

CONDENSED TRANSCRIPT AND INDEX
DEPOSITION OF LYSSA CARTER
TAKEN 6/11/03

Re: McCarthy, et al. vs. Sonic, et al.
Pages 1 through 42

Prepared by
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1 IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
 2 IN AND FOR PINELLAS COUNTY, FLORIDA

3 BRENDA J. MCCARTHY, DAWN
 4 KRAMER, SALLY JO McNEESE
 and MINNIE E. SPARKS,

5 Plaintiffs,

6 vs. CASE NO. : 02-5201CI-15

7 SONIC AUTOMOTIVE - 21699
 8 U.S. HWY 19 N., INC., d/b/a
 Clearwater Mitsubishi, and
 9 SONIC AUTOMOTIVE, INC.,

10 Defendants.

11 _____/

12

13 DEPOSITION OF: LYSSA CARTER

14 TAKEN: Pursuant to Notice by
 Counsel for Plaintiff

15 DATE: June 11, 2003

16 TIME: 10:03 - 11:03 a.m.

17 PLACE: BAY AREA REPORTING, INC.
 18 401 East Jackson Street
 Suite 2320
 19 Tampa, Florida

20 REPORTED BY: DEBBIE E. ASKINS
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 21 Notary Public

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1 LYSSA CARTER,
 2 the Deponent herein, having been first duly sworn,
 3 testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. WEAKLAND:

6 Q Good morning, Mrs. Carter. You understand
 7 you're under oath?

8 A Yes.

9 Q And this is a continuation of your deposition,
 10 which last we met was in April I think it was. Since we
 11 last spoke, have you had any contact with anybody at Sonic
 12 Automotive?

13 A No, I have not.

14 Q Have you spoken with any attorney representing
 15 Sonic Automotive?

16 A No.

17 Q Okay. At the last deposition we talked about
 18 PRU?

19 A Uh-huh. (Indicating affirmatively)

20 Q Can you define that for me? What is PRU?

21 A That is called Per Retail Units, which is the
 22 income made from the financing and-- financing products
 23 that are sold at the time of the car sale.

24 Q And that PRU number would not include front end
 25 profit?

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1 A No, not normally. Unless a dealership wanted
 2 to combine front end and what we call back end, which is
 3 the financial end of it.

4 Q Okay. How do chargebacks effect the PRU
 5 number, if at all?

6 A The chargeback is when somebody cancels an
 7 extended warranty for an example and that extended warranty
 8 after the cancellation is programmed in, that amount gets
 9 charged back to the finance-- that finance income.

10 Q All right.

11 A Already made income.

12 Q And that would effect the PRU number?

13 A Yes, it would.

14 Q The goal or objective numbers, PRU goal numbers
 15 that we talked about earlier, I think in Exhibit 23 you
 16 talk about a national goal of \$800 PRU?

17 A Right.

18 Q Is that number effected by chargebacks?

19 A That number there particularly might not have
 20 been-- that could have been a national goal before
 21 chargebacks.

22 Q Okay. Now, would that PRU number apply for
 23 every sale and lease?

24 A Yes. But that was a national average. Sonic's
 25 goal of 800 was a national average. So some territories

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1 are going to lower numbers, some territories are going to
2 have higher.

3 Q. All right. We talked about some of the
4 products that are included in the-- I guess they're called
5 after market products?

6 A. Yes.

7 Q. One of those products we talked about was Etch.

8 A. Yes.

9 Q. When you were employed by Sonic, what Etch
10 products were sold?

11 A. Well, we sold Sonic's preferred Etch product.

12 Do you mean who--

13 Q. Who were the Etch companies?

14 A. Easy Care.

15 Q. Any others?

16 A. One of the dealerships in my territory had
17 their own Etch product that they used, but I can't recall
18 the name of that company.

19 Q. Who was the dealership?

20 A. Bondeson.

21 Q. And did some of your-- the dealers in your
22 territory sell the JMNA Etch product?

23 A. I think originally, but I think overall they
24 were all switched to the Easy Care Etch eventually.

25 Q. Okay. What was the Easy Care Etch product?

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1 How would you describe it?

2 A. It's a sort of a security system that is etched
3 into each of the windows of the car in case the car gets
4 stolen and the vehicle is retrieved, they can track that--
5 those numbers and try to find the car quicker. And the
6 customer gets a small insurance amount if the car is not
7 found in a certain amount of time.

8 Q. Who does the actual etching on the windows?

9 A. The dealership does.

10 Q. Is there a kit or something that they use to do
11 that?

12 A. Yes. Uh-huh. (Indicating affirmatively)

13 Q. And the marks that are etched on the car, what
14 are those marks?

15 A. It's like a serial number. It's done with an
16 acid wash.

17 Q. And does that serial number vary from dealer to
18 dealer?

19 A. It varies from car to car. Each car has its
20 own unique serial number.

21 Q. All right. Now, I believe you testified
22 earlier-- well, I believe you testified earlier that you
23 were paid a commission based upon your PRU numbers?

24 A. Yes, I was.

25 Q. Were you ever paid a commission from Easy Care?

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1 A. No. Well, I got paid commission depending on
2 my percentages of extended warranties and after market
3 products.

