

MARYANN CERBO, et al.,

Plaintiffs,

v.

FORD OF ENGLEWOOD, INC, et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NOs: BER-L-2871-03; BER-L-2925-03; BER-L-2936-03;
BER-L-2937-03; BER-L-2939-03; BER-L-2954-03; BER-L-2976-03

CIVIL ACTION

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

A New Jersey court authorized this notice. This is not a solicitation.

You Are Not Being Sued.

INFORMATION CONTAINED WITHIN THIS NOTICE MAY AFFECT YOUR RIGHTS TO RECEIVE COMPENSATION. PLEASE READ THE COMPLETE NOTICE CAREFULLY. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOU MAY BE ENTITLED TO THE BENEFITS DESCRIBED BELOW.

TO: ALL PERSONS WHO, WHILE RESIDING IN THE STATE OF NEW JERSEY, PURCHASED OR LEASED A NEW OR USED MOTOR VEHICLE (EXCEPT THAT FLEET SALES AND CERTAIN VEHICLES EXCEEDING 18,000 POUNDS MAY BE EXCLUDED) FROM ANY OF THE "SETTLING DEALERSHIPS DURING THEIR APPLICABLE CLASS PERIOD."

What Is This Notice? This Notice is to inform you of a proposed Class Action Settlement involving the Dealerships referenced on the enclosed list. Your rights may be affected by the proposed settlement of a class action lawsuit pending against automobile dealerships. You are a member of a proposed class that will receive certain benefits if the settlement is approved. The listed benefits of the settlement, described herein, will be available only if the Court approves the Settlement. All Settlement Class Members and their attorneys are entitled to be present at a Fairness Hearing that will commence January 3, 2006 at 9:00 a.m. in Courtroom 301, Superior Court of New Jersey, Bergen County Justice Center, 10 Main Street, Hackensack, New Jersey 07601 before the Honorable Jonathan N. Harris, J.S.C. and will continue day-to-day until completed. At the Hearing, the Court will determine whether the Settlement should receive final approval as being fair, reasonable and adequate, determine whether to unconditionally certify the Settlement Class and consider the award of counsel fees, costs and Class Representative incentive awards to be paid according to the terms of the settlement described in this document. Settlement Class Members who do not request exclusion from the Settlement pursuant to Section X.A below (the "Settlement Class Members") will automatically be bound by the terms of this settlement (Settlement Agreement) if the Court approves it. However, if you request exclusion, you will not receive the Sale or Lease Discount Remedy, the Cash Refund Remedy, or the Parts or Service Discount Remedy, all of which are described herein.

A total of 397 automobile dealerships (Settling Dealerships) have decided to participate in this Settlement. If you purchased or leased a vehicle from any one of the Settling Dealerships from April 17, 1997 through at least April 17, 2003, you should be receiving a Notice like this for each transaction. Please visit www.njautosettlement.com for a complete listing of all Settling Dealerships, their applicable class period and how you can obtain additional Notices and certificates if you did not receive one for each transaction. A list of the Settling Dealerships and their applicable class period is enclosed.

I. CLAIMS AND DEFENSES (WHAT THIS LAWSUIT IS ABOUT)

This lawsuit was brought by 113 Plaintiffs individually, and on behalf of customers like yourself, who purchased or leased a new or used motor vehicle from Defendant new car automobile dealerships across the State of New Jersey from April 17, 1997 through a minimum time period of April 17, 2003. Plaintiffs claim that: (1) consumers were charged Registration and/or Title fees in excess of those permitted by the New Jersey Motor Vehicle Commission ("MVC"); (2) consumers were not given itemized disclosure of those charges, documentary costs or government costs; (3) consumers were overcharged for document service fees; (4) consumers were not advised that the government does not require the Dealer to perform such documentary services; and/or (5) Defendants' actions and omissions described above violated the New Jersey Consumer Fraud Act 56:8-1 et. seq., N.J.A.C. 13:45A-26B and the Truth-In-Consumer Contract, Warranty and Notice Act. Based on these allegations, the Complaint asserts causes of action for Common Law Fraud, Consumer Fraud, conspiracy to commit Consumer Fraud and conspiracy to commit Common Law Fraud.

