



**RIDER BENNETT
EGAN & ARUNDEL**

Michael W. Unger
Civil Trial Specialist
(612) 340-8953

January 26, 2001

OFFICE OF
APPELLATE COURTS

JAN 26 2001

FILED

Hand Delivered

Frederick Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: In Re: Twin Cities Harley-Davidson Litigation
Court File No. C1-01-118
Our File No. 12736/20139A

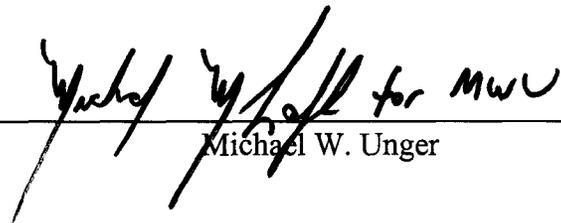
Dear Mr. Grittner:

Enclosed for filing please find the original and three copies of Response to Motion for Consolidation and Affidavit of Michael W. Unger with respect to the above matter. By copy of this letter, opposing counsel is being served with same. Thank you.

Very truly yours,

RIDER, BENNETT, EGAN & ARUNDEL, LLP

By


Michael W. Unger

MWU/lmr
Enclosures

cc: Tammy P. Friederichs, Esq. (hand delivered)

JAN 26 2001

STATE OF MINNESOTA
IN MINNESOTA SUPREME COURT

FILED

In Re:

Court File No. C1-01-118

TWIN CITIES HARLEY-DAVIDSON LITIGATION

RESPONSE TO MOTION FOR CONSOLIDATION

TO: CHIEF JUSTICE KATHLEEN BLATZ

INTRODUCTION

Respondent, Twin Cities Harley-Davidson, Inc., opposes consolidation as requested by counsel for defendants in various pending declaratory judgment actions. Petitioners' motion seeks to avoid ordinary appellate review of trial court rulings that rejected petitioners' arguments for consolidation. In light of petitioners' previous motions raising issues of consolidation, and the decisions by the trial court rejecting petitioners' attempts at consolidation, this motion amounts to an end run that subverts the usual protections of appellate review. For example, petitioners' factual representations are without the full record. Many "facts" are either untrue or misleading. Through this motion, petitioners seek what amounts to *de novo* consideration of consolidation issues decided by Dakota County Judge Robert Carolan after benefit of a full factual record and oral argument.

FACTUAL AND PROCEDURAL BACKGROUND

I. PREVIOUS CLASS ACTION

In September of 1998, two car salesmen sued Twin Cities Harley-Davidson, an independent local family-owned business selling Harley Davidson motorcycles under a franchise

agreement. The two individuals alleged they were promised a chance to purchase Harley-Davidson motorcycles in the future at a below market value price established by the manufacturer rather than the retailer. The lawsuit was brought as a putative class action. Twin Cities Harley-Davidson made an early motion for summary judgment seeking dismissal on legal grounds. The Dakota County court denied that motion as premature, reserving ruling on legal issues until after discovery. (Contrary to petitioners' representation, there was never a motion "to prevent class certification.") Faced with the prospect of an expensive class-wide discovery and litigation (for a class that has usually been estimated at between 3,000 and 5,000), Twin Cities Harley-Davidson agreed to settle the case for less than its cost of defense through a class certification hearing. The settlement, approved by Dakota County Court, provided for payment of \$70,000 in attorney fees, \$12,500 to each of the two class representatives, and by giving a 10 percent discount on the purchase of merchandise from Twin Cities Harley-Davidson to any member of the class for a limited time. Very few class members actually sought the discounts. Out of the thousands of persons in the class, only 132 opted out. (Some of whom claimed they were doing so because the lawsuit was baseless.)

II. THE CURRENT CLAIMS

Approximately three months after the final settlement approval, class counsel wrote counsel for Twin Cities Harley-Davidson saying he was now representing 25 individuals, most of whom opted out, and threatening to sue again unless Twin Cities Harley-Davidson agreed to pay their small¹ individual claims, plus a more hefty attorney's fee. Twin Cities Harley-Davidson asked for petitioners to provide the factual basis for each individual claim. Petitioners' counsel

¹The claims range between \$500.00 and \$3,083.00. (See Unger Aff., Ex. 5.)

refused to supply any factual detail. Instead, he insisted upon payment of the full demand of the plaintiff group or face a lawsuit (i.e., a growing attorney's fees claim.) (Affidavit of Michael Unger & Exhibits 5 & 7.)

As found by Judge Carolan, the claims of plaintiffs are actually based upon individual "oral representations made over a period of seven years, by various salespersons, at two different business locations . . . to at least 25 different individual plaintiffs." (Friederichs Aff., Ex. E, p. 4.)

In order to evaluate the claims, and avoid an unnecessary attorney fee claim, Twin Cities Harley-Davidson started separate declaratory judgment actions against each claimant in their counties of residence and sought their depositions to ascertain their individual claims. (Twin Cities Harley-Davidson requested that petitioners' lawyer refrain from any unnecessary litigation until the depositions could be completed and allow the claims to be evaluated on their merits. In return, Twin Cities Harley-Davidson promised not to file the declaratory judgment actions or serve other discovery or even require an answer until after it had had an opportunity to evaluate the individual claims.) (*See Unger Aff., Ex. 8.*)

Rather than agree to the proposed claims assessment process, petitioners immediately filed a lawsuit consolidating all 25 plaintiffs in one claim for damages.² Petitioners then moved for dismissal of the declaratory judgment actions on the grounds that they were unnecessarily duplicative and multiplying proceedings. Twin Cities Harley-Davidson, in turn, moved to dismiss the multi-plaintiff action as an improper consolidation of individual claims which would be prejudicial to Twin Cities Harley-Davidson on determination of the merits. Both of these motions

²Petitioners suggest that Twin Cities Harley-Davidson lulled them into an extension to bring suit first and that Twin Cities Harley-Davidson avoided service. This is false. These allegations were also presented to Judge Carolan who, on a more complete record and oral argument, found these contentions to be "without merit." (Friederichs Aff., Ex. C & D, p. 5.)

were heard and considered in Dakota County by Judge Robert Carolan. Judge Carolan concluded that each claim was separate and raised issues of oral misrepresentation with no evidence of any written misrepresentation. Judge Carolan concluded that consolidation was improper and would be prejudicial to Twin Cities Harley-Davidson. (Friederichs Aff., Ex. E, p. 4.)

In the meantime, Twin Cities Harley-Davidson has completed all but one of the petitioners' depositions and responded to written discovery. Petitioners have not made a single discovery motion. Two petitioners, Bullis and Bruggentheis, have agreed to dismiss their claims. A suit has since been commenced against Craig Smith. This leaves 22 declaratory judgment actions pending. Nearly half are in Hennepin County and assigned to one judge already. (Unger Aff.)

LEGAL ANALYSIS

I. PETITIONERS' MOTION IS AN END RUN AROUND APPELLATE RULES AND PROCEDURES AND THEREFORE SHOULD BE DENIED

The arguments for consolidation of the various claims was made and decided by Judge Carolan. Judge Carolan ruled, pursuant to Minn.R.Civ.P., Rule 42.02, that prejudice to the defendant outweighed the interests of economy and dictated that the claims were best treated individually. The court stated:

Whether to consolidate cases rests within the discretion of the trial court. Fitzer v. Bloom, 253 N.W.2d 395, 401-402 (Minn. 1997). The court "must balance convenience against the possibility of prejudice." Schacter v. Richter, 271 Minn. 87, 92-93, 135 N.W.2d 66, 70 (1965). The defendant claims that extreme prejudice will occur if plaintiffs are allowed to maintain this action in its consolidated form. Defendants allege and plaintiffs do not disagree that the actions giving rise to this lawsuit involve oral representations made over a period of seven years, by various salespersons, at two different business locations of the defendant, to at least 25 different individual plaintiffs. Additionally, the damages alleged in the complaint vary in both nature and actual dollar value depending upon which plaintiff is being addressed. The court finds that the consolidation of these claims was improper and prejudicial

to the defendant. Therefore, the complaint should be dismissed without prejudice. (Friederichs Aff., Ex. E, pp. 3-4.)

Petitioners acknowledge that this decision by the trial court is appealable. In fact, petitioners state they intend to appeal this decision once judgment is entered. (Memorandum of Law in Support of Motion for Assignment of Cases to Single Judge Pursuant to Minn.R.Gen.Prac. 113, p. 7.)

In light of the procedural history of this case, this motion for consolidation should be denied. While petitioners could have brought this motion in a more timely fashion prior to bringing their own consolidated lawsuit, petitioners chose to do otherwise. Having chosen its "remedy," petitioners should not now be allowed to circumvent the appropriate appellate procedure because they dislike the court's ruling that they themselves sought. Rule 113 of the General Rules of Practice was never designed to permit parties to avoid taking appeals on procedural rulings by the trial court. Accepting this motion at this time would set a poor precedent and should be rejected.

II. CONSOLIDATION OF THE CLAIMS WOULD BE IMPROPER AND PREJUDICIAL

The law in Minnesota is clear that only matters involving common questions of law or fact may be consolidated. Minn.R.Civ.P. 42.01. Although the trial court has broad discretion under Rule 42.01, this discretion must not be exercised so broadly as to sacrifice a fair trial for convenience and economy. Sorenson v. Kruse, 293 N.W.2d 56, 62 (Minn.1980). It is an abuse of discretion to order consolidation where it is prejudicial to the separate interests of the parties. State v. Priebe, 284 Minn. 561, 170 N.W.2d 235 (Minn. 1969); Bucko v. First Minnesota Sav. Bank, F.S.B. 452 N.W.2d 244 (Minn.App. 1990) (trial court abused discretion in consolidating actions where issue of actual damages was not common question).

In a case directly on point, the Minnesota Court of Appeals recognized that consolidation is improper and prejudicial where the actions giving rise to the various claims occurred on separate dates and therefore necessarily involved separate and distinct factual determinations. Green v. City of Coon Rapids, 485 N.W.2d 712 (Minn. App. 1992). Green involved numerous claims by individuals who alleged they were exposed to elevated levels of nitrogen dioxide at an ice arena operated by the City of Coon Rapids. The alleged exposure occurred on several different dates. Resolution of the claims therefore required separate factual determination of the conditions in the arena on the days visited by each claimant. The Court properly recognized it would be too confusing and prejudicial to consolidate the claims due to the separate factual determinations required:

In denying the plaintiffs' motion to consolidate, the trial court stated the decision rested upon the same grounds as those cited by the trial court in denying the motion to proceed as a class. The court found it crucial that evidence showed conditions at the arena varied from day to day and from event to event. The trial court thus concluded that whether the city's negligence caused harm on any given day could be resolved only by considering the circumstances surrounding the day on which a claimant visited the arena. . .

. . . The case is unique because a group of claimants allege similar kinds of exposures, but on a number of individual occasions. The numerous claims, the differing conditions associated with each exposure, and the great quantity of evidence specific to each individual plaintiff could be unduly confusing in a single trial. The trial court did not err.

Id. at 718.

In another case directly on point, the Supreme Court for New York County, New York rejected an attempt by the claimants to improperly consolidate multiple claims involving unique and independent issues of fact. Korren v. Eli Lilly & Company, 568 N.Y.S.2d 670 (1990). Korren involved multiple claims against manufacturers of the drug diethylstilbestrol (DES) to recover for injuries allegedly caused by ingestion of DES during pregnancy. Claimants sought to consolidate

all the claims on the grounds that the claims involved a common question of fact - the mothers' ingestion of DES. The court properly rejected consolidation due to the fact that each claim involved independent and unique issues of fact. The Court recognized that allowing claimants to bolster their case by parading numerous claimant's before the jury would be prejudicial to the defendant. The court reasoned as follows:

One could scarcely imagine actions less amenable to consolidation in a single suit than the myriad suits which have been brought before this court for redress of DES-related injuries.

While the minimum statutory requirement of "a common question of law or fact," may be satisfied by the common thread of DES ingestion which runs through every case, the particular circumstances surrounding each mother's use of the drug, and each daughter's complaints arising from that use, are so diverse as to render consolidation impractical. Where "individual issues predominate", consolidation, even for the purpose of joint trial, is not wise. This has been recognized in cases involving as few as two plaintiffs, or even one plaintiff involved in two separate accidents. Presentation of the numerous plaintiffs' claims before a single jury would also tend to unfairly bolster the case against the defendants in an impermissibly prejudicial manner. Consolidation is, therefore, clearly unavailable.

Id. at 431-432.

In the present case, the particular circumstances surrounding each claimant's transaction with Twin Cities Harley Davidson are so diverse as to render consolidation prejudicial and impractical. The claims asserted by the petitioners in the present case are based on alleged *oral* representations by different Twin Cities Harley-Davidson salespeople, at different times, and at separately managed locations. Each of these allegations necessarily hinges upon an independent, individualized, factual determination of what each claimant was told, and by whom. Moreover, to sustain a misrepresentation claim, a plaintiff must be able to establish that she reasonably relied on the supposed misrepresentation. This necessarily involves an independent and individualized factual determination into each claimant's background, experience, education, training, etc.

Differing factual circumstances also arise by virtue of the independent management of the two stores, each having separate practices and personnel in management of their sales.

Minnesota Courts have recognized that consolidation issues are similar to class certification issues. Green v. City of Coon Rapids, 485 N.W.2d 712 (Minn. App. 1992) (denial of motion to consolidate based on same grounds as denial of motion for class certification).³ Courts have routinely recognized that claims based substantially on oral rather than written misrepresentations cannot be maintained as a class action. Simon v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 482 F.2d 880, 882-83 (5th Cir.1973); Dirks v. Clayton Brokerage Co. of St. Louis, Inc., 105 F.R.D. 125 (D. Minn. 1985); McMerty v. Burtness, 72 F.R.D. 450 (D. Minn. 1976); Stevens v. Woodstock, 372 F.Supp. 654, 656-57 (N.D.Ill.1974);⁴ FRCP 23, Advisory Committee's Official Note ("[A] fraud case may be unsuited for treatment as a class action if there [is] material variation in the representations made or in the kinds or degrees of reliance by the persons to whom they were addressed.").

The lead case of Simon v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 482 F.2d 880, 882-83 (5th Cir.1973) involved a common law fraud claim relating to the sale of securities. The plaintiffs alleged they were induced to purchase securities based on both oral and written misrepresentations. The Fifth Circuit concluded that oral misrepresentation claims do not involve common issues of fact. According to the Court, oral misrepresentation claims necessarily involve a "material variation in the representations made or in the degree of reliance thereupon . . ." Id.

The Federal District Court for the District of Minnesota specifically adopted the Simon Court's reasoning in McMerty v. Burtness, 72 F.R.D. 450 (D. Minn. 1976). McMerty involved

³The underlying class action lawsuit was settled before a class certification motion was heard or decided.

common law fraud and breach of contract claims arising out of the sale of self service postal units.

As in the present case, the primary impetus of the sales was face to face meetings between the seller and the purchasers, wherein the seller allegedly made material oral misrepresentations.

Judge Devitt adopted Simon and determined that oral misrepresentation claims do not present common issues of fact. According to the Court:

The oral misrepresentation issue is the most substantial bar to a class action on the fraud-based claims. It appears that the sales procedure in this case encompassed face-to-face meetings between the agents of the seller and the prospective purchasers. As noted above, one advertisement was mailed, but the primary impetus for a sale was the personal confrontation. . . . [I]t appears that since purchasers were individually solicited, the substance and materiality of the misrepresentations made to them will have to be proved individually. Therefore, the court will follow the well-established line of cases which holds that actions based on oral misrepresentations do not present common issues of fact. *Simon v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 482 F.2d 880 (5th Cir. 1973); Miller v. Central Chinchilla Group, Inc., 66 F.R.D. 411 (S.D.Iowa 1975); *Ingenito v. Bermec Corp.*, supra.

Id.

In the present case, the claims of petitioners encompass face-to-face meetings with different Twin Cities Harley-Davidson salespeople, on different dates, and at different Twin Cities Harley Davidson locations, wherein they were allegedly promised motorcycles would be made available at MSRP. Such claims will necessarily have to be proved individually and do not involve common questions of fact.

III. CONSOLIDATION IS NOT JUSTIFIED BY THE CONSIDERATIONS UNDER THE RULES

Consideration of the factors provided at Gen.R.Prac. 113.02 do not favor consolidation.

The factors argued to favor consolidation are reviewed below.

A. The Number of Parties.

The mere fact that there are 23⁴ different claimants involved against one business hardly argues for consolidation. Every slip and fall claim against Wal-Mart does not require consolidated handling. There is nothing about the number of parties that makes each of these individual claims more manageable before a single judge. If any party would be expected to request consolidated treatment, it should be the party in common to all claims, Twin Cities Harley-Davidson. Twin Cities Harley-Davidson opposes consolidation because of the prejudicial effects of joining the claims as previously discussed.

B. The Nature of the Claims.

Although the claimants' lawyers allege a "pattern and practice," there is no evidence of it. The depositions of all but one of the claimants has now been taken. The claims are all unique and all rely upon alleged oral misrepresentations made by particular salespersons. (*See Unger Aff., Ex. 10-12.*) There are different salespeople involved in the various transactions, and no claim is made that a written "misrepresentation" was made. The alleged oral statements are all unique. Many claimants signed variously worded disclaimers of price guarantees. Claimants fail to cite a single legal authority for the proposition that an allegation of "pattern and practice" is an element in any of their causes of action. The fact is that the allegation of "pattern and practice" is irrelevant to their causes of action. This is no longer a class action. They are individual claims.

The separate, unique, and widely varying factual bases for the claims is illustrated by comparing, for sake of example, the claims of James Kinney, Terrance Carter and Daniel Lund. Claimant James Kinney concedes the Twin Cities Harley-Davidson salesperson he dealt with

⁴Claimant Craig Smith has also been sued for declaratory judgment. His deposition is scheduled for next week. (*See Unger Affidavit.*)

informed him there was no way of knowing what the price would be for a bike that had not even been made yet. Kinney also admits no one at Twin Cities Harley-Davidson ever used the term “Manufacturer’s Suggested Retail Price” or “MSRP” (Kinney Depo, pp. 19-21, Unger Aff., Exhibit 10). Kinney bases his claim solely on his recollection that a salesperson made a reference to the “list price.” However, he concedes this recollection may be based on what other people told him concerning their experiences at Twin Cities Harley-Davidson. Moreover, he did not recall any statements that “list price” meant the Manufacturer’s Suggested Retail Price as opposed to Twin Cities Harley-Davidson’s list price (Kinney Depo, pp. 37-38, Unger Aff., Exhibit 10).

Unlike Claimant James Kinney, Claimant Terrance Carter does not base his claim on an alleged reference to the “list price” or any other alleged affirmative statement. Rather, Carter bases his entitlement to MSRP on the fact that he was offered a motorcycle at MSRP on a prior occasion, possibly as much as three years before putting his name on the waiting list. Specifically, Carter bases his claim on the fact that when he placed his name on the waiting list, no one advised him his motorcycle would *not* be MSRP (Carter Depo, pp. 28-29, Unger Aff., Exhibit 11).

Unlike Claimants Kinney and Carter, Claimant Daniel Lund does allege a salesperson told him he would pay MSRP (Lund depo, p. 24, Unger Aff., Exhibit 12). However, Lund’s claim involves separate and unique accord and satisfaction issues. Lund concedes he learned his price would be over MSRP before taking possession of his motorcycle. After discovering this fact, Lund negotiated a resolution with Twin Cities Harley-Davidson whereby he traded in his existing motorcycle for an agreed upon price and also accepted a \$250 Twin Cities Harley-Davidson gift certificate (Lund Depo., pp. 41-42, Unger Aff., Exhibit 12). In addition to the unique accord and satisfaction issues, Lund’s claims are also atypical and require separate consideration because he failed to properly opt out of the class settlement. Specifically, Lund admitted he received a notice

of the settlement and missed the deadline for opting out (Lund Depo., pp. 51-53, Unger Aff., Exhibit 12.)

Additionally, the arguments of “pattern and practice” were reviewed and rejected by Judge Carolan. This Court should not, on a much less complete record, disturb the judgment of Judge Carolan, at least not without the benefit of the norms and procedures of appellate review.

C. Anticipated Length of Trial.

Claimants’ argue that their claims, ranging from \$500.00 to \$3,083.00, require 12-day trials because all 24 plaintiffs will testify about their own claim in each and every case. This is absurd and completely unsupported on the record. Again, Judge Carolan found this argument to be without merit. Individually, these claims present no more than a 2-day trial. In effect, they require the claimant and the salesperson to testify as to what transpired between them, usually in a single conversation. None of the plaintiffs were involved in the others’ transactions. There is no basis for one to testify in the trial of another. The plaintiffs’ depositions have lasted between one and three hours apiece. It is difficult to conceive how their trial testimony could last longer than discovery depositions. We submit the claimants’ allegations about the length of trial are totally unfounded and provide no support for consolidation.

IV. THERE IS NO NEED FOR CONSOLIDATION FOR PRETRIAL PROCEEDINGS

Twin Cities Harley-Davidson has nearly completed its discovery. All but one of the claimants has been deposed. The final deposition is scheduled for next week. Following these depositions, Twin Cities Harley-Davidson plans to bring appropriate dispositive motions. Because each motion will be based on the individual testimony of each claimant, there is no reason to consolidate the dismissal motions. With nearly all of the discovery completed, the claimants have failed to cite a single example of actual difficulty in discovery management. The mere fact that

there are multiple cases pending does not in itself create an automatic need for management by one judge. This is a matter that should be adjudicated on a case-by-case basis. Since this case has advanced substantially without the benefit of one judge managing pretrial issues, where is the need for consolidation? Petitioners have made no showing of such a need.

CONCLUSION

Petitioners' motion should be denied. Judge Carolan's ruling should not be subverted by an "end run" motion. Consolidation would clearly be prejudicial to Twin Cities Harley-Davidson. There is no evidence that these cases cannot be managed perfectly well as the individual claims that they are. We urge the motion for consolidation be denied.

Respectfully submitted,

RIDER, BENNETT, EGAN & ARUNDEL, LLP

By 

Michael W. Unger (131416)

Michael M. Lafeber (242871)

Attorneys for Twin Cities Harley-Davidson

333 South Seventh Street

Suite 2000

Minneapolis, Minnesota 55402

(612) 340-8953

DATED: 1-26, 2001

4. Of the 22 declaratory judgment actions currently pending, 12 are located in Hennepin County where they appear to have all been assigned to the same judge. There are five cases pending in Anoka County, two in Dakota County, and one each in Scott, Rice, and Nobles County.

5. Attached hereto as Exhibit 1 is a true and correct copy of correspondence of Edwin Sisam dated June 23, 2000.

6. Attached hereto as Exhibit 2 is a true and correct copy of correspondence of Michael W. Unger dated January 30, 2000.

7. Attached hereto as Exhibit 3 is a true and correct copy of correspondence of July 6, 2000, by Edwin Sisam.

8. Attached hereto as Exhibit 4 is a true and correct copy of correspondence by Michael W. Unger dated July 14, 2000.

9. Attached hereto as Exhibit 5 is a true and correct copy of correspondence by Edwin Sisam dated August 7, 2000.

10. Attached hereto as Exhibit 6 is a true and correct copy of correspondence by Michael W. Unger dated August 11, 2000.

11. Attached hereto as Exhibit 7 is a true and correct copy of correspondence by Edwin Sisam dated August 16, 2000.

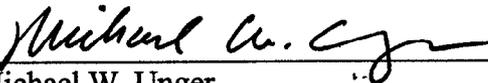
12. Attached hereto as Exhibit 8 is a true and correct copy of correspondence by Michael W. Unger dated August 22, 2000.

13. Attached hereto as Exhibit 9 is a true and correct copy of correspondence by Michael W. Unger dated August 24, 2000.

14. Attached hereto as Exhibit 10 is a true and correct copy of the deposition testimony of James Kinney.

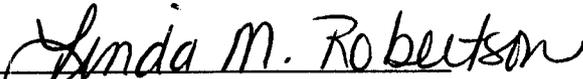
15. Attached hereto as Exhibit 11 is a true and correct copy of the deposition testimony of Terrance Carter.

16. Attached hereto as Exhibit 12 is a true and correct copy of the deposition testimony of Daniel Lund.

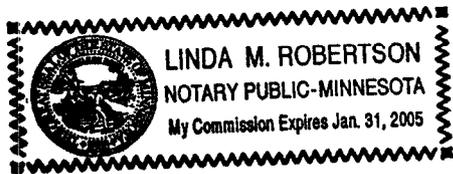


Michael W. Unger

Subscribed and sworn to before me
this 26th day of January, 2001.



Notary Public



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Gregg E. Isaacson,
of counsel

Edwin L. Sisam

June 23, 2000

Michael W. Unger
Rider Bennett Egan & Arundel
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402

Dear Mr. Unger:

I do not know whether you still represent TCHD, but I will assume you do. If that assumption is incorrect, please notify me.

This letter is to inform you that I represent the following people, who allege that TCHD told them it would sell them a new Harley Davidson motorcycle at MSRP and later refused to sell the motorcycle at MSRP:

Jeffrey S. Berg
Robert J. Byrnes
David Denzer
Tim Junkert
Connie L. Kohrt
Allen Lulken
Steven A. Rose
Lawrence White

Bradley P. Bruggenthies
Robert A. Cady
Tracy Gough
Jeff Jungwirth
Mark Lindstrom
Daniel Lund
Dave Schodde
Terrell M. Williams

Rocky Bullis
Terrance J. Carter
Dave Gough
Jim Kinney
Cris C. Lindwall
Anne Marie Mascia
Mark E. Sutherland

Each of these people individually declares that TCHD has breached its agreements with them and demands immediate payment of the difference between the price they actually paid for their new motorcycles and the Harley-Davidson MSRP for the particular motorcycle purchased. This letter constitutes notice pursuant to Minn. Stat. § 336.2-607(3) of TCHD's breach of the contracts between the parties and these individual's demand for payments.

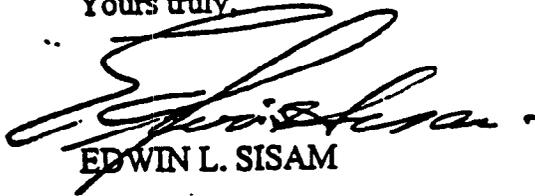
If said payments are not tendered to this office for each of these individuals by July 7, 2000, we will assume that TCHD does not wish to settle these disputes and will proceed with litigation.

EXHIBIT

Mr. Unger
June 23, 2000
Page Two

Please be notified that you nor your clients should contact any of the individuals identified above.

Yours truly,

A handwritten signature in black ink, appearing to read "Edwin L. Sisam", written over a horizontal line.

EDWIN L. SISAM

ELS:amf

cc: clients

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June 30, 2000

Edwin L. Sisam, Esq.
Sisam & Watje, Ltd.
6600 France Avenue South
Suite 360
Minneapolis, MN 55435-1804

Re: Flanagan, et al v. Twin Cities Harley Davidson, Inc.
Our File No.: 12736/20139A

Dear Mr. Sisam:

This is in response to your letter dated June 23, 2000. Without waiving any objection as to the timeliness of your notice, we request that you provide us with the amount of claimed payments being requested for each claimant. Once we have received this information, we will promptly investigate and respond to these claims. Each claim must be evaluated on its own merits and poses different issues. Therefore, the time frame which you have allowed for a response is not adequate from our perspective. In addition, I am on a personal family vacation during the week of July 7th and would not be in any position to respond to you until my return. I look forward to you providing whatever information you can with respect to the amounts of the claims being made by each of your individual clients. Of course, we will not contact your clients directly. We would ask that you and your clients refrain from making any contact with Twin Cities Harley Davidson without first going through me.

Thank you.