4 Q. Right.

5 A. But Easy Care would have been part of those
6 percentages.

7 Q. I understand. Who actually paid you though?

8 A. Sonic Automotive.

9 Q. So the check was paid from Sonic?

10 A. Right.

11 Q. Did the finance and insurance managers receive
12 commissions on the sales of those products as well?

13 A. Yes.

14 Q. And who paid those commissions?

15 A. Each dealership at its own level would pay out
16 of their own management.

17 Q. Do you know if Apco ever paid commissions
18 directly to F&I managers at any of the dealerships?

19 A. No. Directly just them, Apco, like a separate
20 check?

21 Q. Yes.

22 A. No.

23 Q. They didn't do that?

24 A. No.

25 Q. Okay. Did Sonic corporate get paid anything

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1 from Easy Care on the sale of the Etch product?

2 A. I don't know. If there was an inside deal or
3 something like that, I don't know that.

4 Q. Okay.

5 A. There was a cost to the Etch product to each
6 dealership. And then whatever that cost product was, the
7 dealership could keep that commission.

8 Q. All right. So when the Etch product was sold
9 at the dealership, the dealership would pay Apco the cost
10 of the product?

11 A. Right.

12 Q. And keep whatever profit there was?

13 A. Right. Uh-huh. (Indicating affirmatively)

14 Q. You called it a commission. Is it called a
15 commission or a profit?

16 A. A profit, uh-huh. (Indicating affirmatively)
17 MR. WEAKLAND: Off the record.

18 (Whereupon, an off-the-record discussion was
19 had)

20 Q. (By Mr. Weakland) Mrs. Carter, I'm showing you
21 earlier was marked as Exhibit 20. Do you remember that
22 form? (Tendering to Deponent)

23 A. Yes.

24 Q. Okay. I was trying to figure this out and I
25 need your help on this.

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1 A. Okay.
 2 Q. At the top where it says "Gross F&I Revenue",
 3 there's a number of \$169,766.
 4 A. Yes.
 5 Q. What is that number?
 6 A. That would have been-- This is a report that
 7 we do that shows the dealership, their actual numbers and
 8 then with proper training and the different products that
 9 we sell, the forecasted numbers. And this just probably
 10 would have been their actual numbers for the month,
 11 February through May.
 12 Q. Is that first--
 13 A. It doesn't have a year, so I'm not sure what
 14 year it was.
 15 Q. All right. Is that first line that's written--
 16 A. Finance reserve.
 17 Q. So would the \$169,000 represent the profit to
 18 this dealership on--
 19 A. Those three months.
 20 Q. --those three months?
 21 A. Right.
 22 Q. For finance reserve?
 23 A. Right. It could have lease reserve in there as
 24 well, but finance or lease reserve.
 25 Q. The next line says, "RA, 35,560". Do you know

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1 commissions?
 2 A. Uh-huh. (Indicating affirmatively)
 3 Q. Yes?
 4 A. Yes.
 5 Q. Okay. And so have you figured out what "RA"
 6 means yet?
 7 A. I can't think of it right offhand.
 8 Q. Okay. All right.
 9 A. I'll let you know if it comes to me.
 10 Q. Okay. Adding up all these numbers, you come up
 11 to \$417,237 profit on the sale of after market items?
 12 A. For those vehicles. Right, for those three
 13 months.
 14 Q. Okay. Gotcha. And then in this dealership,
 15 the PRU number, the actual PRU number was \$654 for those
 16 three months; is that correct?
 17 A. Yes.
 18 Q. And then the forecasted numbers, would those be
 19 for the next three months?
 20 A. That would have been the exact same three
 21 months.
 22 Q. Oh. I see. These are the numbers that you had
 23 expected them to hit and they didn't hit those numbers?
 24 A. Right. Or the numbers they could have hit had
 25 they had the proper training and the tools.

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1 what "RA" represents?
 2 A. I can't recall right now.
 3 Q. Okay. The next line looks like insurance
 4 commissions?
 5 A. That would have been like life insurance or
 6 accident and health insurance.
 7 Q. Okay. And then I know what GAP commission is.
 8 A. Okay.
 9 Q. When it says "commissions", does that mean the
 10 profit--
 11 A. The profit, right.
 12 Q. These are not the commissions that are paid to
 13 the F&I people; is that right?
 14 A. Right.
 15 Q. And then other commissions it says, "Etc".
 16 Would this number, \$22,201, would that represent--
 17 A. The actual.
 18 Q. --the Etc profits?
 19 A. Yes.
 20 Q. For those three months at that dealership?
 21 A. Probably so, yes.
 22 Q. Okay. And then the final line, VSC, vehicle
 23 service contract?
 24 A. Yes.
 25 Q. So that would be your extended warranty