The Settling Dealerships deny any wrongdoing and will vigorously defend against this lawsuit ("Action") if the Settlement is not approved. The Settling Dealerships have agreed, nevertheless, to settle the Action to avoid the costs, risks, and uncertainty inherent in any litigation.

II. MEMBERS OF THE SETTLEMENT CLASS AND A SUMMARY OF THE SETTLEMENT

Your settlement class consists of all Persons who, while residing in the State of New Jersey, purchased or leased a new or used motor vehicle from any of the Settling Dealerships during their applicable Class Period. This class will be referred to hereinafter as the "Settlement Class." Excluded from the Settlement Class are (a) employees, officers, directors, agents and legal representatives of each Dealership and its affiliated entities; (b) purchasers of Fleet Sale Vehicles; (c) vehicles in excess of 18,000 pounds; and (d) persons who validly exclude themselves from the Settlement Class by requesting exclusion in accordance with the terms of the Notice described herein.

The proposed Settlement of this Action provides that all Settlement Class Members will receive a certificate which entitles the bearer to a \$100 discount off of the purchase or lease of a new or used motor vehicle from the Settling Dealership issuing the certificate (the "Sales or Lease Discount Remedy"). In addition, the proposed Settlement of this Action provides that Settlement Class Members who were charged Registration and/or Title Fees in an amount that were in excess to the fees paid to the MVC on their behalf are entitled to apply for a one-hundred-percent refund of any overcharge in accordance with procedures set forth in the Settlement Agreement (the "Cash Refund Remedy"). If the Settlement Administrator determines that any Settlement Class Member who returns the Cash Reimbursement Certificate was charged Registration and/or Title Fees in an amount that was in excess of the fees paid to the MVC on their behalf by \$35.01 or more, the Settlement Class Member shall receive an additional certificate good for a 10% discount off the total charge on a single visit for the purchase of service and/or parts and/or accessories from the Settling Dealership from whom the Settlement Class Member purchased or leased the vehicle in question (the "Parts or Service Discount Remedy"). Additionally, the Settling Dealerships have agreed to make themselves subject to certain equitable relief governing their conduct in the future. The Settling Dealerships have also agreed to pay the costs of giving notice to Settlement Class Members. Finally, the Settling Dealerships have agreed to pay Plaintiffs' attorney's fees. These payments of attorney's fees will not reduce the amount of the relief to which Settlement Class Members are entitled.

III. TERMS OF THE PROPOSED SETTLEMENT

A. **The Sale or Lease Discount Remedy (\$100 Sale or Lease Certificate)**

Settlement Class Members may receive their Sale or Lease Discount Remedy by presenting the enclosed transferable Sale or Lease Discount Certificate according to the terms reflected thereon. These terms include, but are not limited to, the following: (1) the Certificate is transferable to other customers of the issuing Settling Dealership; (2) this Sale or Lease Discount Certificate may be used in combination with any other valid coupon, certificate, or offer issued after January 28, 2005; (3) each Sale or Lease Discount Certificate shall be redeemable one time only; (4) only one Sale or Lease Discount Certificate may be used for any single purchase or lease; (5) the Sale or Lease Discount Certificate shall be redeemed only within two (2) years of the date after approval of this settlement; and (6) the Sale or Lease Discount Certificate will become invalid if the Court does not approve the Settlement Agreement at the Fairness Hearing.

B. **The Cash Refund Remedy (Cash Reimbursement Certificate)**

If a Settlement Class Member submits the Cash Reimbursement Certificate in compliance with Section IV(B) below, and if the Settlement Administrator determines that said Settlement Class Member has been overcharged for Registration and/or Title Fees by a Settling Dealership, the Settlement Class Member will receive the Cash Refund Remedy. The Settlement Administrator shall calculate the amount of the Cash Refund Remedy in accordance with the Settlement Agreement and ensure that any applicable compensation is timely mailed to each Settlement Class Member.

Any Settlement Class Member who submits the Cash Reimbursement Certificate in compliance with Section IV(B) below, but who the Settlement Administrator determines was not overcharged for Registration and/or Title Fees, will receive a written statement from the Settlement Administrator that the Settlement Class Member is not eligible for any Cash Refund Remedy (the "Ineligibility Statement").