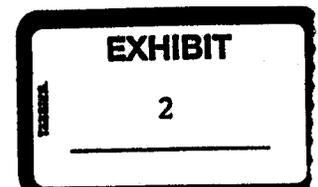
Very truly yours,

RIDER, BENNETT, EGAN & ARUNDEL, LLP

By Michael W. Unger
Michael W. Unger

MWU/cjs

541733.1



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Gregg E. Isaacson,
of counsel

Edwin L. Sisam

July 6, 2000

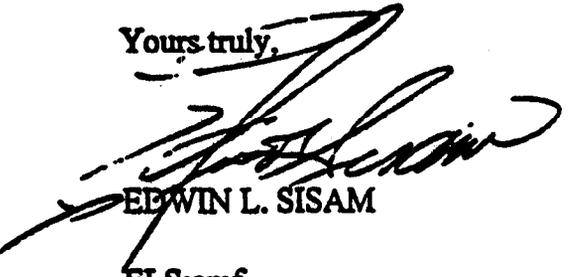
Michael W. Unger
Rider Bennett Egan & Arundel
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402

Dear Mr. Unger:

This letter will respond to yours of June 30, 2000. As I stated in my prior letter, my clients are demanding the difference between the price they actually paid for their new motorcycles and the Harley-Davidson MSRP for the particular motorcycle purchased. Your client has the documents identifying the price each of my clients paid for their new motorcycles and your client knows the MSRP for each motorcycle. Although your client can easily calculate the difference, if you provide me with the documents, I will be happy to do the math and provide you with the actual numbers.

Please contact me when you return to the office to make arrangements to provide the documents. As per my clients' instructions, I will need to receive these documents by July 14, 2000.

Yours truly,



EDWIN L. SISAM

ELS:amf

cc: clients

EXHIBIT

3



RIDER BENNETT
EGAN & ARUNDEL

Attorneys at Law
A Professional Limited Liability Partnership

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Telephone • 612 • 340 • 7951
Fax • 612 • 340 • 7900

Michael W. Unger
Civil Trial Specialist
(612) 340-8953

July 14, 2000

Edwin L. Sisam, Esq.
Sisam & Watje, Ltd.
6600 France Avenue South
Suite 360
Minneapolis, MN 55435-1804

SENT BY TELEFACSIMILE

Re: Flanagan, et al v. Twin Cities Harley Davidson, Inc.
Our File No.: 12736/20139A

Dear Mr. Sisam:

I have received your most recent letter. I must respectfully disagree with your suggestion that it is my client's obligation to calculate the amount of your damage claims. I would ask you to take the time to speak with each of your clients individually and find out how much they claim to be entitled to. I am sure your clients know how much they paid for their motorcycles and what they believe the MSRP to be. Since you are making the claim, it is incumbent upon you to document the claim and specify what it is. I have the impression that you may not have taken the time to talk with these individuals and find out the detail of their claims. Some of these individuals have made more than one purchase over the years. Some of these individuals had previously complained about price and reached an accommodation with the dealer that we viewed to be in accord and satisfaction. We highly doubt that you or your clients are willing to accept our calculations of their claims.

As I indicated before, if you provide the claim information, we will be prepared to respond. Each claim presents a separate and individualized factual circumstance. Each claim warrants a specific answer. Once we have the information, I will promptly respond.

Thank you.

Very truly yours,

RIDER, BENNETT, EGAN & ARUNDEL, LLP

By Michael W. Unger
Michael W. Unger

MWU/cjs

EXHIBIT

4

Sisam & Watje, Ltd.

a professional association of lawyers
6600 FRANCE AVENUE SOUTH, Suite 360
MINNEAPOLIS, MINNESOTA 55435-1804
(612) 920-8877 Phone
(612) 920-8812 Fax
(888)-920-9557 Toll Free
email Sisam@Sisam.com

Gregg E. Isaacson,
of counsel

Edwin L. Sisam

August 7, 2000

Michael W. Unger
Rider Bennett Egan & Arundel
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402

Dear Mr. Unger:

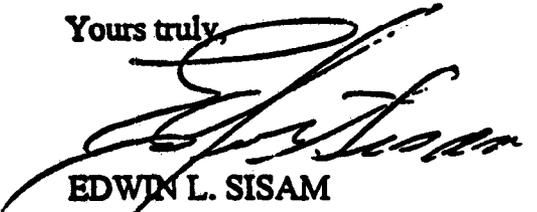
This letter will respond to yours of July 14, 2000. I respectfully disagree with your suggestion that I have not already talked with each of my clients individually about their personal factual situation. I certainly have discussed with each client his/her individual facts. I have not been presented with any evidence demonstrating "accord and satisfaction." If you have such evidence, it is incumbent upon you to bring it forth.

This letter constitutes notice pursuant to Minn. Stat. § 336.2-607(3) of TCHD's breach of the contracts between the parties and these individual's demand for payments.

If my clients' claims can be settled prior to commencing litigation, we are prepared to sign releases in exchange for the payments identified in the attached document. Rather than "horse trading" and "posturing," my clients are demanding amounts that represent the actual difference between MSRP and the price they paid.

Please contact me if your client is interested in paying these amounts. (Since I have given you the courtesy of identifying actual figures, there is not room for negotiation.) If we cannot reach an agreement by August 18, 2000, I will commence the lawsuit.

Yours truly,



EDWIN L. SISAM

ELS:amf

Enclosure

cc: clients

EXHIBIT

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FOR SETTLEMENT PURPOSES ONLY

For settlement purposes, we demand payment of the following amounts:

Jeffrey S. Berg	\$2,670.00
Bradley P. Bruggenthies	\$1,339.00
Rocklyn Bullis	\$1,604.00
Robert J. Byrnes	\$1,469.00
Robert A. Cady	\$1,200.00
Terrance J. Carter	\$2,653.24
David Denzer	\$500.00
Tracy and Dave Gough	\$2,385.90
Jeff Jungwirth	\$1,527.75
Tim Junkert	\$2,225.00
Jim Kinney	\$2,225.00
Connie L. Kohrt	\$815.00
Mark Lindstrom	\$3,083.00
Cris C. Lindwall	\$500.00
Alan L. Lucken	\$2,844.00
Daniel Lund	\$1,478.00
Anne Marie Mascia	\$2,021.00
Steven A. Rose	\$1,781.00
Dave Schodde	\$2,653.00
Craig Smith	\$2,579.00
Mark E. Sutherland	\$2,288.00
Lawrence White	\$1,003.00
Terrell M. Williams	\$1,478.00

Sisam & Watje, LTD (attorneys fees and costs)	\$21,500.00
---	-------------



RIDER BENNETT
EGAN & ARUNDEL

Michael W. Unger
Civil Trial Specialist
(612) 340-8953

August 11, 2000

Edwin L. Sisam, Esq.
Sisam & Watje, Ltd.
6600 France Avenue South
Suite 360
Minneapolis, MN 55435-1804

Re: Flanagan, et al v. Twin Cities Harley Davidson, Inc.
Our File No.: 12736/20139A

Dear Ed:

Thank you for providing numbers for the claims being advanced by your various clients. I have discussed this matter briefly with my clients. Before we can decide how to respond to each claim, I believe it is appropriate and customary for the attorney making a demand to explain the basis of the liability allegation. While we know from your initial letter that these individuals apparently all make some claim that there was a promise to buy at MSRP, we would ask you to tell us, for each individual, the particular claim your clients make. While we do not expect great detail at this point, it would be appropriate to advise us as to who each individual claims made a promise for sale at MSRP, when the promise was made, what the form of the promise was (written or oral) and whether there were any witnesses or other corroborating evidence. Whatever detail you can provide will be helpful to us in evaluating these claims. Please let me know if you are unwilling to provide such information, otherwise we will await receipt of this information before responding to the demands.

Thank you.

Very truly yours,

RIDER, BENNETT, EGAN & ARUNDEL, LLP

By Michael W. Unger
Michael W. Unger

MWU/jma

557635-

EXHIBIT

6

Sisam & Watje, Ltd.

a professional association of lawyers
6600 FRANCE AVENUE SOUTH, Suite 360
MINNEAPOLIS, MINNESOTA 55435-1804
(612) 920-8877 Phone
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email Sisam@Sisam.com

Gregg E. Isaacson,
of counsel

Edwin L. Sisam

August 16, 2000

Via facsimile and U.S. Mail

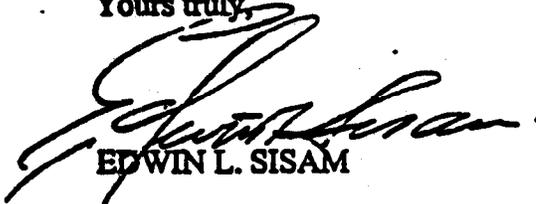
Michael W. Unger
Rider Bennett Egan & Arundel
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402

Dear Mr. Unger:

This letter will respond to yours of August 11, 2000. I made a good faith settlement demand in an attempt to resolve this matter prior to litigation. You respond by demanding an explanation of the basis for TCHD's liability. You claim this procedure is customary; I wholly disagree. Moreover, having litigated the class action, you are sufficiently informed of the nature of the claims and the facts that will likely be presented. I decline to allow your client to conduct "free discovery" before the litigation is commenced.

Our demand, tendered on August 7th, remains open until Tuesday, August 22nd at 5:00 p.m. (I extended the deadline as a professional courtesy since you will be out of the office until Monday of next week.) If you have not accepted the demand by that deadline, it will be deemed rejected.

Yours truly,



EDWIN L. SISAM

ELS:amf

EXHIBIT

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RIDER BENNETT
EGAN & ARUNDEL

Attorneys at Law
A Professional Limited Liability Firm

333 South Seventh Street
Suite 2000
Minneapolis, MN 55402

Telephone • 612 • 340 • 7951
Fax • 612 • 340 • 7900
www.riderlaw.com

Michael W. Unger
Civil Trial Specialist
(612) 340-8953

August 22, 2000

Edwin L. Sisam, Esq.
Sisam & Watje, Ltd.
6600 France Avenue South
Suite 360
Minneapolis, MN 55435-1804

Re: Flanagan, et al v. Twin Cities Harley Davidson, Inc.
Our File No.: 12736/20139A

Dear Mr. Sisam:

When we spoke last week before I went on vacation, I asked you to provide me with additional financial information on one of the motorcycle sales to Dave Schodde. I had previously requested you to specify each claimant's allegations on which you base your claim. It had been my impression from our conversation that you were planning to respond to my requests to provide the additional financial information and a general outline of the liability allegations of each of the individual claimants. While you expressed that your clients were growing impatient, you did not indicate an unwillingness to work with me in providing the requested information. As I told you on the phone, I was fully prepared to take the additional information I was requesting back to my clients and try to get you a prompt response. Needless to say, I was disappointed yesterday to read the letter you faxed after I had left on vacation.

Contrary to your assertion in your letter, it is customary for plaintiff's lawyer's demand letters to specify the liability allegations that they are making. That is, at least, if there is serious interest in trying to obtain an out-of-court resolution. Your glib assertion that the prior lawsuit should make me sufficiently aware of the liability issues ignores the critical fact that each one of these transactions falls or stands on its own merits and depends upon the particulars of the communications that occurred. While my clients have some knowledge of a few of your clients' allegations based on prior discussions, many of your clients have never before told the management of Twin Cities Harley Davidson that there was a promise of manufacturers suggested retail price. We are in the dark about the particular claims of most of these individuals. By refusing to provide this information to my clients, you leave them no basis on which to make a meaningful appraisal of these claims.

Your prior reluctance to provide the amounts of your clients' claims, followed by your current refusal to provide a succinct description of the basis for liability, leaves my clients in serious

EXHIBIT

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RIDER, BENNETT, EGAN & ARUNDEL, LLP

Edwin L. Sisam, Esq.

August 22, 2000

Page 2

doubt about your genuine interest in seeing these claims resolved fairly. My clients are further disturbed by the size of your attorney fee claim based upon a work product output so far consisting of two one-page letters. My clients believe that the threat of an attorneys' fee claim is being used as a bludgeon to force them to pay claims without knowing the full basis for the claim first. As you know, these claims are contrary to Twin Cities Harley Davidson business practices and so my clients are skeptical of their merit.

In light of the arbitrary deadline and ultimatum you have given for a response, my clients feel compelled to seek relief from the court for a situation they perceive as a kind of extortion. Accordingly, we have commenced declaratory judgment actions against each of your clients by delivering today summons and complaints to the sheriffs of their respective counties of residence. By U.S. Mail I am sending you courtesy copies of these complaints and am requesting that you advise as to whether you will accept service on behalf of your clients. If you will so accept service, we will advise the sheriffs that they need not complete service. If I hear nothing from you to the contrary, we will allow our request for personal service to stand with the various sheriffs.

Since you are unwilling to provide specifics on the basis for your clients' claims, it is my intention to take the deposition of each of your clients. This will afford my clients the opportunity to assess the claims you have presented and decide whether to contest or resolve them. I specifically request that you refrain from any unnecessary lawyering on this matter until we have had the opportunity to evaluate your clients' claims to determine their legitimacy. In that regard, I am willing to give you an extension of time to Answer while we conduct those depositions. I am also willing to refrain from filing the litigation until we have had such an opportunity in order to avoid unnecessary costs. I will be happy to give you any of the documentation that we have pertaining to these individual clients' sales transactions without written discovery. I will work with you and your clients to accomplish these depositions at the earliest possible time. Please let me know whether you agree to this method of proceeding. If you do not, and we are forced to incur unnecessary expense in litigating this matter, we will not only vigorously pursue the litigation necessary to defeat these claims, but, in the event that any claims are settled or result in any recovery, we will vigorously dispute any claims for the attorneys' fees as being unreasonably incurred.

RIDER, BENNETT, EGAN & ARUNDEL, LLP

Edwin L. Sisam, Esq.

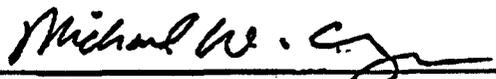
August 22, 2000

Page 3

I look forward to hearing your response. I truly hope your clients recognize the reasonableness of avoiding unnecessary litigation. Thank you.

Very truly yours,

RIDER, BENNETT, EGAN & ARUNDEL, LLP

By 
Michael W. Unger

MWU/cil

333 South Seventh Street
Suite 2000
Minneapolis, MN 55402

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RIDER BENNETT
EGAN & ARUNDEL

Michael W. Unger
Civil Trial Specialist
(612) 340-8953

VIA FACSIMILE AND
U.S. MAIL

August 24, 2000

Edwin L. Sisam, Esq.
Sisam & Watje, Ltd.
6600 France Avenue South
Suite 360
Minneapolis, MN 55435-1804

Re: Flanagan, et al v. Twin Cities Harley Davidson, Inc.
Our File No.: 12736/20139A

Dear Mr. Sisam:

I am in receipt of your letter dated August 22, in which you state that John Thorman is bringing a claim "and demands immediate payment of the difference between the price he actually paid for his motorcycle and the Harley Davidson MSRP for the particular motorcycle purchased." As with your other clients, we request that you provide us with a specific demand that indicates what your client is claiming that amount is. Furthermore, we request that you provide us with some description of the factual basis upon which Mr. Thorman makes his allegation. Who does he claim told him that Twin Cities Harley Davidson would sell him a new motorcycle at MSRP and when does he claim that occurred. What does he claim was said? If you are unwilling to provide this information so that my client may consider this claim, we will be forced to commence another action. Please advise as to your response.

Finally, we are advised that our declaratory judgment actions have been commenced under Rule 3.01(c) with the successful delivery for service to the Sheriff. We again renew our request that you accept service to avoid unnecessary expense and potential embarrassment or inconvenience for your clients. Please advise as to your intention in this regard. Thank you.

Very truly yours,

RIDER, BENNETT, EGAN & ARUNDEL, LLP

By Michael W. Unger
Michael W. Unger

MWU/cil

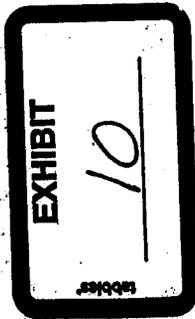
EXHIBIT
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1 STATE OF MINNESOTA DISTRICT COURT
 2 COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
 3
 4
 5
 6 Twin Cities Harley-Davidson,
 7 Plaintiff,
 8
 9 vs. File No. CT-00-012649
 10
 11 James Kinney,
 12 Defendant.

13
 14
 15
 16 The Deposition of JAMES D. KINNEY, taken
 17 pursuant to Notice of Taking Deposition, taken before
 18 Randall D. Herrala, RPR, a Notary Public in and for the
 19 County of Wright, State of Minnesota, taken on the 15th day
 20 of November, 2000, at Metropolitan Centre, Suite 1800, 333
 21 South Seventh Street, Minneapolis, Minnesota, commencing at
 22 approximately 9:05 a.m.
 23
 24
 25

1 JAMES D. KINNEY.
 2 the Witness in the above-entitled
 3 matter after having been duly sworn
 4 deposes and says as follows:
 5
 6 CROSS-EXAMINATION
 7 BY MR. LAFEBER:
 8 Q. Good morning, Mr. Kinney. My name is Michael
 9 Lafeber, and I represent Twin City Harley-Davidson. I want
 10 to begin by asking if you've ever had your deposition taken
 11 before.
 12 A. No.
 13 Q. Let me go over a few of the ground rules to
 14 make it go as quickly and smoothly as possible. You need
 15 to avoid any nonverbal responses. As you can see, we have
 16 a court reporter here, and it's real difficult for him to
 17 transcribe a shake of the head or any other nonverbal
 18 responses. Okay?
 19 A. Correct.
 20 Q. Avoid responses such as uh-huh or huh-huh.
 21 Again, it's real difficult for the record to reflect what
 22 those responses were intended to mean. Okay?
 23 A. Okay.
 24 Q. And in addition, let me finish asking my
 25 question before you answer it. That way we won't talk over

1 APPEARANCES:
 2 MICHAEL M. LAFEBER, ESQUIRE, of the Law Firm of
 3 RIDER, BENNETT, EGAN & ARUNDEL, P.L.L.P., Metropolitan
 4 Centre, Suite 2000, 333 South Seventh Street, Minneapolis,
 5 Minnesota 55402, appeared for and on behalf of Plaintiff.
 6 GREGG E. ISAACSON, ESQUIRE, of the Law Firm of
 7 SISAM & WATJE, P.A., 7230 Metro Boulevard, Edina, Minnesota
 8 55439, appeared for and on behalf of Defendant.
 9
 10 ALSO PRESENT:
 11 Mr. Mike Kuelbs
 12 Mr. Kevin Kuelbs
 13
 14 *The Original is in the possession of
 15 Attorney Michael M. Lafeber as of January 25, 2001.*
 16
 17 INDEX PAGE
 18 Cross-Examination by Mr. Lafeber 3
 19
 20 JAMES D. KINNEY DEPOSITION EXHIBITS MARKED
 21 1 - Harley-Davidson Motorcycle Order and Deposit 32
 22 Receipt, FLST Heritage Softail, Twin Cities
 23 Harley-Davidson and James D. Kinney, Receipt No.
 24 05453, 4/27/96; Receipt for Purchase of 1999
 25 FLHRC1 Twin Cities Harley-Davidson and James D.
 Kinney, Receipt No. 10444, \$20,850.25, 7/16/99
 2 - Purchase Agreement, Twin Cities Harley-Davidson
 and James Daniel Kinney, 1999 FLHRC1,
 \$20,850.25, Agreement Number 264, 7/12/99
 3 - Letter, From Twin Cities Harley-Davidson, 42
 To Dear Customer
 4 - Handwritten Notification, "We hereby request to 43
 be excluded..." Signed by Dave Gough, Tracy
 Gough, and James Kinney



1 each other.
 2 A. Okay.
 3 Q. And lastly, I don't want you to answer any
 4 questions you don't understand. If I ask a question you
 5 don't understand, please ask me to rephrase it or clarify
 6 it. I'll be more than happy to do that. All right?
 7 A. All right.
 8 Q. Do we have an agreement you won't answer any
 9 questions you don't understand today?
 10 A. Sure.
 11 Q. We'll start with an easy one. Would you state
 12 your full name for the record, please?
 13 A. James Daniel Kinney.
 14 Q. Can you spell your last name, please?
 15 A. K-I-N-N-E-Y.
 16 Q. And, Mr. Kinney, how old are you?
 17 A. Forty-three.
 18 Q. What is your date of birth?
 19 A. 9/26/57.
 20 Q. And where do you currently reside?
 21 A. 2112 West 86th Street in Bloomington.
 22 Q. Is that a home or an apartment?
 23 A. It's a home.
 24 Q. How long have you been at that address?
 25 A. Since November of '85.

1 Q. So a good 15 years?
 2 A. Right.
 3 Q. Did you graduate from high school?
 4 A. No, I did not.
 5 Q. How far did you make it in school?
 6 A. I went to my -- I started my senior year and
 7 went and got a GED.
 8 Q. When did you get your GED?
 9 A. A couple of years later. I'm not sure of the
 10 date.
 11 Q. Any formal education beyond your GED?
 12 A. No.
 13 Q. Have you ever served in the military?
 14 A. No.
 15 Q. Do you have a criminal record of any type?
 16 A. None other than driving.
 17 Q. What type of driving offenses have you had?
 18 A. Alcohol-related DWI.
 19 Q. How many DWIs have you had?
 20 A. Three.
 21 Q. What years were those in?
 22 A. I'd be guessing '78, '83, and '91.
 23 Q. Do you remember what counties those were in?
 24 A. Hennepin and Dakota.
 25 Q. Consecutively?

1 Q. What did you do in the off-season during those
 2 three years?
 3 A. Last season I couldn't find work, but I hooked
 4 up with other companies and traveled, worked in Florida one
 5 year, worked in Kansas City a little bit. They send me out
 6 on different rock jobs, artificial rock work.
 7 Q. I neglected to ask you, are you married?
 8 A. No.
 9 Q. Have you ever been married?
 10 A. No.
 11 Q. Do you have any kids?
 12 A. No.
 13 Q. And where did you work prior to Pace Concrete
 14 Construction?
 15 A. Custom Rock International in St. Paul.
 16 Q. And how long did you work for Custom Rock
 17 International?
 18 A. I believe that was nine years.
 19 Q. What did you do for them?
 20 A. I was a cement mason.
 21 Q. Was that a full-time position?
 22 A. Yes, it was.
 23 Q. Was that seasonal?
 24 A. Yes and no. Some seasons, yes. Other seasons
 25 they would send me on the road.

1 A. Right.
 2 Q. Have you ever gone through any chemical
 3 dependency treatment?
 4 A. No.
 5 Q. Or alcohol abuse treatment programs?
 6 A. No.
 7 Q. Are you presently employed?
 8 A. No. I was just laid off.
 9 Q. Who did you work for?
 10 A. Pace Concrete Construction.
 11 MR. ISAACSON: Excuse me, I didn't hear
 12 that. What that Pace?
 13 THE WITNESS: Pace Concrete
 14 Construction.
 15 BY MR. LAFFEBER:
 16 Q. Where are they located?
 17 A. Inver Grove Heights.
 18 Q. What did you do for them?
 19 A. Cement finisher.
 20 Q. How long did you work for them?
 21 A. Three years.
 22 Q. Was this a full-time position?
 23 A. Yes.
 24 Q. Was it seasonal?
 25 A. Yes.

1 Q. Tell me, how long is the cement season that
 2 you can do cement work?
 3 A. It varies. The last couple of winters have
 4 been warm, so it goes eight, nine months. If it's real
 5 cold, it can be as short as seven months.
 6 Q. You indicated you worked for Pace Concrete
 7 Construction for roughly three years?
 8 A. Correct. I should mention I had my own
 9 business in between those two.
 10 Q. What period of time did you have your own
 11 business?
 12 A. For two years prior to Pace.
 13 Q. What was the name of your business?
 14 A. First Impressions Concrete.
 15 Q. Did First Impressions Concrete do the same
 16 type of things as Pace Concrete?
 17 A. Yes.
 18 Q. And Custom Rock?
 19 A. No, not Custom Rock.
 20 Q. What type of work did Custom Rock do?
 21 A. They did artificial rock work such as an
 22 example would be Camp Snoopy at the Mall of America.
 23 Q. You indicated while you were at Pace Concrete
 24 Construction there were some seasons that you got work in
 25 other parts of the country some off-seasons and some

1 off-seasons where you didn't get work.
 2 A. Correct.
 3 Q. What did you do during the off-seasons that
 4 you did not have work?
 5 A. I basically looked for work and collected
 6 unemployment.
 7 Q. Mr. Kinney, how many Harley-Davidson
 8 motorcycles have you owned?
 9 A. Two.
 10 Q. And where did you obtain those two
 11 motorcycles?
 12 A. One from a private party and another from Twin
 13 City South.
 14 Q. The one you obtained from a private party,
 15 when did you obtain that motorcycle?
 16 A. Approximately sometime in 1991.
 17 Q. What type of motorcycle was that?
 18 A. It's a 1982 FXB Sturgis.
 19 Q. FXB?
 20 A. Correct.
 21 Q. Do you remember the name of the individual you
 22 purchased that motorcycle from?
 23 A. Jim Kluck, K-L-U-C-K, I believe.
 24 Q. Do you remember what you paid for that
 25 motorcycle?

1 A. \$7300.
 2 Q. Do you remember how many miles it had on it
 3 when you purchased it?
 4 A. 617.
 5 Q. Do you still have that motorcycle?
 6 A. Yes, I do.
 7 Q. Have you made any attempts to sell that
 8 motorcycle?
 9 A. No, I have not.
 10 Q. Have you had any offers to buy that
 11 motorcycle?
 12 A. No, none serious.
 13 Q. Have you owned any other motorcycles?
 14 A. A few different motorcycles, yes.
 15 Q. Tell me about those.
 16 A. I had a Yamaha 500 Enduro, 1976, I believe; a
 17 1984 Honda V65 Magna; and a 1986 Yamaha V Max.
 18 Q. What year was that?
 19 A. 1986.
 20 Q. Do you still have any of those motorcycles?
 21 A. No.
 22 Q. Do you recall when you got rid of the 1986
 23 Yamaha V Max?
 24 A. It was after I bought my Sturgis, so it would
 25 probably be '92.

1 Q. Do you remember who you sold that motorcycle
 2 to?
 3 A. No, I do not.
 4 Q. Do you remember if it was to a dealer or a
 5 private party?
 6 A. It was a private party.
 7 Q. Do you remember how much you sold that
 8 motorcycle for?
 9 A. \$3800.
 10 Q. Do you remember what you had paid for that
 11 motorcycle?
 12 A. \$3999.
 13 Q. When had you acquired that motorcycle?
 14 A. I bought it in I believe it was the spring of
 15 '87.
 16 Q. How about the '84 Honda? Do you remember when
 17 you acquired that motorcycle?
 18 A. I bought that new at a dealer. I couldn't
 19 give you the dates for sure.
 20 Q. So that would have been approximately '83 or
 21 '84?
 22 A. Probably '84.
 23 Q. Do you remember the name of the dealer?
 24 A. No, but it was on University in St. Paul. The
 25 Hitching Post maybe.

1 Q. Do you remember what you paid for that
 2 motorcycle?
 3 A. No, I don't recall that one.
 4 Q. And do you remember when you sold that
 5 motorcycle?
 6 A. That motorcycle was stolen.
 7 Q. When was it stolen? Do you remember?
 8 A. Right before I bought the Yamaha. That was in
 9 '87.
 10 Q. Did you make an insurance claim?
 11 A. Yes, I did.
 12 Q. Do you remember what you were paid from your
 13 insurance company?
 14 A. I think \$1800 with a \$500 deductible.
 15 Q. And you don't remember what you had paid for
 16 the motorcycle?
 17 A. I don't recall, no.
 18 Q. Do you know if it was more or less than \$1800?
 19 A. Oh, it was more.
 20 Q. Do you know how much more?
 21 A. I don't recall. I would guess somewhere in
 22 the neighborhood of \$3500, but I'm not sure.
 23 Q. Mr. Kinney, have you belonged to any
 24 Harley-Davidson-related clubs, groups, or associations?
 25 A. Other than HOG, no.

