STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 96-CvS-1499

FILED
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ONSLOW COUNTY C.S.C.

SHARON SUE HOGE,

Plaintiff,

vs.

NATIONAL DODGE-OLDS, INC.,

Defendant.

JUDGMENT

THIS MATTER, coming on for hearing and being heard before the undersigned Judge Presiding at the **February 1, 1999** Term of Onslow County Civil Superior Court, Jacksonville, North Carolina, before the Honorable W. Allen Cobb, Jr., Presiding, and a jury being duly impaneled to consider the issues, and the issues having been submitted to the jury and having been answered by them as follows:

1. Was the Plaintiff, **SHARON SUE HOGE**, induced to execute the contract for the purchase of a **1996 Dodge Truck** by the fraudulent representations of the Defendant, **NATIONAL DODGE-OLDS, INC.**?

Answer: Yes.

2. What amount of damages is the Plaintiff, **SHARON SUE HOGE**, entitled to recover?

Answer: $6,000.00.

3. Is the Defendant, **NATIONAL DODGE-OLDS, INC.**, liable to the Plaintiff, **SHARON SUE HOGE**, for punitive damages?

Answer: Yes.

4. What amount of punitive damages, if any, does the jury in its discretion award to the Plaintiff?

Answer: $300,000.00.

A TRUE COPY
CLERK OF SUPERIOR COURT
ONSLOW
BY Julia Alvarado

IT FURTHER APPEARING unto the Court that the amount of punitive damages awarded to the Plaintiff having exceeded the limitations allowed by N.C.G.S. Section 1D-25(b), the Court reduced this award and entered judgment for punitive damages in the maximum amount allowed and directed the Clerk to enter the jury verdict as amended on its records.

AND IT FURTHER APPEARING to the Court that the Defendant filed a motion for a new trial pursuant to Rule 59 or, in the alternative, for Judgment notwithstanding the verdict pursuant to Rule 50 of the North Carolina Rules of Civil Procedure, and for review of the punitive damages award pursuant to the provisions of Chapter 1D and in light of recent decisions in that area by the Supreme Court of the United States; and the Plaintiff having filed her motion for Findings of Fact pursuant to Rule 52 of the North Carolina Rules of Civil Procedure, and this matter coming on for hearing before the undersigned Judge Presiding upon such motions:

NOW, THEREFORE, THE COURT REVIEWING THE EVIDENCE IN THE RECORD MAKES THE FOLLOWING ADDITIONAL:

FINDINGS OF FACT

1. That the Defendant herein is a corporation duly organized under the laws of the State of North Carolina and having its principal place of business in Jacksonville, Onslow County, North Carolina.

2. That at all times relevant hereto, the Defendant was engaged in the retail sales of new and used automobiles, the retail servicing of automobiles, and the retail sale of automobile parts. Further, that the Defendant at all times relevant hereto was the Onslow County franchised dealer for the sale of Dodge trucks and automobiles, the sale of Volkswagen automobiles, and the sale of Subaru automobiles. At all times relevant hereto, the Defendant was a licensed North Carolina automobile dealer.

3. That at all times relevant hereto, **HARRY BROWN** was the sole stockholder and president of the Defendant.

4. That on or about the **18th** day of **April, 1996**, the Defendant corporation, in the regular course of its business, offered for sale to the general public a **1996 Dodge Truck, VIN 3B7HC13Y8TM154233** (hereinafter "the **1996 Dodge Truck**").

5. That on or about the **19th** day of **April, 1996**, **WARLICK-HORNE UNDERGROUND, INC.**, a North Carolina corporation in the person of **ROBERT L. WARLICK, JR.**, its President (hereinafter **"WARLICK"**), entered into a contract with the Defendant for the purchase of the **1996 Dodge Truck**.

6. That **WARLICK** agreed to pay to the Defendant the sum of **THIRTY THOUSAND TWENTY-SEVEN AND 87/100 DOLLARS ($30,027.87)** for the **1996 Dodge Truck** by giving to the Defendant an assignment of the **THREE HUNDRED AND NO/100 DOLLAR ($300.00)** rebate from the manufacturer, **ONE THOUSAND AND NO/100 DOLLARS ($1,000.00)** in cash, trading in a **1993 Chevy Truck** with an equity of **FIVE THOUSAND TWO HUNDRED TWENTY AND 77/100 DOLLARS ($5,220.77)**, and financing the balance of **TWENTY-THREE THOUSAND FIVE HUNDRED SEVEN AND 10/100 DOLLARS ($23,507.10)** with a loan through Wachovia Bank of North Carolina.

7. On **April 19, 1996**, **WARLICK** executed all of the paperwork necessary for the purchase of the **1996 Dodge Truck**, paperwork which was prepared and provided by the Defendant's Finance and Insurance Manager. **WARLICK** executed all documents necessary to transfer title to his **1993 Chevy Truck** to the Defendant, paid the purchase price in full and took delivery of the **1996 Dodge Truck**. The Defendant filled out the Manufacturer's Certificate of Origin in **WARLICK's** name and provided an Application for Title in **WARLICK's** name on North Carolina Department of Motor Vehicles Form MVR-1. The Defendant, through its Finance and Insurance Manager, sent a copy of the dealer's invoice and a copy of the Retail Buyer's Order to the Sales Finance Department of Wachovia Bank and received from Wachovia Bank the balance of the purchase price pursuant to the loan granted to **WARLICK** by Wachovia. The Defendant never delivered any title documents to **WARLICK** or forwarded the Manufacturer's Certificate of Origin or the MVR-1 to the North Carolina Department of Motor

Vehicles, and the **1996 Dodge Truck** was never titled nor registered to **WARLICK**. The actions of **WARLICK** and the Defendant, as aforesaid, constituted a sale of the **1996 Dodge Truck** to **WARLICK**.

8. **WARLICK** took possession of the **1996 Dodge Truck** on **April 19, 1996**, **WARLICK** drove the vehicle until he took it for service on **April 22, 1996**. Upon taking the truck to the Defendant's Service Department on **April 22, 1996** for repairs, the **1996 Dodge Truck** registered 295 miles. **WARLICK** complained, among other things, that there was a clicking noise in the steering column and a drive-line vibration on take-off. On **April 23, 1996**, the Defendant's Service Department returned the vehicle to **WARLICK** noting on the Repair Order that the Defendant's Service Department had special-ordered a steering column shaft and other parts necessary to fix the clicking noise in the steering column. The Repair Order further noted that the mechanic had talked to Chrysler about the drive-line vibration and had been told that Chrysler was in the process of designing a new drive shaft to remedy the vibration, and the new drive shaft would be coming out sometime during the summer of 1996.