If a Settlement Class Member submits the Cash Reimbursement Certificate in compliance with Section IV(B) below, but the Settlement Administrator cannot determine whether said Settlement Class Member was overcharged for Registration and/or Title Fees, the Settlement Class Member will receive a refund equal to the average overcharge by the Settling Dealership in question.

C. **The Parts or Service Discount Remedy**

If a Settlement Class Member receives a Cash Refund Remedy equal to or greater than \$35.01, said Settlement Class Member will also automatically receive a Parts or Service Discount Certificate, which can be used to receive the Parts or Service Discount Remedy according to the terms reflected on the Parts or Service Discount Certificate. These terms include, but are not limited to, the following: (i) the Parts or Service Discount Certificate shall be non-transferable; (ii) the Parts or Service Discount Certificate shall be redeemable one time only; (iii) only one Parts or Service Discount Certificate may be used for any single visit for parts, services, and/or accessories; and (iv) the Parts or Service Discount Certificate shall be redeemable only within one (1) year from the date of mailing as indicated by the expiration date printed on the Certificate.

D. **The Equitable Remedy**

On a going-forward basis, each Settling Dealership agrees to (1) charge documentary fees only in amounts reasonably related to the value of the benefit of the services to the consumer; (2) disclose that the documentary fees are service fees established by the Settling Dealership in amounts that cover costs and reflect the value of the benefit of the service; (3) disclose that, in some cases, the fee includes some optional services that may be performed by the consumer; and (4) disclose that title and registration fees may be estimated and that the Settling Dealership will refund any overcharge to customers in the ordinary course of business.

IV. WHAT YOU NEED TO DO TO PARTICIPATE IN THE SETTLEMENT

- A. As the addressee, if you receive this Notice directly in the mail, your Sale or Lease Discount Certificate and your Cash Reimbursement Certificate are enclosed. If you are a Settlement Class Member and you received this Notice by means other than directly in the mail, you may obtain a Sale or Lease Discount Certificate and a Cash Reimbursement Certificate by contacting the Settlement Administrator, Poorman-Douglas Corporation, at the [Cerbero Settlement website, www.njautosettlement.com](http://www.njautosettlement.com) or by calling toll free at 1-866-778-1146. Your request must include your name and address and dealership information.
- B. To determine whether a Settlement Class Member is eligible for the Cash Refund Remedy and/or the Parts or Service Discount Remedy, the Settlement Class Member must complete the Cash Reimbursement Certificate and mail it to the Settlement Administrator, Poorman-Douglas Corporation, at PO Box 3240, Portland, Oregon 97208-3240, with a postmark no later than midnight of the expiration date printed on the certificate ("the Application Deadline"). In completing the Cash Reimbursement Certificate, the Settlement Class Member must provide (i) the Settlement Class Member's name; (ii) the Settlement Class Member's address; (iii) the name of the Settling Dealership from which the Settlement Class Member purchased or leased the vehicle for which the Cash Reimbursement Certificate is submitted; (iv) the address of the Settling Dealership for which the Cash Reimbursement Certificate is submitted; (v) the Year, Make, and Model of the vehicle purchased or leased for which the Cash Reimbursement Certificate is submitted; and (vi) the Settlement Class Member's signature.
- C. The Settlement Administrator will disregard any Cash Reimbursement Certificate that is materially incomplete or inaccurate such that the Settlement Administrator cannot verify the Settlement Class Member's eligibility for a Cash Refund Remedy and/or Parts or Service Discount Remedy.
- D. **Settlement Class Members must complete and return the Cash Reimbursement Certificate no later than the Application Deadline.** The Settlement Administrator will disregard any Cash Reimbursement Certificate that is received after the Application Deadline, unless said Cash Reimbursement Certificate bears a legible postmark dated on or before midnight of the application deadline printed on the Cash Reimbursement Certificate.
- E. As to each Cash Reimbursement Certificate that the Settlement Administrator receives and does not disregard, the Settlement Administrator will mail to the Settlement Class Member a Cash Refund, if applicable; the Parts or Service Discount Certificate, if applicable; or the Ineligibility Statement, if applicable, within ninety (90) days of the later of the date on which the Settlement Administrator receives the Cash Reimbursement Certificate or the date the Court approves the Settlement at or after the Fairness Hearing.