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1 Q. Okay. Was there a sheet like this for every
 2 dealership in your territory?
 3 A. Yes, there was.
 4 Q. Would Sonic have the sheets for Clearwater
 5 Mitsubishi?
 6 A. They should.
 7 Q. What would I-- What would you call this sheet?
 8 What's the name of this form?
 9 A. A forecast sheet. It's part of a group of
 10 sheets called a finance analysis. And there's about
 11 three-- if I think if I recall, there's about three sheets
 12 that go with this one. This is just part of this report.
 13 And the whole thing is called a finance analysis.
 14 Q. And who would prepare those sheets?
 15 A. We would, the-- (Indicating)
 16 Q. The regional directors?
 17 A. Regional directors, right.
 18 Q. And would they be prepared on a quarterly
 19 basis?
 20 A. Not necessarily. Sometimes we would prepare
 21 them when it was a new dealership, one that we just
 22 acquired, or one that maybe wasn't doing so well and they
 23 came in and asked for us to do a finance analysis. So
 24 there wasn't really an exact time frame at the time I was
 25 there to do one.

1 Q. Okay. Did you have any meetings with anybody
 2 at Sonic to discuss the figures that are shown in these
 3 financial analyses?
 4 A. I would have, yes.
 5 Q. How often would you-- Who would you meet with?
 6 A. Normally, the general manager of the dealership
 7 or the dealer operator.
 8 Q. Who else would be present at those meetings?
 9 A. Sometimes the finance director might be
 10 present. And on some occasions, my supervisor was present,
 11 which was Richard O'Connor. And that's-- that would be
 12 normally it.
 13 Q. During your employment with Sonic, how often
 14 would Richard O'Connor meet with the dealer operators to go
 15 over these analyses?
 16 A. In my territory?
 17 Q. Yes.
 18 A. He only met with them one time to go over some
 19 of the finance analysis.
 20 Q. At which dealership was that?
 21 A. I can't recall which ones. I think he was here
 22 at this one, the Higgenbotham Chevrolet Olds. I think he
 23 came to about four of my finance analysis, but I can't
 24 recall the names of them.
 25 Q. Do you recall him going to Clearwater?

1 A. I'm sorry.
 2 Q. That was pretty late in your employment there?
 3 A. Yes.
 4 Q. One second. Mrs. Carter, I'm showing you
 5 Exhibit 19. (Tendering to Deponent)
 6 A. (Reviewing document) Okay.
 7 Q. And I believe you testified this is a memo that
 8 you wrote on or about March 29, 2000 regarding that
 9 combination of F&I departments. Do you see that?
 10 A. Uh-huh. (Indicating affirmatively) Yes.
 11 Q. Okay. On the second page of this exhibit,
 12 there are numbers associated with some of the F&I people at
 13 these two dealerships. What do those numbers represent,
 14 dollar numbers?
 15 A. Their average monthly salary.
 16 Q. Would those be their commissions?
 17 A. Probably salary including commissions.
 18 Q. I see.
 19 A. Or draw including commissions.
 20 Q. Okay. And you noted that there is one
 21 secondary F&I manager who works for both stores and his
 22 name was Jack Navatka (phonetic)?
 23 A. Yes.
 24 Q. So that would customers who needed secondary
 25 financing at both Clearwater Toyota and Clearwater

1 Mitsubishi?
 2 A. Yes.
 3 Q. What was the-- Did you invite him to go to
 4 Clearwater Mitsubishi?
 5 A. Well, he had never been to the Florida region
 6 before, so this was an opportunity for him to come and meet
 7 the dealers.
 8 Q. Okay.
 9 A. This is early on, the first time that we did
 10 these finance analysis.
 11 Q. At some point you proposed joining the F&I
 12 departments at Clearwater Toyota and Clearwater Mitsubishi;
 13 is that correct?
 14 A. Well, actually, I didn't propose the idea. The
 15 general manager asked me to write an analysis of how and if
 16 it could be possible, if it could work. So that's when I
 17 did the proposal of how it could work.
 18 Q. Who was the GM at that time, do you remember?
 19 A. Scott Fink.
 20 Q. Was that ever accomplished, do you know?
 21 A. No. Not while I was there.
 22 Q. Do you know why that wasn't accomplished?
 23 A. I don't know.
 24 Q. That was pretty late in your employment there,
 25 was it?

1 Mitsubishi go through Jack Navatka?
 2 A. Yes.
 3 Q. The third page of this document talks about a
 4 motivational pay plan. And if you can, Mrs. Carter, tell
 5 me a little bit about what the motivational pay plan means.
 6 Who was the pay plan for and how would these people be
 7 motivated?
 8 A. This was a Sonic preferred pay plan that
 9 Richard O'Connor help develop and so he wanted to see it
 10 implemented in the stores because the pay plan is based on
 11 actual percentages of the after market products. So the
 12 more that they sell, the more money they'll make and the
 13 more we'll sell.
 14 Q. I see.
 15 A. So it's based on-- part of is per retail units,
 16 but most of it is extended warranties, GAP and Etch.
 17 Q. I see. Let me try to figure this out then. So
 18 who would be motivated, the F&I manager at the dealerships?
 19 A. Yes.
 20 Q. And Sonic implemented-- Did they actually
 21 implement this plan? Did Sonic implement the plan?
 22 A. No. Well, a lot of the dealerships implemented
 23 the plan, yes. Sonic really couldn't just go into a
 24 dealership and say, you're going to do this. We really had
 25 to kind of sell ourselves. So Sonic Automotive corporate