1 Q. How long have you been a member of HOG?
 2 A. I got a one-year membership when I bought my
 3 motorcycle.
 4 Q. Which motorcycle?
 5 A. The one from Twin City South.
 6 Q. Do you receive any motorcycle-related
 7 publications?
 8 A. None other than from Harley-Davidson.
 9 Q. Is that the publication you receive as part of
 10 your HOG subscription?
 11 A. Right.
 12 Q. Do you belong to the Minnesota Valley HOG club
 13 or Association?
 14 A. Not if it didn't come with my bike. I haven't
 15 joined any.
 16 Q. Do you know if the membership you have has any
 17 type of local chapter?
 18 A. I have no idea.
 19 Q. Do you belong to any Harley-Davidson-related
 20 Internet or e-mail groups?
 21 A. No.
 22 Q. Do you have any friends or relatives in the
 23 motorcycle business?
 24 A. No.
 25 Q. Any friends or relatives in the

1 Q. And at that time you had to select a model
 2 that you wanted?
 3 A. Correct.
 4 Q. Before you went to Twin City Harley-Davidson,
 5 had you done any shopping around, price comparison?
 6 A. No.
 7 Q. Had you done any research at all into
 8 Harley-Davidson motorcycles at that time?
 9 A. Other than on my own motorcycle, no.
 10 Q. What do you mean by your own motorcycle?
 11 A. Well, I owned an '82 Sturgis already.
 12 Q. So before you put your name on the waiting
 13 list, you hadn't checked prices anywhere else?
 14 A. No.
 15 Q. You hadn't talked to any other dealers?
 16 A. No.
 17 Q. You hadn't looked in the newspaper to check
 18 prices of Harley-Davidsons?
 19 A. I followed used prices in the newspaper.
 20 Q. What did that tell you, if anything, about the
 21 market for Harley-Davidson?
 22 A. They had a strong market.
 23 Q. What do you mean by a "strong market"?
 24 A. They held their value real well.
 25 Q. Were you familiar with waiting lists at all?

1 Harley-Davidson business?
 2 A. No.
 3 Q. Did you know any employees or owners of Twin
 4 City Harley-Davidson before you first contacted them about
 5 buying a motorcycle?
 6 A. No.
 7 Q. How did you learn about Twin City
 8 Harley-Davidson?
 9 A. I guess just the phone book. I don't recall
 10 any certain instance.
 11 Q. When did you make the decision to buy an
 12 additional Harley-Davidson motorcycle?
 13 A. I knew it would take a considerable amount of
 14 time to get one, so I just jumped on the list, thinking I
 15 had the time.
 16 Q. Do you remember when that was?
 17 A. I suppose April of '96.
 18 Q. What did you know about the Harley-Davidson
 19 market at that time?
 20 A. Well, not much really. I guess I'd ask you to
 21 be more -- what do you want to know about it?
 22 Q. It's your testimony you put your name on the
 23 waiting list at Twin City Harley-Davidson in April of '96,
 24 or sometime around there?
 25 A. Correct.

1 A. I didn't know how they worked.
 2 Q. Had you known anyone whose name had been on a
 3 waiting list for a Harley?
 4 A. No.
 5 Q. Do you remember who you dealt with at Twin
 6 City Harley-Davidson?
 7 A. Bill Young.
 8 Q. Now, did you visit the store on more than one
 9 occasion before you put your name on the waiting list, or
 10 did you put your name on the waiting list the first time
 11 you went on the store?
 12 A. I had been in the store previously for other
 13 things, so I had been to the store before.
 14 Q. Had you ever discussed with anybody the
 15 possibility of purchasing a new motorcycle on any of the
 16 previous trips into the store?
 17 A. No.
 18 Q. So at one point, you went into the store and
 19 your intention was to get your name on a waiting list?
 20 A. It was more I was out at the store and decided
 21 I should get on the waiting list.
 22 Q. And you dealt with Bill Young on that
 23 occasion.
 24 A. I believe it was Bill, yes.
 25 Q. Describe Bill for me.

1 A. I can't even recall what he looks like.
 2 Q. Can you tell me what color hair he had?
 3 A. Not offhand, no.
 4 Q. Can you tell me if he was a young person or an
 5 older person?
 6 A. He was a younger guy.
 7 Q. About how old would you say?
 8 A. 30s.
 9 Q. Can you tell me if he was a bigger person or a
 10 smaller person, thin person, heavy person?
 11 A. Average.
 12 Q. What do you mean by average?
 13 A. He was just average size.
 14 Q. Can you give me any more information than
 15 that?
 16 A. Not at this time.
 17 Q. Was he taller than six feet?
 18 A. I don't recall.
 19 Q. And on that occasion, you actually decided to
 20 put your name on the waiting list. Correct?
 21 A. Correct.
 22 Q. What was your understanding as to how the
 23 waiting list would work?
 24 A. My name would go on a list, and when my bike
 25 came in, it was my turn.

1 A. He showed me a clipboard with a list on it and
 2 said, Here are the prices. I'm sure it will be more
 3 because they go up every year.
 4 Q. Did he tell you anything else at that time?
 5 A. No.
 6 Q. And that's the best you can remember today
 7 word for word what Mr. Young told you?
 8 A. Yeah.
 9 Q. Did you talk to anybody else at that time
 10 about price?
 11 A. No, I did not.
 12 Q. You said he showed you a clipboard?
 13 A. Yeah.
 14 Q. Describe that for me.
 15 A. It was just a nine-by-eleven clipboard.
 16 Q. And there was something on the clipboard?
 17 A. A list was attached to it.
 18 Q. Describe that list for me.
 19 A. It was just a photocopy of all the bikes and
 20 models and prices.
 21 Q. Did you read it?
 22 A. I went to the bikes that I was interested in,
 23 yeah.
 24 Q. Was this colored? Black and white? What did
 25 it look like?

1 Q. Did you have to put any money down?
 2 A. Yes, I did.
 3 Q. How much money did you put down?
 4 A. \$500.
 5 Q. And was it your understanding that money was
 6 fully refundable?
 7 A. Yes.
 8 Q. You understood at any time you could get your
 9 money back?
 10 A. Yes.
 11 Q. Do you remember the type of bike you placed
 12 your name on the waiting list for?
 13 A. A Heritage Softail.
 14 Q. And you hadn't made any attempts at that time
 15 to obtain that bike anywhere else?
 16 A. No.
 17 Q. And you hadn't done any research into the
 18 price of those types of motorcycles?
 19 A. No.
 20 Q. Did you have any discussions with Mr. Young
 21 about price?
 22 A. He just told me he had no way of knowing the
 23 price on a bike that wasn't made yet.
 24 Q. I want you to tell me as best you can remember
 25 today verbatim what Mr. Young told you about price.

1 A. Black and white. It was like a photocopy.
 2 Q. And you said it had prices on it?
 3 A. Yeah -- yes.
 4 Q. How were they arranged on the document?
 5 A. It was the bike and then the price by it, and
 6 it was FX or FL model numbers.
 7 Q. Do you remember anything else about the
 8 document?
 9 A. Not at this time.
 10 Q. Did you read the document, or did you just
 11 look at whatever price was listed for your bike?
 12 A. I was just looking at the prices of the bikes.
 13 Q. Was there any header or descriptive terms at
 14 the top of the document?
 15 A. Not that I recall.
 16 Q. Did Mr. Young make any statements about the
 17 document?
 18 A. Not that I can recall.
 19 Q. Were you shown any other written materials,
 20 paperwork, price lists on that occasion?
 21 A. No.
 22 Q. So you've told me absolutely everything you
 23 can remember about what may have been told to you that da
 24 or what may have been shown to you that day?
 25 A. Everything I recall.

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1 Q. And specifically regarding price, you've told
2 me everything?
3 A. Everything I recall, yes.
4 Q. When was the next time you had any contact or
5 communication with anybody at Twin City Harley-Davidson?
6 A. I went in a couple of years after the initial
7 down payment and asked to change the motorcycle, and I was
8 told I'd go to the bottom of the list.
9 Q. Who did you deal with on that occasion?
10 A. I don't recall. It was a salesman, and we
11 didn't get formal about it. I just mentioned it to him,
12 and that's what he told me, so I left it alone.
13 Q. Can you describe that salesperson for me?
14 A. Long brown hair and a scruffy beard.
15 Q. And you wanted to switch --
16 A. Models.
17 Q. -- models at that time?
18 A. Correct.
19 Q. What model did you want to switch to?
20 A. The Road King.
21 Q. Why did you want to switch models?
22 A. My tastes changed, I suppose.
23 Q. Was this bike significantly different than the
24 bike that you originally were on the waiting list for?
25 A. No.

1 A. Correct.
2 Q. Were there any discussions about price at that
3 time?
4 A. No.
5 Q. Were you shown any documents, paperwork, price
6 lists at that time?
7 A. No.
8 Q. Do you know if the model motorcycle that you
9 switched to was a new model that Harley-Davidson was
10 selling?
11 A. When I switched?
12 Q. Yes.
13 A. I knew it was a new edition of the Road King.
14 Q. When did you next have any contact with anyone
15 at Twin City Harley-Davidson?
16 A. When I came in and switched motorcycles.
17 Q. And that's what you just told me about.
18 Correct?
19 A. No.
20 Q. So you switched a second time?
21 A. No. I didn't switch the first time. The
22 first time I went in and asked them him about switching.
23 He said no, and I said -- he said you cannot switch, or you
24 can switch but you go to the bottom of the list.
25 Q. And so at that time you elected not to switch.

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1 Q. Was it different in any respect?
2 A. Styling.
3 Q. Tell me how it was different.
4 A. Styling. It's a different look. It's
5 basically the same motorcycle.
6 Q. Well, it was different enough that you made it
7 a point to make sure you were on the list for that type of
8 motorcycle. Correct?
9 A. When I signed up, I picked one out, and I had
10 a change of heart, I guess.
11 Q. But there was a reason why you had a change of
12 heart. I just want to know how that motorcycle differed,
13 if you can remember.
14 A. I don't recall.
15 Q. Was the motorcycle that you had put your name
16 on the list for still available?
17 A. Yes.
18 Q. Harley-Davidson was still making that type of
19 motorcycle?
20 A. Yes.
21 Q. Did you complete any additional paperwork when
22 you went in on that occasion?
23 A. No.
24 Q. You were told that you would go to the bottom
25 of the list?

1 A. And I just said no, and that was the end of
2 that meeting.
3 Q. I'm sorry. I was confused. And then you went
4 back --
5 A. -- at a later time and talked to a big guy,
6 and he said it would be no problem.
7 Q. Do you recall that person's name?
8 A. It's the guy I got my bike from. I don't
9 recall his name right now.
10 Q. And you said it was a big guy?
11 A. Yeah.
12 Q. How big?
13 A. Well, muscular, looks like he works out
14 regularly.
15 Q. Bigger than you?
16 A. Oh, yeah.
17 Q. Height-wise?
18 A. A little bit, yeah.
19 Q. How tall are you?
20 A. Five-ten.
21 Q. And you talked to this person, and you were
22 told you could switch models?
23 A. He told me they used to not do that, but now
24 they're more flexible.
25 Q. Was there any discussion about price at that

1 time?

2 A. No.

3 Q. And you switched from the model you originally

4 were on the waiting list for to the newer Road King model?

5 A. Correct.

6 Q. Were you shown any documents, written

7 materials, price lists at that time?

8 A. No.

9 Q. Did you complete any additional paperwork at

10 that time?

11 A. No, not that I recall.

12 Q. When was the next time you had any

13 communication with Twin City Harley-Davidson?

14 A. I had a call that my bike was in.

15 Q. Do you know who contacted you on that

16 occasion?

17 A. I don't recall. I was out of town, and they

18 had left several messages.

19 Q. You don't know who that person was?

20 A. No.

21 Q. Did any of the messages have any information

22 regarding price?

23 A. No.

24 Q. Did you eventually call Twin City

25 Harley-Davidson back?

1 '99, and that was my hike.

2 Q. So you either could take your \$500 back --

3 A. Or the '99.

4 Q. -- or buy the '99 or put your name on the list

5 again to wait for the 2000?

6 A. No. Yeah, take your \$500 back, but you

7 couldn't get a 2000, the list was too long. You'd be back

8 three years again.

9 Q. But you could have gotten your name on the

10 list?

11 A. I believe so. Not for a 2000.

12 Q. Did you talk to anybody on this visit other

13 than this bigger gentleman?

14 A. Rod.

15 Q. Rod?

16 A. Rod is his name.

17 Q. Rod is the big gentleman?

18 A. Uh-huh.

19 Q. Did you talk to anybody else other than Rod on

20 this occasion?

21 A. No.

22 Q. Did you ultimately decide to purchase the '99

23 motorcycle?

24 A. Yes.

25 Q. And did you take possession of it on that

1 A. I went out there.

2 Q. And who did you deal with on that occasion?

3 A. The same large person. I don't recall his

4 name.

5 Q. And what happened on that visit?

6 A. I asked him what my options were as far as

7 buying the bike or postponing it, and he said my options

8 were take the bike or the \$500.

9 Q. I'm not following you. My understanding was

10 your bike was available.

11 A. Right.

12 Q. And why would you postpone it?

13 A. I was just thinking maybe I would wait for the

14 2000 year.

15 Q. So when the Road King motorcycle that your

16 name was on the list for became available, you were

17 contemplating switching to get another model?

18 A. I thought about the 2000.

19 Q. What model 2000 motorcycle were you interested

20 in?

21 A. Road King Classic, same model.

22 Q. What were you told at that time?

23 A. It wasn't an option.

24 Q. Explain that to me.

25 A. The 2000 model -- my model was in. It was a

1 date?

2 A. No. They had to prep it.

3 Q. Was there any discussion about the price of

4 your '99 motorcycle on that visit?

5 A. He called it up on the computer and gave me a

6 number, yes.

7 Q. Were there any discussions about that figure?

8 A. No.

9 Q. Did you review any written materials or

10 documents or price lists at that time?

11 A. No.

12 Q. Were you comfortable with that price?

13 A. I thought it was pretty high.

14 Q. Based on what?

15 A. Reading the paper, talking to other people

16 about bikes.

17 Q. So at some point you did begin to research the

18 price of motorcycles?

19 A. I don't know if I'd call it research.

20 Q. You started to look at the paper?

21 A. Well, I always watched the paper.

22 Q. Were you watching them for used bikes or new

23 bikes?

24 A. Both. The new aren't advertised much, so use

25 I would guess.

1 Q. And you felt this price was high based on what
 2 you had seen in the newspaper?
 3 A. Correct.
 4 Q. And you said you had also talked to people?
 5 A. Uh-huh.
 6 Q. Who had you talked to?
 7 A. Some friends. Rick Pace, my boss, he had
 8 recently bought a Harley at St. Croix.
 9 Q. Did he tell you what he had paid at St. Croix?
 10 A. Yes.
 11 Q. Do you know what model motorcycle he
 12 purchased?
 13 A. The Heritage Softail.
 14 Q. Do you know what he had paid for his
 15 motorcycle?
 16 A. \$16,000 something.
 17 Q. Do you know what year Softail that was?
 18 A. '99.
 19 Q. Do you know if it was a new motorcycle when he
 20 purchased it?
 21 A. It was new, yes.
 22 Q. Do you know if it had any extra features on
 23 it?
 24 A. I don't believe so.
 25 Q. Did you complain about the price that Rod

1 A. Yes. Jim Selecta.
 2 Q. What had you heard from Mr. Selecta?
 3 A. That Twin City was marking their bikes up.
 4 Q. When did he tell you that?
 5 A. Oh, a couple of months before I bought it, I
 6 guess.
 7 Q. Is Mr. Selecta a friend of yours?
 8 A. Yes.
 9 Q. Is he somebody you work with?
 10 A. No.
 11 Q. Do you know if Mr. Selecta owned a
 12 Harley-Davidson?
 13 A. Not at the time. He was researching one.
 14 Q. Do you know what he based his statements on?
 15 A. He had a book with all the retail prices
 16 listed from Harley-Davidson.
 17 Q. Had you ever looked at that book before?
 18 A. Not until then.
 19 Q. So you had never looked at anything that
 20 showed any Harley-Davidson retail prices?
 21 A. Well, I don't recall any.
 22 Q. Did you base your belief that the price was
 23 high on discussions with anyone else?
 24 A. Not that I recall.
 25 Q. Did you base your belief that the price was

1 quoted to you?
 2 A. I don't recall.
 3 Q. I want you to tell me as best you can remember
 4 today all the discussions that occurred regarding price on
 5 that occasion.
 6 A. I don't think we had a long discussion on
 7 price. It was I guess understood it was nonnegotiable.
 8 Q. You can't remember any of the specifics of the
 9 conversation?
 10 A. Not right now, no.
 11 Q. Tell me what happened next.
 12 A. I went back out and picked up the motorcycle.
 13 Q. And who did you deal with on that occasion?
 14 A. Rod.
 15 Q. Were there any discussions about price on that
 16 occasion?
 17 A. No.
 18 Q. Did you still feel you were paying too much
 19 for the motorcycle?
 20 A. I knew it was expensive, yeah.
 21 Q. Based on what you had seen other bikes selling
 22 for?
 23 A. From what I have heard from other people, yes.
 24 Q. Did you hear anything from anyone other than
 25 Mr. Pace?

1 high on any other information you had obtained?
 2 A. I don't recall.
 3 Q. You went ahead and purchased the bike?
 4 A. Correct.
 5 Q. Did you make any complaints to anyone about
 6 the price at that time?
 7 A. Not that I recall.
 8 Q. I've asked you a lot about conversations
 9 you've had with people from Twin City Harley-Davidson about
 10 price. Were there ever any witness to any of the
 11 conversations you might have had about price?
 12 A. Not that I can recall right now.
 13 Q. Do you still have that motorcycle?
 14 A. Yes, I do.
 15 Q. Have you made any attempts to sell that
 16 motorcycle?
 17 A. No, I haven't.
 18 Q. Have you had any offers from anybody to buy
 19 that motorcycle?
 20 A. No, I haven't.
 21 Q. Have you made any attempts to buy an
 22 additional Harley-Davidson motorcycle?
 23 A. No, I have not.
 24 (At this time James D. Kinney Deposition
 25 Exhibit Number 1 was marked for identification)

1 by the Court Reporter.)
 2 Q. Mr. Kinney, I'm showing you what's been marked
 3 as Deposition Exhibit Number 1, and I want you to pay
 4 attention to the left side of that document and the receipt
 5 numbered 05453. Do you recognize that document?
 6 A. Yes.
 7 Q. Can you tell me what that document is?
 8 A. That is my deposit.
 9 Q. And the receipt is dated April 27, 1996. Does
 10 that accurately reflect the date that you originally placed
 11 your deposit down for a Harley-Davidson motorcycle at Twin
 12 City Harley-Davidson?
 13 A. I believe so, yes.
 14 Q. What model motorcycle is listed on that
 15 receipt?
 16 A. FLSTC Heritage Softail.
 17 Q. Does that accurately reflect the model
 18 motorcycle that you placed your deposit for?
 19 A. Yes.
 20 Q. I want to call your attention to the right
 21 side of the document. Is that your signature on the bottom
 22 right-hand corner of Receipt Number 10444?
 23 A. No, it is not.
 24 Q. I'm sorry, that's the salesman's signature.
 25 Do you know whose signature that?

1 Q. And is that your signature in the box
 2 entitled, Dealer's Disclaimer of Warranty, on the left-hand
 3 side?
 4 A. Yes.
 5 Q. And it's partially cut off in the bottom
 6 right-hand corner of the page, but does that appear to be
 7 the top half of your signature?
 8 A. It appears to be, yes.
 9 Q. Does this document accurately reflect the
 10 price that you paid for your motorcycle, the motorcycle you
 11 obtained from Twin City Harley-Davidson?
 12 A. Yes.
 13 Q. Did you have an opportunity to review this
 14 document before you signed it?
 15 A. Yes.
 16 Q. No one prevented you from reading it?
 17 A. No.
 18 Q. And is it your normal practice to review a
 19 document before you sign it?
 20 A. Usually, yes.
 21 Q. Did you review this document before you signed
 22 it?
 23 A. I believe so.
 24 Q. Mr. Kinney, I've asked you on several
 25 occasions to tell me as best you can recall about certain

1 A. I cannot read it, no.
 2 Q. Do you recognize that document?
 3 A. It looks familiar.
 4 Q. Can you tell me what it is?
 5 A. The sales receipt.
 6 Q. Can you tell me what that's a receipt for?
 7 A. My 1999 Road King Classic.
 8 Q. And that receipt is dated July 16th, 1999?
 9 A. Yes.
 10 Q. Does that accurately reflect the date that you
 11 took possession of your motorcycle?
 12 A. I believe so.
 13 (At this time James D. Kinney Deposition
 14 Exhibit Number 2 was marked for identification
 15 by the Court Reporter.)
 16 Q. Mr. Kinney, I want you to take a look at
 17 what's been marked as Deposition Exhibit Number 2. Do you
 18 recognize that document?
 19 A. Yes.
 20 Q. Can you tell me what it is?
 21 A. The invoice.
 22 Q. The invoice for what?
 23 A. For my motorcycle, '99.
 24 Q. What type of motorcycle was that?
 25 A. Road King Classic.

1 conversations or communications you had with individuals at
 2 Twin City Harley-Davidson. Correct?
 3 A. Correct.
 4 Q. Have you told me today everything you can
 5 recall about any conversations or communications you've had
 6 with anyone at Twin City Harley-Davidson regarding the
 7 price of your motorcycle?
 8 A. Everything I can recall, yes.
 9 Q. Have you ever had any discussions or
 10 communications with anybody about your claims you're making
 11 in this lawsuit?
 12 A. Yes.
 13 Q. Who have you talked to?
 14 A. Dave Gough.
 15 Q. Who is Mr. Gough?
 16 A. He is another person in this suit.
 17 Q. How do you know Mr. Gough?
 18 A. Childhood friends.
 19 Q. What have you talked to Mr. Gough about?
 20 A. How we overpaid on our bikes.
 21 Q. What did Mr. Gough tell you?
 22 A. We both got stuck.
 23 Q. Why do you believe you overpaid for your
 24 motorcycle?
 25 A. Because I was led to believe I was getting a

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1 motorcycle, that putting \$500 down on a motorcycle would
 2 give me a list price.
 3 Q. What do you base that claim on?
 4 A. The fact that I was shown a list price when I
 5 picked up my motorcycle.
 6 Q. And you've already told me everything you can
 7 recall about -- and you're referring to the document that's
 8 an unidentified salesman showed you?
 9 A. Correct.
 10 Q. And you've already told me everything you can
 11 recall about that document?
 12 A. Well, everything I can recall at this time.
 13 The word list was used by the salesman at the time of
 14 looking at the clipboard.
 15 Q. You have a better recollection now of what he
 16 told you?
 17 A. I remember list being used.
 18 Q. Who told you that?
 19 A. The salesman.
 20 Q. What did he tell you about list price?
 21 A. He told me those were list prices, but they
 22 were not going to be that in '99.
 23 Q. Did he tell you anything else at that time?
 24 A. Not that I recall.
 25 Q. So as we sit here today, I'm asking you --

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1 this is the second or third time I've asked you this. To
 2 the best you can recall on that occasion, he showed you
 3 some type of price list and said these are the list prices,
 4 but he couldn't tell you that those were going to be the
 5 prices whenever you got your bike?
 6 A. He told me those were the list prices for all
 7 the bikes and he had no way of knowing what the price would
 8 be in '99 or later.
 9 Q. So, again, that's the best you can recall
 10 about what you were told on that date?
 11 A. As best I can recall. As we talk about it, it
 12 starts coming around. You remember things.
 13 Q. Is it possible what you remember is based on
 14 conversations you've had with people since that time?
 15 A. No. Well, I can't say.
 16 Q. Is it possible it's based on what other people
 17 have told you they may have been told?
 18 A. I can't say.
 19 Q. It's possible?
 20 A. I can't say for sure.
 21 Q. Do you have any specific recollection of him
 22 telling you anything?
 23 A. I remember him saying this was list price on
 24 the clipboard.
 25 Q. But you don't remember anything else that was

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1 contained on that clipboard, whether it had a header or any
 2 descriptive terms or anything like that?
 3 A. I wasn't looking for a header before.
 4 Q. What has Mr. Gough told you about his
 5 experience with Twin City Harley-Davidson?
 6 A. Can you be more specific?
 7 Q. You've talked to him about your claim.
 8 A. Yes.
 9 Q. And he's told you about the claims he's
 10 making?
 11 A. I'm not sure I understand what you're getting
 12 at, what you want.
 13 Q. All I want to know is what he's told you about
 14 his experience at Twin City Harley-Davidson.
 15 A. He just thinks it's expensive.
 16 Q. Has he told you that he was -- anything was
 17 misrepresented to him by Twin City Harley-Davidson?
 18 A. I believe he said he remembers list price also
 19 being mentioned.
 20 Q. What price is that?
 21 A. Pardon?
 22 Q. What price is that?
 23 A. The manufacturer's retail price.
 24 Q. Have you talked to anyone else about your
 25 claims against Twin City Harley-Davidson?

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1 A. Not that I'm aware of.
 2 Q. You're part of a lawsuit that has several
 3 plaintiffs, and I want to know if you've talked to anyone
 4 else other than Mr. Gough about your experience at Twin
 5 City Harley-Davidson.
 6 A. I don't recall any in particular, no.
 7 Q. Have any of the other plaintiffs talked to you
 8 about their experience at Twin City Harley-Davidson?
 9 A. Other than at the attorney's office, no.
 10 Q. What were you told at the attorney's office?
 11 MR. ISAACSON: Objection.
 12 Attorney-client privilege.
 13 Q. I don't want to know what your attorney may
 14 have told you. I just want to know what the other
 15 plaintiffs may have told you.
 16 A. I guess we all just talked about the cost of
 17 the bikes.
 18 Q. So you had an opportunity to discuss these
 19 matters with all the other plaintiffs?
 20 A. Yes.
 21 Q. And did the other people tell you what they
 22 may or may not have been told by people at Twin City
 23 Harley-Davidson?
 24 A. Yes.
 25 Q. You're claiming you're entitled to damages

1 from Twin City Harley-Davidson?
 2 A. I don't know if it's damages.
 3 Q. What do you feel you're entitled to from Twin
 4 City Harley-Davidson?
 5 A. The difference between retail price and what I
 6 paid.
 7 Q. What do you mean by retail price?
 8 A. The manufacturer's suggested retail price.
 9 Q. When did you first learn you had paid more
 10 than MSRP?
 11 A. They sent out a letter approximately a month
 12 before I got the bike stating that although it was going to
 13 be more than manufacturer's retail price, they believed it
 14 was still a fair price.
 15 Q. So you received a letter from Twin City
 16 Harley-Davidson that told you you were going to pay more
 17 than MSRP for your hike?
 18 A. Correct.
 19 Q. And what did you do when you received that
 20 letter?
 21 A. I received it the same day as Dave Gough, and
 22 he said he made a call and talked to a salesman and was
 23 told that that's the way they do it.
 24 Q. What else did Mr. Gough tell you?
 25 A. At that time, that's all I recall.

1 A. Correct.
 2 (At this time James D. Kinney Deposition
 3 Exhibit Number 4 was marked for identification
 4 by the Court Reporter.)
 5 Q. Mr. Kinney, I want to show you what's been
 6 marked as Deposition Exhibit Number 4. Do you recognize
 7 that document?
 8 A. Yes, I do.
 9 Q. Can you tell me what that is?
 10 A. It's an exclusion form.
 11 Q. Is that your signature on the bottom
 12 right-hand corner of the page?
 13 A. Yes, it is.
 14 Q. And I'm quoting from that document where it
 15 says, quote, We have sought our own attorney in this
 16 matter, end quote.
 17 A. Correct.
 18 Q. Had you retained an attorney at that time?
 19 A. No.
 20 Q. Had you spoken with any attorneys at that time
 21 regarding pursuing a claim?
 22 A. No.
 23 Q. Had any attorneys contacted you at that time
 24 regarding pursuing a claim?
 25 A. None except for the attorneys for -- except

1 Q. Did you ever contact anyone from Twin City
 2 Harley-Davidson when you received that letter?
 3 A. Personally, no.
 4 Q. Did you complain to anybody?
 5 A. Maybe Dave.
 6 Q. Have you ever been involved in any other
 7 litigation, Mr. Kinney?
 8 A. No.
 9 Q. Have you ever made any claims against anyone
 10 else?
 11 A. No.
 12 (At this time James D. Kinney Deposition
 13 Exhibit Number 3 was marked for identification
 14 by the Court Reporter.)
 15 Q. Mr. Kinney, I want to show you what's been
 16 marked as Deposition Exhibit Number 3. Do you recognize
 17 that document?
 18 A. Yes, I do.
 19 Q. Can you tell me what that document is?
 20 A. It's a copy of the letter I received prior to
 21 purchasing my Harley.
 22 Q. And this is the document you were referring to
 23 that informed you that in fact Twin City Harley-Davidson
 24 was selling its motorcycles over the manufacturer's
 25 suggested retail price?