9. On **April 24, 1996**, **WARLICK** retrieved the **1996 Dodge Truck** from the Defendant's Service Department and drove it two (2) miles before returning it to the Defendant's Service Department with 297 miles on it. **WARLICK** again complained of the vibration in the drive train and the noise in the steering column. The Defendant's Repair Orders reflect that the Defendant's Service Technician attempted to shim down the center bearing in the drive shaft and noted that this attempt did not fix the vibration problem. The Repair Order from the Defendant's Service Department on **April 24, 1996** reiterates that Chrysler was in the process of redesigning the drive shaft which would come out sometime during the summer of 1996. The Defendant's Service Technician replaced the lower steering column shaft in accordance with Chrysler Technical Service Bulletin 19-00-96. The Defendant's Service Department tendered the **1996 Dodge Truck** to **WARLICK** again on **April 26, 1996**. On **April 26, 1996** the **1996 Dodge Truck** was returned to the Defendant's Service Department. **WARLICK** again complained that there was a severe vibration when driving. The Defendant's Service Technician changed the

drive shaft from another truck to this **1996 Dodge Truck** according to the **April 26, 1996** work order. The truck was returned to **WARLICK** on **April 26, 1996**. **WARLICK** drove the vehicle through the weekend with the vehicle still suffering from the vibration problem.

10. On **April 29, 1996, WARLICK** drove the **1996 Dodge Truck** to the local Jacksonville Firestone Tire retailer and requested that the Firestone retailer replace the tires on the **1996 Dodge Truck** under the tire manufacturer's warranty in an attempt to solve the vibration problem. The Jacksonville Firestone retailer replaced the tires under warranty, but this did not resolve the vibration problem.

11 Sometime between **April 30, 1996** and **May 2, 1996, WARLICK** returned the **1996 Dodge Truck** to the Defendant's place of business and discussed the situation with the Defendant's Sales Manager, **ROBBIE YATES**. After discussing the continuing vibration problem with **ROBBIE YATES**, the **1996 Dodge Truck** was left by **WARLICK** at the Defendant's place of business.

12. The evidence is conflicting as to whether **WARLICK** intended to permanently return ownership of the **1996 Dodge Truck** to the Defendant. It is undisputed that Defendant never prepared any documentation transferring ownership of the **1996 Dodge Truck** from **WARLICK** to Defendant, and **WARLICK** never executed any documents transferring ownership of the **1996 Dodge Truck** to Defendant.

13. Sometime between **April 30, 1996** and **May 2, 1996**, the Defendant's Sales Manager, **ROBBIE YATES**, decided that rather than make any further attempts to cure the vibration problem of the **1996 Dodge Truck**, he would place the **1996 Dodge Truck** back on the Defendant's lot for sale. The **1996 Dodge Truck** was returned to the Defendant's lot and was offered to the public for sale as a new vehicle.

14. On **May 3, 1996**, the Plaintiff in this action appeared at the Defendant's car lot seeking to purchase a new vehicle. The Defendant's Salesman, **DAVE CASTILLO**, directed the Plaintiff to the **1996 Dodge Truck**. After inspecting the truck and taking the **1996 Dodge Truck** for a test drive, the Plaintiff inquired as to why the **1996 Dodge Truck** had 545 miles on it and

noted that the **1996 Dodge Truck** had a vibration problem when driven at moderate speeds. The Plaintiff was informed by **DAVE CASTILLO** that the mileage on the truck was a result of various potential customers "test-driving" the truck and that the vibration problem was a minor problem that could be easily cured by the Defendant's Service Technicians. Based on the representations of the Defendant's Salesman, **DAVE CASTILLO**, the Plaintiff entered into a contract for the purchase of the **1996 Dodge Truck** from the Defendant. The contract as entered into between the parties stated that the Plaintiff would pay to the Defendant for the **1996 Dodge Truck** the sum of **TWENTY-NINE THOUSAND SIX HUNDRED FOURTEEN AND 72/100 DOLLARS ($29,614.72)**. The purchase price was to be paid by allowing the Plaintiff a trade-in allowance on her **1994 Dodge Truck** of **FOUR THOUSAND THIRTEEN AND 29/100 DOLLARS ($4,013.29)**. The Plaintiff was to pay the sum of **SIX HUNDRED NINETEEN AND 72/100 DOLLARS ($619.72)** in cash and the balance of **TWENTY-FOUR THOUSAND NINE HUNDRED EIGHTY-ONE AND 71/100 DOLLARS($24,981.71)** was to be financed by the Plaintiff through Wachovia Bank. The Purchase Order and all disclosure documents indicate that the **1996 Dodge Truck** was represented to the Plaintiff as being new, and the Defendant's pleadings stipulate that the **1996 Dodge Truck** was represented to the Plaintiff as new.

15. That on **May 6, 1996**, the Plaintiff returned to the Defendant's place of business and executed all paperwork necessary for the purchase of the **1996 Dodge Truck**. The Plaintiff tendered the full purchase price for the truck to the Defendant and executed all documents necessary to transfer the title to her trade-in to the Defendant and took delivery of the **1996 Dodge Truck**. This transaction was ratified by the Defendant's Finance and Insurance Manager and by the Defendant's Sales Manager, **ROBBIE YATES**. The Defendant, through its Finance and Insurance Manager, sent a copy of the dealer's invoice and a copy of the Retail Buyer's Order to the Sales Finance Department of Wachovia Bank and received from Wachovia Bank the balance of the purchase price pursuant to the loan granted to Plaintiff by Wachovia. As was the case with **WARLICK**, the Defendant never delivered any title documents to the Plaintiff, and

never forwarded a Certificate of Origin or the MVR-1 to the North Carolina Department of Motor Vehicles. The **1996 Dodge Truck** was never titled nor registered to Plaintiff.