1 had an idea, we had to actually go into the dealerships and
 2 sell these programs and hopefully implement them.
 3 Q. I see. So how did this work? If an F&I
 4 manager sold an Etch product, he would get \$8 for that?
 5 A. It would be actually into a pool, this one.
 6 For example, there was two or three finance managers. They
 7 could make a total of this amount per car sold if they
 8 had-- if they hit all of these-- if they hit 35 percent
 9 Etch, if they hit 40 percent GAP, and if they hit 40
 10 percent Etch, the money would go into-- I mean, extended
 11 service contracts, yes. If they hit all of their
 12 objectives, they would get \$121 per car sold.
 13 Q. I see.
 14 A. And then it would go into a pool. And if there
 15 were three finance managers, they split it 33 percent. And
 16 then each of them would get 33 percent of the pool, as an
 17 example.
 18 Q. Would this be pay in addition to what they
 19 would get in other commissions?
 20 A. Some dealerships gave them a salary and then--
 21 See, with this motivational pay plan, you can really change
 22 the percentages to anywhere you want it to be. So some
 23 people made it a smaller percentage, but then paid them a
 24 salary along with it.
 25 Q. I see. Did you go talk to the dealer operators

1 about this pay plan?
 2 A. Yes.
 3 Q. And what did you tell them to encourage them to
 4 implement it?
 5 A. Bigger profit, more revenue basically.
 6 Q. Did you talk to anybody at Clearwater
 7 Mitsubishi about implementing this pay plan?
 8 A. Yes.
 9 Q. Who would that be?
 10 A. Scott Fink.
 11 Q. And do you know if he implemented the pay plan?
 12 A. I believe he did.
 13 Q. Do you know about when you would have talked to
 14 Mr. Fink? Would that have been before or after March of
 15 2000?
 16 A. Roughly. I mean, I don't recall exactly.
 17 Q. During that time period?
 18 A. Yeah.
 19 Q. All right. I'm going through some of these
 20 exhibits because at the end of the last deposition, we kind
 21 of rushed through them and I didn't get a chance to ask you
 22 about them.
 23 A. Okay.
 24 Q. Exhibit 25, do you recognize that exhibit?
 25 (Tendering to Deponent)

1 A. (Reviewing document) Yes, I do.
 2 Q. Actually, it's a memo to you, right?
 3 A. Yes, it is.
 4 Q. From Mr. O'Connor?
 5 A. Yes, it is.
 6 Q. If you could look at the last page of that
 7 exhibit where it talks about Clearwater Mitsubishi?
 8 A. (Obliging) Yes.
 9 Q. Did you talk to Mr. O'Connor about this action
 10 plan for Clearwater Mitsubishi?
 11 A. Yes.
 12 Q. Okay. What is "special rate program"? What
 13 does that mean?
 14 A. Clearwater Mitsubishi often has subvented rates
 15 programs where they have, if you've seen the commercials,
 16 zero percent financing.
 17 Q. Yes.
 18 A. Okay. Well, that really means zero percent
 19 financing to the dealership. So they make no reserve.
 20 Q. I see.
 21 A. So in a special rate program like that, they
 22 make \$20 or \$25 flat reserve.
 23 Q. Okay. When he says "the special rate program
 24 has had a negative impact on production", what is meant by
 25 that?

1 MR. SICKLES: Objection to form.
 2 Q. (By Mr. Weakland) Well, what do you understand
 3 that to mean?
 4 A. If I were a finance manager, it would be a
 5 negative impact on me because I wouldn't make as much money
 6 to put it bluntly.
 7 Q. I see. Now, there's an action plan stated
 8 here. What does that say for Clearwater Mitsubishi?
 9 A. It says, "develop a strategy with the dealer
 10 operator and F&I as a team to reduce the impact special
 11 rates have on F&I production".
 12 Q. Okay. Did you do that at all?
 13 A. Not really, no.
 14 Q. Okay. Why not?
 15 A. The special rates are programmed from the
 16 manufacturer. So you can't really-- you can't really call
 17 Mitsubishi who's doing a national program and say, hey, can
 18 you not do zero percent financing for our dealership? So
 19 it's not something that could be accomplished. The only
 20 thing that we could try to do is reduce the negative impact
 21 of the zero percent financing and then try to make an
 22 effort of selling more after market products.
 23 Q. I see. Was there ever a discussion about
 24 trying to have customers avoid the zero percent financing?
 25 A. No.

1 Q. To your knowledge, were there additional after
 2 market products sold as a result of the zero percent
 3 financing? I didn't say that right. Were there additional
 4 after market products sold by F&I managers because they
 5 weren't getting the finance reserve?
 6 A. I couldn't answer that unless I could see their
 7 reports.
 8 Q. Okay.
 9 A. And do an analysis.
 10 Q. Did you speak with Scott Fink or anybody at
 11 Clearwater Mitsubishi about how they were going to handle
 12 the loss of finance reserve as a result of these special-
 13 A. I recall having a conversation about that,
 14 uh-huh. (Indicating affirmatively)
 15 Q. What did he say to you?
 16 A. Just I think I told him we needed to develop a
 17 way to try to train the people so we could sell more after
 18 market products since we were not making the finance
 19 reserve.
 20 Q. Was there in your experience as the F&I
 21 director or F&I regional, well, director?
 22 A. Director is fine, yes.
 23 Q. How would you describe Clearwater Mitsubishi's
 24 F&I managers in terms of their success at selling after
 25 market products?