1 for the letter I got for the class action.
 2 Q. Your letter says "We have sought our own
 3 attorney in this matter." What does that mean?
 4 A. We were looking for an attorney, sought after.
 5 Q. But you hadn't spoken with any at that point?
 6 A. I hadn't, no.
 7 Q. Do you know if the Goughs had?
 8 A. Not for sure, I don't know, no.
 9 Q. Have you ever heard the term "freight and
 10 setup," Mr. Kinney?
 11 A. Could you repeat that?
 12 Q. Are you familiar with the terms "freight" and
 13 "setup"?
 14 A. Yes.
 15 Q. What do those terms mean?
 16 A. I believe shipping and handling.
 17 Q. Did you understand that you had to pay freight
 18 and setup at Twin City Harley-Davidson?
 19 A. I believed it was built into the cost of the
 20 bike.
 21 Q. Do you know how much freight and set-up --
 22 strike that. Do you know what the cost of freight and
 23 setup was?
 24 A. No, I don't.
 25 Q. Mr. Kinney, have you had any discussions with

1 anyone at St. Croix Harley-Davidson regarding Twin City
 2 Harley-Davidson?
 3 A. No, I have not.
 4 Q. Have you ever had any discussions with anyone
 5 at Harley-Davidson's headquarters?
 6 A. No, I have not.
 7 Q. Have you ever had any discussion with anyone
 8 at Freeway Dodge?
 9 A. No, I have not.
 10 Q. How about Wally McCarthy dealerships? Have
 11 you ever talked with anyone at any Wally McCarthy's
 12 dealerships?
 13 A. No.
 14 Q. Have you ever attended any motorcycle shows?
 15 A. I have in the past, yes.
 16 Q. Did you attend the International Motorcycle
 17 Show that was held in Minneapolis a while ago?
 18 A. No.
 19 Q. What motorcycle shows have you attended?
 20 A. Years ago, the Crocodile production in
 21 St. Paul.
 22 Q. Any others?
 23 A. Not to my recollection, no.
 24 Q. And, once again, I just want to make clear,
 25 you've told me everything you can remember about any

1 (JAMES D. KINNEY)
 2
 3 I, JAMES D. KINNEY, do hereby certify that I
 4 have read the foregoing transcript of my Deposition and
 5 believe the same to be true and correct (or except as
 6 follows, noting the page and line number of the change or
 7 addition desired and the reason why):
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24 Dated this ____ day of _____, 20____.
 25 (RDH)

1 conversations or communications you've had with Twin City
 2 Harley-Davidson regarding the price of your motorcycle.
 3 A. At this time, yes.
 4 Q. Is it safe to say your memory is not going to
 5 get any better on that point?
 6 A. I don't know if anything would jog my memory.
 7 I don't know.
 8 MR. LAFEVER: That's all I have. Thank
 9 you, Mr. Kinney.
 10 THE WITNESS: Thank you.
 11 MR. ISAACSON: Mr. Kinney, you have the
 12 right to read the transcript of this deposition and make
 13 corrections, and that would involve going to the court
 14 reporter's office or our office and reading through the
 15 transcript and making a list of corrections and getting it
 16 back to the court reporter. You also can waive that right.
 17 I would recommend that you read it.
 18 THE WITNESS: I would like to read it.
 19 (Whereupon, at 10:10 a.m., Wednesday,
 20 November 15, 2000, the taking of the deposition
 21 of JAMES D. KINNEY was adjourned.)
 22
 23
 24
 25

1 STATE OF MINNESOTA)
 2 COUNTY OF WRIGHT) SS.
 3 Be it known that I took the deposition of JAMES D.
 4 KINNEY on the 15th day of November, 2000, at Metropolitan
 5 Centre, Suite 1800, 333 South Seventh Street, Minneapolis,
 6 Minnesota:
 7 That I was then and there a Notary Public in and for
 8 the County of Wright, State of Minnesota, and that by
 9 virtue thereof, I was duly authorized to administer an
 10 oath;
 11 That the witness before testifying was by me first
 12 duly sworn to testify the whole truth and nothing but the
 13 truth relative to said cause;
 14 That the testimony of said witness was recorded in
 15 Stenotype by myself and transcribed into typewriting under
 16 my direction, and that the deposition is a true record of
 17 the testimony given by the witness to the best of my
 18 ability;
 19 That the cost of the original transcript has been
 20 charged to the party noticing the deposition, unless
 21 otherwise agreed upon by Counsel, and that copies have been
 22 made available to all parties at the same cost, unless
 23 otherwise agreed upon by Counsel;
 24 That I am not a relative to any of the parties hereto
 25 nor interested in the outcome of the action;
 That the reading and signing of the deposition by the
 witness was executed as evidenced by the preceding page:
 That Notice of Filing was waived.
 WITNESS MY HAND AND SEAL this ____ day of
 _____, 2000.
 Randall D. Herrala, RPR
 Court Reporter

1 STATE OF MINNESOTA DISTRICT COURT
 2 COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT
 3
 4
 5
 6 Twin Cities Harley-Davidson,
 7 Plaintiff,
 8
 9 vs. File No. 19-CX-00-9611
 10
 11 Terrance John Carter,
 12 Defendant.

13
 14
 15
 16 The Deposition of TERRANCE JOHN CARTER, taken
 17 pursuant to Notice of Taking Deposition, taken before
 18 Randall D. Herrala, RPR, a Notary Public in and for the
 19 County of Wright, State of Minnesota, taken on the 13th day
 20 of November, 2000, at Metropolitan Centre, Suite 1800, 333
 21 South Seventh street, Minneapolis, Minnesota, commencing at
 22 approximately 3:10 p.m.
 23
 24
 25

1 TERRANCE JOHN CARTER.
 2 the Witness in the above-entitled
 3 matter after having been duly sworn
 4 deposes and says as follows:
 5

6 CROSS-EXAMINATION
 7 BY MR. LAFEBER:

8 Q. Good afternoon, Mr. Carter. My name is
 9 Michael Lafeber, and I represent Twin City Harley-Davidson.
 10 I want to begin by asking you if you've ever had your
 11 deposition taken before.

12 A. Yes.

13 Q. For what reason did you have your deposition
 14 taken?

15 A. I was president of one of the smaller unions
 16 at Northwest Airlines, and in that regard I had a
 17 deposition.

18 Q. Any reason to have your deposition taken for
 19 anything else?

20 A. Not that I can remember.

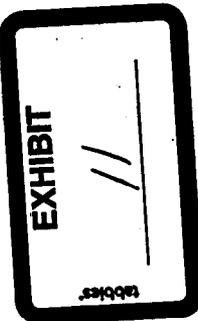
21 Q. So you're familiar with how it works. Let me
 22 just remind you of a couple of things. We've got a court
 23 reporter here, so you need to avoid nonverbal responses
 24 such as shaking your head. I also need you to avoid
 25 answers such as uh-huh or huh-huh. It's very difficult for

1 APPEARANCES:
 2 MICHAEL M. LAFEBER, ESQUIRE, of the Law Firm of
 3 RIDER, BENNETT, EGAN & ARUNDEL, P.L.L.P., Metropolitan
 4 Centre, Suite 2000, 333 South Seventh Street, Minneapolis,
 5 Minnesota 55402, appeared for and on behalf of Plaintiff.
 6
 7 GREGG E. ISAACSON, ESQUIRE, of the Law Firm of
 8 SISAM & WATJE, P.A., 7230 Metro Boulevard, Edina, Minnesota
 9 55439, appeared for and on behalf of Defendant.
 10
 11
 12 ALSO PRESENT:
 13 Mr. Mike Kuelbs
 14 Mr. Kevin Kuelbs

15 *The Original is in the possession of
 16 Attorney Michael M. Lafeber as of January 25, 2001.*

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1 the court reporter to get those down. Okay?
 2 A. (Indicating in the Affirmative.)
 3 Q. Is that a yes?
 4 A. Yes.
 5 Q. Second, please let me finish asking my
 6 question before you answer it so we don't talk over each
 7 other. Okay?
 8 A. Okay.
 9 Q. And lastly, please don't answer any questions
 10 that you don't understand. If I ask you a question you
 11 don't understand, feel free to have me rephrase the
 12 question or clarify it for you. All right?
 13 A. I'll try that.
 14 Q. Do we have an agreement that you won't answer
 15 any questions you don't understand today?
 16 A. I will certainly try not to.
 17 Q. We'll start with an easy one. Please state
 18 your full name for the record, please.
 19 A. Terrance John Carter, C-A-R-T-E-R.
 20 Q. Mr. Carter, how old are you?
 21 A. Fifty-three.
 22 Q. And what's your date of birth?
 23 A. 3/25/47.
 24 Q. And where do you currently live?
 25 A. Do you want the address?

Page 5

- 1 Q. Please.
- 2 A. 20610 Holt Avenue East, Lakeville, Minnesota,
- 3 P.O. Box 669, Zip Code 55044.
- 4 Q. How long have you been at that address?
- 5 A. Thirteen days.
- 6 Q. How about before there where did you live?
- 7 A. 4201 Trenton Road, Eagan, Minnesota 55123.
- 8 Q. And how long were you at that address?
- 9 A. Five months.
- 10 Q. You don't stay anywhere very long, do you?
- 11 A. Not since my divorce.
- 12 Q. And where were you at prior to the 4201
- 13 Trenton Road address?
- 14 A. 4548 141st Street West, Apple Valley,
- 15 Minnesota 55124.
- 16 Q. How long were you at that address?
- 17 A. Twenty years.
- 18 Q. There we go. Are you presently married?
- 19 A. No.
- 20 Q. Have you ever been married?
- 21 A. Twice.
- 22 Q. When were you first married?
- 23 A. I believe it was 1966.
- 24 Q. What was your first wife's name?
- 25 A. Kay. Are these questions relevant to this

Page 6

- 1 case?
- 2 Q. Yes, they are. And what was your first wife's
- 3 name?
- 4 A. I believe I stated Kay.
- 5 Q. And her maiden name?
- 6 A. I'm sorry, I can't remember right now.
- 7 Believe me.
- 8 Q. Do you still have any contact with Kay?
- 9 A. Yes, through my two children.
- 10 Q. Does she live in the Cities here?
- 11 A. Apple Valley.
- 12 Q. Does she have a telephone number?
- 13 A. I don't remember it.
- 14 Q. Has she been remarried?
- 15 A. Yes.
- 16 Q. Do you know her present last name?
- 17 A. T-A-N-G-E-N.
- 18 Q. Tangen?
- 19 A. Yes.
- 20 Q. How long were you married to Kay?
- 21 A. Ten years.
- 22 Q. And at some point in time you were remarried?
- 23 A. Yes.
- 24 Q. And what is your second wife's name?
- 25 A. Judith.

Page 7

- 1 Q. What was Judith's maiden name?
- 2 A. Stromberg.
- 3 Q. Is that S-T-R-O-M-B-E-R-G?
- 4 A. I believe so.
- 5 Q. Has Ms. Stromberg been remarried?
- 6 A. No.
- 7 Q. Does she go by Stromberg today?
- 8 A. No.
- 9 Q. Did she retain your name?
- 10 A. Yes.
- 11 Q. And when were you divorced from Ms. Stromberg?
- 12 A. June 21st of this year.
- 13 Q. Does Ms. Stromberg still live in the Cities?
- 14 A. You mean ex-Mrs. Carter? She goes by Carter.
- 15 Q. Does Mrs. Carter still live in the Twin
- 16 Cities?
- 17 A. She lives at the 4548 address.
- 18 Q. Do you know her telephone number?
- 19 A. 423-4133.
- 20 Q. Are you presently employed?
- 21 A. Yes.
- 22 Q. Where do you work?
- 23 A. Northwest Airlines.
- 24 Q. What do you do for Northwest Airlines?
- 25 A. Technical manual writer.

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- 1 Q. How long have you held that position?
- 2 A. I'm sorry, do you want to know how long I was
- 3 a technical manual writer, or how long I've been at
- 4 Northwest Airlines?
- 5 Q. How long have you been a technical manual
- 6 writer?
- 7 A. Since '89, 11 years.
- 8 Q. And how long have you been at Northwest
- 9 Airlines?
- 10 A. Thirty-four years.
- 11 Q. I'm assuming that's a full-time position?
- 12 A. Yes.
- 13 Q. Let me ask you about your education. Did you
- 14 graduate from high school?
- 15 A. Yes.
- 16 Q. What year?
- 17 A. '65.
- 18 Q. Where did you go to school?
- 19 A. South.
- 20 Q. Do you have any formal education beyond high
- 21 school?
- 22 A. My radio, electronics training at Elkins
- 23 Institute.
- 24 Q. What was the name of the institute?
- 25 A. E-L-K-I-N-S.

1 Q. Any other formal education?
 2 A. Quite a few classes through work, formal
 3 classes that would qualify me for credits, but I haven't
 4 used them.
 5 Q. Okay. Any military service?
 6 A. No.
 7 Q. Do you have any criminal record of any type?
 8 A. No.
 9 Q. Mr. Carter, how many Harley-Davidson
 10 motorcycles have you owned?
 11 A. I can't remember. Over my lifetime?
 12 Q. Yes.
 13 A. Twenty.
 14 Q. When did you first get involved with
 15 Harley-Davidson motorcycles?
 16 A. Probably 25 years ago. '73 for sure. How
 17 long ago was that? Twenty-seven years ago? Yeah, '73
 18 probably was the first year.
 19 Q. How many Harley-Davidsons do you presently
 20 own?
 21 A. Zero.
 22 Q. What was the highest number of Harley-Davidson
 23 motorcycles you owned at any one time?
 24 A. I had two.
 25 Q. Have you ever owned more than two at any one

1 sold your motorcycle to private parties?
 2 A. Yeah, of course. I'm sorry, yes, I did. I
 3 traded a new Harley to a Cadillac dealer. Yes, I did.
 4 Q. What do you mean by a new Harley?
 5 A. I just bought it.
 6 Q. Do you remember which Harley -- and when was
 7 that?
 8 A. 1998 Red Heritage, FXSTC, and it was to Wally
 9 McCarthy's, and it was right around May or June of '98, to
 10 the best of my recollection.
 11 Q. Where did you purchase that motorcycle from?
 12 A. Twin Cities South.
 13 Q. And what is your best recollection as to when
 14 you had purchased that motorcycle?
 15 A. Somewhere around the early part of 1998, early
 16 or middle, May, June, somewhere around there.
 17 Q. Other than this transaction with Wally
 18 McCarthy's dealership, do you recall selling any
 19 motorcycles to any other either motorcycle dealers or
 20 automobile dealers?
 21 A. No. You refreshed my memory. When you said
 22 sell to a dealer, I don't feel I did that with Wally
 23 McCarthy's. I traded it for another vehicle, but I don't
 24 ever remember selling a Harley to any dealer, no.
 25 Q. Who did you deal with at Wally McCarthy's?

1 time?
 2 A. Not that I can remember.
 3 Q. Let's do it this way: Why don't you tell me
 4 which Harley-Davidson dealers that you've dealt with.
 5 A. Donahue, St. Croix, St. Paul, Twin City,
 6 Faribault. I've been to the North store, but I don't think
 7 I've bought a bike from you guys.
 8 Q. So when you say Twin City Harley-Davidson,
 9 you're referring to the South store?
 10 A. Yes.
 11 Q. Any others that you can recall?
 12 A. No.
 13 Q. And have you ever purchased your bikes from
 14 private individuals?
 15 A. Yes.
 16 Q. Do you remember any of their names?
 17 A. No.
 18 Q. Have you ever sold your Harley-Davidson
 19 motorcycles to dealers?
 20 A. I don't think so.
 21 Q. Have you -- I'm sorry, go ahead?
 22 A. I was going to say if you've got anything that
 23 refreshes my memory, please show it because I can't
 24 remember if I've sold one to a dealer or not.
 25 Q. If it wasn't it to a dealer, would you have

1 A. Sonnen, S-O-N-N-E-N, is the salesman's name.
 2 I happen to know his name because he's a relative of
 3 somebody I work with at Northwest Airlines.
 4 Q. Have you ever dealt with a gentleman by the
 5 name of Dave Robson?
 6 A. Yeah, I believe I have. Now, that reminds of
 7 a second deal, but I can't remember what it was at Wally
 8 McCarthy's.
 9 Q. Tell me the best you can remember about any
 10 dealings you've had with Mr. Robson.
 11 A. If I remember correctly, he was the Sonnen,
 12 the salesman's boss. He was the manager or something, and
 13 the name is just familiar. I'm just guessing. You came up
 14 with a name. I'm assuming that it was his boss, because
 15 there was one other guy I dealt with.
 16 And I still believe it all had to do with the
 17 Red Heritage, so I don't know if there's anything else
 18 involved, but it seems to me there was another bike, but I
 19 don't know if it was for me, but I sold to them. A friend
 20 of mine sold one to them, a Springer.
 21 Q. Who was the friend of yours?
 22 A. Max Olivera, O-L-I-V-E-R-A. He bought a
 23 Springer and sold it right away to Wally McCarthy's.
 24 Q. Do you know where Mr. Olivera had purchased
 25 his motorcycle?

Page 13

1 A. I thought it was St. Paul.

2 Q. How did you come to sell your motorcycle to
3 Wally McCarthy or trade it in? Tell me how that
4 transaction occurred.

5 A. They had kind of a rare SS Camaro. It was
6 coming back from lease. The value was pretty close. I
7 could trade in the bike and save all the sales tax, and the
8 price on the Camaro was four or five thousand under book,
9 and it was a deal I couldn't pass up.

10 Q. What do you mean by you could save sales tax?

11 A. If you trade, you only pay sales tax on the
12 difference.

13 Q. Do you remember the date you traded in that
14 motorcycle to Wally McCarthy?

15 A. It was within three weeks of when I purchased
16 the bike. I can't tell you what that day was, but it was
17 right around that May, June time frame.

18 Q. Do you remember how much you were credited for
19 the trade-in?

20 A. No. Somewhere around eighteen.

21 Q. Do you remember if it was more than you had
22 paid for the motorcycle?

23 A. I do remember for a fact that it was not.

24 Q. Had you already made the decision to do a deal
25 with Wally McCarthy before you obtained possession of that

Page 14

1 motorcycle?

2 A. No.

3 Q. When did you originally make the decision to
4 trade that motorcycle in at Wally McCarthy?

5 A. After I found out what Twin City South was
6 going to charge me for the bike, and after I got it home, I
7 started making plans to get rid of it.

8 Q. You knew you could have elected not to take
9 that bike. Correct?

10 A. And I waited three years for nothing?

11 Q. But you understood you did not have to take
12 the bike. Correct?

13 A. Correct.

14 Q. Is it safe to say you took it because you knew
15 you could still sell it or you thought you could sell it
16 for more money?

17 A. No, it's not safe to say that. I took it
18 because I had waited three years for the bike.

19 Q. But you knew when you picked it up you were
20 going to get rid of it right away. Correct?

21 A. Somewhere around that time I made that
22 decision. I don't know if I bought it and then made the
23 decision. I was angry at the time that I was forced to pay
24 that price, yes. So I don't know exactly when it was I
25 made that decision.

Page 15

1 Q. The other motorcycles, the other

2 Harley-Davidson motorcycles that you owned, you've sold
3 them to private parties?

4 A. Mostly, I believe, yes, or all of them. I
5 can't remember exactly who I sold them to.

6 Q. Do you remember the names of any of those
7 private parties you sold the motorcycles to?

8 A. Sure. I sold one to my son's wife's sister.
9 Her name is Dawn H-O-E-F-T.

10 I sold one to a policeman in Eagan. I can't
11 remember his name. He ended up riding with me.

12 I sold one to -- I sold them to relatives,
13 friends, people I wanted to get in on the business.

14 Q. I'm sorry, these were people you wanted to get
15 in on the business?

16 A. Not specifically. It's just it was -- you
17 know, I liked to sell it to people I knew.

18 Q. Did you consider this a "business"?

19 A. Absolutely not. I meant the business of
20 riding motorcycles.

21 Q. Okay. Why don't you give me the names of some
22 of these other relatives and friends that you sold your
23 motorcycles to?

24 A. I can't remember. I gave you all the ones I
25 can remember right now. I apologize.

Page 16

1 Q. Do you have any documentation from any of
2 these sales?

3 A. I'm sure I have records, probably not from all
4 of them.

5 Q. If I ask you to provide those to your
6 attorney, would you be able to do that for me?

7 A. As many as I have, he's welcome to.

8 Q. Okay.

9 A. And my son, he bought one from me too.

10 Q. What's his name?

11 A. Thomas John Carter.

12 Q. Did you make a profit on the sale of any of
13 these motorcycles?

14 A. Sometimes I made more. Mostly I made less.

15 Q. Tell me about the times you can remember that
16 you made a profit on the sale of the motorcycles.

17 A. I can't think of any offhand, but I do
18 remember that I got all my money back and sometimes I felt
19 good and sometimes I just got out from under it. My policy
20 was to buy in the spring when it was time to ride and get
21 rid of them in the fall so I didn't have to winter the
22 bikes. The prices of a Harley allowed people to do that
23 and not lose too much money.

24 Q. Did you ever buy a motorcycle with the
25 intention of reselling it for a profit?

1 A. I would like to sell everything I buy at a
2 profit eventually because I usually don't keep things very
3 long, more than one season, but specifically to turn it,
4 no.

5 Q. Are there any other types of goods that you
6 routinely buy and sell in a short period of time?

7 A. No. Well, cars, yes, but not for the business
8 or the purpose of making money on them.

9 Q. How many automobiles have you owned in the
10 last ten years?

11 A. Maybe 50, maybe 150, I don't know.

12 Q. You have potentially owned 150 automobiles in
13 the last ten years?

14 A. Quite possibly.

15 Q. Do you make a profit off the sale of these
16 automobiles?

17 A. Not usually.

18 Q. Why would you have owned so many automobiles
19 in the last ten years?

20 A. I like to change cars.

21 Q. 150 is a lot of automobiles.

22 A. Okay.

23 Q. Have you ever made a profit on the sale of an
24 automobile?

25 A. Sure.

1 dealt with most frequently?

2 A. Yes.

3 Q. What would those be?

4 A. Mustangs, Camaros.

5 Q. Those two in particular?

6 A. Mostly, recently, last five or ten years or
7 eight years, I suppose.

8 Q. Do you advertise?

9 A. Yes.

10 Q. Advertise for the sale of your vehicles and
11 motorcycles?

12 A. Yes.

13 Q. And where do you advertise motorcycles that
14 you have for sale?

15 A. Minneapolis Star and Tribune.

16 Q. Anywhere else?

17 A. St. Paul.

18 Q. Anywhere else?

19 A. I believe when I helped my brother-in-law sell
20 his bike, I used the Internet the last time, this last
21 year.

22 Q. Anywhere else?

23 A. Not that I can think of.

24 Q. Do you have any friends or relatives in the
25 Harley-Davidson business?

1 Q. If you had made a profit on the sale of a
2 motorcycle or the resale of an automobile, would you have
3 reported those profits on your income tax statements?

4 A. If it's required, of course. I always talk to
5 my tax man about all my income.

6 Q. Would you have kept documentation of all the
7 transactions, your automobile transactions in the last ten
8 years?

9 A. All of them, no.

10 Q. Some of them?

11 A. Yes, I have some.

12 Q. If I asked you to provide those to your
13 attorney, would you be able to do that?

14 A. As many as I have.

15 Q. Do you normally deal with automobile
16 dealerships in the purchase and resale of automobiles or
17 private parties?

18 A. Both equally. It doesn't matter.

19 Q. Are there some dealerships that you deal with
20 more often than others?

21 A. Not as a rule. I've bought cars from a lot of
22 dealerships, but I don't keep going back to the same one
23 for any particular reason unless they have something I
24 want.

25 Q. Are there specific types of cars that you have

1 A. Not that I know of.

2 Q. When did you first begin dealing with Twin
3 City Harley-Davidson?

4 A. I'd been out there many times, but I believe
5 the first bike I bought was a '91 Shrine bike.

6 Q. Do you remember which store that would have
7 been from?

8 A. South.

9 Q. Do you remember when you would have purchased
10 that motorcycle?

11 A. Sometime probably early '91, maybe even late
12 '90. I don't know when they came in. Mike might remember.

13 Q. Is a Shrine bike unique in any way?

14 A. If I remember correctly, sometimes they have
15 unique badging or color, paint colors. Everything else is
16 typically loaded with options, but that's negotiated when
17 they're ordered.

18 Q. Is there a specific reason why someone would
19 be interested in a Shrine bike?

20 A. Yes, because they're a Shriner and they ride
21 them in parades.

22 Q. Are you a Shriner?

23 A. Yes.

24 Q. How long have you been a Shriner?

25 A. Since '89 or '90.

Page 21

1 Q. I'm not real familiar with that organization.
 2 Is it divided into different chapters or locations?
 3 A. Yes. Osmond, which is St. Paul, and Zurah,
 4 which is Minneapolis.
 5 Q. Is there is a specific one that you belong to?
 6 A. Osmond.
 7 Q. And is it divided any narrower than that? Are
 8 there local affiliates?
 9 A. Not that I know of. I haven't been --
 10 Q. When did you first ride a motorcycle in a
 11 Shriner event?
 12 A. '91 I went with all the Shriners to an
 13 invitational, the Zurah Shriners, in the parade in
 14 Farmington.
 15 Q. How many times have you ridden a
 16 Harley-Davidson motorcycle in a Shriner event?
 17 A. Actually just that once.
 18 Q. And that would have been in '91?
 19 A. Yes.
 20 Q. Did you use the motorcycle that you referred
 21 to that you purchased in 1991 from the South store?
 22 A. Yes.
 23 Q. Did you sell that motorcycle?
 24 A. Yes.
 25 Q. Do you remember who you sold that motorcycle

Page 22

1 to?
 2 A. I might have traded it to Faribault Harley.
 3 I'm not sure. I really don't remember, to be honest with
 4 you.
 5 Q. Did you buy any more Shriner type bikes after
 6 you got rid of that one?
 7 A. Not that I remember.
 8 Q. Now, you've purchased and sold quite a few
 9 Harley-Davidson motorcycles. Correct. Is that fair to
 10 say?
 11 A. Sounds reasonable, yes.
 12 Q. So you're familiar with the market for
 13 Harley-Davidson motorcycles?
 14 A. Somewhat, I suppose.
 15 Q. You understand that especially over the last
 16 ten years or so, the demand for Harley-Davidson motorcycles
 17 has been extremely high?
 18 A. Yes.
 19 Q. And do you understand the difference between
 20 manufacturer's suggested retail price and market value?
 21 A. I think so.
 22 Q. And do you understand -- is it fair to say
 23 that over the course of the last ten years, the market
 24 value for Harley-Davidson motorcycles has been higher than
 25 MSRP?

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1 A. I would have to agree.
 2 Q. And I'm guessing you are familiar with the
 3 practice of waiting lists at Harley-Davidson dealers?
 4 A. Somewhat, yes.
 5 Q. When did you first become affiliated -- when
 6 were you first exposed to this waiting list practice?
 7 A. I'd be guessing.
 8 Q. Can you give me your best estimate?
 9 A. '93, '94.
 10 Q. Do you remember the first dealer that you
 11 placed your name on a waiting list at?
 12 A. It's only been on -- I take that back. I
 13 think I was on a waiting list at St. Paul and St. Croix,
 14 but the first one would have been Twin Cities South.
 15 Q. Let me ask you about your experience at
 16 St. Paul Harley. Did you have to place a deposit to get on
 17 a waiting list at St. Paul Harley?
 18 A. Not to get on the list. Only when there was
 19 some kind of a trigger date from the factory, then they
 20 wanted money, if I remember correctly.
 21 Q. Did you ever have to place a deposit to place
 22 your name on a waiting list at St. Croix Harley?
 23 A. Yes.
 24 Q. Do you know how much you had to place down
 25 there?