16. On **May 9, 1996**, the Plaintiff herein brought the **1996 Dodge Truck** to the Defendant's Service Department and complained of the vibration in the front end and loose steering. The Defendant's Service Department told the Plaintiff that both of these conditions were a normal characteristic of this type of vehicle. The Service Technician who worked on the **1996 Dodge Truck** on **May 9, 1996** for the Plaintiff, was the same Defendant's employee who had worked on the **1996 Dodge Truck** for **WARLICK** on **April 26, 1996, April 24, 1996** and on **April 22, 1996**. The **1996 Dodge Truck** was returned to the Plaintiff on **May 9, 1996**.

17. Over the weekend of **May 17-19, 1996**, the Plaintiff herein attempted to use the **1996 Dodge Truck** to pull her horse trailer. When under load, the **1996 Dodge Truck** vibrated so badly that it was difficult for the Plaintiff to control the vehicle and she was forced to abort her trip only a few miles from her home.

18. On **May 20, 1996**, the Plaintiff again returned the **1996 Dodge Truck** to the Defendant's Service Department, complaining of a loose steering wheel and of the vibration problem. The **1996 Dodge Truck** was tendered back to the Plaintiff on **May 20, 1996**, with the Service Department noting on the Repair Invoice that a steering column and shaft were on order and informing the Plaintiff for the first time that the manufacturer suspected the vibration problem was caused by a design defect in the drive shaft and that the manufacturer would not have a new drive shaft available for several months. The Plaintiff picked up the **1996 Dodge Truck** from the Service Department on **May 21, 1996**.

19. On or about **May 27, 1996**, the Plaintiff took the **1996 Dodge Truck** to the Jacksonville, North Carolina Firestone Tire Retailer in an attempt to have the tires replaced under warranty, thinking that perhaps the vibration problem was caused or aggravated by defective tires. At the Jacksonville Firestone retailer the Plaintiff met the same mechanic, a **Mr. Dave Ramach**, who had worked on the **1996 Dodge Truck** for **WARLICK**. **Mr. Ramach** informed the Plaintiff that he would not replace the tires on the **1996 Dodge Truck** as he had already done

so once for the previous owner and the replacement of the tires had not solved the vibration problem. At this point the Plaintiff inquired of **Mr. Ramach** as to who the prior owner of the **1996 Dodge Truck** was and ultimately learned that **WARLICK** had previously owned the **1996 Dodge Truck**. Later, **WARLICK** and the Plaintiff spoke on the telephone and **WARLICK** confirmed to the Plaintiff that he had indeed owned the **1996 Dodge Truck** prior to her purchase of the same.

20. On **May 28, 1996**, the Plaintiff drove the **1996 Dodge Truck** to the Defendant's place of business where she met with and spoke to the Defendant's Sales Manager, **ROBBIE YATES**. Upon being confronted with the Plaintiff's accusations that the truck was not new but in fact used when sold to her, and upon being told by the Plaintiff that the Plaintiff had spoken to **WARLICK** and had taken the truck to the same Firestone dealership as had **WARLICK**, the Defendant's Sales Manager, **ROBBIE YATES**, replied, "It's a small world, isn't it?" **ROBBIE YATES** indicated to the Plaintiff that he would be unable to do anything for the Plaintiff in the way of returning her money or replacing the **1996 Dodge Truck** without the express permission of **MR. HARRY BROWN**.

21. On **May 29, 1996**, the Plaintiff left the **1996 Dodge Truck** at the Defendant's place of business and removed her license plate from the truck.

22. The deposition of **HARRY BROWN** introduced and admitted into the record, and testified to by **HARRY BROWN**, contains the following exchange:

Robert W. Detwiler:	Q:	How often or how many times in your experience do you know of situations where a customer has come into National Dodge, signed a contract to buy a vehicle, National Dodge is paid by the bank for the vehicle, the customer drives out with the vehicle, brings it back sometime later and says, 'I'm not happy with it' and National Dodge resold that vehicle as a new vehicle. How often does that happen?"
Harry Brown:	A:	"Only if it's not titled."

Plaintiff's counsel again asked:

Robert W. Detwiler: Q: "And how often does that happen?"

Harry Brown: A: "It may happen two or three times a month."

23. The deposition of **ROBBIE YATES**, introduced and admitted into the record, and testified to by **ROBBIE YATES**, contains the following exchange:

Robert W. Detwiler: Q: "Is it your recollection that at the time the truck was sold to **WARLICK** that you or the Service Techs at National Dodge knew there was a vibration problem in this particular truck?"

Robbie Yates: A: "Yes."

24. Plaintiff offered copies of service records from the Defendant's Service Department which indicated that it was not until after **October 11, 1996** that the Defendant was finally able to resolve the vibration problem in the **1996 Dodge Truck**.

25. That in response to a direct question from Plaintiff's counsel, **ROBBIE YATES** indicated that he was not especially familiar with the North Carolina statutes and Department of Motor Vehicle regulations dealing with the registration, titling and licensing of motor vehicles, but did not feel the need to be familiar with them because he had the ability to call the local Department of Motor Vehicles at any time that he had a question regarding these statutes or regulations. However, there was no evidence that **ROBBIE YATES** had ever called for advice or assistance with regard to the licensing, titling or registration of motor vehicles.

26. That witnesses from the Sales Finance Department of Wachovia Bank of North Carolina, N.A. were called by the Plaintiff. These witnesses testified that it was not until Plaintiff's counsel called Wachovia Bank on **June 19, 1996** that Wachovia Bank became aware that documents submitted to them by the Defendant showed the **1996 Dodge Truck** was simultaneously serving as collateral for both the Plaintiff's and **WARLICK** loans. No one at Wachovia Bank was aware that the defendant had never recorded a lien on any title documents for either **WARLICK** or the Plaintiff; the Sales Finance Department of Wachovia Bank & Trust

believed from the title documents submitted to them by Defendant that Wachovia Bank & Trust had a valid first lien for both the **WARLICK** and the Plaintiff's loans.

27. From **April 19, 1996 to June 19, 1996** the Defendant corporation had exclusive possession of all proceeds from the **WARLICK** sale, including his down payment, trade-in allowance and the proceeds of the Wachovia loan.

28. That after **June 26, 1996** the Plaintiff began receiving telephone calls at home from Wachovia Bank regarding her failure to make the monthly loan payment for the **1996 Dodge Truck**.

29. That from **May 6, 1996 to July 30, 1996** the Defendant corporation had exclusive possession of all the proceeds from the sale to the Plaintiff, including her down payment, trade-in allowance, and the proceeds of the Wachovia loan.