1 A. I thought they did okay. I thought they did
 2 pretty good.
 3 Q. There some F&I managers who did better than
 4 others; is that correct?
 5 A. Uh-huh. (Indicating affirmatively) As
 6 everywhere, uh-huh. (Indicating affirmatively)
 7 Q. Did you have meetings from time to time at the
 8 corporate office in Charlotte, North Carolina?
 9 A. We had just one in Charlotte while I was with
 10 them. We had quarterly meetings, but they were held in
 11 different areas.
 12 Q. I see.
 13 A. Only one was in Charlotte while I was there.
 14 Q. And would these be finance and insurance
 15 meetings?
 16 A. No. They would actually be-- we called them 20
 17 group meetings, but it was actually a dealer operator, a
 18 general manager, all the heads of each dealership and the
 19 corporate people, all of us would get together on a
 20 quarterly basis and just discuss everything from forecasts
 21 to different ideas to better ways of doing business,
 22 anything.
 23 Q. Who from Sonic was present at these meetings?
 24 A. Sonic corporate?
 25 Q. Yes.

1 A. Mostly everybody.
 2 Q. How far up the chain did it go?
 3 A. Jeff Rachor is probably the one that was
 4 hands-on most.
 5 Q. All right.
 6 A. He was probably there more.
 7 Q. Was Scott Smith present?
 8 A. I met Scott Smith, yeah. Yeah, he would be
 9 present. I think he was at everyone of them.
 10 Q. Okay. What about Bruton Smith?
 11 A. I met him one time. He was at one of our
 12 corporate meetings while I was there.
 13 Q. Okay. Did Scott Smith speak at these meetings?
 14 A. I think he did once. I don't recall what it
 15 was about though.
 16 Q. Okay. Was there any discussion at these
 17 meetings about selling more after market products?
 18 A. Sometimes, yeah.
 19 Q. Okay. Did Mr. O'Connor participate in these
 20 meetings?
 21 A. I don't recall if he ever got up and spoke in
 22 front of everybody.
 23 Q. Who was Mr. O'Connor's direct supervisor?
 24 A. Jeff Rachor.
 25 Q. Okay. Was Mr. Rachor responsible for both

1 finance and insurance matters and sales?
 2 A. While I was there he became I guess President
 3 of Retail Operations. He took over Dennis Higgenbotham's
 4 position. And so, yeah, I think, yeah. While he didn't
 5 directly supervise us, I think he oversaw retail operations
 6 and finance and insurance.
 7 Q. We talked about Larry Hill before.
 8 A. Uh-huh. (Indicating affirmatively)
 9 Q. Would Larry Hill have reported to Mr. Rachor?
 10 A. Yes.
 11 Q. All right. At these quarterly meetings, were
 12 the operational people there, Mr. Hill and the others?
 13 A. Yes.
 14 Q. All right. And how long did the meetings last?
 15 A. Two to three days.
 16 Q. And the dealer operators you said were present
 17 as well?
 18 A. Yes.
 19 Q. Were there any other individuals from the
 20 dealerships other than the dealer operators at these
 21 meetings?
 22 A. There might have been comptrollers there or
 23 maybe service directors.
 24 Q. Were there any training sessions at these
 25 meetings?

1 A. What sort of training?
 2 Q. Well, were there like different topics
 3 scheduled?
 4 A. There would be different topics scheduled, yes.
 5 Q. So there was an agenda of sorts?
 6 A. Yes. I wouldn't say hands-on training, but we
 7 would discuss different topics, uh-huh. (indicating
 8 affirmatively)
 9 Q. Were there agendas or outlines for these
 10 meetings?
 11 A. Yes.
 12 Q. Were there any of these meetings in Florida?
 13 A. No.
 14 Q. Okay. Mrs. Carter, we talked briefly at the
 15 other deposition about the documents that you I think at
 16 one time had that you've since returned to Sonic?
 17 A. Yes.
 18 Q. Do you remember talking about that?
 19 A. Yes.
 20 Q. But I don't think we defined exactly what it
 21 was that you returned to Sonic. Did you have any personal
 22 notes that you returned to Sonic?
 23 A. Did I have any personal notes? No. I mean,
 24 everything that I had related to Sonic went back to Sonic
 25 Automotive, which would have been calendars, reports,