Page 24

1 A. I don't remember, three to five hundred,
 2 somewhere in there.
 3 Q. Are you familiar with the practice whereby
 4 people sell their spots on a waiting list?
 5 A. Absolutely not.
 6 Q. You've never heard of that happening?
 7 A. Yes. We discussed it once at Twin Cities
 8 South, and Mike Kuelbs said it absolutely never happened on
 9 his waiting list. It was not allowed.
 10 Q. Did he say it never happened, or it wasn't
 11 allowed?
 12 A. He said it wasn't allowed, and I guess I don't
 13 remember for sure whether he said it hadn't happened.
 14 Q. Mr. Carter, it's my understanding you're
 15 claiming damages from Twin City Harley-Davidson; is that
 16 correct?
 17 A. Yes.
 18 Q. And what damages do you claim you're entitled
 19 to?
 20 A. \$1500 per motorcycle for the two that I
 21 purchase and \$1500 for the one that I finally refused to
 22 buy.
 23 Q. So you're claiming damages for three separate
 24 motorcycle transactions?
 25 A. Yes.

1 Q. And where do you come up with the \$1500
 2 figure?
 3 A. That's how much they charged me over MSRP.
 4 Q. But one of the motorcycles you never actually
 5 paid for or obtained. Correct?
 6 A. That's correct.
 7 Q. Well, let's start with the first motorcycle
 8 you claim you're entitled to damages for. Do you remember
 9 what year you purchased that motorcycle?
 10 A. I believe it was a '97 Standard. That would
 11 be an FLST -- no, that's Softail. F-L -- I'm sorry. I
 12 don't remember what that is.
 13 THE WITNESS: Come on, Mike.
 14 Q. Had your name been on a waiting list for that
 15 motorcycle?
 16 A. Yes.
 17 Q. Do you remember when you put your name on a
 18 waiting list for that motorcycle?
 19 A. No. It seemed to me it was about two and a
 20 half years before it came in. That's all I can say.
 21 Q. So roughly '95, '94?
 22 A. Yes. And that was my first experience.
 23 THE WITNESS: Sound about right?
 24 Q. Do you remember who you dealt with at Twin
 25 City Harley-Davidson with respect to this motorcycle?

1 wasn't aware of any changes. Also I had had conversations
 2 with Mike, how he was very proudly proclaiming that they
 3 were letting these bikes go cheaper than market value and
 4 it was hurting them, but they were hoping they would keep
 5 loyal customers by doing that.
 6 Q. So you're basing your belief on the fact that
 7 you had previously bought a bike for what you believed to
 8 be MSRP?
 9 A. No. And partially. The Shrine bike that I
 10 bought was not at MSRP. It was below MSRP because there's
 11 money that comes from the dealership and from the
 12 manufacturer that gives the Shriners discounts on
 13 motorcycles, so that wasn't relative. But if I had bought
 14 a bike that wasn't a Shrine bike, those were the figures
 15 that I would play with, would be MSRP. Those were the
 16 deals. And I had negotiated deals with Mike or Dave or
 17 whatever salesman before. And those would be the figures.
 18 I didn't buy every bike I negotiated on.
 19 Q. It's your testimony that the '97 FLXT
 20 motorcycle we're talking about was the second motorcycle
 21 you purchased from Twin City Harley-Davidson?
 22 A. Best I can recall, I believe it is.
 23 Q. And prior to that you had purchased the '91
 24 Shrinker motorcycle that we talked about earlier?
 25 A. Yes.

1 A. I usually dealt with Dave Borri, but I can't
 2 say he was every deal I ever did. He certainly wasn't
 3 every conversation I had.
 4 Q. Is there anybody else you recall dealing with
 5 with respect to this motorcycle?
 6 A. Yeah. Rodney Schmidt -- oh, I'm sorry. With
 7 respect to this motorcycle, I can't remember anybody else
 8 for sure.
 9 Q. Are you certain that you dealt with Dave Borri
 10 for this motorcycle?
 11 A. No, I'm not.
 12 Q. So you don't recall who you dealt with?
 13 A. No. I just said I mostly dealt with Dave
 14 Borri whenever I was at South. That's all I can honestly
 15 say. I think it was Dave, but don't pin me to the wall.
 16 Q. And you're claiming you understood you were
 17 going to get this motorcycle when it became available at
 18 MSRP?
 19 A. Yes.
 20 Q. And what do you base that claim on?
 21 A. That's what I believe they were selling them
 22 for at the time.
 23 Q. What did you base that belief on?
 24 A. Because that's what they were selling them for
 25 the last time I bought a bike at Twin City Harley, and I

1 Q. And you didn't get that bike at MSRP?
 2 A. I got it below MSRP.
 3 Q. Tell me about any other transactions between
 4 those two motorcycles where you believe you negotiated
 5 based on MSRP.
 6 A. With anybody? Anywhere?
 7 Q. No, at Twin City Harley-Davidson.
 8 A. Oh, I can't remember any. I've talked bikes.
 9 I've been in there so many times over the years. I go in
 10 ten times a year, and we talk prices and we talk bikes.
 11 Q. I'm going to ask you again, What do you base
 12 your belief that you were going to get that motorcycle,
 13 that '97 FLXT, at MSRP?
 14 A. Because at the time I put my money down, I
 15 believe that's what they were selling them for and had no
 16 reason to think otherwise.
 17 Q. And what did you base your belief that that's
 18 what they were selling those motorcycles for?
 19 A. I can't put my finger on it. They didn't tell
 20 me anything different. I knew that that's what they had
 21 been selling them for when I talked prices with them
 22 before, and I was led to believe that that's the way it
 23 was, that nothing had changed. I was specifically not told
 24 anything had changed.
 25 Q. I'm going to ask you again. What did you base

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1 your belief that they had been selling bikes prior to that
 2 at MSRP?
 3 A. Well, the prices they had offered me bikes
 4 for.
 5 Q. Okay. When had you been offered a price on a
 6 motorcycle prior to this '97 FLXT?
 7 A. Sometime between '91 and '94 when I got on the
 8 list.
 9 Q. Do you remember who you dealt with on those
 10 occasions?
 11 A. I always talked to Mike or Dave Borri or Rod
 12 Schmidt, or there's a couple of managers that have come and
 13 gone there. I've talked to a lot of people.
 14 Q. Can you remember specifically what any of
 15 those individuals may have told you at any given time about
 16 price?
 17 A. They had told me the price of the bike. I
 18 would check it on the brochure they gave me and see what
 19 they were selling them for and what they went for. That's
 20 how I based my decision.
 21 Q. What brochure are you talking about?
 22 A. Harley-Davidson prints out typically two
 23 brochures, a large one and a small one. They're identical
 24 except for the small one always has the prices MSRP in it.
 25 And I always got a small brochure. I was always given one

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1 or always got one, or whatever. And that's how I based my
 2 prices.
 3 Q. And this was a brochure that had been produced
 4 by Harley-Davidson Corporation?
 5 A. I believe so.
 6 Q. Was this a glossy, colored brochure?
 7 A. Yes.
 8 Q. Multipage?
 9 A. Yes.
 10 Q. Other than these prior occasions that you had
 11 attempted to negotiate the price of a motorcycle, did you
 12 base your belief that you were going to get the '97 FLXT at
 13 MSRP on anything else?
 14 A. Yes. When I was negotiating or looking at the
 15 price of getting on the list, I was handed one of the
 16 smaller brochures, and I looked through it and saw MSRP.
 17 Nobody said there was going to be anything over and above
 18 that or anything different than that. And so I was, I
 19 believe, specifically led to believe that's the way it
 20 would be.
 21 Q. Now, eventually that motorcycle became
 22 available to you?
 23 A. Yes.
 24 Q. And you did purchase it?
 25 A. Yeah.

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1 Q. Between the time you placed your name on the
 2 waiting list until the time it became available to you, did
 3 you have any subsequent discussions with anyone at Twin
 4 City Harley-Davidson about what the price of that
 5 motorcycle was ultimately going to be?
 6 A. Never.
 7 Q. When was the next time you had any discussions
 8 with anybody about the price of this motorcycle?
 9 A. Probably six months after I bought the
 10 motorcycle.
 11 Q. So you even took possession of the motorcycle
 12 without having any detailed discussions about the price?
 13 A. That's correct.
 14 Q. You were just quoted a price and you paid it?
 15 A. Right. Put it on the purchase order. It
 16 didn't say what MSRP was. They said that was the price. I
 17 trusted they were doing the deal we had negotiated, and I
 18 went about my way.
 19 Q. Did you check the MSRP price when you picked
 20 up the motorcycle?
 21 A. No, didn't think I had to.
 22 Q. How did you eventually learn that what you had
 23 paid was not MSRP?
 24 A. My son-in-law's motorcycle came in, and he was
 25 complaining because he checked MSRP and found out that they

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1 were going to charge him \$1500 over. And in discussions
 2 that he said he had with Twin City, they told him that
 3 they'd been doing that for a long time. So I went back and
 4 checked the last bike I bought and found out they did it to
 5 me. I was very angry.
 6 Q. What's your son-in-law's name again?
 7 A. Jerry McDonald.
 8 Q. Does he live in the Twin-Cities?
 9 A. Lakeville. Now he lives in New Market, I'm
 10 sorry.
 11 Q. So did you check your price against MSRP?
 12 A. Then?
 13 Q. Yes?
 14 A. Six months later, four months later, whenever
 15 it was, yes.
 16 Q. And what did you find?
 17 A. Like I just told you, I found they had charged
 18 me \$1500 over like they were trying to charge him.
 19 Q. What did you do at that point?
 20 A. I went right to Twin City Harley and talked to
 21 Dave Borri or Mike, and we had some conversations.
 22 Q. I want you to tell me everything you can
 23 remember about those conversations.
 24 A. That's impossible because we haven't got
 25 enough time here to go into all the conversations we had.

1 Over the next month, month and a half, we had many
 2 conversations, but I do remember that I was on the list for
 3 that '98 Heritage, and so I said, You ripped me off on that
 4 last bike. What are you going to do on the next one? And
 5 after several conversations with Dave Borri and he said he
 6 couldn't do anything, Mike said, I will take care of you.
 7 Don't worry about it.
 8 Q. And this conversation supposedly took place
 9 approximately six months after you picked up that '97 bike?
 10 A. All I can say for sure it's within two or
 11 three days of when I found out they charged me \$1500 extra
 12 on the Standard.
 13 Q. And is that the best you can remember verbatim
 14 what Mike Kuelbs said to you? I will take care of you?
 15 A. Those are the words that he said.
 16 Q. Did he say anything else?
 17 A. Yes, I'm sure he did because we had many
 18 conversations. I can't possibly remember it all. If you
 19 would have anything to refresh my memory, I'd appreciate
 20 it.
 21 Q. Well, do you remember if Mr. Kuelbs made any
 22 statements to you about whether or not you had been
 23 promised a bike at MSRP?
 24 A. Yes.
 25 Q. And what did he say about that?

1 fall.
 2 Q. Do you remember who you sold that motorcycle
 3 to?
 4 A. No.
 5 Q. Do you remember what you sold it for?
 6 A. No.
 7 Q. Do you know if you sold it for more or less
 8 than you had purchased it for?
 9 A. I'm pretty sure it was less because I had
 10 extras on it, so I took a little bit of a bath on it. I
 11 figured the little money I lost during the year was the fun
 12 I was paying for.
 13 Q. Now, you said you're claiming damages for
 14 three separate motorcycles.
 15 A. Yes.
 16 Q. I think we just got done talking about the
 17 first motorcycle.
 18 A. Yes.
 19 Q. I want you to tell me about the second
 20 motorcycle you're claiming damages for.
 21 A. That was the red '98 Heritage, FLXT C.
 22 Q. What year was that?
 23 A. '98, I believe.
 24 Q. Had your name been on the waiting list for
 25 that motorcycle?

1 A. I believe I remember that he denied promising
 2 me a bike at MSRP. His denial was based on the fact that
 3 he never mentioned MSRP.
 4 Q. Did you ever have any discussions with
 5 Mr. Borri?
 6 A. Yes.
 7 Q. Did Mr. Borri make any statements to you
 8 regarding whether or not he had promised you a bike at
 9 MSRP?
 10 A. I don't believe I pressured Dave Borri for
 11 that. Dave Borri is in the middle. He doesn't make
 12 policy, so I wouldn't put him in the middle, and I don't
 13 believe Dave Borri would intentionally mislead anybody.
 14 Q. Now, earlier you said you're claiming damages
 15 for three motorcycles.
 16 A. Right.
 17 Q. Let me back up. With respect to the '97 FLXT
 18 motorcycle --
 19 A. It's not an FLX. It's an FLT. I believe it's
 20 an FLT. I believe that's called a standard.
 21 Q. Do you still have that motorcycle?
 22 A. No.
 23 Q. When did you sell that motorcycle?
 24 A. Oh, boy, probably the fall of that year.
 25 That's what I typically do is sell all my bikes in the

1 A. Yes.
 2 Q. Do you remember when you put your name on a
 3 waiting list for that motorcycle?
 4 A. I'm pretty sure it was around '95.
 5 Q. Was there a specific salesman that you dealt
 6 with for that motorcycle?
 7 A. I think it was Dave Borri again.
 8 Q. And you believed you were going to get that
 9 motorcycle for MSRP as well?
 10 A. Yes.
 11 Q. And what do you base that claim on?
 12 A. Mike's statement that he said he would take
 13 care of me after we had our long heated discussions since
 14 the last bike.
 15 Q. Okay. I want to back up to the time you
 16 originally put your name -- got your name on the waiting
 17 list for that motorcycle.
 18 A. That was prior to me knowing that they had
 19 charged me too much for the other bike that I just bought.
 20 Are you following me?
 21 Q. Yes. It's my understanding you put your name
 22 on the waiting list for the '98 bike in '95.
 23 A. I believe it was somewhere around there, and
 24 it was before I knew what they were doing on price.
 25 Q. When you got your name on the waiting list for

1 that bike, on what do you base your claim that you believed
 2 you were going to get that bike for MSRP?
 3 A. Same claim I based my first one on. I had
 4 nothing, no idea that they had changed their pricing
 5 structure.

6 Q. So you had absolutely no additional
 7 information at that time that made you believe you were
 8 going to get the bike at MSRP other than the information
 9 you had when you placed your name on the waiting list for
 10 the first bike?

11 A. Again, they gave me a brochure that had MSRP
 12 in it, and they didn't say anything about changing the
 13 pricing structure, so I had the same information
 14 reconfirmed.

15 Q. When you would get these pricing brochures,
 16 would you make it a point to read through the brochure?

17 A. Oh, absolutely.

18 Q. In its entirety?

19 A. I tried.

20 Q. And anything in there that dealt with price,
 21 you would be very careful to pay close attention to that
 22 language?

23 A. I would look at the price on a particular
 24 model I was going on. I'd look at other ones for
 25 comparison. I certainly didn't remember them all all the

1 said that phrase meant he could give me the bike he wanted.
 2 He didn't have to give me any bikes that were on the list.
 3 He could give me a Sportster. That's exactly what Mike
 4 Kuelbs said.

5 The second part of the disclaimer was we don't
 6 guarantee prices. At the time I was putting my money down,
 7 he said that meant the prices changed every year. I'm
 8 going, yes, MSRP changes every year, and we don't know what
 9 that's going to be, so he can't guarantee what that price
 10 is going to be. When it came time to buy the bike, then that
 11 statement changed to I can charge you anything I want.

12 And there was a third thing. I can't remember
 13 what it was right now, but if you show me the disclaimer,
 14 I'll tell you what their little twist on that one was.

15 Q. When do you first recall being asked to sign
 16 any disclaimers? Were you asked to sign these disclaimers?

17 A. You mean the receipt I was given for my money?
 18 I don't remember at all.

19 Q. These disclaimers you're talking about were
 20 located on the receipts that you received?

21 A. On one. I've just seen the disclaimer. I
 22 don't remember if it was on one of my receipts. It could
 23 have been. I do know that the disclaimer got longer from
 24 one receipt to the next. I seem to remember that. It was
 25 like, if I remember right, a red stamp.

1 time.

2 Q. But you would read through the brochures
 3 carefully?

4 A. Yeah, I was interested in the bikes.

5 Q. Between the time you put your name on the
 6 waiting list in '95 for the '98 Heritage until the time you
 7 discovered you supposedly paid too much for the '97 bike,
 8 did you have any discussions with Twin City Harley-Davidson
 9 about the price of that red '98 Heritage?

10 A. Other than the disclaimers they put on the
 11 receipt that I got, we didn't have any discussions on the
 12 price specifically.

13 Q. What disclaimers are you talking about,
 14 Mr. Carter?

15 A. Well, I had an interesting discussion. I
 16 can't remember if it was Mike beforehand or Mike afterwards
 17 or Dave beforehand, but they had three provisions on the
 18 disclaimers. One of them was they couldn't guarantee a
 19 specific model bike. At the time I was putting my money
 20 down and my name on the list, they said you can wait three
 21 years for a model that Harley isn't making anymore. Put
 22 your name down now for a Bad Boy in '95, and in '98, when
 23 it comes in, there are no Bad Boys. They don't make them.
 24 So they can't possibly guarantee that.

25 When it came time for me to buy my bike, he

1 Q. So it's possible these disclaimers weren't
 2 present on your receipts?

3 A. Possible.

4 Q. If they weren't on your receipts, where would
 5 you have come to know of these disclaimers?

6 A. Showed me the disclaimer on another receipt or
 7 a disclaimer that he said he gave to everybody when they
 8 got receipts.

9 Q. I want your best recollection of when you
 10 first became aware of these disclaimers.

11 A. I believe it would have been in the
 12 discussions at the time I found out about the extra price I
 13 paid on my '97 and was trying to make sure I didn't have to
 14 pay that on my '98, somewhere in that period of time.

15 Q. So prior to that, you would have never been
 16 asked to sign one of these disclaimers or had any
 17 discussions or conversations with anybody about the
 18 contents of these disclaimers?

19 A. I don't remember having any, and I don't ever
 20 remember being asked to sign a receipt. They were giving
 21 me a receipt for the money I gave them. I don't know why I
 22 would have signed anything. I may have. I just don't
 23 remember.

24 Q. I think we started talking about these
 25 disclaimers because I asked you if you had had any other

1 conversations or communications with anybody at Twin City
 2 Harley-Davidson about the price of the second motorcycle
 3 between the time you placed your name on the waiting list
 4 for that motorcycle until the time you learned or believed
 5 that you had been overcharged for the '97 motorcycle. Were
 6 there any other communications with Twin City
 7 Harley-Davidson about price during that time?
 8 A. On the price of my '98 red Heritage?
 9 Q. Correct.
 10 A. Prior to me finding out that they had ripped
 11 me off on the '97, no, I do not remember any. Nothing
 12 would trigger me to let me know that that price was going
 13 to be up there.
 14 Q. Now, eventually the '98 Heritage became
 15 available to you. Correct?
 16 A. Yes.
 17 Q. And what happened when that motorcycle became
 18 available to you?
 19 A. I remember distinctly looking up the price
 20 MSRP on the bike, and when Dave Borri called me and told me
 21 the bike was in, I asked him what was the price. And he
 22 told me the price over the phone, and I said that's still
 23 got the \$1500. Mike Kuelbs said he would take care of me.
 24 Dave said I don't know anything about that. I said don't
 25 worry about it. I'll talk to Mike.

1 the price of that motorcycle would be?
 2 A. Yes, I did.
 3 Q. And I want to know as best you can recall
 4 today verbatim what was said during that conversation.
 5 A. I had more than one. And to recall verbatim
 6 would be doing an injustice to both of our memories. Mike
 7 denied that he gave me the impression that he was going to
 8 insulate me from the \$1500. I told him specifically that
 9 that's what he led me to believe, and we disagreed on that.
 10 Then he went into a long dissertation about how he needed
 11 to get in on the market value and that was perfectly okay
 12 for him to do that. And then Leo came in, his father --
 13 THE WITNESS: He's your father. Right?
 14 A. Anyway, and then they pulled me off the floor
 15 because I guess I was getting loud, and we went into an
 16 office. Now, this might have been three or four
 17 conversations later. And they went in justifying charging
 18 the higher prices, and I couldn't get them to understand
 19 that they can do that and I don't care, but don't take my
 20 money when we have a deal here and change the deal later.
 21 That's what I had my problem with. When I gave my money, I
 22 believed it was going to be at MSRP or what I believed they
 23 were selling the bikes for at that time. And I had nothing
 24 to feel they were doing anything differently.
 25 Q. Did you reach an agreement with respect to

1 Q. What happened next?
 2 A. Then he went in and talked to Mike.
 3 Q. And what was said?
 4 A. Mike denied ever having that conversation with
 5 me.
 6 Q. Had Mr. Kuelbs ever said anything more
 7 specific to you than "I'll take care of you"?
 8 A. I don't believe so. Just left me with the
 9 impression that I wasn't going to have to pay the \$1500,
 10 and I let it go.
 11 Q. Did you ever ask for any clarification as to
 12 what that meant, "I will take care of you"?
 13 A. I told him very clearly exactly what I wanted.
 14 I did not want to pay that \$1500. And his response to that
 15 was, Don't worry, John, I will take care of you.
 16 Q. Did you tell Mr. Kuelbs what you based your
 17 claimed entitlement to MSRP on?
 18 A. I don't know if he asked. Oh, I do remember
 19 saying that that's what the deal was when I left my money.
 20 And now that he decided to charge market value on his
 21 bikes, which is certainly his right, that's fine, but when
 22 I made my deal, that's what they weren't charging, so don't
 23 change my deal. That was my premise.
 24 Q. Eventually you, when your bike became
 25 available, you had a discussion with Mr. Kuelbs about what

1 price at that time?
 2 A. Not to my satisfaction. He stuck with his
 3 price and that was the way it was, period. He gave me a
 4 \$50 T-shirt to appease my anger.
 5 Q. Did Twin City Harley-Davidson make any other
 6 accommodations for you at that time?
 7 A. You know, I believe they offered something,
 8 and I don't believe I took it, but I don't remember what it
 9 was, to be honest with you. I think it was \$100 or
 10 something. I don't remember, now that you bring it up.
 11 Q. Can you remember anything else about your
 12 conversations with Mr. Kuelbs or Leo Kuelbs? When I say
 13 Mr. Kuelbs, I mean Mike Kuelbs.
 14 A. I can't right now. We had many discussions.
 15 We spent a lot of time, and that would be more than the
 16 time we spend here talking about it. All I can tell you is
 17 my impressions and the things that I remember he said. We
 18 weren't happy with each other and how things ended up.
 19 Q. It's accurate to say you can't remember
 20 specifically anything else that was said between you at
 21 that time?
 22 A. Not without being triggered. I'm sure if I
 23 was talking to Mike and he said some of the things he
 24 remembered, it would trigger things to remember back and
 25 forth, but that's the best I can remember right now. I

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1 I know there was more.
 2 Q. And this red '98 Heritage is a motorcycle you
 3 then sold to Wally McCarthy?
 4 A. I traded it.
 5 Q. Traded it?
 6 A. Yes.
 7 Q. Now, you're claiming damages for a third
 8 motorcycle.
 9 A. Yes.
 10 Q. Why don't you tell me about that motorcycle.
 11 A. I believe that was another standard.
 12 Q. And had you placed your name on the waiting
 13 list for that motorcycle?
 14 A. Yes. And I placed it split with a friend of
 15 mine, Bob Hammond, a guy I grew up with.
 16 Q. How do you spell Mr. Hammond?
 17 A. H-A-M-M-O-N-D, Hammond.
 18 Q. What type of motorcycle was that?
 19 A. Another standard.
 20 Q. Is there a model name for that?
 21 A. FLT, same as the first one.
 22 Q. Do you remember when you placed your name on
 23 the waiting list for that bike?
 24 A. A year and a half, two years prior to when it
 25 was supposed to come in, and I believe it was going to be a

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1 '99.
 2 Q. So would this have been after you had placed
 3 your name on the waiting list for the two other bikes we've
 4 talked about?
 5 A. Yes.
 6 Q. Do you remember who you dealt with for this
 7 transaction?
 8 A. I'm sure it was Dave Borri.
 9 Q. And are you claiming you expected to get that
 10 bike at MSRP as well?
 11 A. I can't remember when we went on the list. I
 12 believe it would have been prior to me even knowing what I
 13 paid for my '97.
 14 Q. But are you claiming you believed you were
 15 going to get that bike at MSRP as well?
 16 A. Yes.
 17 Q. Do you base that claim on the same reasons you
 18 thought you were going to get the other bikes at MSRP?
 19 A. I believe so.
 20 Q. Do you base it on anything other than what
 21 we've already talked about here today?
 22 A. No. The conversation with Mike, I believe I
 23 probably -- I can't tell the dates. I don't remember. I
 24 really don't when I got on the list.
 25 Q. You started to refer to a conversation you had

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1 with Mike. Is there a specific conversation you were going
 2 to tell me about?
 3 A. Well, I was going to tell you again the one
 4 about where he said he'd take care of me, but I don't
 5 remember if it happened after that or before that. Before
 6 that conversation, I didn't know that they were charging
 7 extra. After that conversation, there was a short period
 8 of time before my next bike come in and I found out he
 9 wasn't going to honor what I thought we had an agreement,
 10 and I don't remember which time frame it was, but I'm sure
 11 it was before I purchased my '98 Heritage. And that is
 12 when I knew for sure that they were going to, no matter how
 13 much I negotiated, charge me the \$1500. So any time prior
 14 to that that I got on the list, I would have assumed I was
 15 getting it at MSRP.
 16 Q. And eventually that motorcycle became
 17 available?
 18 A. It actually became available a couple of
 19 times. I was supposed to get a -- and I don't remember the
 20 year. But I was supposed to get one year newer, and they
 21 called me and said I could take the one year older one
 22 quicker. And I said I didn't want that, I wanted to hold
 23 out for the newer one. And then after a couple of months
 24 went by, I talked to my friend --
 25 Q. Let me stop you there. As part of this

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1 communication where they offered you a one year older bike,
 2 was there any discussion about price at that time?
 3 A. No. We didn't discuss price.
 4 Q. Do you remember when that was that you were
 5 notified that a one year older model was available to you?
 6 A. No, but I remember it was Dave Borri telling
 7 me that it was available.
 8 Q. Okay. What happened next?
 9 A. I said I'd wait for the next bike. And
 10 somewhere in that period of time, I finally -- this suit
 11 started up and we had the conversations with Mike, and it
 12 just came to realize that there was no way I was going to
 13 get around the \$1500. And the reason my friend was on
 14 there was so I could get him a bike, and I didn't want him
 15 paying the extra money. So I just suggested to him that
 16 even though we'd been waiting, just to drop off and get a
 17 bike somewhere else. I'd get him one somewhere else and
 18 not have to pay that kind of money. So we together agreed
 19 to get off the list.
 20 Q. Explain to me again why your friend's name was
 21 on the list with you.
 22 A. Remember when you started out about selling
 23 places on the list? My 1997 Heritage, the standard that
 24 came in, I wanted to give that bike to my friend. Okay?
 25 And I wanted him to buy it directly and get my price. Mike

1 said that's not allowed specifically. I said I grew up
2 with this guy. I'm not trying to make a profit. He said
3 we don't do that because people do it to make profit. They
4 sell to the third guy for the same price, but then there's
5 money that goes under the table in profit, and he didn't
6 like not getting in on that profit. So he kept the list.
7 You can't sell your place.

8 So I went and got on the list with my friend
9 so that either one of us could have bought the bike. And
10 that was a compromise, discussing the place on the list,
11 that he allowed me and Dave Borri allowed it, and so we
12 both sat and waited on the bike. The reason I had my name
13 on it at all is because I live next to Twin City South. He
14 lives up in Blaine. So I'm always in close contact. I can
15 suggest to him what to get on it for options because I've
16 had a lot of bikes. So that's the whole story.

17 Anyway, we just gave up. It wasn't going to
18 happen. I really didn't want to deal with South anymore,
19 and I said forget the bike.

20 Q. Let me make sure I understand your story here,
21 Mr. Carter. You originally tried to get Mr. Kuelbs to let
22 your friend, Mr. Hammond, take your spot on the list for
23 the very first bike we talked about?

