



Watch for Alignment Issues in Your Financing Documents

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Every so often a case pops up where there is a misalignment between the software and the hardware that a dealer uses to populate the specifics of a retail installment sale contract. The misalignment can mean the difference between a RISC that's compliant with the Truth in Lending Act and a non-compliant RISC. Here's the latest.

Elisa Franco bought a car from A Better Way Wholesale Autos, Inc., under a retail installment sale contract. The RISC included a \$60 charge for vendor's single interest insurance that was disclosed as part of the amount financed. After the sale, Franco sued Better Way, claiming that it violated the Truth in Lending Act by failing to accurately disclose the finance charge. Franco argued that Better Way should have disclosed the premium for vendor's single interest insurance as part of the finance charge, instead of as part of the amount financed. TILA provides that charges for property insurance do not constitute finance charges and do not need to be disclosed as finance charges when "a clear and specific statement in writing is furnished by the creditor to the person to whom credit is extended setting forth the cost of insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained." The trial court granted summary judgment to Franco. Better Way appealed and argued there was an issue of material fact regarding whether the premium was properly excluded from the finance charge.

The U.S. Court of Appeals for the Second Circuit upheld the trial court's ruling in favor of Franco. Better Way argued that it provided Franco with sufficient notice under TILA to exclude the premium from the finance charge. The financing agreement contained a VSI provision with a checkbox, and that provision stated that VSI insurance was required, the premium amount, and that Franco could choose her insurance company. However, the appellate court found that Better Way did not comply with the TILA notice requirement because the VSI provision was not properly checked. While there was an "XX" indicator in the general vicinity of the VSI provision, it was not close enough for a reasonable jury to conclude that the box was checked. Further, if there was ambiguity about whether the box was checked, it could not constitute a "clear and specific" disclosure, as required by TILA. The court disagreed with Better Way's argument that the provision provided notice that VSI insurance was required, even if the box was unchecked.

If your documents are experiencing a misalignment problem, it may be time for a repair – before the problem results in harm to your customers or to you.

Franco v. A Better Way Wholesale Autos, Inc., 2017 U.S. App. LEXIS 8689 (2d Cir. (D. Conn.)

May 18, 2017).

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