1 A. Sometimes. I mean, sometimes I had them.
 2 Q. Did these documents include correspondence that
 3 you had from your office to Mr. O'Connor or other people at
 4 Sonic?
 5 A. It would have, yes. Uh-huh. (indicating
 6 affirmatively)
 7 Q. Did you prepare financial documents as well
 8 here in Tampa that you transmitted to the people in Sonic?
 9 A. Well, the comptrollers would actually prepare
 10 the final numbers, the monthly numbers, and send them off
 11 to corporate. But Richard O'Connor liked us to have like a
 12 weekly or a monthly number that the dealership level or
 13 management level would send to me on a weekly basis and I
 14 would just fill out like a weekly report. That just gave
 15 us an overview of kind of how the numbers were going. That
 16 wouldn't give us an exact number.
 17 Q. Okay. Did you prepare any documents on your
 18 computer?
 19 A. Documents on my computer? Letters and things,
 20 sure. Finance reports or daily operating reports?
 21 Q. Yes.
 22 A. Yes.
 23 Q. Okay. Where was your computer located?
 24 A. It was a laptop computer. It was located where
 25 ever I was.

1 agendas, meeting notes, quarterly reports, finance analysis
 2 memos, interoffice memos, anything like that.
 3 Q. Can you give me an idea about the volume of
 4 materials that you returned to Sonic?
 5 A. There was about three boxes about like that
 6 maybe. (indicating)
 7 Q. Three bankers boxes?
 8 A. Roughly.
 9 Q. Like Xerox box?
 10 A. No. The big plastic boxes with the covers.
 11 Q. Oh. The bins?
 12 A. Uh-huh. (indicating affirmatively)
 13 Q. The plastic bins?
 14 A. Uh-huh. (indicating affirmatively) Roughly.
 15 Q. And can you tell me without violating your
 16 agreement who you returned that to?
 17 A. Actually, they were picked up from my
 18 attorney's office so I'm not sure who picked them up.
 19 Q. Okay.
 20 A. But I dropped them off at my attorney's office
 21 and they were picked up there.
 22 Q. Okay. Had these documents been at your
 23 attorney's office for a while? In other words, during the
 24 pendency of your lawsuit, had your attorney stored these
 25 documents?

1 Q. And was it your personal computer?
 2 A. No. No. I gave that-- I had to give that
 3 back.
 4 Q. Was that the only the only computer that you
 5 used for these reports and documents?
 6 A. Yes.
 7 Q. Okay. But that computer was purchased by Sonic
 8 for you?
 9 A. Yes. Actually, there was a lot of problems
 10 with that computer. It was a used computer when I got it
 11 and-- I don't know. There was a lot of problems with that
 12 computer.
 13 Q. All right. I just have a couple more questions
 14 and then I'll be all done. I'm going to ask you a
 15 questions on preferred lenders. And I'm looking at
 16 Exhibit 23. Do you recognize that? (Tendering to
 17 Deponent)
 18 A. (Reviewing document)
 19 MR. SICKLES: I'm just going do make a standing
 20 objection to the line of questioning on relevancy,
 21 but go ahead.
 22 A. Yes.
 23 Q. This memo from you, April 5, 2000, talks about
 24 the change in the percentages of finance deals through
 25 preferred lenders. Do you see that?

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1 A. Yes.
 2 Q. That increase?
 3 A. Uh-huh. (Indicating affirmatively)
 4 MR. SICKLES: What exhibit is that?
 5 MR. WEAKLAND: This is Exhibit 23.
 6 Q. (By Mr. Weakland) Which went I believe from 25
 7 percent to 80 percent?
 8 A. Yes.
 9 Q. I had asked you last time about who the
 10 preferred lenders were and if you knew some of them.
 11 A. I can't.
 12 Q. You can't recall who they are?
 13 A. No. But there was a preferred lending list.
 14 Q. All right. I haven't seen it. Where did
 15 that-- Who generated that list?
 16 A. That would have been from corporate.
 17 Q. About how many lenders were on that list?
 18 A. Maybe 10 or so. I can't recall exactly.
 19 Q. Okay. And I think I asked you before, but I'm
 20 not sure you answered the question. What makes a lender a
 21 preferred lender?
 22 A. We wanted to have a group of businesses--
 23 instead of spreading out so thin, we wanted to have a group
 24 of business where we sent a lot of our business to. And in
 25 turn, they would buy a little-- they would buy customers

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1 that maybe were a little less desirable. Because if we
 2 were sending a lot more business, they were going to help
 3 us buy customers that aren't A1 paper. So the object was
 4 to have a smaller group of lenders more on a national basis
 5 for all of our dealerships, instead of each dealership
 6 having so many different lenders.
 7 Q. Okay. Does preferred mean a lower interest
 8 rate for customers?
 9 A. Some of the lenders said that they gave us a
 10 special rate for giving them so much business, but I
 11 couldn't tell you who now or what it was.
 12 Q. Would preferred lenders give Sonic a greater
 13 spread for the finance reserve, do you know?
 14 A. I don't know that.
 15 Q. Okay. Who in the corporation would have the
 16 most information about preferred lenders?
 17 A. At the time, the preferred lending director was
 18 Peter D'Angelo. And he was the head of all preferred
 19 lending.
 20 Q. Is he on the organization chart, do you know?
 21 A. It depends what year that organizational chart
 22 is.
 23 Q. I'm looking at Exhibit 12 now. I think it goes
 24 like this. (Indicating)
 25 A. Right here. (Indicating)

