaway agreement must be signed on all sales of new or used cars or otherwise misrepresent the meaning or effect of the agreement?

Yes No

8. If you answered “yes,” which defendant or defendants so told plaintiff, or participated in making such a statement?

9. Did any defendant cause plaintiff to sign a towaway agreement while such defendant believed plaintiff was not buying the vehicle for rebuilding?

Yes No

10. If you answered “yes,” which defendant or defendants caused or participated in causing plaintiff to sign a towaway agreement while such defendant believed plaintiff was not buying the vehicle for rebuilding?

11. Did plaintiff rely on all misrepresentations, if any, made to her in purchasing the vehicle?

Yes No

12. If you answered “yes,” was such reliance by plaintiff reasonable?

Yes No

13. If your answer is “no” list the alleged misrepresentations (questions 1, 3, 5, and 7) on which plaintiff did *not* rely.

If you answered “no” to questions 1, 3, 5, 7, and 9 no damages will be entered against any defendant, and you should stop here. The Foreperson should sign the form, and you should return to the courtroom.

14. State the amount, if any, of actual damages (as defined in Instruction No. H) suffered by plaintiff Vicki Grabinski because she bought the Jimmy vehicle without knowing of prior wreck damage and repair.

\$(state the amount or “none”)

15. State the amount, if any, of actual damages suffered by plaintiff because she bought the vehicle without knowing of defects in the condition of the vehicle other than wreck damage.

\$(state the amount or “none”)

16. State the amount, if any, of actual damages suffered by plaintiff because she bought the vehicle without knowing there had been more than one prior owner.

\$(state the amount or “none”)

17. State the amount, if any, of actual damages suffered by plaintiff because she was persuaded to sign the towaway affidavit.

\$(state the amount or “none”)

18. If you believe punitive damages should be assessed against one or more defendants because of any of their conduct causing the damage items 14 through 17 in which you have entered a dollar amount of actual damages, using the standard for assessing punitive damages set forth in Instruction Number I, state the *total* award of punitive damages (you may *not* assess punitive damages based on any matter on which you assessed *no actual damages*).

\$(state the amount or “none”)

19. If you have awarded punitive damages, state the portion of that amount that you assess against each of the following defendants (the total awarded must equal the sum listed in answer to Question 18)

<sup>15</sup> These jury instructions were provided by Bernard Brown a private attorney specializing in auto fraud in Kansas City, MO.