V. REASONS FOR THE SETTLEMENT

Plaintiffs in this lawsuit have been represented by a team of lawyers headed by Donald A. Caminiti of the law firm Breslin & Breslin and Donald S. MacLachlan and Philip S. Tarr of the MacLachlan Law Offices LLC (together, "Lead Counsel"). Lead Counsel have investigated the facts and reviewed the law underlying the Action. Lead Counsel also considered the defenses available to the Settling Dealerships.

In addition, the parties engaged in extensive, arm's-length settlement negotiations beginning in January 2004. The parties were able to arrive at a Settlement Agreement, which details all of the terms and conditions of the Settlement between the Settling Dealerships and the Settlement Class Members, both individually and on behalf of the Settlement Class, subject to final approval by the Court. The parties to this Settlement Agreement believe that the terms of the Settlement Agreement are fair, adequate, and in the best interest of the Settlement Class. The parties reached this conclusion after investigating and considering, among other things, the strengths and weaknesses of the Settlement Class Members' claims against the Settling Dealerships, the uncertainties inherent in this complex litigation, and the substantial benefits provided by the Settlement Agreement to the Settlement Class Members. While vigorously denying any liability in this Action, the Settling Dealerships consider it desirable and in their best interest that this Action be dismissed on the terms set forth in the Settlement Agreement to avoid further expense, inconvenience, distraction, and litigation.

This Settlement Class Notice does not indicate any expression or opinion by the Court concerning the merits of the respective claims or defenses asserted in the Action. This Notice is sent merely to advise Settlement Class Members of the proposed Settlement and of the Settlement Class Members' rights in connection therewith.

VI. ATTORNEYS' FEES, CLASS REPRESENTATIVE FEES, AND LITIGATION COSTS AND EXPENSES

The Settling Dealerships have agreed, subject to Court approval, to pay attorneys' fees to Lead Counsel as follows:

- A. \$2.50 per vehicle sold or leased by the Settling Dealership during the class period applicable to said Settling Dealerships.
- B. An additional \$0.50 per vehicle sold or leased by the Settling Dealership during the class period applicable to said Settling Dealership, if said Settling Dealership's average overcharge for title and registration fees equaled \$35.01 or more.
- C. Notwithstanding subsections A and B above, under the terms of the Settlement Agreement, each Settling Dealership will pay Lead Counsel a minimum of \$18,000.00 (eighteen thousand dollars) in attorneys' fees. The total minimum legal fee paid by the 397 Settling Dealerships under the agreement would equal \$7,146,000.00 (seven million, one hundred forty-six thousand dollars).

The Settling Dealership have also agreed, subject to Court approval, to pay an incentive award of \$2,000.00 (two thousand dollars) to each Court-appointed Class Representative, payable by the Settling Dealership from whom each such Court-appointed Representative purchased or leased a vehicle, provided however that the aggregate of incentive payments owed by any Settling Dealership shall not exceed \$6,000 (six thousand dollars), to be shared equally between those Court-appointed Class Representatives who purchased or leased a vehicle from said Settling Dealership.

If the Amended Complaint names no Plaintiffs for any particular Settling Dealership, or if the Amended Complaint names fewer Plaintiffs for any particular Settling Dealership than the Court may require, and if the Court requires the addition of named Plaintiffs as a precondition to considering or approving the Settlement, each such newly named Plaintiff will receive an incentive award of \$2,000.00 (two thousand dollars), payable by the Settling Dealership from whom each such newly named Plaintiff purchased or leased a Vehicle, provided however that the aggregate of incentive payments owed by any Settling Dealership pursuant to this paragraph shall not exceed \$4,000.00 (four thousand dollars), to be shared equally between those newly named Plaintiffs who purchased or leased a vehicle from said Settling Dealership. Any incentive awards applied toward the \$6,000.00 (six thousand dollar) cap in the prior paragraph shall also apply towards the \$4,000.00 (four thousand dollar) cap in this paragraph.

In addition, the Settling Dealerships shall pay the costs of providing Notice and of the costs and fees of the Settlement Administrator, which amounts are in addition to and separate from all other fees, consideration and remedies paid to and available to the Settlement Class Members, Court-appointed Class Representatives, and Lead Counsel.