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1 Q. Do you know if he's still there?
 2 A. I don't know.
 3 Q. Do you know if Scott Fink has any involvement
 4 with Sonic today?
 5 A. I don't know.
 6 Q. When you spoke with him about Clearwater Toyota
 7 and Clearwater Mitsubishi, what was his title at that
 8 point?
 9 A. I think he was dealer operator of those two
 10 stores.
 11 Q. He's also listed here in Exhibit 12 as Vice
 12 President of Internet Marketing; is that correct?
 13 A. Yes.
 14 Q. Do you know what he did as Vice President of
 15 Internet Marketing?
 16 A. He set up having our internets all integrated,
 17 having all our stores and dealerships all integrated.
 18 Q. Okay.
 19 MR. WEAKLAND: Can we take two minutes?
 20 MR. SICKLES: Okay.
 21 (Whereupon, a recess was taken)
 22 MR. WEAKLAND: Just a couple things.
 23 Q. (By Mr. Weakland) Do you have a home computer
 24 or did you have a home computer at the time you worked with
 25 Sonic?

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1 A. I have a home computer, but I'd have to find
 2 out when I purchased that home computer, if I've had it
 3 prior to or after.
 4 Q. Did you ever prepare a document for Sonic on
 5 your home computer and then copy it to your laptop?
 6 A. I don't know. I could find out. I can look in
 7 my computer and see, but I doubt it. All of the documents
 8 that I had stored would have been on my work computer, but
 9 if I. I might have made a quick memo or something on my
 10 computer, but I don't recall.
 11 Q. Okay.
 12 A. Right offhand.
 13 Q. Okay. If you could look for that.
 14 A. Okay.
 15 Q. And one follow-up question. We talked about
 16 the special rates at zero percent financing at Clearwater
 17 Mitsubishi. Did the F&I people there at Clearwater
 18 Mitsubishi sell more after market product when those
 19 special rates came into place?
 20 A. See, I'd have to see a report. I think the
 21 reason that they were-- it was having a negative impact
 22 because they were having trouble selling after market
 23 products with that zero percent rate.
 24 Q. Why would they have trouble selling the after
 25 market products?

1 A. The subvented rate program that I'm thinking of
 2 in particular was one that was zero percent financing on a
 3 certain truck, a little Mitsubishi truck, so that the
 4 payments were like \$88 a month. So the type of person that
 5 you're going to come in for that ad is going to be \$88 a
 6 month plus tax and that's probably it. So the people
 7 probably-- the finance managers probably had a tougher time
 8 upselling a certain customer.

9 Q. I see. Okay.

10 A. Does that make sense?

11 Q. That makes sense.

12 A. Okay.

13 MR. WEAKLAND: That's all I have. Thank you
 14 very much.

15 DEPOENT: Okay.

16 MR. SICKLES: Mrs. Carter, I have a few
 17 things. As you know, I represent Clearwater
 18 Mitsubishi and Sonic Automotive in this case.
 19 Based upon what I understand from the last
 20 deposition, there is some type of an agreement in
 21 place. So I'm sure your attorney will tell you not
 22 to answer if anything here violates whatever
 23 agreement there is.

24 MS. WADE: Counsel, just so you know, I
 25 have served and filed a motion for protective

1 order. And it was served on Chuck Geitner.

2 MR. SICKLES: Oh. Okay.

3 MS. WADE: The protective order only
 4 relates to the line of questioning regarding a
 5 lawsuit with Sonic and the settlement agreement,
 6 and the facts and circumstances giving rise to the
 7 agreement.

8 MR. SICKLES: Okay.

9 CROSS-EXAMINATION

10 BY MR. SICKLES:

11 Q. I believe you said that you monitored F&I sales
 12 at the various dealerships in your region; is that correct?

13 A. Yes.

14 Q. And was one of those Clearwater Mitsubishi?

15 A. Yes, it was.

16 Q. When you were overseeing the finance and
 17 insurance department, to the best of your knowledge, was it
 18 the policy of Clearwater Mitsubishi to provide additional
 19 product contracts with the sale of each additional product?

20 A. Yes.

21 Q. And did each-- and when I say "additional
 22 products", I think that was defined in your first
 23 deposition, could you describe what the--

24 A. The after market products, the extended service
 25 contracts, the Etch or the GAP, things of that nature?

1 Q. Correct.

2 A. Yes. There would be a separate agreement for
 3 those along with the finance contract.

4 Q. And to your knowledge, the policy of the
 5 dealership was that those documents were provided to
 6 customers when they purchased those products; is that
 7 accurate?

8 A. Should have been, yes. Absolutely.

9 Q. Was there any point in time that you became
 10 aware that Clearwater Mitsubishi's management advised its
 11 F&I managers to stop providing contracts to customers?

12 A. No.

13 Q. Did anyone at Sonic Automotive, Inc. ever
 14 encourage its dealerships to not provide these contracts to
 15 customers?

16 A. No.

17 Q. Was there ever a time at Clearwater Mitsubishi
 18 that you became aware of these additional product contracts
 19 being provided to customers without price terms in them?