24 A. Yes.

25 Q. And Mr. Kuelbs didn't let you do that?

1 A. I don't think so, no.

2 Q. Did you ever have any discussions with
3 Mr. Hammond about how that actual motorcycle would be paid
4 for if the two of you ultimately purchased it?

5 A. Well, the two of us wouldn't. It would go
6 into either one or the other's name. But if something
7 happened or the Harley dealer insisted they go in both of
8 our names, that's not a problem because one of us could
9 take our name off the title at any time without any extra
10 hassle. It would have worked that way, I believe. I've
11 never done it before, but I assume it would have worked
12 okay.

13 Q. Did you ever discuss with Mr. Hammond in fact
14 how you would handle that transaction if you purchased the
15 bike?

16 A. Yeah. He was going to pay for it.

17 Q. Did you ever discuss who was going to take
18 title to the motorcycle?

19 A. Yes. He would. It was going to be his bike.

20 Q. And you said Mr. Hammond lives in Blaine?

21 A. He's north. He probably doesn't live exactly
22 in Blaine. That's not the township, but he's way north.

23 This is the way it would work: Like I say,
24 we've been friends since we were 13. If at the time the
25 bike came in he could not afford it, then I would just take

1 A. Correct.

2 Q. So at that time you decided to place your name
3 on the list for yet a third motorcycle?

4 A. Don't know if it was at that time.

5 Q. But sometime subsequent to that you decided to
6 put both of your names on the waiting list?

7 A. Correct.

8 Q. And why was it that you couldn't just put his
9 name on the waiting list?

10 A. Because I was the contact. I knew about the
11 bike. He trusted my judgment as far as what options he
12 should get right away. If my name was not on the list,
13 then I would have no place in negotiations or setting up
14 anything for extras. You see what I'm saying? It wouldn't
15 be any of my business if I wasn't on the list, and I think
16 we all saw it that way.

17 Q. Mr. Carter, are you familiar with the practice
18 called co-titling?

19 A. Would that be putting both of our names on the
20 title?

21 Q. Yes.

22 A. Okay. I'm not familiar with it, but I'm sure
23 it would work just fine.

24 Q. Have you ever participated in a practice like
25 that?

1 it and put it in my name, drive it for a year and sell it.

2 It was going to go either way. If he could afford it at
3 that time, then he would take the bike.

4 I put my name on there specifically because I
5 was encouraging him to buy one. He always wanted one but
6 didn't know if he would be in a financial position at the
7 time, so it just didn't matter.

8 Q. I thought you said earlier that you were going
9 to get the bike at a certain price for Mr. Hammond.

10 A. I don't understand the question. I was going
11 to get the bike at a certain price. Anytime I bought a
12 bike from South, I thought it was going to be at MSRP. I
13 don't know what you're saying. The reason I didn't buy the
14 '97 and give it to Bob Hammond because I would have paid
15 sales tax and he would have had to pay sales tax. And
16 that's tax on another \$1,000 on the price of the bike,
17 that's just money that's going down the drain.

18 Q. Explain that to me. Why would that have
19 worked that way?

20 A. Well, if I buy a bike, I pay sales tax on it.
21 If I sell it to you, then you pay sales tax on it too. If
22 you sell it to someone else, then they pay sales tax on it
23 too. I have never skipped title. I don't play games or
24 things like that. I try and do things straight up.

25 Q. Did Mr. Hammond have any separate negotiations

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1 with anybody at Twin City Harley-Davidson?
 2 A. I don't believe he's ever talked to anybody
 3 over there or ever been in the store.
 4 Q. And you ultimately made the decision not to
 5 purchase this third motorcycle?
 6 A. We ultimately, Bob and I ultimately made the
 7 decision not to purchase that bike when I told him on the
 8 price.
 9 Q. Did you make any efforts to buy a comparable
 10 bike anywhere else?
 11 A. No, not for Bob. He wasn't in a position to
 12 buy at that time.
 13 Q. Did you make any attempts to buy a comparable
 14 bike anywhere else?
 15 A. Comparable bike? No. I've bought other
 16 Harleys.
 17 Q. But that model that you were on the waiting
 18 list for, did you make any efforts to buy a comparable bike
 19 when you decided you weren't going to pay that price at
 20 Twin City Harley-Davidson?
 21 A. The Standard that I was on the waiting list
 22 for? The latest one that I did not take?
 23 Q. Yes.
 24 A. That was for Bob Hammond. I wasn't interested
 25 in that model anymore. I had already had one.

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1 Q. When did you learn that Bob Hammond wasn't in
 2 a position to buy that bike?
 3 A. When I discussed with him my thoughts about
 4 where the price was going to be and what he should
 5 ultimately do. He said, Well, I'm not in a position to buy
 6 now. And I said, Well, the bike is not available now
 7 anyway, but when it is, I don't want you buying it from
 8 them or paying the extra money. If you want one, let me
 9 know, and I'll try and get you one.
 10 Q. I want to just clarify something. Did this
 11 bike ever become available?
 12 A. No, other than when I told you they called me
 13 and said I could have last year's model. Other than that,
 14 no.
 15 Q. That was the last discussion with --
 16 A. As far as availability goes, yes. I got off
 17 the list before they called me and said the next one is
 18 available.
 19 Q. Okay. And that was because you knew then that
 20 you weren't going to get the bike at MSRP?
 21 A. I knew that because I had a discussion just
 22 before I got off the list about what they were going to
 23 charge me for that next bike.
 24 Q. Subsequent to that time, you've purchased
 25 additional Harley-Davidson motorcycles?

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1 A. Yes.
 2 Q. Have you ever purchased any additional
 3 motorcycles from Twin City Harley-Davidson?
 4 A. No.
 5 Q. Where have you purchased your subsequent
 6 Harley-Davidson motorcycles?
 7 A. St. Croix, Faribault, maybe St. Paul.
 8 Q. Do you know how many bikes you've purchased
 9 since you declined to -- strike that -- since you decided
 10 to get off the waiting list for that third motorcycle at
 11 Twin City Harley-Davidson?
 12 A. I can think of three.
 13 Q. Why don't you tell me about those bikes.
 14 A. I had two '99 matching Softail Standards. My
 15 wife and I set up our dream motorcycles, and we put \$3500
 16 of Harley extras in each motorcycle. And we had those in
 17 '99 from spring until fall.
 18 Q. Where did you obtain those motorcycles?
 19 A. One was from St. Croix, and one was from
 20 Faribault.
 21 Q. Did you have to put your name on a waiting
 22 list for either of those bikes?
 23 A. Yes.
 24 Q. Do you still have either of those bikes?
 25 A. No.

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1 Q. Do you know who you sold those motorcycles to?
 2 A. Yeah, I can kind of remember. I can't
 3 remember the guy's name, but it was a stranger I met in
 4 front of a shopping mall. He was taking his girlfriend for
 5 a ride on a Buell. I said you should have this bike, and a
 6 couple of weeks later he bought it.
 7 And the second motorcycle, the one that I
 8 modified for my wife, was very short. I sold it to my
 9 son's wife's sister.
 10 THE WITNESS: I'm not keeping you awake,
 11 am I?
 12 Q. Do you know if you made a profit on the sale
 13 of either of those motorcycles?
 14 A. Yes, I know.
 15 Q. Did you or didn't you?
 16 A. Did not. Sold them both at a loss.
 17 Q. You indicated there may have been a third
 18 motorcycle that you have obtained since then?
 19 A. I had a 2000 Heritage.
 20 Q. And did you obtain that one from St. Paul
 21 Harley?
 22 A. No, Faribault.
 23 Q. Do you still have that motorcycle?
 24 A. No.
 25 Q. Do you remember who you sold that one to?

1 A. No, I can't remember his name. He was an
 2 attorney.
 3 Q. Do you know if you sold that one for more or
 4 less than you had originally paid for it?
 5 A. I got my sales tax back on that one.
 6 Q. How long did you have that 2000 bike before
 7 you sold it?
 8 A. Couple months.
 9 Q. You indicated that you purchased a bike from
 10 St. Paul Harley.
 11 A. Purchased a bike from St. Paul?
 12 Q. Yes.
 13 A. I can't remember what bike that was. I
 14 remember leaving St. Paul and driving it home. And I don't
 15 remember what kind of bike it was, to be honest with you.
 16 I think it was a -- I just don't remember. I think it was
 17 a Softail Custom. That's what I was into, Customs and
 18 Heritages.
 19 Q. And was this subsequent to your transactions
 20 at Twin City Harley-Davidson?
 21 A. I don't remember the time frame.
 22 Q. But you ultimately sold that motorcycle as
 23 well. Correct?
 24 A. Yes.
 25 Q. Do you remember who you sold that motorcycle

1 during that period of time?
 2 A. I can remember the dealers I dealt with in
 3 general, but I don't know which bikes I bought when and how
 4 they fit in between other bikes. I'm sorry.
 5 Q. Do you know if you ever paid MSRP or less than
 6 MSRP at any other dealers that you purchased motorcycles
 7 from?
 8 A. All my prices that I ever bought motorcycles
 9 for were based on MSRP except Twin City South.
 10 Q. No, that's not my question. All prices are
 11 based on MSRP in some way or the other.
 12 A. Except Twin City South. He specifically said
 13 his prices are not based on MSRP. They're based on market
 14 value.
 15 Q. I want to know if at any other dealer you've
 16 dealt with other than Twin City Harley-Davidson, the price
 17 you paid for those motorcycles was either at MSRP or
 18 somewhere below MSRP.
 19 A. They were all at MSRP plus whatever extras I
 20 had on there.
 21 Q. So you never paid more than MSRP at any other
 22 dealers that you purchased a motorcycle from?
 23 A. No. MSRP, freight and setup, and then my
 24 extras. That's it.
 25 Q. Do you remember how much you paid for freight

1 to?
 2 A. If I remember, it was a '98 Softail Custom. I
 3 sold a '98 Softail Custom to a priest or a minister in
 4 Farmington by the name of Sboli, S-B-O-L-I, something like
 5 that, a minister. He officiated at a friend of mine's
 6 funeral. That's how I met him.
 7 Q. Do you know if you sold that one for more or
 8 less than you had paid for it?
 9 A. No. Plus all the options I had on it, I don't
 10 remember, but it was close. I might have retrieved my
 11 sales tax back on that one too.
 12 Q. Do you remember how long you owned that bike
 13 before you sold it?
 14 A. Most of the summer. That's all I can think
 15 of.
 16 Q. While your name was on the waiting list for
 17 the three bikes we've talked about at Twin City
 18 Harley-Davidson, did you purchase any Harleys from any
 19 other dealers during that period of time?
 20 A. I would say probably.
 21 Q. Do you remember which bikes you purchased
 22 during that period of time you were waiting for motorcycles
 23 at Twin City Harley-Davidson?
 24 A. No, I can't.
 25 Q. Do you remember what dealers you dealt with

1 can setup at these other dealers?
 2 A. No, I don't. It varied, but mostly it was
 3 what was in the book, in the price book.
 4 Q. Can you give me a ballpark figure as to what
 5 you were paying for freight and setup at these other
 6 dealers?
 7 A. Between four and a half, somewhere around
 8 there, four and a half, five hundred, depending on
 9 different models had different amounts.
 10 Q. \$500?
 11 A. Four and a half, five hundred. Four and a
 12 half usually I think. Four hundred, four and a half.
 13 Q. Do you remember if freight and setup was
 14 included in the price you were paying for your motorcycles
 15 at Twin City Harley-Davidson?
 16 A. It was never mentioned.
 17 Q. So to the extent you believe you were paying
 18 over MSRP, that included freight and setup at Twin City
 19 Harley-Davidson?
 20 A. I had no reason to believe that. It
 21 included -- the price they gave me included everything,
 22 whatever they wanted to make it.
 23 One thing they specifically did not call it
 24 was additional dealer markup, which is what it was.
 25 Q. What was your understanding as to whether you

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1 were being charged for freight and setup at Twin City
2 Harley-Davidson?

3 A. I don't remember a discussion about it. Are
4 you referring to them justifying the \$1500? Is that what
5 you're asking?

6 Q. My question is simple. I want to know what
7 your understanding was as to whether you were being charged
8 freight and setup at Twin City Harley-Davidson.

9 A. I don't remember a discussion about it.

10 Q. Did you ever ask about it?

11 A. I don't remember it ever coming up.

12 Q. And you had paid some amount representing
13 freight and setup over and above the MSRP price at other
14 dealers?

15 A. Yes.

16 (At this time Terrance John Carter Deposition
17 Exhibit Number 1 was marked for identification
18 by the Court Reporter.)

19 Q. Mr. Carter, I want to show you what's been
20 marked as Deposition Exhibit Number 1. I ask you to take a
21 look at that, please.

22 A. (Witness complies.)

23 Q. Do you recognize that document? And, in
24 particular, I'd like you to pay attention to the right side
25 of the document which at the bottom reflects that it's

1 about finally doing that, so we were going to get another
2 Shrine bike to proudly show, something that we didn't do
3 last time. But, anyway, I wasn't in a position or
4 something happened. I don't remember why I didn't get in
5 on it. I think I gave up my spot for one of the guys in
6 Minneapolis. Those guys are serious about their riding,
7 and one guy was short.

8 Q. I want to call your attention to the left side
9 of the document.

10 A. Okay.

11 Q. At the bottom, you can't see it very well, but
12 it appears to be Receipt Number 20795.

13 A. I can't verify that number.

14 Q. Do you see that document I'm referring to?

15 A. Yeah, on the left side of the copy you gave
16 me, yes.

17 Q. And do you see toward the bottom of that
18 document it says \$250 from Invoice Number 2306?

19 A. Oh, okay. All right. That's probably where
20 it went.

21 Q. Do you recognize that document?

22 A. I don't remember it. I really don't. But I
23 wasn't aware of other than the money that was charged on my
24 bikes that they had done anything wrong on the other money.
25 The down payments and moneys I gave I thought were always

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1 Receipt Number 2306.

2 A. Okay.

3 Q. Do you recognize that document?

4 A. No, I don't remember. I see the word
5 "Shriner" on there, so that must go back to '91. Oh, no, I
6 had one on order, I guess, but I never took it. I was
7 involved in the ordering of -- I remember when they
8 specifically beat Mike up pretty badly, and I don't
9 remember if he finally got the order or if I went to
10 Faribault, but I was somehow in on that. I even wrote a
11 letter because I believed those were white Shrine bikes
12 they were going to supply and the Shriners didn't want
13 them. Anyway, that's all I can remember about that. I
14 never did get a bike.

15 Q. Well, did you, in fact, place a deposit down
16 for a Shriner-bike at that time?

17 A. I don't remember. It looks like I did. And
18 if I did, I don't remember getting it back.

19 Q. Can you tell me why you would have been
20 interested in a Shriner bike at that time?

21 A. I liked the bikes. And you didn't ask, but
22 the breakup between St. Paul and Minneapolis, Minneapolis
23 has 24 Shrine bikes and St. Paul has two. And the other
24 guy didn't like to ride parades and therefore I didn't ride
25 alone. That's why we didn't ride parades. We had talked

1 straight up.

2 Q. It appears that your deposit originally placed
3 on August 22, 1994, was being used for an additional bike
4 you're being placed on the waiting list for on December
5 14th, 1995?

6 A. That would have been the 1997 one that I
7 finally ended up purchasing, I believe.

8 (At this time Terrance John Carter Deposition
9 Exhibit Number 2 was marked for identification
10 by the Court Reporter.)

11 Q. Mr. Carter, I want to show you what's been
12 marked as Deposition Exhibit Number 2. Do you recognize
13 that document?

14 A. No, not particularly, but it looks like a
15 receipt for money. Okay.

16 Q. You've had a chance to review the document?

17 A. Yes.

18 Q. Does it refresh your recollection at all what
19 it represents?

20 A. It appears to be the deposit I put on one of
21 the Standards that was refunded to me when I decided not to
22 buy it.

23 Q. Would this be the bike that you were
24 interested in buying with John Hammond?

25 A. Bob Hammond?

1 Q. Bob Hammond, I'm sorry.
 2 A. I believe so. It would appear that's the
 3 bike.
 4 Q. The bottom of the document reflects that you
 5 were refunded that money on 11/1/99.
 6 A. I believe I got that money.
 7 Q. Does that sound accurate?
 8 A. It seems reasonable, yes.
 9 (At this time Terrance John Carter Deposition
 10 Exhibit Number 3 was marked for identification
 11 by the Court Reporter.)
 12 Q. Mr. Carter, I'd like you to take look at
 13 what's been marked as Deposition Exhibit Number 3. Do you
 14 recognize that document?
 15 A. No. I'd have to look it over and try to
 16 figure out what bike it is.
 17 Q. Go ahead and take a few seconds.
 18 A. I'm trying to think. That looks like the '98
 19 Heritage, the red one. Yes. Okay. That's the one I
 20 traded. Okay.
 21 Q. And this would be the last motorcycle that you
 22 actually purchased from Twin City Harley-Davidson?
 23 A. I believe so, yes.
 24 Q. And is that your signature in the box entitled
 25 "Dealer's Disclaimer of Warranty"?

1 A. Until I heard about the lawsuit, I thought I
 2 was the only one that really made a lot of noise over what
 3 they did. I didn't care for it. Mike told me that was
 4 their policy and that's what they were doing. I was
 5 surprised more people weren't complaining, but I just take
 6 care of myself. I did what I could do. I couldn't do
 7 anymore, so I just quit dealing with them.
 8 Q. Mike told you this was their policy?
 9 A. Mike said that what he was charging me here
 10 was their policy.
 11 Q. When did he tell you that?
 12 A. When he insisted that I pay that price. He
 13 said that's their policy, they charge everybody that.
 14 Q. By policy, you mean charging over MSRP?
 15 A. I believe he meant that, yes.
 16 Q. Other than any conversations or discussions
 17 with your attorneys, have you ever been contacted by anyone
 18 about either this lawsuit that we're presently in or the
 19 class action, the prior class action lawsuit?
 20 A. No, not that I can recall.
 21 Q. Have you ever been contacted by anyone from
 22 St. Croix Harley-Davidson about either of those lawsuits?
 23 A. No.
 24 Q. Have you ever been contacted by anybody at
 25 Wally McCarthy's regarding either of these two lawsuits?

1 A. Yes, it looks like it.
 2 Q. And although it appears to be partially cut
 3 off at the bottom of the page, does that appear to be the
 4 top of your signature?
 5 A. On the lower right corner?
 6 Q. Yes.
 7 A. It appears to be.
 8 Q. Does this document accurately reflect the
 9 price that you paid for that '98 red Heritage?
 10 A. It looks like it.
 11 Q. Did you have an opportunity to read this
 12 document before you signed it?
 13 A. They always give you an opportunity. Did I
 14 read it? No, not actually. I looked over the figures.
 15 Complained.
 16 Q. Mr. Carter, do you have any knowledge or
 17 evidence to suggest that this was a practice or pattern on
 18 the part of Twin City Harley-Davidson to supposedly promise
 19 people bikes at MSRP?
 20 A. I'm sorry, you'll have to repeat the question.
 21 I remember the first part, what you were asking me.
 22 Q. Do you have any knowledge or evidence to
 23 suggest that this was a pattern or practice on Twin City
 24 Harley-Davidson's part to supposedly offer bikes to people
 25 at MSRP?

1 A. I said nobody.
 2 Q. Mr. Carter, did you attend the International
 3 Motorcycle Show which was held here in Minneapolis a few
 4 years back?
 5 A. I have no idea. I've been to a couple
 6 motorcycle shows. I've missed a couple good ones. I don't
 7 know which one you're talking about.
 8 Q. Motorcycle Shows here in the Twin Cities
 9 you've attended?
 10 A. Yes.
 11 Q. Within the past four to five years?
 12 A. Yes, one or two for sure.
 13 Q. Have you ever had any discussions with anybody
 14 at any of those shows regarding Twin City Harley-Davidson?
 15 A. I can honestly say whenever I've been anywhere
 16 around motorcycles, we've had discussions about Twin City
 17 Harley-Davidson and their negative policies toward
 18 customers.
 19 Q. Who have you discussed Twin Cities' policies
 20 with other than your attorneys?
 21 A. Anybody that owned a Harley. Any and
 22 everybody.
 23 Q. Can you recall any of those people that you
 24 talked to, their names?
 25 A. Other than my friends and relatives, no, I

1 don't.

2 Q. Do you recall having any discussions with

3 anybody involved in the Harley-Davidson business about Twin

4 City Harley-Davidson practices?

5 A. Other than the discussions I had inside the

6 dealership, no, with the various salesmen. Would you

7 rephrase that question, because there might be something I

8 have to answer differently?

9 Q. I'm curious if you've ever had any discussions

10 or communications with anybody in the Harley-Davidson

11 business regarding Twin Cities Harley-Davidson practices.

12 A. Yes, other dealers too.

13 Q. What other dealers have you talked to about

14 Twin Cities Harley-Davidson's practices?

15 A. Probably every dealer I've ever dealt with.

16 Q. And what have you talked about with them?

17 A. How I was unhappy particularly how they

18 treated me. They changed my deal from Point A to Point B.

19 Q. Have you ever had any discussions with any

20 factory personnel from Harley-Davidson?

21 A. No. I don't know anybody. I don't know if

22 I've ever talked to anybody, factory people.

23 Q. Have you ever run any advertisements that have

24 referenced Twin City Harley-Davidson?

25 A. I know my son-in-law did, and I wanted to, but

1 DIRECT EXAMINATION

2 BY MR. ISAACSON:

3 Q. Regarding Exhibit Number 3, would you take a

4 look at that again, please?

5 A. (Witness complies.) Yes.

6 Q. Would you look at the back of that sheet? Is

7 there anything on the back?

8 A. No.

9 Q. Was there anything on the back of the original

10 of that bill of sale when you signed it?

11 A. A lot of fine print.

12 Q. Okay. So that's not the entire agreement?

13 A. Certainly not.

14 Q. Okay.

15 MR. ISAACSON: That's all I have. You

16 have the right to read the transcript of this deposition to

17 make any corrections of errors or wrong answers or

18 whatever. That would involve you going either to the court

19 reporter's location or our office to sit down and read it

20 and writing out corrections on a separate page. You also

21 have the right to waive that reading. And I would

22 recommend that you read it.

23 THE WITNESS: I will not waive the

24 reading.

25 MR. ISAACSON: Thank you.

1 I don't know if I did.

2 Q. Tell me about your son-in-law's advertisement.

3 A. I don't remember. I just thought he did

4 something that had something to do with it. He just

5 mentioned that he didn't buy from -- or didn't get ripped

6 off from Twin Cities South on a bike he was selling so that

7 people wouldn't think the price was too high for him to

8 resell it, something to that effect.

9 Q. And where did he place that ad?

10 A. I believe it was in the Star and Tribune. I

11 never saw it myself.

12 Q. Have you ever placed ads?

13 A. I told you I had.

14 Q. That refer to or reference Twin City

15 Harley-Davidson in any way?

16 A. I remember thinking about it. I don't

17 remember if I ever did. I honestly don't remember.

18 Q. It's possible you did?

19 A. It's possible. I'd liked to have.

20 MR. LAFEVER: That's all I have,

21 Mr. Carter. Thank you very much for your time.

22 THE WITNESS: Thank you.

23 MR. ISAACSON: I've got a couple of

24 questions, I think.

25 ///

1 (Whereupon, at 4:50 p.m., Monday, November 13,

2 2000, the taking of the deposition of TERRANCE

3 JOHN CARTER was adjourned.)

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1 (TERRANCE JOHN CARTER)

2

3 I, TERRANCE JOHN CARTER, do hereby certify
4 that I have read the foregoing transcript of my Deposition
5 and believe the same to be true and correct (or except as
6 follows, noting the page and line number of the change or
7 addition desired and the reason why):

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24 Dated this _____ day of _____, 20____.

25 (RDH)

1 STATE OF MINNESOTA)
2 COUNTY OF WRIGHT) ss.

3 Be it known that I took the deposition of TERRANCE
4 JOHN CARTER on the 13th day of November, 2000, at
5 Metropolitan Centre, Suite 1800, 333 South Seventh Street,
6 Minneapolis, Minnesota;

7 That I was then and there a Notary Public in and for
8 the County of Wright, State of Minnesota, and that by
9 virtue thereof, I was duly authorized to administer an
10 oath;

11 That the witness before testifying was by me first
12 duly sworn to testify the whole truth and nothing but the
13 truth relative to said cause;

14 That the testimony of said witness was recorded in
15 Stenotype by myself and transcribed into typewriting under
16 my direction, and that the deposition is a true record of
17 the testimony given by the witness to the best of my
18 ability;

19 That the cost of the original transcript has been
20 charged to the party noticing the deposition, unless
21 otherwise agreed upon by Counsel, and that copies have been
22 made available to all parties at the same cost, unless
23 otherwise agreed upon by Counsel;

24 That I am not a relative to any of the parties hereto
25 nor interested in the outcome of the action;

That the reading and signing of the deposition by the
witness was executed as evidenced by the preceding page;

That Notice of Filing was waived.

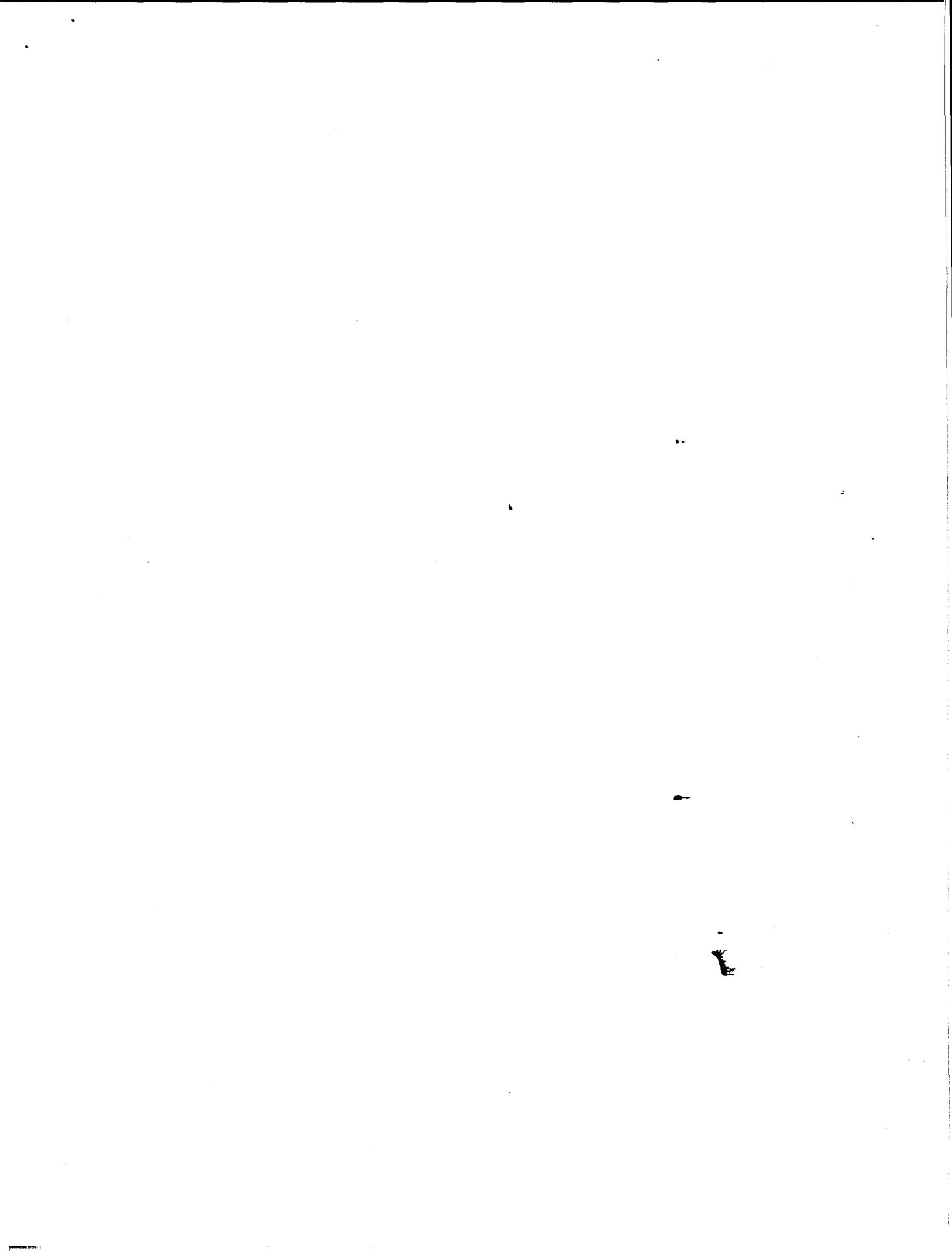
WITNESS MY HAND AND SEAL this _____ day of
_____, 2000.