30. **HARRY BROWN** testified that since the events giving rise to this action in **1996**, **ROBBIE YATES** had been promoted from Sales Manager to General Manager, the Finance and Insurance Manager who ultimately handled the transactions had been promoted to Sales Manager, and the Plaintiff's Salesman, **DAVE CASTILLO**, was still employed by the Defendant corporation.

31. On **June 19, 1996** the Defendant paid off the **WARLICK** loan after being directed to do so by Wachovia Bank.

32. On **July 30, 1996** the Defendant paid off the Plaintiff's loan after being directed to do so by Wachovia Bank.

33. That both **WARLICK** and the Plaintiff received late notices from Wachovia Bank & Trust regarding their unpaid loans.

34. During the second phase of the trial relating to the Defendant's liability for punitive damages, the Plaintiff introduced the Defendant's **1995, 1996 and 1997 State and Federal** corporate tax returns. For each of the years **1995, 1996 and 1997**, the Defendant had a total income in excess of **$4,000,000.00**. The Defendant's gross assets exceeded **$7,000,000.00** each of the three (3) years. **HARRY BROWN's** compensation ranged from **$142,000.00** to

$184,000.00 per year, with additional loans to **HARRY BROWN** from the corporation ranging from **$58,500.00** to **$93,360.00**. The Defendant's annual advertising budget ranged from **$485,000.00** to **$642,000.00** per year for each of the three (3) years, and the Defendant's charitable contributions ranged from **0 to $5,000.00** per year.

35. That in response to both a Request for Production of Documents and Subpoenas Duces Tecum from Plaintiff's counsel, Defendant furnished numerous documents to Plaintiff which were offered into evidence by Plaintiff. Included in these documents were several Work Orders from Defendant's Service Department which pertained to attempts to repair the **1996 Dodge Truck** during the period of its ownership by **WARLICK**. Defendant's General Manager, **MR. ROBBIE YATES**, testified in response to questions from Plaintiff's counsel that these Work Orders, Plaintiff's Exhibits #60, 63, and 64, were true and accurate copies of the original Work Orders. In fact, these Work Orders had been deliberately altered by the Defendant by deleting **WARLICK's** name and address from the documents, apparently in an attempt to convince the Court that **WARLICK** had never owned the **1996 Dodge Truck**.

36. That prior to resting her case, the Plaintiff moved for leave to amend her Complaint to allege a cause of action for fraudulent misrepresentation by the Defendant, which misrepresentations induced the Plaintiff to enter into the contract for purchasing the **1996 Dodge Truck**. By stipulation and agreement of the parties, the Plaintiff's Motion to Amend was allowed, and the Plaintiff abandoned her claims under N.C.G.S. Section 75-1.1 *et seq.*.

37. That the jury having returned a verdict as to Issue #4 in the amount of **THREE HUNDRED THOUSAND AND NO/100 DOLLARS ($300,000.00)**, the Court upon its own motion reduced the award of punitive damages to **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($250,000.00)** in compliance with North Carolina General Statute Section 1D-25.

OPINION

1. As required by the express provisions of N.C.G.S. Section 1D-50, this Court now reviews the Defendant's liability for punitive damages by application of the evidence presented at trial as hereinbefore set out, to the requirements of Chapter 1D.

2. As required by N.C.G.S. Section 1D-15(a), Plaintiff in this action is entitled to recover punitive damages only if she proves fraud, malice, or willful and wanton conduct by clear and convincing evidence. In this action, the Court submitted to the jury upon instructions approved by both parties the pattern jury instructions regarding fraud, and the level of evidence necessary to rise to the level of "clear and convincing". The jury returned a verdict in favor of the Plaintiff as to this issue. It is clear from the foregoing findings of fact that the Defendant had actual knowledge that the motor vehicle in question was defective prior to selling such motor vehicle to the Plaintiff. Moreover, the motor vehicle in question had been previously sold to another consumer and returned by that consumer because of the identical defect. Nonetheless, the Defendant represented this vehicle as a new vehicle to the Plaintiff. The actions of the Defendant in so doing clearly constitute actual fraud. Prior to purchasing the vehicle in question, the Plaintiff specifically asked about the vibration problem and was told by the Defendant's agents that the vibration problem was something that could be easily remedied by the Defendant's Service Department, despite the Defendant having actual knowledge that the vibration problem was an inherent design defect which could not be remedied by the Defendant.

3. N.C.G.S Section 1D-15(c) requires that prior to subjecting any corporate Defendant to liability for punitive damages, it must appear that the Defendant's officers, directors, or managers participated in or condoned the conduct constituting the aggravating factor giving rise to punitive damages. Plaintiff presented evidence that both the sole stockholder of the Defendant corporation, **MR. HARRY BROWN**, and the Defendant's Sales Manager, **MR. ROBBIE YATES**, were aware throughout the entire transaction with the Plaintiff as to the true nature of the vehicle sold to the Defendant and the misrepresentations which the Defendant's

employees were making to the Plaintiff. In fact, many of the misrepresentations made to the Plaintiff were made by the Defendant's Sales Manager, **MR. ROBBIE YATES**.

4. N.C.G.S. Section 1D-35 sets out nine (9) factors which the jury shall consider in determining the amount of punitive damages. The reprehensibility of the Defendant's conduct is demonstrated by the Plaintiff's evidence that the Defendant's agents deliberately misrepresented the condition of the **1996 Dodge Truck**, belittled the Plaintiff when confronted by the Plaintiff about the misrepresentations, violated the provisions of North Carolina General Statutes with regard to licensing and registration of motor vehicles, and misrepresented to Wachovia Bank the status of the Bank's lien position with regard to said motor vehicle. Not only did Defendant retain in its employment one of the persons responsible for making the misrepresentations, but promoted from Sales Manager to General Manager another of the individuals involved in the misrepresentations after this litigation was filed. Additionally, the Defendant presented, through discovery and at trial, documentary evidence to this Court which had clearly been altered in an attempt to mislead the Court and the jury as to the true state of the facts. (See Findings of Fact #s 14, 20, 23, 26, 30 and 35, *supra*.)