20 A. No.

21 Q. Were you ever aware of any instruction from
 22 Sonic Automotive, Inc. to its dealerships to have these
 23 contracts issued to customers without price terms in them?

24 A. Oh, no. No.

25 Q. While you were overseeing F&I at Clearwater

1 Mitsubishi, was there ever a time when Clearwater
 2 Mitsubishi's management instructed its employees to forge
 3 customers' signatures on additional products-- contracts--
 4 product contracts?

5 A. I mean, that certainly wasn't-- wouldn't have
 6 been Sonic's policy. I wasn't there on a day-to-day basis,
 7 so I wouldn't know what was going on.

8 Q. But that wouldn't have been a policy from Sonic
 9 Automotive, Inc.?

10 A. No.

11 Q. Were you aware of anything like that ever going
 12 on at Clearwater Mitsubishi?

13 A. No, I was not.

14 Q. You discussed some seminars I guess that were
 15 provided at these quarterly meetings with Sonic Automotive,
 16 Inc.; is that accurate?

17 A. Yes.

18 Q. Were there F&I sales of additional product type
 19 seminars presented at these meetings that can you recall?

20 A. I can recall some of the meetings based on some
 21 F&I ideas, yes.

22 Q. Were any of the ideas that were presented at
 23 this-- at this quarterly meeting designed in your opinion
 24 to mislead a customer into purchasing additional product?

25 A. No.

1 Q. Designed to trick a customer into purchasing
 2 additional products?
 3 A. No.
 4 Q. Was there ever any training of F&I employees
 5 that you would be aware of that was designed to show the
 6 F&I employees ways to conceal additional products so that
 7 customers wouldn't know what they were purchasing?
 8 A. No.
 9 Q. Earlier on you were discussing some suggestions
 10 that were made with respect to a payment plan at one of the
 11 dealerships. Do you recall that?
 12 A. The preferred-- Is that the motivational
 13 payment plan?
 14 Q. I think that's what it was called. It's an F&I
 15 structured--
 16 A. Okay.
 17 Q. You indicated that the only power that Sonic
 18 Automotive, Inc. would have over a dealership with respect
 19 to salaries would be to make suggestions, is that what you
 20 testified to?
 21 A. In my area.
 22 Q. Is it possible for them to come in and tell a
 23 dealership that you're going to pay your F&I managers in
 24 this fashion?
 25 A. Can you rephrase that question?

1 MR. SICKLES: That's all I have.
 2 MR. WEAKLAND: Give us one more minute.
 3 (Whereupon, a recess was taken)
 4 MR. WEAKLAND: Okay. We're completed.
 5 Thank you very much.
 6 COURT REPORTER: Read?
 7 MS. WADE: Yes.
 8 COURT REPORTER: Are you ordering, Brian,
 9 or you holding off?
 10 MR. WEAKLAND: I'll order it.
 11 COURT REPORTER: You need a copy?
 12 MS. WADE: Yes.
 13 MR. SICKLES: Yes.
 14 COURT REPORTER: Okay. Thank you.
 15 (WHEREUPON, THE TAKING OF THE DEPOSITION
 16 WAS CONCLUDED AT 11:02 A.M.)
 17 STIPULATION
 18 It was stipulated and agreed by and
 19 between both counsel present and the deponent that
 20 reading and signing of the deposition would not be
 21 waived; however, filing of the original would be
 22 waived.
 23
 24
 25

1 Q. In your experience, has Sonic Automotive, Inc.
 2 ever come in and handled day-to-day operations of a
 3 dealership?
 4 A. There were some management teams that would go
 5 into a dealership and handle day-to-day operations.
 6 Q. Which dealership--
 7 A. If the dealership needed it.
 8 Q. From Sonic Automotive, Inc.?
 9 A. Sonic's corporate management.
 10 Q. Did that occur at any dealerships while you--
 11 in Florida while you were regional director?
 12 A. I can recall Freedom Ford. There was a
 13 regional director named Michael Martin, who was a corporate
 14 manager in Florida, and he could make changes if he would
 15 like to at the dealership level.
 16 Q. What was his position, do you remember?
 17 A. Regional Vice President.
 18 Q. At these quarterly meetings did Scott Smith
 19 ever provide training to the individuals who were in
 20 attendance at those meetings?
 21 A. There was never really individual, one-on-one
 22 training, no. It was more large groups together.
 23 Q. And then I guess Bruton Smith would not have
 24 also provided training to anyone individually?
 25 A. He never did to me. How about that?

1 CERTIFICATE OF OATH
 2
 3
 4
 5
 6 STATE OF FLORIDA :
 7
 8 COUNTY OF HILLSBOROUGH :
 9
 10 I, Debbie E. Askins, do hereby certify
 11 that the deponent herein, known to me through personal
 12 knowledge, appeared before me and was duly sworn.
 13
 14
 15 Witness my official seal this day
 16 of , 2003.
 17
 18
 19
 20 DEBBIE E. ASKINS
 21 Notary Public, State of Florida
 22
 23 My Commission No. DD018255
 24 Expires: 05/13/2005
 25

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