21

22

23

24 Randall D. Herrala, RPR
25 Court Reporter



1 STATE OF MINNESOTA DISTRICT COURT
 2 COUNTY OF ANOKA TENTH JUDICIAL DISTRICT
 3
 4
 5
 6 Twin Cities Harley-Davidson,
 7 Plaintiff,
 8
 9 vs.
 10
 11 DAVID Lund,
 12 Defendant.

13
 14
 15 The Deposition of DANIEL M. LUND, taken
 16 pursuant to Notice of Taking Deposition, taken before
 17 Randall D. Herrala, RPR, a Notary Public in and for the
 18 County of Wright, State of Minnesota, taken on the 9th day
 19 of November, 2000, at Metropolitan Centre, Suite 1700, 333
 20 South Seventh Street, Minneapolis, Minnesota, commencing at
 21 approximately 11:40 a.m.

1 DANIEL M. LUND,
 2 the Witness in the above-entitled
 3 matter after having been duly sworn
 4 deposes and says as follows:
 5

6 CROSS-EXAMINATION

7 BY MR. LAFEBER:

8 Q. Good morning, Mr. Lund.
 9 A. Good morning.
 10 Q. My name is Michael Lafeber, and I represent
 11 Twin City Harley-Davidson. I want to first ask you if
 12 you've ever had your deposition taken before.
 13 A. Yes.
 14 Q. Let me start by laying down a couple of ground
 15 rules. My guess is your attorney has already discussed
 16 some of these things with you, but as you can see, we have
 17 a court reporter here, so I want you to avoid any nonverbal
 18 responses such as shaking your head. I need you to avoid
 19 answers like huh-huh or uh-huh that are very difficult for
 20 the court reporter to get down. Okay?
 21 A. Yes.
 22 Q. Second, if you would avoid -- if you would
 23 please wait until I'm done asking my question before you
 24 answer it so we don't talk over each other. Again, it's
 25 very difficult for the court reporter to get down.

1 APPEARANCES:
 2 MICHAEL M. LAFEBER, ESQUIRE, of the Law Firm of
 3 RIDER, BENNETT, EGAN & ARUNDEL, P.L.L.P., Metropolitan
 4 Centre, Suite 2000, 333 South Seventh Street, Minneapolis,
 5 Minnesota 55402, appeared for and on behalf of Plaintiff.
 6 GREGG E. ISAACSON, ESQUIRE, of the Law Firm of
 7 SISAM & WATJE, P.A., 7230 Metro Boulevard, Edina, Minnesota
 8 55439, appeared for and on behalf of Defendant.

8 ALSO PRESENT:
 9 Mr. Mike Kuelbs
 10 Mr. Kevin Kuelbs

11 *The Original is in the possession of
 12 Attorney Michael M. Lafeber as of January 25, 2001.*

15 INDEX	PAGE
16 Cross-Examination by Mr. Lafeber	3
18 LUND DEPOSITION EXHIBITS	MARKED
19 1 - Harley-Davidson Motorcycle Order and \$500	20
20 Deposit Receipt, Twin Cities Harley-Davidson	
and Daniel M. Lund, Receipt No. 7597, 8/31/95	
21 2 - Purchase Agreement for Harley-Davidson	33
22 Motorcycle, Twin Cities Harley-Davidson	
and Daniel Mark Lund, 3/19/99	



1 A. Yes.
 2 Q. And lastly I don't want you to answer any
 3 questions that you don't understand. If I ask a question
 4 that you don't understand, which I probably will do at some
 5 point in the deposition, just ask me to rephrase the
 6 question or let me know you don't understand it, and I'll
 7 be more than happy to clarify it for you.
 8 A. Okay.
 9 Q. Do we have an understanding that you won't
 10 answer any questions that you don't understand?
 11 A. Yes, sir.
 12 Q. Okay. With that said, we'll start with an
 13 easy one. State your full name for the record, please.
 14 A. Daniel Mark Lund.
 15 Q. And what is your present age?
 16 A. Sixty-seven.
 17 Q. And your date of birth?
 18 A. 2/12/33.
 19 Q. What's your current address?
 20 A. 5021 Fourth Street Northeast, Columbia Heights
 21 55421.
 22 Q. And how long have you lived at that address?
 23 A. Since '56.
 24 Q. And let me ask you about your education. Did
 25 you graduate from high school?

Page 5

1 A. Yes.

2 Q. What year was that?

3 A. 1950.

4 Q. Where did you go to high school?

5 A. Columbia Heights High School.

6 Q. I'm from and still live in Columbia Heights.

7 I didn't realize the high school was already operating in

8 1950.

9 A. It wasn't at the one where it's at now. It

10 was at -- the one I graduated from is Northwestern

11 Electronics. That was the high school.

12 Q. Sure. All right, which was a junior high for

13 a long time and then --

14 A. I don't know. I'm not sure. I think it

15 probably was. It was some kind of a high school.

16 Q. Do you have any education beyond high school?

17 A. Well, with my trade, I was an electrician. I

18 went through apprenticeship school, trade school, and then

19 I went to school when I was in the service in the Navy.

20 Q. Anything other than your on-the-job training

21 as an electrician?

22 A. As far as, yes, we used to have some night

23 schools we used to go to keep up our current

24 classification.

25 Q. You indicated you were in the military?

Page 6

1 A. I was in the Navy, yes, four years.

2 Q. What did you do in the Navy?

3 A. I was electrician's mate.

4 Q. And I ask everyone this, so please don't be

5 offended. Do you have any criminal record of any type?

6 A. No, just speeding tickets and so forth.

7 Q. I don't need to ask you about that. Let me

8 ask about your employment history. Are you presently

9 employed?

10 A. No. I'm retired.

11 Q. When did you retire?

12 A. March '95.

13 Q. What did you do before you retired?

14 A. I was an electrician.

15 Q. Who did you work for?

16 A. The last shop I worked for?

17 Q. Yeah.

18 A. ColliSys Electric.

19 Q. How do you spell that?

20 A. C-O-L-L-Y-S-Y-S, I believe, ColliSys. It used

21 to be Collins Electrical Company, and then they changed it

22 to ColliSys.

23 Q. How long did you work for them?

24 A. That was in Minneapolis. I believe it was

25 like close to 30 years.

Page 7

1 Q. And you were an electrician?

2 A. I was an electrician, journeyman electrician.

3 Q. I might keep your address. If I need some

4 work done around my house, I'll know who to call.

5 A. No, I can't do that.

6 Q. You can't do that?

7 A. I can't do any scabbing. I don't even have a

8 license anymore. I dropped my license after I retired.

9 Q. Let me ask you a little about your experience

10 with Harley-Davidson motorcycles. Okay?

11 A. Okay.

12 Q. How many Harley-Davidson motorcycles have you

13 owned?

14 A. Three.

15 Q. And when did you first obtain a

16 Harley-Davidson motorcycle?

17 A. '95.

18 Q. And who did you obtain that from?

19 A. Delano.

20 Q. The Harley-Davidson --

21 A. -- in Delano.

22 Q. What type of motorcycle is that?

23 A. It was a Sportster, 1200 Custom Sportster.

24 Q. What year was it?

25 A. '96.

Page 8

1 Q. Did you buy it new or used?

2 A. Brand new.

3 Q. Do you remember what you paid for it?

4 A. Around \$10,000. I'm not sure exact.

5 Q. Do you still have any of the paperwork on that

6 transaction?

7 A. I'm not sure.

8 Q. Do you remember how you paid for it?

9 A. Cash. Well, check, personal check.

10 Q. Personal check. Do you keep your cancelled

11 checks?

12 A. No, I don't get my personal checks back.

13 Q. Who do you bank with?

14 A. Checking account?

15 Q. At that time, which was '95.

16 A. I think it was probably -- it's called First

17 Community Credit Union now. It was called Columbia Heights

18 Credit at the time.

19 Q. Sure. I know where that's at. And do you

20 remember if the price you paid for that '96 Sportster was

21 above MSRP?

22 A. I'm not sure. I don't remember at this time

23 if it was or not.

24 Q. Would you have been familiar with the MSRP

25 price at that time?

1 A. Yeah, I knew what they were because I had a
 2 '95 brochure that I actually picked up from Twin-City
 3 Harley.
 4 Q. So you may not remember now, but you certainly
 5 knew at that time whether it was above or below MSRP?
 6 A. Right now I'm not sure. I'm not sure if I
 7 knew or not.
 8 Q. But at that time you knew what MSRP was, or
 9 you knew when you purchased it if it was above or below
 10 MSRP?
 11 A. I probably -- yes, I probably knew what it
 12 probably was. I probably knew what the MSRP price was, but
 13 I'm not sure whether it was above or whatever.
 14 Q. Okay. Was there any waiting list for your
 15 purchase of that motorcycle?
 16 A. Actually, there was. But it wasn't --
 17 actually, it actually was my daughter's motorcycle I
 18 bought. In fact, it came out in both of our names. She
 19 had went out there and signed up for it.
 20 Q. Put her name on the waiting list?
 21 A. Put her name on the waiting list. Right. And
 22 when it came due, and I had put my name on the waiting list
 23 but not at that dealership.
 24 Q. Okay.
 25 A. So that when hers -- then when hers came in,

1 Q. You said you had your name on a waiting list
 2 somewhere else.
 3 A. Uh-huh.
 4 Q. Where did you have your name on a waiting
 5 list?
 6 A. St. Paul Harley.
 7 Q. What was St. Paul Harley's waiting list
 8 practice?
 9 A. Same as Delano's, just sign up for whatever
 10 model you wanted and just wait until your name came up.
 11 Q. Did you have to put any money down on at
 12 St. Paul Harley?
 13 A. No, no money down.
 14 Q. Were you at all familiar with the practice of
 15 people buying or selling spots on a waiting list?
 16 A. No.
 17 Q. Have you ever heard of that?
 18 A. No.
 19 Q. Have you had your name -- have either you or
 20 your daughter had your names on waiting lists anywhere
 21 other than what you've already told me about or at Twin
 22 City Harley-Davidson?
 23 A. Well, I haven't. I don't know about my
 24 daughter.
 25 Q. So you've had your name on a waiting list at

1 and mine wasn't supposed to come in until the next spring,
 2 hers came in and she didn't have the finances for it, so
 3 she says, Well, do you want to buy mine, and then I'll buy
 4 yours when yours comes in? I said, yeah, that would be
 5 fine. So I went out and bought hers.
 6 Q. Are you familiar with how Delano's waiting
 7 list worked at that time?
 8 A. All I know is that she just put her name on
 9 the list for whatever motorcycle she wanted, whatever
 10 model, and then when her name came up, they just called her
 11 and said, Your motorcycle came in. Do you want it? If it
 12 wasn't the right color, then she just said no. If it's the
 13 right color she wanted, then she'd just say yes.
 14 Q. Do you know if she had to place any money down
 15 to put on that list?
 16 A. No, no money down.
 17 Q. No money down?
 18 A. No.
 19 Q. Do you know how long she was on the waiting
 20 list?
 21 A. I'm not sure.
 22 Q. Did you pay your daughter any money --
 23 A. Huh-huh.
 24 Q. -- to obtain the rights to buy her motorcycle?
 25 A. No.

1 St. Paul Harley and at Twin City Harley-Davidson?
 2 A. Right.
 3 Q. Anywhere else?
 4 A. No.
 5 Q. Do you still have that '95 Sportster?
 6 A. No. It's a '96.
 7 Q. '96, I'm sorry.
 8 A. No, I sold it.
 9 Q. When did you sell it?
 10 A. When I got my '97 that I ordered at St. Paul
 11 Harley.
 12 Q. Do you know who you sold it to?
 13 A. My '96?
 14 Q. Yes.
 15 A. The guy that owns Jeff and Bobby Steve's,
 16 Columbia Heights.
 17 Q. Do you know if he won?
 18 A. If he what?
 19 Q. Do you know if he won the election?
 20 A. Williams? Yeah, he did. Him and Bruce and
 21 Rocky.
 22 Q. Who was it Bobby that you sold it to?
 23 A. No, I sold it to Jeff. That was when they had
 24 their business across the street, which they still do, but
 25 I mean it's been kind of moved around.

1 Q. Do you remember what you sold it for?
 2 A. The price I sold it for?
 3 Q. Yes.
 4 A. It was in the \$8,000 figure. I'm not sure
 5 exactly what it was.
 6 Q. Do you know how many miles you had on it?
 7 A. It was over 10,000, but I'm not sure of the
 8 exact mileage on it.
 9 Q. Okay. So you told me about the '96 Sportster
 10 you purchased, and then you've indicated you purchased a
 11 '97 model from St. Paul Harley?
 12 A. Uh-huh.
 13 Q. Was that the second Harley-Davidson that you
 14 owned?
 15 A. Uh-huh.
 16 Q. What model was that?
 17 A. Same thing, 1200 Custom Sportster.
 18 Q. What did you pay for that?
 19 A. I think that was probably in the same figure
 20 as the '96 was, probably around \$10,000.
 21 Q. And had you placed your name on a waiting list
 22 to obtain that motorcycle?
 23 A. Yes, I did.
 24 Q. Did you have to put any money down to get on
 25 that one?

1 A. No money down.
 2 Q. Do you know if the price you paid for the '97
 3 Sportster was above MSRP?
 4 A. Yes, it was.
 5 Q. Do you know by how much it was above MSRP?
 6 A. No, I'm not sure.
 7 Q. Do you still have that motorcycle?
 8 A. No. I traded that in when I bought the one
 9 from Twin City Harley.
 10 Q. And you said you owned three Harley-Davidsons?
 11 A. Yeah. That was my second one, the '97.
 12 Q. The third one was the one you obtained from
 13 Twin City Harley?
 14 A. Yes.
 15 Q. Do you belong to any motorcycle or
 16 Harley-Davidson-related clubs, groups, or associations?
 17 A. I belong to the HOG chapter. I don't belong
 18 to any chapter. I'm a member of the HOG group.
 19 Q. When did you become a member of HOG?
 20 A. When I bought my first motorcycle, they
 21 automatically signed you up and paid your first-year
 22 membership.
 23 Q. And you retained a membership ever since?
 24 A. Yes, I have.
 25 Q. And as part of that, do you receive any

1 publications?
 2 A. Yes, I do. They send out an accessory
 3 magazine, catalog, parts and stuff. And I also get a
 4 couple of magazines that tells about the motorcycles,
 5 stories and about other members and stuff.
 6 Q. Are those HOG-related magazines?
 7 A. Yes.
 8 Q. Do you subscribe to any other --
 9 A. I'm also a member of the AMA, which they have
 10 a magazine too.
 11 Q. Any other motorcycle-related publications?
 12 A. As far as clubs go?
 13 Q. Just in general.
 14 A. I belong to the Christian Motorcycle
 15 Association, too, CMA.
 16 Q. Any other clubs or groups? associations?
 17 A. I don't believe so.
 18 Q. Any other publications, motorcycle-related
 19 publications that you routinely receive?
 20 A. No.
 21 Q. Do you belong to any Internet or e-mail
 22 communication groups of any type like chat rooms, that type
 23 of stuff?
 24 A. I belong to -- well the CMA has a -- it's not
 25 a chat room. It's just an e-mail address. All the members

1 have e-mail addresses, and then when you send out e-mail
 2 like they're -- like when they're having their meetings or
 3 whatever, then they send it out on e-mail. That's the only
 4 one as far as motorcycle groups.
 5 Q. All right. Do you know anyone in the
 6 motorcycle business, someone that works for a motorcycle
 7 dealer or involved in the motorcycle business in any way?
 8 A. Huh-huh, no.
 9 Q. Let me ask you about your experience with Twin
 10 Cities Harley-Davidson. Okay?
 11 A. Okay.
 12 Q. Do you know any of the owners or employees of
 13 Twin City Harley-Davidson?
 14 A. Just when I met Kevin when I bought my
 15 motorcycle.
 16 Q. You didn't know anybody before that?
 17 A. No, I didn't.
 18 Q. How did you learn about Twin City
 19 Harley-Davidson?
 20 A. It was just the closest dealership to my
 21 house, so I just went out there to look at their
 22 motorcycles.
 23 Q. Just strictly due to location?
 24 A. Yes.
 25 Q. You previously had a relationship with

1 St. Paul Harley-Davidson?
 2 A. When I bought my '97, yes.
 3 Q. Is there a reason why you didn't go back
 4 there?
 5 A. Because I had -- this was my first motorcycle
 6 that I signed for was a '95, and I had a four-year wait for
 7 it, three and a half, whatever.
 8 Q. Okay. When you first put your name on the
 9 waiting list at Twin City Harley-Davidson, which was this
 10 August of '95, what was your understanding of the market
 11 for Harley-Davidsons at that time?
 12 A. As far as what? As far as price-wise?
 13 Q. Anything you want to tell me. What did you
 14 know about the market?
 15 A. Well, I found out there was a waiting list.
 16 They were -- you had to back order them, whatever. Prices
 17 were pretty much higher than all other motorcycles in the
 18 same classification.
 19 Q. Before you contacted Twin City
 20 Harley-Davidson, had you done any price shopping or price
 21 comparison at that time?
 22 A. No. First dealer I went to.
 23 Q. At that time you already owned --
 24 A. No, I didn't.
 25 Q. You purchased your one from Delano after you

1 A. Yes, my son. My son-in-law.
 2 Q. What's your son's name?
 3 A. Curtis.
 4 Q. Where does he live?
 5 A. Maple Grove.
 6 Q. Tell me about your son-in-law. What's his
 7 name?
 8 A. Mike Buesgens.
 9 Q. How did you spell that?
 10 A. B-U-E-S-G-E-N-S.
 11 Q. Where does he live?
 12 A. Crystal.
 13 Q. Do you know where they obtained their
 14 Harley-Davidsons from?
 15 A. Mike bought his first from a dealer in Iowa, I
 16 believe.
 17 Q. How about -- had he had more than one Harley?
 18 A. I don't know. I guess they had a lot of
 19 motorcycles when they were younger, but I don't know what
 20 kind they had.
 21 Q. What about your son Curtis?
 22 A. He never had any motorcycles before -- he
 23 never had any Harleys before.
 24 Q. He had a Harley when you first started looking
 25 into buying a Harley, though. Correct?

1 got on the Twin City Harley waiting list?
 2 A. Yes.
 3 Q. And you hadn't done any price shopping or
 4 comparison before you approached Twin City Harley-Davidson?
 5 A. No, sir.
 6 Q. I'm not talking strictly about other
 7 dealerships. I'm talking about any independent research
 8 you did on the Internet, reading publications, magazines,
 9 checking classified ads, anything like that.
 10 A. I don't believe so, no.
 11 Q. What kind of motorcycle were you interested in
 12 when you first approached Twin City Harley-Davidson?
 13 A. I had no idea what kind I wanted to purchase
 14 really.
 15 Q. This was your first --
 16 A. It was my first.
 17 Q. -- kind of foray into the Harley world?
 18 A. Into the Harley-Davidson motorcycle world,
 19 yes.
 20 Q. Do you remember who you first dealt with at
 21 Twin City Harley-Davidson?
 22 A. I'm not sure. I think I talked to all the
 23 different salesmen that were there.
 24 Q. Did you know anyone at that time who owned a
 25 Harley-Davidson?

1 A. Yes.
 2 Q. Do you know where he had obtained his Harley
 3 from?
 4 A. He bought it from a private party.
 5 (At this time Daniel M. Lund Deposition
 6 Exhibit Number 1 was marked for identification
 7 by the Court Reporter.)
 8 Q. Mr. Lund, I want to show you what's been
 9 marked as Deposition Exhibit Number 1. Do you recognize
 10 that?
 11 A. It looks like the purchase agreement, or
 12 whatever you want to call it, that I signed, yes.
 13 Q. And it's dated August 31st, 1995?
 14 A. Yes.
 15 Q. Would that date reflect the date that you
 16 placed your refundable deposit down, to place your name on
 17 the waiting list?
 18 A. Yes.
 19 Q. Is that your signature at the bottom of this
 20 document?
 21 A. Yes.
 22 Q. Now, did you have an opportunity to review and
 23 read this document before you signed it?
 24 A. Yes, I believe I did.
 25 Q. Nobody prevented you from reading this

1 document in any way?
 2 A. No.
 3 Q. Specifically I want to call your attention to
 4 the writing at the bottom there just above your signature.
 5 Did you have an opportunity to read that before you signed
 6 it?
 7 A. Yes.
 8 Q. Did you read where it says that this does not
 9 guarantee price?
 10 A. Yes. I understood that would not guarantee
 11 that I would be getting it at the '95 MSRP price.
 12 Q. Let me ask you about all your contacts with
 13 Twin City Harley-Davidson. Okay? I want to do this
 14 chronologically.
 15 How many times did you visit Twin City
 16 Harley-Davidson before you put your money down to get on
 17 the waiting list?
 18 A. I'm not really sure. I don't remember.
 19 Q. Was it more than once?
 20 A. It probably was.
 21 Q. Do you remember who you dealt with on those
 22 occasions?
 23 A. Most of the time I just went in there and just
 24 looked at them. I looked at the different ones.
 25 Q. Eventually did you have any discussions with

1 anybody at Twin City Harley-Davidson about the price?
 2 A. No, because all the ones that were there were
 3 marked the price and I had the brochure and I knew what the
 4 pricing brochures were for new ones.
 5 Q. So you never had any discussions with anybody
 6 about price?
 7 A. No.
 8 Q. What did you understand the price for your
 9 motorcycle would be?
 10 A. The MSRP in the brochure.
 11 Q. Had anyone ever told you that this would be
 12 the price of your motorcycle?
 13 A. Yes, the salesman actually did.
 14 Q. Who was that?
 15 A. Dick Greeman, I think his name was,
 16 G-R-E-E-M-A-N, I believe.
 17 Q. When did Mr. Greeman tell you this?
 18 A. When I gave my \$500.
 19 Q. Was that the first time anybody at Twin City
 20 Harley-Davidson had ever told you anything about the price?
 21 A. It's the only time I ever asked, I believe.
 22 Q. When did you ask him about the price? After
 23 you had placed your deposit down?
 24 A. I don't remember if it was before or after.
 25 Q. It's possible it was sometime after you had

1 placed your deposit down?
 2 A. Well, when I put the deposit down, I just took
 3 for granted that he said it was going to be MSRP price
 4 whenever it comes in. He didn't know when it was going to
 5 come in, whether it was going to be a '97, '98, or later.
 6 He said it could be '98 or whatever. So he said whatever
 7 the MSRP price is when that comes in, that's what you'll
 8 pay. I said that's fine. I understand that.
 9 Q. Here is what I want to know, though, is when
 10 did he tell you that? Is it possible he told you that a
 11 couple weeks later when you were in the store?
 12 A. No. He told me at the time I put my \$500
 13 down.
 14 Q. But you had made the decision to put your \$500
 15 down before you were even told anything about price?
 16 A. No, because that's what I agreed on. I
 17 wouldn't have given him the \$500 if he would have told me
 18 it's going to be higher than the MSRP price. I would have
 19 said forget it. I'll go buy it the market, shop someplace
 20 else.
 21 Q. At what point did this topic of price come up?
 22 A. Before I put the \$500 down.
 23 Q. I want your best --
 24 A. I mean, why would you want to put some money
 25 down on something you don't know what you're going to pay

1 for it. Right?
 2 Q. I understand that completely, but I want to
 3 know your best recollection verbatim of what was said and
 4 how it came about.
 5 A. I had the brochure. I got the brochure from
 6 Twin City Harley-Davidson, and the MSRP price and the model
 7 that I wanted to buy was listed in there. And the salesman
 8 says whatever this MSRP price is, when this motorcycle
 9 comes in, that's what you will pay. And I said I
 10 understand that. And I said, Well, how much does it
 11 increase per year? And he says, Well, it might go up 1
 12 percent or 2 percent or whatever. He said there will be a
 13 slight increase. I said that I understand that because I
 14 had looked at brochures before, and they were lower prices
 15 than the '95s were. So I said I will just pay the MSRP
 16 price whatever it is when it comes in.
 17 Q. And this was Dick Greeman that told you this?
 18 A. Yes.
 19 Q. You mentioned brochures that you were relying
 20 on and that you observed. What were those?
 21 A. The brochures that Harley-Davidson puts out
 22 to all the dealers.
 23 Q. And what did those brochures say?
 24 A. The brochures had the picture of all the
 25 motorcycles, the models, and it's got the MSRP price, what

1 it is if you want solid color, two tone. It's all listed
 2 right in the brochure.
 3 Q. Okay. And just to make sure we're clear, did
 4 you ask Mr. Greeman about the price, or did he just
 5 volunteer this information to you?
 6 A. It was in a brochure. It's all in the
 7 brochure. That's how I knew what the price was going to
 8 be.
 9 Q. But before you signed this document and put
 10 your \$500 down, did you ask him about the price?
 11 A. No. I just said -- he just said it was going
 12 to be the MSRP price. That's all I went by.
 13 Q. And he told you this before you signed this?
 14 A. Yes.
 15 Q. Okay. Do you understand the difference
 16 between market price and MSRP?
 17 A. Well, MSRP is the one that comes from the
 18 factory, I understand. Market price, I suppose that would
 19 be whatever you can get for it.
 20 Q. Did you understand that at that time the
 21 market price was actually above MSRP?
 22 A. I didn't even check those. I'm not sure.
 23 Q. Were there any witnesses to Mr. Greeman's
 24 statements about the price? Were you accompanied by
 25 anybody at that time?

1 the fact that you would get this bike at MSRP?
 2 A. No, I just went by this (indicating).
 3 Q. Other than that statement that you've told me
 4 about that Mr. Greeman made, is that the only thing you've
 5 relied on to support your claim that you were going to get
 6 this bike at MSRP?
 7 A. Yes.
 8 Q. So there weren't any other price lists or
 9 written material that you relied on suggesting that you
 10 would get this bike at MSRP?
 11 A. No.
 12 Q. After you put your name on the waiting list,
 13 were there any other subsequent communications you had with
 14 any representatives of Twin City Harley-Davidson about the
 15 price of your motorcycle?
 16 A. What do you mean after I -- right after?
 17 Q. At any time after.
 18 A. I don't believe so.
 19 Q. He told you supposedly that you'd get it at
 20 MSRP?
 21 A. Yes.
 22 Q. You had given him your \$500, signed this
 23 document. After that point, was there any ever any
 24 communications between you and Twin City Harley-Davidson
 25 about the price of your motorcycle?

1 A. I don't remember. I don't remember. It could
 2 have been with my son, or it could have been with my wife
 3 could have been there too. I'm not sure.
 4 Q. Have you ever had any discussions with them
 5 about this topic?
 6 A. My wife or my son or something?
 7 Q. Yes.
 8 A. No.
 9 Q. Did you understand that the deposit you were
 10 placing down was fully refundable?
 11 A. Yes.
 12 Q. Do you know, were there any, besides people
 13 accompanying you, were there any witnesses, meaning other
 14 employees or representatives of Twin City Harley-Davidson
 15 that may have overheard Mr. Greeman's statements about
 16 price?
 17 A. I don't know. I'm not sure.
 18 Q. But you don't remember if there was anybody
 19 there or not?
 20 A. Well, their office then at that time was right
 21 out kind of in the open. I mean, there was other desks
 22 around, other salesmen, other people walking around. I
 23 don't know if anybody overheard what I was talking about or
 24 not.
 25 Q. Did you ever ask Mr. Greeman to put in writing

1 A. No.
 2 Q. You were never told again by anybody at Twin
 3 City Harley-Davidson that you would get this motorcycle at
 4 MSRP?
 5 A. That I would get it at that price? No, I
 6 never talked to anybody about it.
 7 Q. Okay. Now, eventually while your name was
 8 still on this waiting list, you went and purchased
 9 motorcycles elsewhere. Correct?
 10 A. '97, yes. Well, I actually purchased them
 11 both after that.
 12 Q. What caused you to do that? You just wanted
 13 a motorcycle sooner than it was going to be available at
 14 Twin City?
 15 A. Right.
 16 Q. Was Delano the first other dealer you went to?
 17 A. No, I didn't even have my name on that list at
 18 Delano. That was my daughter's.
 19 Q. Oh, that's right. When you purchased the
 20 motorcycle from Delano, did you have any discussions with
 21 anybody there at the time about MSRP?
 22 A. No, because I was buying my daughter's. It
 23 was my daughter's motorcycle, and I was just buying her
 24 motorcycle, whatever the price was.
 25 Q. So you weren't even interested at that point

1 what the MSRP was?