Settlement Class Members shall have no personal liability for any attorneys' fees, expenses or costs associated with this Action.

VII. RELEASES

In addition to the binding effect, and all other effects, of any Final Judgment entered in accordance with the Settlement Agreement, upon the Settlement Agreement being approved by the Court, the Settling Dealerships and their affiliates, predecessors, successors, parents, subsidiaries, assigns, counsel, agents, and all past, present or future officers, directors or employees, and each of their respective affiliates, predecessors, successors, parents, subsidiaries, and counsel which have been or could have been asserted as parties to the transactions, actions, conduct and events that are the subject of the Action and the Settlement (all called the "Released Parties"), will, to the fullest extent permitted by law, be released and forever discharged by the Plaintiffs, Settlement Class Members, and their respective heirs, assigns, and successors (the "Releasing Parties"), from any and all claims, rights, demands, suits, matters, obligations, damages, including consequential damages, losses or costs, punitive or exemplary damages, fines, penalties, attorney's fees and costs, actions or causes of action, of every kind and description, whether based on or under federal law or regulation, or the laws of regulation of any state or subdivision, that the Releasing Parties had, or may have, against the Released Parties, arising out of or related in any way to the subject matter of the action, whether known or unknown, suspected or unsuspected, asserted or unasserted, accrued, or which may thereafter accrue, including but not limited to, and regardless of the legal theory and the type of relief or damages sought, claims for damages, injunctive or declaratory relief, arising out of or related to any Documentary Fees and/or Registration and/or Title Fees charged and/or collected by the Settling Dealerships. Collectively, the claims identified in the preceding paragraph are the "Released Claims." The Released Claims, include, but are not limited to, claims arising under theories of fraud; Consumer Fraud; violations of the Truth in Consumer Contract, Warranty and Notice Act; Conspiracy or Concert of Action, and all other state or federal statutory, regulatory, and common-law claims.

VIII. LIMITS OF CONSIDERATION

The Cash Refund Remedy, the Sale or Lease Discount Remedy, the Parts or Service Discount Remedy, the Equitable Remedy, the incentive awards to the Plaintiffs, the Category A and B Administrator fees, costs and expenses, attorneys' fees, costs and expenses as described above, and in the Settlement Agreement, are the only consideration, fees, costs, or expenses that the Settling Dealerships or the Released Parties shall be obligated to give to any Plaintiff, Settlement Class Member, or Lead Counsel in connection with the Settlement and the release of the Released Rights.

IX. DENIAL OF LIABILITY

The Settling Dealerships and the Released Parties do not admit any wrongdoing or liability and vigorously deny the Plaintiffs' and Settlement Class Members' allegations. The proposed Settlement is a compromise of disputed claims and does not mean that the Settling Dealerships are liable for any of the claims or causes of action asserted by the Plaintiffs in the Complaint.

X. RIGHTS AND OPTIONS OF CLASS MEMBERS

Each Settlement Class Member has the following rights and options:

- A. **Request Exclusion from the Settlement Class.** Any Settlement Class Member who does not want to be a Settlement Class Member must timely and properly complete and submit an Opt-Out Notice stating (1) the Class Member's name and address, and (2) the Class Member wishes to be excluded from the Settlement Class. The Opt-Out Notice must be postmarked by midnight on October 31, 2005 and mailed to the Settlement Administrator, Poorman-Douglas Corporation, at PO Box 3240, Portland, Oregon 97208-3240. Failure to follow these instructions for requesting exclusion will result in a waiver of the right to be excluded from the Settlement Class.
- B. **Become a Settlement Class Member.** Any Settlement Class Member who does not request exclusion from the Settlement pursuant to subsection A, above, will become a Settlement Class Member, bound by the terms of the Settlement and this Notice. Settlement Class Members' interests will be represented by the Court appointed Class Representatives and Lead Counsel, who can be contacted at Breslin & Breslin, 41 Main Street, Hackensack, New Jersey 07601-7087 and MacLachlan Law Offices, 487 Goffle Road, Ridgewood, New Jersey 07450.
- C. **Enter an Appearance in the Action Through Counsel of Your Choice.** Settlement Class Members may enter an appearance in the Action through counsel of their choice.
- D. **Object to the Settlement.** Settlement Class Members may object to the Settlement by filing a written objection (two copies) with the Clerk of the Superior Court of New Jersey, Law Division, Attention Judge Jonathan N. Harris, Court Room 301, 10 Main Street, Hackensack, New Jersey 07601-0769. Objections must be filed and served upon the Court no later than November 28, 2005. In addition, no later than November 28, 2005, two copies of any objection with exhibits must also be served upon Lead Co-Counsel MacLachlan Law Offices, LLC, 487 Goffle Road, Ridgewood, New Jersey 07450, and two copies served upon liaison counsel for the Settling Dealerships, Marvin J. Brauth, Esq., at Wilentz Goldman & Spitzer, P.A., 90 Woodbridge Center Drive, Suite 900, Woodbridge, New Jersey 07095-0958. Settlement Class Members cannot both request exclusion from the Settlement Class and object to the Settlement; only Settlement Class Members may object to the Settlement. The objection must include: (1) a statement of each objection asserted; (2) a detailed description of the facts underlying each objection; (3) a detailed description of the legal authorities supporting each objection; (4) a statement of whether the objector intends to appear and argue at the Fairness Hearing and, if so, how long the objector anticipates needing to present the objection; (5) a list of the exhibits which the objector may offer during the Fairness Hearing, along with copies of such exhibits; and (6) a reference to docket number L-2871-03. Any Settlement Class Member who does not make and serve their written objection(s) in the manner prescribed above will be deemed to have waived any objections.

XI. THE FAIRNESS HEARING

The Court has given its preliminary approval to the proposed Settlement, has conditionally certified the Settlement Class, has found the Settlement has apparent merit, has approved this Settlement Class Notice, has approved appointment of the Class Representatives and has approved appointment of Lead Counsel as class counsel. The Court will hold a Fairness Hearing in the Courtroom of the Honorable Jonathan N. Harris, Superior Court of New Jersey, Law Division, Courtroom 301, Bergen County Justice Center, 10 Main Street, Hackensack, New Jersey commencing on January 3, 2006 at 9:00 a.m. and continuing day-to-day until completed, to determine whether, as recommended by the Class Representatives and Lead Counsel, it should confirm final certification of the Settlement Class, give final approval to the proposed Settlement, direct the consummation of the remaining terms of the Settlement Agreement, approve Lead Counsel fees in an amount not less than \$7,146,000.00, make any other findings, and make such other rulings incident thereto as are provided in the Settlement Agreement, including but not limited to executing the proposed Final Judgment, which will dismiss with prejudice all of the Settlement Class Members' Released Claims against the Released Parties. Attendance at the hearing is not necessary; however, any Settlement Class Member wishing to be heard orally in opposition to the proposed Settlement must indicate this intention in his or her objection as explained in Section X(D) above. Settlement Class Members who support the proposed Settlement do not need to appear at the hearing or take any other action to indicate their approval.

XII. FURTHER PROCEEDINGS

If the Court does not approve the Settlement, the Settlement Agreement will terminate and be null and void, and the Court will vacate the conditional certification of the Settlement Class, appointment of the Class Representatives as settlement class representatives and Lead Counsel as class counsel, and the Action will proceed as though the Settlement Class had never been certified and the appointments had not been made.

XIII. ADDITIONAL INFORMATION: OBTAINING A COPY OF THE SETTLEMENT AGREEMENT AND RELEASE

Any questions you have about the matters in this Settlement Class Notice should be directed to Lead Co-Counsel, Donald S. MacLachlan at MacLachlan Law Offices, 487 Goffle Road, Ridgewood, New Jersey 07450. The content of this Class Notice is only a summary of the terms of the Settlement Agreement. If you wish to obtain a copy of the Settlement Agreement, you may do so by requesting it in writing from Lead Co-Counsel at the above address. Please do not contact the Court. You may seek the advice and guidance of your own attorney if you desire. The pleadings and other records in this law suit may be examined and copied at any time during regular office hours of the office of the Clerk of the Superior Court, Bergen County, New Jersey.

SO ORDERED BY THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, BERGEN COUNTY.

Dated: July 1, 2005
(As Amended: August 19, 2005)

By: **Hon. Jonathan N. Harris, J.S.C.**
(Signature on File)