

Automobile financing in California

In a victory for automobile dealerships and financial institutions who lend money to California car buyers, lawyers at Christa & Jackson defeated a class action lawsuit challenging the legality of confidential profit-sharing agreements between automobile dealerships and the financial institutions that buy their car loans. The case had been closely watched by corporations owning dealerships in consumer-friendly California.

In *Corbett v. Hayward Dodge, Inc., Bank of America, et al.*, California Superior Court, Case No. H212741-9, the plaintiff asserted class action claims for unfair competition and fraud against an automobile dealership and the financial institution to which it had assigned a used car loan it had made to the plaintiff, Corbett. Although automobile dealers originally agree to finance the purchases of their customers, they then typically attempt to assign the loan to financial institutions. The financial institution often buys the loan at an interest rate which is lower than that the consumer has agreed to pay the dealership. The "profit" differential is usually shared between the dealership and the financial institution, typically under a pre-existing agreement. Corbett argued, on behalf of himself and other borrowers in California, that the profit-sharing arrangement was unfair because it ultimately forced consumers to pay higher interest rates on their loans. The plaintiff's lawyers argued that the profit-sharing arrangement should be disclosed to consumers. On behalf of each consumer who had purchased a vehicle, Corbett sought restitution of the entire "profit" differential. Corbett also sought recovery of all profits the dealership had made over the course of several years from the assignments. A

victory for the plaintiff would have cost the dealership millions of dollars.

Christa & Jackson persuaded the court to terminate the class action before holding a trial in the case. In the United States, both state court and federal courts employ a procedure to avoid a full-blown trial on the merits if a party can demonstrate that there is no "material" question of fact to be decided during a trial. In that event, the court can decide the matter in advance of trial, as a matter of law. This is usually termed a motion for "summary judgment."

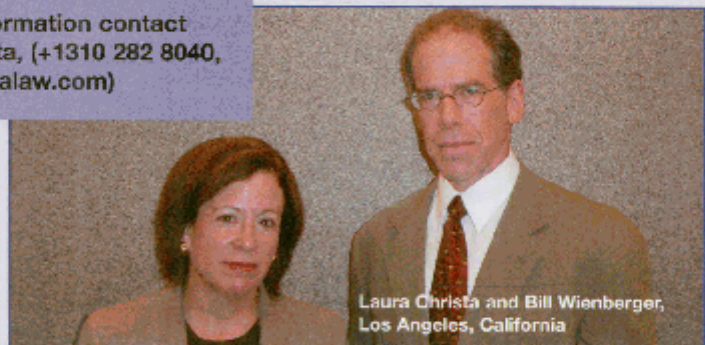
Laura K. Christa and William E. Weinberger of Christa & Jackson, argued on behalf of the automobile dealership that the dealership had not overcharged or deceived its customers: The automotive sales industry is highly regulated and the federal body in charge of regulating financial institutions had declined to require disclosure of the profit-sharing arrangement. The California legislature had never entertained, much less decided to require such a disclosure. Despite this, the court suggested that even if disclosure was not "required,"

wouldn't it nevertheless be "useful" to a customer? This illustrates the difficulty of doing business in an extremely consumer-friendly jurisdiction like California. A business runs the risk its conduct, while not affirmatively illegal, might nevertheless be considered "unfair," because different conduct might benefit consumers. Ultimately, while acknowledging the additional disclosure could well be useful to consumers, the court agreed that the failure to provide the disclosure could not, nevertheless, be decreed illegal under the existing regulatory environment. The court was not inclined to require additional disclosures in the absence of additional legislative requirements. The court granted summary judgment in favor of defendants.

Judge Ronald Sabraw, who decided the Corbett case, also decided a consumer case against Visa and MasterCard a couple of months later. He ordered approximately \$500 million in restitution to cardholders for failure to disclose adequately on their credit card statements that member banks were making a profit on international exchange rate conversions to U.S. Dollars when the customer used his or her card to make a purchase abroad.

Christa & Jackson is the LAWORLD member in Los Angeles, California, USA, specializing in litigation.

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Claus H. Lenz, managing partner of LAWORLD's Cologne, Germany member firm Lungerich & Lenz, has recently been elected as chairman of the Court of Arbitration of the West-German Hockey Association. Claus, who has represented Germany in the sport, is still an active field hockey player.



Yoav Salomon, a partner with LAWORLD's Haifa, Israel member Avniel, Salomon & Co, has been nominated by the prestigious guide European Legal Experts as one of 42 Israeli legal experts in litigation and arbitration.