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## **The good guys win!**

*by Gil Van Over*

I periodically report on current or pending litigation against dealers. I am happy to share the outcome of two of cases that were decided recently. The dealers won!

I've discussed the two cases within the last year. The mass-action RICO lawsuit and the identity thief who turned around and sued a dealer for FCRA violations when her apparent fraud unraveled.

### **First the mass action lawsuit.**

This case had 59 plaintiffs who were alleging similar, but not common, complaints of deceptive practices—all in a single lawsuit. The plaintiffs' attorney also attached a RICO charge.

Two potential nightmares existed for the dealer. First, the dealer faced the preparation and cost to defend against potentially 59 different set of depositions and testimony. Second, the dealer faced potential penalties under fraud RICO statutes. Worst case scenario: An easily seven-figure sum.

The dealer's attorney successfully severed the cases so the first nightmare went away. Next, the good guys were able to settle the case for a fraction of the worst case scenario cost and all the complaints went away.

Lesson learned? The dealer realizes that anyone can sue for any number of reasons and manufacture stories. This dealer has installed a video recording system to record the transactions. By implementing a structured review process, he is confident that future claims can be reviewed on video and put to rest.

### **The second case was a complete victory.**

A young woman walked into a dealer with another young woman's identity and purchased a car. Both women had the same name.

The victim found out within a month and notified the dealer. The dealership unwound the deal and paid off the bank.

Incredibly, the alleged identity thief then turned around and sued the dealer, for among other things, for not having a permissible purpose to pull her credit report!

This lawsuit dragged on for almost four years. Finally, the plaintiff's attorney produced a hired gun expert witness who put together an expert report supporting its case with more than a few machinations of the truth. This forced the dealer's attorney to hire an expert witness.

Based in part on the dealer's expert's findings, the dealer's attorney was able to present the

plaintiff's attorney with a pretty strong case that his client was probably an identity thief.

Shortly thereafter, the plaintiff's attorney excused himself from the case, which now appears as if it will go away.

Lesson learned: If you didn't do anything wrong, sometimes you may want to press the issue instead of settle.

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