5. With regard to the likelihood of serious harm at the relevant time, economic harm to the Plaintiff was entirely foreseeable. Not only did the Plaintiff suffer economic loss as a result of the Defendant's misrepresentations, but the Jacksonville Firestone retailer replaced an entire set of new tires under warranty because of the Defendant's misrepresentations. Wachovia Bank made two (2) "secured" loans unknowingly utilizing the same vehicle as collateral for both loans, when in fact the Defendant never recorded a valid lien on the title for either loan. When the vehicle in question was under load, the vibration problem was so severe that the Plaintiff was unable to control the vehicle, thereby rendering the motor vehicle a significant safety hazard to the Plaintiff and other motorists. (See Findings of Fact #s 10, 17, 18, 24, 26, 27, 28, 29 and 33, *supra*.)

6. The Plaintiff's evidence proved that the Defendant's Sales Manager was aware throughout the transaction of the true state of affairs regarding this vehicle, and was also aware of

the misrepresentations that were being made by the Defendant's various employees and agents during their course of dealing with the Plaintiff. Further, the Defendant's Sales Manager, **MR. ROBBIE YATES**, testified during the course of the trial that he had made the decision to place the **1996 Dodge Truck** back into the stream of commerce, despite having actual knowledge of the defects of which the previous owner complained. The service records produced by the Defendant indicate that the Service Technician who attempted to convince the Plaintiff that the defects in the **1996 Dodge Truck** were a "normal characteristic of the vehicle" was the same Service Technician who had previously tried to correct these defects for the previous owner. (See Findings of Fact #s 7, 8, 9, 11, 13, 16, 20, 23 and 25, *supra*.)

7. Insofar as the duration of the Defendant's misconduct is concerned, the Defendant engaged in a pattern of misrepresentation and refusal to account to the Plaintiff for its actions throughout the entire time that the Defendant was engaged in dealing with the Plaintiff. Specifically, the Defendant had possession of the entire proceeds of the Plaintiff's loan from Wachovia Bank from **May 6** until **July 30, 1996**, only returning the proceeds to Wachovia when the Bank demanded that the Defendant do so. Even when the Plaintiff confronted the Defendant's Sales Manager and announced that she had uncovered the Defendant's misrepresentations, the Sales Manager's flippant response to the Plaintiff and refusal to take any action to correct the problem indicate a refusal by the Defendant to deal fairly with the Plaintiff until forced to do so by this litigation. The Defendant had still not returned the Plaintiff's cash downpayment to her, despite her rescission of the transaction, as of the date of the commencement of this trial. (See Findings of Fact #s 22, 27, 29, 31 and 32, *supra*.)

8. With regard to the Plaintiff's actual damages, the parties to this action stipulated that the damage to be considered by the jury was the actual economic out-of-pocket loss suffered by the Plaintiff. However, the Plaintiff suffered other losses not included in the compensatory damages, including the loss of use of her money for three (3) years and the damage done to her credit as a result of the Defendant's failure to pay off Plaintiff's Wachovia Bank loan. (See Findings of Fact #s 28 and 33, *supra*.)

9. The Defendant's attempt to conceal its conduct consisted of, *inter alia*, failing to properly fill out the documents required by the North Carolina Department of Motor Vehicles for the sale of this vehicle to the initial purchaser, as well as the sale to the Plaintiff, and its failure to properly record Wachovia Bank's lien for either transaction. The Defendant's salesman's outright misrepresentations to the Plaintiff prior to her purchase of the truck, attempts by the Defendant's Service Department to misconstrue to the Plaintiff the nature of the defect with the truck, and the Defendant's production of altered documents for the trial of this action are further evidence of concealment. (See Findings of Fact #s 12, 13, 14, 15, 16, 20, 26 and 35, *supra*.)

10. With regard to the frequency of other incidents of this type, the Plaintiff introduced the deposition testimony of the owner of the Defendant corporation. During this deposition, the deponent admitted that it is a regular course of business for the Defendant to offer for sale to the public as new, vehicles which had been previously sold to other customers and returned. (See Finding of Fact #22, *supra*.)

11. With regard to the profit realized by the Defendant on the transaction with the Plaintiff, it is impossible to determine, despite the voluminous documentation presented at trial, the specific amount of profit made by this Defendant with regard to this one particular sale. The Defendant's tax returns, however, indicate an annual gross profit from sales in excess of **THREE MILLION AND NO/100 DOLLARS ($3,000,000.00)**. (See Findings of Fact #s 6, 14, 15, 26, 27 and 34, *supra*.)

12. With regard to the Defendant's ability to pay punitive damages, the Plaintiff introduced the Defendant's tax returns for several years prior to and including the year of the transaction of which the Plaintiff complains. In addition, the Plaintiff called the owner of the Defendant corporation, **MR. HARRY BROWN**, as its sole witness during the second phase of the trial to introduce evidence regarding the level of compensation paid to the owner of such corporation. The jury's award of punitive damages is approximately one (1) month's gross profit to the Defendant corporation in the year of the transaction of which the Plaintiff complains. The Defendant offered no evidence during the punitive damages phase of the trial.

13. The Court is convinced that the Plaintiff has carried its burden of demonstrating by clear and convincing evidence that a substantial award of punitive damages is justified by the facts of this case. The Court is equally convinced that the jury's award of **THREE HUNDRED THOUSAND AND NO/100 DOLLARS ($300,000.00)** is excessive and that an award of ONE HUNDRED ~~SEVENTY-FIVE~~ **THOUSAND AND NO/100 DOLLARS** (100,000.00 ~~$75,000.00~~) in punitive damages would be more appropriate.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

1. That all parties hereto are *sui juris* and properly served with notice and with process and that this action is properly before the Court for trial.

2. That the Plaintiff, **SHARON SUE HOGE**, is entitled to recover compensatory damages from the Defendant in the amount of **SIX THOUSAND AND NO/100 DOLLARS ($6,000.00)**.

3. The evidence presented was sufficient to support the jury's verdict that the Defendant corporation acted fraudulently and was sufficient to support the submission of a punitive damage instruction to the jury.

4. That the provision of N.C.G.S. Section 1-D-25(b) requires that the jury's verdict of **THREE HUNDRED THOUSAND AND NO/100 DOLLARS ($300,000.00)** be reduced and that the Plaintiff, **SHARON SUE HOGE**, is entitled to recover punitive damages from the Defendant in an amount not to exceed **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($250,000.00)**.

5. That the issues were properly submitted to the jury upon instructions approved by both parties without objection.

6. That the jury was properly instructed to consider in determining its award of punitive damages the purposes for which punitive damages are awarded pursuant to N.C.G.S. Section 1D-1.