2 A. Oh, yes, I was.

3 Q. But if it was over MSRP --

4 A. Well, if it was way over, I would not have
5 bought it, no. I wouldn't have bought it.

6 Q. And ultimately you had your name on the
7 waiting list at -- what was the other dealership?

8 A. St. Paul Harley-Davidson.

9 Q. What was your agreement with St. Paul Harley
10 about the price of your motorcycle?

11 A. There was really no -- all they told you was
12 you're on the waiting list. When the motorcycle comes in,
13 they'll call you.

14 Q. Did you ask them at all about whether it would
15 be made available at MSRP?

16 A. No. I just took for granted that it would be.

17 Q. So when you put your name on the waiting list
18 at St. Paul Harley, you just assumed that that would be
19 made available at MSRP as well?

20 A. Right.

21 Q. Okay. And that bike became available to you
22 before the bike was ready at Twin City Harley-Davidson.
23 Correct?

24 A. Right.

25 Q. And that bike was made available to you at

1 A. Yes.

2 Q. From the time you put your name on the waiting
3 list until the time you were notified your bike was
4 available, did you have any contact with Twin City
5 Harley-Davidson, call to inquire about the status of your
6 motorcycle?

7 A. When I used to stop in and get parts or
8 something, I would check and see if my name was on the list
9 and how much longer it was going to be, and they'd give me
10 kind of an approximate of when they thought it would come
11 in.

12 Q. When you would visit the store to inquire, did
13 you ever sit down and meet with any of the salespeople?

14 A. No. Why would I?

15 Q. Did you ever have any reason to go into any of
16 the sales people's offices?

17 A. No.

18 Q. How often do you think you went into Twin City
19 Harley-Davidson to inquire about the status of your
20 motorcycle?

21 A. How many times?

22 Q. Yes.

23 A. When I went and got service on my '96 or my
24 '97, and most of those times I didn't even ask then either.
25 Sometimes I would and sometimes I wouldn't.

1 above MSRP. Correct?

2 A. I believe it was probably slightly.

3 Q. Do you remember how much?

4 A. I'm not sure, no. I don't remember.

5 Q. Did you complain to anybody about that at
6 St. Paul Harley?

7 A. No.

8 Q. Why didn't you complain about it?

9 A. Because it felt like a fair price.

10 Q. But don't I understand your testimony to mean
11 you thought you had an agreement that it would be made
12 available at MSRP?

13 A. Well, I'm not even sure the price I paid. I
14 may have paid MSRP price. I'm not really sure. I don't
15 remember at this time, because they write it down, and then
16 they write the taxes and the license and registration,
17 whatever, and it was just a certain amount, and that's what
18 I paid.

19 Q. Now, eventually your motorcycle at Twin City
20 Harley-Davidson became available. Correct?

21 A. You mean how soon after?

22 Q. Just eventually it became available.

23 A. Eventually, yes, it did.

24 Q. Were you notified by somebody at Twin City
25 Harley-Davidson that your bike was ready?

1 Q. Okay.

2 A. Because they already had told me, if I had
3 been in there a month before or a week before, they said it
4 was going to be another year and a half, two years. I'd
5 just say, well, fine. There was no sense checking until
6 two years is up.

7 Q. How frequently did you have your motorcycle
8 serviced?

9 A. Whatever the maintenance is required on them.

10 Q. Can you give me an estimate of how often that
11 was?

12 A. They went by the mileage. They went like 500
13 miles, 1,000 miles, 2,000 miles, 2500. And I'd take my
14 motorcycle to Twin City Harley.

15 Q. Did you ever get it serviced at anywhere other
16 than Twin-City Harley?

17 A. Well, my '97, I got that mostly serviced at
18 St. Paul Harley because that's where I bought it. My '96,
19 I had that done at Twin City Harley.

20 Q. Okay. Did you have reason to stop by there
21 other than when you were having your motorcycle serviced
22 there?

23 A. If I was going to purchase some material or
24 whatever, some parts or whatever, yes.

25 Q. When did you first learn that your motorcycle

1 at Twin City Harley-Davidson was not going to be made
2 available to you at MSRP?

3 A. When I came down to -- when I saw what was
4 marked on the slip.

5 (At this time Daniel M. Lund Deposition
6 Exhibit Number 2 was marked for identification
7 by the Court Reporter.)

8 Q. Mr. Lund, I want to show you what's been
9 marked as Deposition Exhibit Number 2. Do you recognize
10 that document?

11 A. Yeah, it looks like the one I signed, yes.

12 Q. Can you tell me what that is?

13 A. I just call them a contract or a purchase
14 agreement or whatever.

15 Q. Does this document reflect your purchase of a
16 Harley-Davidson from Twin City Harley-Davidson in March of
17 '99?

18 A. Yes.

19 Q. And does this document accurately reflect the
20 price that you paid for that motorcycle?

21 A. The bottom line price?

22 Q. Yes.

23 A. I'm trying to see where that is. Yeah, yes,
24 that's it.

25 Q. And when you received this document, was that

1 conversations with anybody else at Twin City

2 Harley-Davidson when you picked up your motorcycle?

3 A. Actually, before I picked it up, we went into
4 Kevin's office before I actually agreed -- before I

5 actually agreed to the bottom line price. In fact, when I
6 saw this, this \$7500, or whatever it was that he gave me

7 for the trade-in on my bike, my '97, that wasn't even on
8 there then. All I had was this price up here (indicating).

9 And at that time I wasn't even going to trade my bike in.
10 I had no idea that I was going to trade it in originally.

11 That was kind of a last-minute deal, which I still was
12 unhappy about.

13 Q. Why don't you tell me in your own words what
14 happened that day when you went to pick up your motorcycle.
15 I want to know the best you can remember any discussions.

16 A. My daughter went with me, I know that, because
17 she says if they're going to be charging you more than the
18 MSRP price, she wants to know why, whatever.

19 Q. Let me back up.

20 A. And how they've been treating you, whatever.

21 Q. Let me back up. So you knew that you were
22 going to be charged more than MSRP before you went to pick
23 up your motorcycle?

24 A. Yes. I believe I did, yes.

25 Q. I thought this was the first time you had

1 the first time you realized that you were not going to
2 receive the bike at MSRP?

3 A. Yes.

4 Q. Had you inquired about the price at all when
5 they called to let you know that your bike was available?

6 A. What was that? Repeat that.

7 Q. When you were first notified that your bike
8 was going to be available to you, did you inquire about the
9 price at that time?

10 A. I don't believe so.

11 Q. And who did you deal with -- let me first back
12 up and ask, Is that your signature on the document?

13 A. Yes.

14 Q. And did you have an opportunity to read and
15 review this document before you signed it?

16 A. Yes.

17 Q. And you took advantage of that opportunity?

18 A. Yes.

19 Q. Mr. Greeman's name is on here. Is that who
20 you dealt with when you picked up your motorcycle?

21 A. Yes.

22 Q. Did you deal with anybody else when you picked
23 up your motorcycle?

24 A. No.

25 Q. Did you have any communications or

1 learned about it. I'm just trying to remember when you
2 first learned that you were going to be charged more than
3 MSRP.

4 A. First I was called I think in the fall about I
5 had to come down and pick out the color, decide on what
6 color I wanted, because as you notice, when I signed it, it
7 was no color. I didn't pick out any colors.

8 So then he called me in the fall. I don't
9 remember when exactly, and he said your bike should be
10 coming in soon. You have to come down and pick out the
11 color you want so when that color comes in, that will be
12 your bike. So then I went down there and picked out the
13 colors. And at that time I asked him -- he thought it was
14 going to be coming in like the first of the year or maybe
15 in December.

16 And so then I kind of mentioned about the
17 price of what it would be and whether I could trade my
18 Sportster and so forth on it. And he said you'd be better
19 off to sell your Sportster outright. You'd get a better
20 price for it. So I said I'll think about that.

21 So then I just was waiting for him to call me,
22 which was in the spring. It wasn't until spring that I got
23 called that my bike was in. Then I think when they called
24 me on the phone said your bike was in to go pick it up, I
25 had to know how much I was going to have to take out of the

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1 credit union to borrow, whatever. Then I think I asked him
2 then what the price was. And he told me what it was, and I
3 said, well, that's a lot higher than MSRP price. And he
4 said, well, that's the price. Do you want it or do you
5 don't want it? And I said let me think about it. And I
6 didn't go right down that day and purchase the bike.

7 Q. How did you know what the MSRP price was at
8 that time?

9 A. Because I had a brand new brochure. Every
10 year I get a brochure on the bikes that come out. When I
11 got my '97, I had a '97 brochure. When the '98 came out, I
12 had '98 brochure. And I had a brochure on the '99s.

13 Q. Who called you on the phone that time?

14 A. I believe it was Dick Greeman.

15 Q. And when you told him that wasn't MSRP, did
16 you tell him --

17 A. I said, Why is the price so high? That's way
18 over MSRP price.

19 Q. What did he say?

20 A. That's what he said. He says, If you don't
21 want it, then we'll sell it to somebody else. He said you
22 can come down and get your \$500.

23 Q. What did you tell Mr. Greeman?

24 A. I said let me think about it.

25 Q. Anything else? Did you tell him anything

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1 other than that?

2 A. At that time, I don't think I did.

3 Q. Okay. What happened next?

4 A. Well, I don't remember how many days it was
5 that I went down. Then my daughter, I told my daughter
6 about that because she bought all her bikes down in Iowa
7 and she knew what the prices of the bikes were. And she
8 said that's ridiculous that you're paying that amount of
9 money, especially after you've been doing all your business
10 with them. She said when you bought, you retired. You
11 didn't have much money. They told you it was going to be
12 MSRP. And I didn't want to even buy that much expensive
13 bike at that time. And she says I think that's a hardship
14 on you. I don't think that's right, and I'm going to go
15 down there and talk to them. She said I can talk to Kevin.
16 I'll talk to him. She said she didn't know anything about
17 Dick Greeman, but she said I can talk to Kevin.

18 So I don't know. Maybe she knew him before.
19 I don't know. But anyway, so then she went down there with
20 me when we decided to go down there to get it. And then
21 that was when we decided to, after we talked in Kevin's
22 office for I don't know how long, we got kind of hot and
23 heavy.

24 And when I talked to Dick Greeman at first,
25 the way it actually came out when I went in his office with

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1 my daughter in there, and he says -- I says, well, how
2 about if I trade my '97 in? He said we don't even want
3 your '97. We have all the Sportsters we want. We don't
4 even want it. I said, Well, funny, when I originally
5 purchased this, I asked you if I had another motorcycle
6 that I could trade, you would take the trade-in on it. Now
7 you don't even want my motorcycle. Now you don't want to
8 take a trade-in. All you want to do is charge me this
9 extra price over and above MSRP. I said I think that's
10 really bad.

11 All you ever get as answers for my questions
12 is, If you don't want it, we'll give your \$500 back. We'll
13 sell it to somebody else. They don't want to deal with
14 you. So that's what I said, Well, let me talk to the
15 manager. He said, Okay, we'll go get Kevin.

16 So we went in to Kevin's whatever -- I don't
17 know if that was his office, some back room there
18 someplace. And we sat and haggled there for, I don't know,
19 a half-hour or an hour about the price. And I called other
20 dealers, and I knew what they were selling over MSRP. And
21 their price was ridiculous. He said, Well, everyone has
22 their own price. They can sell what they want to.

23 Q. Let me back up. You were aware that all the
24 other dealers were also selling over MSRP?

25 A. At that model, yes, they were, yes.

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1 Q. And I want to make sure we're clear here.

2 Were you just upset that you thought you were paying too
3 much for this motorcycle?

4 A. Yes, too much over MSRP, yes.

5 Q. Was there any discussions at that point about
6 what had or had not been promised to you?

7 A. Well, yes. I just understood that I was going
8 to pay MSRP when it came in. That's all I planned on
9 paying. That's why I was shocked when it was way above it.

10 Q. Again, was that just what you understood, or
11 had that actually been promised to you?

12 A. I told you. Dick Greeman, that's what he
13 said. I went by what his word was.

14 Q. Was that brought up at all as part of your
15 conversations with Mr. Kuelbs?

16 A. Yes, it was.

17 Q. What was said?

18 A. I said I thought I was supposed to be paying
19 this MSRP price, what the brochure says. Why is it so
20 high? He said our markup, we can charge whatever we want.
21 If you don't want to buy it, we'll sell it to somebody
22 else. And I said, Well, then I've got to wait another four
23 years for another bike. That don't seem right.

24 Q. What Mr. Greeman part of that conversation?

25 A. Yes, he was.

1 Q. Did Mr. Greeman indicate one way or the other
 2 whether he had told you you could get the bike at MSRP?
 3 A. No, I'm sure he wouldn't be able to say that
 4 in front of the manager, the owner.
 5 Q. Did he say anything about that subject?
 6 A. No. He didn't really say much of anything.
 7 He just said, whatever Kevin asked him, then he'd give him
 8 an answer.
 9 Q. Did Kevin ask him if he had promised you the
 10 bike at MSRP?
 11 A. Did Kevin ask him?
 12 Q. Yes.
 13 A. I don't believe so.
 14 Q. Did you ultimately reach an agreement with
 15 Twin City Harley-Davidson to purchase the motorcycle?
 16 A. Yes, after our discussion.
 17 Q. So you negotiated a price that day that you
 18 were comfortable with?
 19 A. Not really. But it was -- I didn't want to
 20 wait any more time. I wanted a motorcycle. I was getting
 21 tired of waiting three and a half years.
 22 Q. Did they offer to do anything to accommodate
 23 you?
 24 A. As far as -- well, he took my motorcycle
 25 finally on trade after a lot of hassling around. First he

1 Q. The one you got from Twin City
 2 Harley-Davidson?
 3 A. Yes.
 4 Q. Have you made any attempts to sell that
 5 motorcycle?
 6 A. No.
 7 Q. Have you had any offers from anybody to
 8 purchase that motorcycle from you?
 9 A. No.
 10 Q. And when you got that -- ultimately purchased
 11 that motorcycle from Twin City Harley-Davidson, you had
 12 called around to see if you could get that motorcycle at a
 13 better price anywhere else?
 14 A. Not after I bought it, no.
 15 Q. But before you bought it?
 16 A. Oh, yeah, I told you I did that. I called
 17 St. Paul Harley. I called Delano, ones that I dealt with
 18 before.
 19 Q. Now, Mr. Lund, you're claiming that you're
 20 entitled to damages from Twin City Harley-Davidson.
 21 Correct?
 22 A. I believe so, yes.
 23 Q. What do you claim you're entitled to receive
 24 from Twin City Harley-Davidson?
 25 A. I think the amount of money that was over the

1 didn't want to take it on trade, according to Dick Greeman,
 2 and then Kevin said, Well, what did we get for that one
 3 last week? or whenever we sold one. Well, we got so much
 4 for it, whatever it was. Well, about how about we give him
 5 this much? And I said, Well, I'm not taking some
 6 ridiculous price he said, like \$6500 on a \$10,000
 7 motorcycle they sell it for. I said I'm not taking that.
 8 He finally came up to \$7500, and then he said
 9 I'll throw you in a \$250 gift certificate. So I thought
 10 I'm saving a little money on the sales tax because now
 11 that's a trade-in and that cuts down on the original price
 12 of the motorcycle, so I'd pay less sales tax, so I thought
 13 I'd be saving money there, but it wasn't as much as I wanted
 14 to save, but I wasn't going to take any more money out of
 15 my annuity.
 16 Q. But there was no requirement that you trade in
 17 your motorcycle that day, was there?
 18 A. No.
 19 Q. You still could have sold it yourself?
 20 A. Yes.
 21 Q. And this saved you the hassle of having to do
 22 that?
 23 A. True.
 24 Q. Do you still have that motorcycle?
 25 A. The '97?

1 MSRP price.
 2 Q. Do you know what that amount was?
 3 A. I think it was like \$1400 or something like
 4 that.
 5 Q. Are claiming anything else from Twin City
 6 Harley-Davidson?
 7 A. No.
 8 Q. Did you have any other communications or
 9 conversations with any representatives of Twin City
 10 Harley-Davidson about the price of your motorcycle that we
 11 haven't talked about here today?
 12 A. Have I what?
 13 Q. Have you had any other conversations or
 14 communications with any representatives of Twin City
 15 Harley-Davidson about the price of your motorcycle that we
 16 haven't talked about here today?
 17 A. No.
 18 MR. KEVIN KUELBS: I'm going to take a
 19 break.
 20 MR. LAFEVER: I just have about five or
 21 ten more minutes, Mr. Lund. Let me just take a quick
 22 break.
 23 THE WITNESS: Thank you.
 24 (At this time a brief recess was taken.)
 25 BY MR. LAFEVER:

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1 Q. Mr. Lund, I asked you some questions about
2 your negotiations for the final price you paid on the
3 motorcycle from Twin City Harley-Davidson, and in fact I
4 think you testified that you had in fact called around to
5 other dealers to see what type of price you could get on a
6 comparable motorcycle; is that true?

7 A. Yes.

8 Q. And when you were negotiating the price for
9 this motorcycle, were you negotiating off of a price you
10 had been quoted by the Delano dealership?

11 A. Was I quoting a price?

12 Q. Negotiating off of a price you had been quoted
13 by the Delano dealership.

14 A. I just said that Why are they selling for \$800
15 and why are you selling for \$1400 more? And all I got was,
16 Well, they're selling for what they think they can get for
17 it, and we're selling for what we think we can get for it.

18 Q. But ultimately as part of your negotiations,
19 were you trying to get as close to that Delano price as you
20 could?

21 A. I was probably trying to get as close as I
22 could to MSRP price. I wasn't saying that I was happy with
23 Delano's price. I wasn't happy with any of the dealer's
24 prices. I think they all charged too much.

25 Q. When talking to Delano, were there any

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1 conversations about freight and setup charges?

2 A. I'm not sure if that was mentioned in it or
3 not.

4 Q. Are you familiar --

5 A. They just said that was their price. That
6 included setup and whatever else, freight and setup.

7 Q. I showed you earlier what had been marked as
8 Deposition Exhibit Number 1. And do you see on there where
9 it reads "\$500 refundable deposit to get on the list"?

10 A. Where is this at?

11 Q. (Indicating.)

12 A. Oh, written in there. Yes, okay.

13 Q. Do you know, did you ask that that be written
14 on that invoice so that it was clear that your \$500 deposit
15 was refundable?

16 A. I don't remember if I did or not.

17 Q. Is it possible you did?

18 A. No, I don't really remember.

19 Q. Is that something you would normally do to
20 protect yourself, ask that you get whatever promises that
21 were made to you put in writing?

22 A. I guess I would probably think as far as the
23 receipt goes, I suppose, but then you got your check, too,
24 that you put it down. I don't think I told them to put
25 this down there. I think they wrote that down there

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1 themselves. All he wanted me to know that anytime I wanted
2 to, I could get my \$500 and my name would be taken off the
3 list. That's what I understood it to be.

4 Q. Did you ever ask anyone to put the
5 representations concerning the MSRP in writing?

6 A. No. I just took it for what this here says on
7 here. That's what I just took it for.

8 Q. That says that there's no guarantee of price.

9 A. No guaranty of price as far as of the MSRP
10 price because we know it's going to increase every year.

11 Q. But this doesn't say anything about MSRP.

12 A. That's what I take for granted that it's
13 supposed to mean. When I sign something like that, that's
14 what I figure it is. If you buy a car, you buy a car at
15 whatever the price is that you're paying for the car, which
16 would be MSRP price.

17 Q. Mr. Lund, are you aware there was a class
18 action lawsuit brought against Twin City Harley-Davidson?

19 A. Yes.

20 Q. When did you first become aware of this class
21 action lawsuit?

22 A. I believe when I got a letter from them saying
23 there was a class action lawsuit.

24 Q. Do you remember when that was?

25 A. No, I don't.

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1 Q. Do you remember what --

2 A. It was quite a while ago.

3 Q. Did you read that notice thoroughly?

4 A. Not really, no.

5 Q. Did you understand that you were a member of
6 the class?

7 A. It says that if you don't do anything about
8 it, you're automatically a member of it.

9 Q. You understood that you had to do something to
10 get out of the class?

11 A. Right.

12 Q. Did you do anything to get out of the class?

13 A. Yes, I did.

14 Q. What did you do?

15 A. I called the attorney that was on the letter.

16 Q. Which attorney did you call?

17 A. Sisam attorneys, the office.

18 Q. And you verbally represented to Mr. Sisam's
19 office that you wanted to opt out of the class?

20 A. No, I don't -- no, I didn't. In fact, no,
21 I'll take that back. I didn't -- when I got the letter, I
22 actually didn't do -- I was just going to say forget it,
23 just go whatever the letter says. That was my original
24 deal.

25 Q. You elected to take whatever deal the class

1 members were going to receive?
 2 A. Right.
 3 Q. Do you understand that that prevents you from
 4 bringing a claim now?
 5 A. No, because then they, after it was -- I never
 6 did do anything about it. I never got any discounts or
 7 anything because my reasoning was why would I want to go to
 8 a store and give them more money just to get a discount?
 9 And, anyway, I didn't think the discount was that great.
 10 Ten percent on \$2,000, and you get \$200 off when they
 11 overcharge you \$1400? I mean that's a pretty good -- I
 12 mean, I would give up \$200 to get \$1200 more back. That
 13 would be a pretty good deal.
 14 Q. But you didn't do anything affirmatively to
 15 opt out of the settlement?
 16 A. Not at that time, no.
 17 Q. Have you ever taken any steps to opt out of
 18 the settlement?
 19 A. Yes, I did. That's why I got into this.
 20 Q. What did you do?
 21 A. Because some of the ones that were on the list
 22 called me and wanted to know because they knew I bought a
 23 motorcycle there, and they say you can get on this list, so
 24 that's when I called the lawyer. And he said we'll see if
 25 we can get you on the list, and I got on the list before

1 A. It was after this one right now? No, it
 2 wasn't after that. It had to be before that. Otherwise I
 3 wasn't have been in the lawsuit.
 4 Q. Somebody informed you there was another
 5 lawsuit starting and that maybe you could get involved in
 6 it?
 7 A. No, just the lawsuit that was taking place,
 8 the one where you got the discount. That's the only one I
 9 was aware of at the time.
 10 Q. The class action lawsuit?
 11 A. Right.
 12 Q. And you got a notice saying that you had to
 13 either elect to stay in that or opt out of that?
 14 A. Right.
 15 Q. And you didn't take any affirmative steps to
 16 opt out of that lawsuit. Correct?
 17 A. (Indicating in the Negative.) Not at that
 18 time, no.
 19 Q. What did you ever do -- did you ever
 20 affirmatively tell somebody that you wanted to opt out of
 21 that lawsuit?
 22 A. When I called the lawyer.
 23 Q. And I want to know as best you can recall when
 24 that was. When did you call the lawyer?
 25 A. Well, I think -- if I remember right, I

1 the lawsuit was taking place.
 2 Q. You wanted to get on what list?
 3 A. The list for the lawsuit.
 4 Q. The present lawsuit that you're a plaintiff
 5 in?
 6 A. Yes.
 7 Q. Did anyone explain to you that because you
 8 failed to opt out of the class action, you couldn't partake
 9 in this lawsuit?
 10 A. No, because they said they had the opportunity
 11 to do it when they entered my name in it.
 12 Q. Entered your name in what?
 13 A. On this class action lawsuit with the other
 14 whoever is on there.
 15 Q. Did you ever submit anything in writing to
 16 anyone saying you did not want to be a member of the class?
 17 A. I don't believe so.
 18 Q. And you never verbally informed anyone that
 19 you didn't want to be a member of the class?
 20 A. Just to the lawyer.
 21 Q. Okay. Can you tell me approximately when that
 22 was?
 23 A. No. I'm not sure when it was.
 24 Q. It was after you had heard about this lawsuit
 25 that you're presently involved in?

1 believe the -- you had to take this discount deal at Twin
 2 City Harley before May 1st, I believe, and I never got a
 3 letter stating that I was entitled to do that. I had been
 4 in the store many times before that, and I could have used
 5 it every time I went for service on my bike. I could have
 6 used that discount for that, or whatever, whatever the
 7 discount was for. I'm not even sure what it was all for.
 8 I heard it was just for certain things. You couldn't get
 9 for everything anyway. I don't know. I'm not sure what it
 10 was.
 11 Q. So you understood your time frame for either
 12 opting out of the settlement or accepting the settlement
 13 was the time made available to take advantage of the
 14 discount? That was your deadline for opting out of the
 15 settlement? Was that your understanding?
 16 A. No. I had just understood what the letter
 17 said, the original letter said, that there's a class action
 18 lawsuit against Twin City Harley, and if you don't opt out
 19 of it, you're automatically in the class action lawsuit.
 20 So then I just took and put it away. I said, Well, I'll
 21 think about that later. When I went to get the letter, it
 22 was past that date. When I looked at the letter, I
 23 thought, well, I guess I'm just going to have to go along
 24 with it. I wasn't happy about it, but it's too late. I
 25 didn't submit my letter.

1 Q. So you understand that it was too late for you
 2 to do anything about it?
 3 A. Yes, I did.
 4 MR. LAFFEBER: That's all I have.
 5 MR. ISAACSON: I have no questions.
 6 Mr. Lund, you have the right to read and
 7 review and correct the transcript of this deposition after
 8 it's typed up. It would get sent to us, and you come into
 9 our office, sit down and read it, see what corrections you
 10 might want to make and put those down on a separate sheet
 11 of paper, and then we send it back to the court reporter.
 12 You also have the right to waive that right. You need not
 13 do that. I'd recommend that you review it.

14 THE WITNESS: Okay.

15 (Whereupon, at 12:58 p.m., Thursday,
 16 November 9, 2000, the taking of the deposition
 17 of DANIEL M. LUND was adjourned.)
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 25

1 STATE OF MINNESOTA)
 2 COUNTY OF WRIGHT) SS
 3 Be it known that I took the deposition of DANIEL M.
 4 LUND on the 9th day of November, 2000, at Metropolitan
 5 Centre, Suite 1700, 333 South Seventh Street, Minneapolis,
 6 Minnesota;
 7 That I was then and there a Notary Public in and for
 8 the County of Wright, State of Minnesota, and that by
 9 virtue thereof, I was duly authorized to administer an
 10 oath;
 11 That the witness before testifying was by me first
 12 duly sworn to testify the whole truth and nothing but the
 13 truth relative to said cause;
 14 That the testimony of said witness was recorded in
 15 Stenotype by myself and transcribed into typewriting under
 16 my direction, and that the deposition is a true record of
 17 the testimony given by the witness to the best of my
 18 ability;
 19 That the cost of the original transcript has been
 20 charged to the party noticing the deposition, unless
 21 otherwise agreed upon by Counsel, and that copies have been
 22 made available to all parties at the same cost, unless
 23 otherwise agreed upon by Counsel;
 24 That I am not a relative to any of the parties hereto
 25 nor interested in the outcome of the action;
 That the reading and signing of the deposition by the
 witness was executed as evidenced by the preceding page:
 That Notice of Filing was waived.
 WITNESS MY HAND AND SEAL this ____ day of
 _____, 2000.

 Randall D. Herrala, RPR
 Court Reporter

1 (DANIEL M. LUND)
 2
 3 I, DANIEL M. LUND, do hereby certify that I
 4 have read the foregoing transcript of my Deposition and
 5 believe the same to be true and correct (or except as
 6 follows, noting the page and line number of the change or
 7 addition desired and the reason why):
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 Dated this ____ day of _____, 20____.
 (RDH)