

LITIGATION PRACTICE GROUP

LAWYERS SUING CAR DEALERS OVER DOCUMENT PREPARATION FEES

OCTOBER 2007

Automobile dealers take note. Class action lawyers have begun suing automobile dealers for charging document preparation fees.

Following on the heels of class action lawsuits against banks for charging document preparation fees, litigation has spread to the automotive industry. Lawsuits were filed in St. Louis Courts on Thursday, September 26. The problem with document preparation fees is that the document preparation process can be considered the practice of law. When non-lawyers engage in the unauthorized practice of law, they can be ordered to pay back three times the amount of the fees collected.

In a case challenging document preparation fees charged by financial institutions, the Missouri Supreme Court last August held that when the defendant bank charged a customer a document preparation fee for preparing or completing various mortgage loan documents, the bank was engaging in the practice of law. The Court cited a Missouri statute defining the “law business” as “assisting in the drawing for valuable consideration of any paper, document or instrument affecting or relating to secular rights.” *Eisel v. Midwest Bank Centre*, No. SC 88167 (Mo. banc 8/21/2007), citing Missouri Statute Section 484.010.2. The statute allows only licensed attorneys to engage in the law business. Under the Court’s reasoning, because a bank cannot be a licensed attorney, if “the bank” is preparing the documents, the bank is engaging in the unauthorized practice of law.

The violation was triggered by the combination of preparing documents and charging the

customer a fee for the preparation of the documents. All seven judges of the Missouri Supreme Court joined in the decision.

Presumably inspired by the recent court ruling, class action suits have been filed against automobile dealers in the St. Louis area. But companies in other industries that include document preparation fees on their invoices or billing documents could be targets of suits.

Document fees have also been attacked in the past from a more traditional consumer fraud perspective. For instance, litigation in the cell phone industry by state attorneys general attacked “regulatory” or other fees on cell phone bills where fees appeared to be government-imposed taxes rather than company-imposed fees.

Liability for companies charging document preparation fees is far from automatic. The precise way they are described or accounted for may make a difference. Among the issues for consideration: Are the fees actually for drawing up documents? Is the customer being charged for a service to the customer, or is the preparation for the company? Does the fee appear to be government-imposed or company-imposed?

The answers to these questions will vary from business to business. Automobile dealers and other businesses charging fees with terms similar to document preparation fees should have their forms analyzed carefully.

For more information contact Erwin Switzer at 314-335-6825.