7. That the Plaintiff proved by clear and convincing evidence the existence of actual fraud as required by N.C.G.S. Section 1D-15(e)(1) and that after considering the evidence presented to the jury, and the Court applying the standards set forth in N.C.G.S. Section 1D-35, and in light of recent Supreme Court decisions in this area, the jury's award was unconstitutional under the facts and circumstances of this case.

8. That the Court, in its discretion, and with the consent of the Plaintiff, finds that the sum of **ONE HUNDRED ~~FIFTY THOUSAND~~** THOUSAND **AND NO/100 DOLLARS (~~$150,000.00~~** 100,000) is a more reasonable award in light of N.C.G.S. Section 1D-1 *et seq.* and recent Supreme Court decisions in this area.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Defendant's motion for JNOV pursuant to Rule 50 is hereby denied.

2. That the Defendant's motion for a new trial pursuant to Rule 59 is hereby denied.

3. That the Plaintiff shall have and recover of the Defendant the sum of **SIX THOUSAND AND NO/100 DOLLARS ($6,000.00)** as compensatory damages, said sum to bear interest at the legal rate from **June 13, 1996**.

4. That the Plaintiff shall have and recover of the Defendant the sum of **ONE HUNDRED ~~FIFTY~~ THOUSAND AND NO/100 DOLLARS (~~$150,000.00~~** 100,000) as punitive damages, said sum to bear interest at the legal rate from the **5th** of **February, 1999**.

5. That by the stipulation of the parties on the record, this Judgment may be entered out of session and out of district.

This the 3rd day of ~~November~~ January, 1999 2000.

W. Allen Cobb

HONORABLE W. ALLEN COBB, JR.
Superior Court Judge Presiding
Onslow County, North Carolina

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 96-CvS-1499

SHARON SUE HOGE,

Plaintiff,

vs.

NATIONAL DODGE OLDS, INC.,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **Judgment** dated **January 3, 2000** on counsel for the opposing party by hand-delivering a copy thereof to the following person at the following address, which is his last known address:

Jimmy F. Gaylor, Esq.
Gaylor, Edwards & Vatcher
219 New Bridge Street
Jacksonville, NC 28540.

This the 3rd day of January, 2000.

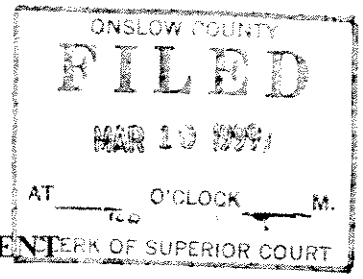
ROBERT W. DETWILER
Attorney for Plaintiff
327 New Bridge Street
P.O. Box 353
Jacksonville, NC 28541-0353
Telephone: (910) 455-0867
FAX: (910) 455-0867

GEORGANN GERACOS
Attorney for Plaintiff
323 New Bridge Street
Jacksonville, NC 28540
Telephone: (910) 346-1335

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 96-CvS-1499



SHARON SUE HOGE,

Plaintiff,

vs.

NATIONAL DODGE-OLDS, INC.,

Defendant.

JUDGMENT

THIS MATTER, coming on for hearing and being heard before the undersigned Judge Presiding at the **February 1, 1999** Term of Onslow County Civil Superior Court, Jacksonville, North Carolina, before the Honorable W. Allen Cobb, Jr., Presiding, and a jury being duly impaneled to consider the issues, and the issues having been submitted to the jury and having been answered by them as follows:

1. Was the Plaintiff, **SHARON SUE HOGE**, induced to execute the contract for the purchase of a **1996 Dodge Truck** by the fraudulent representations of the Defendant, **NATIONAL DODGE-OLDS, INC.**?

Answer: Yes.

2. What amount of damages is the Plaintiff, **SHARON SUE HOGE**. entitled to recover?

Answer: $6,000.00.

3. Is the Defendant, **NATIONAL DODGE-OLDS, INC.**, liable to the Plaintiff, **SHARON SUE HOGE**, for punitive damages?

Answer: Yes.

4. What amount of punitive damages, if any, does the jury in its discretion award to the Plaintiff?

Answer: $300,000.00.

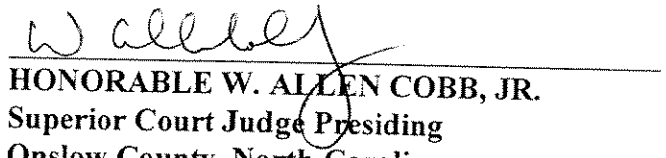
AND IT FURTHER APPEARING unto the Court that the amount of punitive damages awarded to the Plaintiff having exceeded the limitations allowed by N.C.G.S. Section 1D-25(b), the Court must reduce this award and enter judgment for punitive damages in the maximum amount allowed, **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($250,000.00)**.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Plaintiff shall have and recover of the Defendant, as compensatory damages, the sum of **SIX THOUSAND AND NO/100 DOLLARS ($6,000.00)**, together with interest thereon at the legal rate from the **13th** day of **June, 1996**.

2. That the Plaintiff shall have and recover of the Defendant, as punitive damages, the sum of **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($250,000.00)**, together with interest thereon at the legal rate from this date.

This the 10th day of March, 1999.



HONORABLE W. ALLEN COBB, JR.
Superior Court Judge Presiding
Onslow County, North Carolina

STATE OF NORTH CAROLINA

ONSLOW COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 96-CvS-1499

SHARON SUE HOGE,

Plaintiff,

vs.

NATIONAL DODGE-OLDS, INC.,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **Judgment** in the above-captioned case by hand-delivering a copy thereof addressed to the following person at the following address which is his last known address:

Jimmy F. Gaylor, Esq.
Attorney for Defendant
219 New Bridge Street
Jacksonville, NC 28540

This the 11th day of March, 1999.

ROBERT W. DETWILER
Attorney for the Plaintiff
327 New Bridge Street
Jacksonville, NC 28540
Telephone: (910) 455-0867
FAX: (910) 346-5418

Bob Detwiler

ONSLOW COUNTY
FILED
MAY 21 2002
AT _____ O'CLOCK ____ M.
BY _____
CLERK OF SUPERIOR COURT

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 96-CvS-1498

WARLICK-HORNE UNDERGROUND, INC.,
Plaintiff,
vs.
NATIONAL DODGE-OLDS, INC.,
Defendant & Third-Party Plaintiff,
vs.
DAIMLERCHRYSLER CORPORATION,
Third-Party Defendant.

JUDGMENT

THIS MATTER, came on for hearing before the Honorable Judge James R. Vosburgh Presiding at the **May 6, 2002** Term of Onslow County Civil Superior Court, in Jacksonville, North Carolina. A jury was sworn and impaneled. The Third-Party Complaint was dismissed at the conclusion of the Plaintiff's evidence. The following issues were submitted to the jury and answered in the following manner.

1. Was the Plaintiff, **WARLICK-HORNE UNDERGROUND, INC.**, induced to execute the contract for the purchase of a **1996 Dodge Truck** by the fraudulent representations of the Defendant, **NATIONAL DODGE-OLDS, INC.**?

Answer: Yes.

2. What amount of damages is the Plaintiff, **WARLICK-HORNE UNDERGROUND, INC.** entitled to recover?

Answer: **$81,249.50.**

3. Is the Defendant, **NATIONAL DODGE-OLDS, INC.**, liable to the Plaintiff, **WARLICK-HORNE UNDERGROUND, INC.**, for punitive damages?

Answer: Yes.

4. What amount of punitive damages, if any, does the jury in its discretion award to the Plaintiff **WARLICK-HORNE UNDERGROUND, INC.**?

Answer: **$82,000.00**.

The Defendant made a motion for a new trial pursuant to Rule 59 of the Rules of Civil Procedure, or, in the alternative, for Judgment notwithstanding the verdict pursuant to Rule 50 of said Rules. They were denied by the court. Plaintiff made a motion for a remittitur as to issue number two and also made an oral motion for attorney's fees pursuant to chapter §1D of the NC General Statutes. The motion to reduce damages, as to issue number two, was allowed and damages were reduced to SIX THOUSAND ONE HUNDRED AND NO/100 DOLLARS ($6,100). The undersigned Judge has conducted the following review of the evidence in reference to the punitive damages award pursuant to GS 1D-15(a) and 1D-50, and attorney fees pursuant to GS 1D-45;

THE COURT REVIEWING THE EVIDENCE IN THE RECORD MAKES THE FOLLOWING ADDITIONAL:

FINDINGS OF FACT

1. The Defendant is a corporation organized under the laws of the State of North Carolina with its principal place of business in Jacksonville, Onslow County, North Carolina.

2. At all relevant times the Defendant was engaged in the retail sales of new and used automobiles, retail servicing automobiles, and retail sale of automobile parts. The Defendant was

the Onslow County franchised dealer for the sale of Dodge trucks and Dodge, Volkswagen, and Subaru automobiles. The Defendant was a licensed North Carolina automobile dealer.

3. **HARRY BROWN** was the sole stockholder and president of the Defendant Corporation..

4. On or about the **18th** day of **April, 1996**, the Defendant corporation, in the regular course of its business, offered for sale to the general public a **1996 Dodge Truck, VIN 3B7HC13Y8TM154233** (hereinafter "the **1996 Dodge Truck**").

5. On the **19th** day of **April, 1996, WARLICK-HORNE UNDERGROUND, INC.**, a North Carolina corporation in the person of **ROBERT L. WARLICK, JR.**, its President (hereinafter **"WARLICK"**), entered into a contract with the Defendant for the purchase of the **1996 Dodge Truck.**

6. **WARLICK** agreed to pay to the Defendant the sum of **THIRTY THOUSAND TWENTY-SEVEN AND 87/100 DOLLARS ($30,027.87)** for the **1996 Dodge Truck** by giving to the Defendant an assignment of the **THREE HUNDRED AND NO/100 DOLLAR ($300.00)** rebate from the manufacturer, **ONE THOUSAND AND NO/100 DOLLARS ($1,000.00)** in cash, trading in a **1993 Chevy Truck** with an equity of **FIVE THOUSAND TWO HUNDRED TWENTY AND 77/100 DOLLARS ($5,220.77)**, and financing the balance of **TWENTY-THREE THOUSAND FIVE HUNDRED SEVEN AND 10/100 DOLLARS ($23,507.10)** with a loan from Wachovia Bank of North Carolina.

7. On **April 19, 1996, WARLICK** executed all paperwork necessary for the purchase of the **1996 Dodge Truck. It was** prepared and provided by the Defendant's Finance and Insurance Manager. **WARLICK** executed all documents necessary to transfer title to his 1993 Chevy Truck to the Defendant, paid the purchase price in full and took delivery of the 1996 Dodge

Truck. The Defendant filled out the Manufacturer's Certificate of Origin in **WARLICK's** name and provided an Application for Title in **WARLICK's** name on North Carolina Department of Motor Vehicles Form MVR-1. The Defendant, through its Finance and Insurance Manager, sent a copy of the dealer's invoice and a copy of the Retail Buyer's Order to the Sales Finance Department of Wachovia Bank and received from the bank the balance of the purchase price pursuant to the loan granted to **WARLICK** by Wachovia. The Defendant never delivered any title documents to **WARLICK** or forwarded the Manufacturer's Certificate of Origin or the MVR-1 to the North Carolina Department of Motor Vehicles, and the 1996 Dodge Truck was never titled nor registered to **WARLICK**. The actions of **WARLICK** and the Defendant, constituted a sale of the 1996 Dodge Truck to **WARLICK**.

8. **WARLICK** took possession of the **1996 Dodge Truck** on **April 19, 1996**. and drove the vehicle until he took it for service on **April 22, 1996 The Truck** registered **295** miles. **WARLICK** complained, among other things, that there was a clicking noise in the steering column and a drive-line vibration on take-off. On **April 23, 1996**, the Defendant's Service Department returned the vehicle to **WARLICK**. The Plaintiff introduced what purported to be copies of Repair Orders produced by Defendant through discovery. These work orders were not authentic. They contained information not available to Defendant until after the date of the work orders. The Repair Orders noted the Defendant's Service Department had special-ordered a steering column shaft and other parts necessary to fix the clicking noise in the steering column. The Repair Order noted the mechanic had talked to Chrysler about the drive-line vibration and had been told that Chrysler was in the process of designing a new drive shaft to remedy the vibration, and the new drive shaft would be coming out sometime during the summer of 1996.

9. **April 24, 1996, WARLICK** retrieved the **1996 Dodge Truck** from the Defendant's Service Department and drove it **two (2)** miles before returning it to the Defendant's Service Department with **297** miles on it. He again complained of the vibration in the drive train and the noise in the steering column. The Defendant's **Repair Orders** reflect that the Defendant's Service Technician attempted to shim down the center bearing in the drive shaft and noted that this attempt did not fix the vibration problem. The Repair Order from the Defendant's Service Department on **April 24, 1996** reiterates that Chrysler was in the process of redesigning the drive shaft, which would come out sometime during the summer of 1996. The Defendant's Service Technician replaced the lower steering column shaft in accordance with Chrysler Technical Service Bulletin 19-00-96. The Defendant's Service Department tendered the **1996 Dodge Truck** to **WARLICK** again on **April 26, 1996**. The **1996 Dodge Truck** was returned to the Defendant's Service Department the same day. **WARLICK** again complained that there was a severe vibration when driving. The Defendant's Service Technician changed the drive shaft from another truck to this **1996 Dodge Truck** according to the **April 26, 1996** work order. The truck was returned to **WARLICK** on **April 26, 1996**. **WARLICK** drove the vehicle through the weekend with the vehicle still suffering from the vibration problems.

10. On **April 29, 1996, WARLICK** drove the **1996 Dodge Truck** to the local Jacksonville Firestone Tire retailer and requested that the Firestone retailer replace the tires on the **1996 Dodge Truck** under the tire manufacturer's warranty in an attempt to solve the vibration problem. The Jacksonville Firestone retailer replaced the tires under warranty, but this did not resolve the vibration problem.

11. Sometime between **April 30, 1996 and May 2, 1996, WARLICK** returned the 1996 Dodge Truck to the Defendant's place of business and discussed the situation with the

Defendant's Sales Manager, **ROBBIE YATES**. After discussing the continuing vibration problem with **ROBBIE YATES**, the **1996 Dodge Truck** was left by **WARLICK** at the Defendant's place of business.

12. Defendant never prepared any documentation transferring ownership of the **1996 Dodge Truck** from **WARLICK** to Defendant, and **WARLICK** never executed any documents transferring ownership of the **1996 Dodge Truck** to Defendant. Sometime between **April 30, 1996 and May 2, 1996**, the Defendant's Sales Manager, **ROBBIE YATES**, decided that rather than make any further attempts to cure the vibration problem of the **1996 Dodge Truck**, he would place the **1996 Dodge Truck** back on the Defendant's lot for sale. The **1996 Dodge Truck** was returned to the Defendant's lot and was offered to the public for sale as a new vehicle.

13. On **May 3, 1996, SHARON SUE HOGE** appeared at the Defendant's car lot seeking to purchase a new vehicle. The Defendant's Salesman, **DAVE CASTILLO**, directed **SHARON SUE HOGE** to the **1996 Dodge Truck.** After inspecting the truck and taking the **1996 Dodge Truck** for a test drive, **SHARON SUE HOGE** inquired as to why the **1996 Dodge Truck** had **545** miles on it and noted that the **1996 Dodge Truck** had a vibration problem when driven at moderate speeds. **SHARON SUE HOGE** was informed by **DAVE CASTILLO** that the mileage on the truck was a result of various potential customers "test-driving" the truck and that the vibration problem was a minor problem that could be easily cured by the Defendant's Service Technicians. Based on the representations of the Defendant's Salesman, **DAVE CASTILLO, SHARON SUE HOGE** entered into a contract for the purchase of the **1996 Dodge Truck** from the Defendant. The contract as entered into between the parties stated that **SHARON SUE HOGE** would pay to the Defendant for the **1996 Dodge Truck** the sum of **TWENTY-NINE**

THOUSAND SIX HUNDRED FOURTEEN AND 72/100 DOLLARS ($29,614.72). The purchase price was to be paid by allowing **SHARON SUE HOGE** a trade-in allowance on her **1994 Dodge Truck** of **FOUR THOUSAND THIRTEEN AND 29/100 DOLLARS ($4,013.29). SHARON SUE HOGE** was to pay the sum of **SIX HUNDRED NINETEEN AND 72/100 DOLLARS ($619.72)** in cash and the balance of **TWENTY-FOUR THOUSAND NINE HUNDRED EIGHTY-ONE AND 71/100 DOLLARS ($24,981.71)** was to be financed by **SHARON SUE HOGE** through Wachovia Bank. The Purchase Order and all disclosure documents indicate that the **1996 Dodge Truck** was represented to **SHARON SUE HOGE** as being new.

14 On **May 6, 1996, SHARON SUE HOGE** returned to the Defendant's place of business and executed paperwork necessary for the purchase of the **1996 Dodge Truck. SHARON SUE HOGE** tendered the full purchase price for the truck to the Defendant and executed all documents necessary to transfer the title to her trade-in to the Defendant and took delivery of the **1996 Dodge Truck.** The transaction was ratified by the Defendant's Finance and Insurance Manager and Sales Manager, **ROBBIE YATES.** The Defendant sent a copy of the dealer's invoice and a copy of the Retail Buyer's Order to the Sales Finance Department of Wachovia Bank and received from the bank the balance of the purchase price pursuant to the loan granted to **SHARON SUE HOGE** by Wachovia.

15. **May 9, 1996, SHARON SUE HOGE** brought the **1996 Dodge Truck** to the Defendant's Service Department and complained of the vibration in the front end and loose steering. The Defendant's Service Department told **SHARON SUE HOGE** that both of these conditions were a normal characteristic of this type of vehicle. The Service Technician who worked on the **1996 Dodge Truck** on **May 9, 1996** for **SHARON SUE HOGE**, was the same

Defendant's employee who had worked on the **1996 Dodge Truck** for **WARLICK** on **April 26, 1996, April 24, 1996 and on April 22, 1996.** The **1996 Dodge Truck** was returned to **SHARON SUE HOGE** on **May 9, 1996.**

16. Over the weekend of **May 17-19, 1996, SHARON SUE HOGE** herein attempted to use the **1996 Dodge Truck** to pull her horse trailer. When under load, the 1996 Dodge Truck vibrated so badly that it was difficult for **SHARON SUE HOGE** to control the vehicle and she was forced to abort her trip only a few miles from her home. She had to unload the horses and lead them back home.

17. On May 20, 1996, **SHARON SUE HOGE** again returned the 1996 Dodge Truck to the Defendant's Service Department, complaining of a loose steering wheel and of the vibration problem. The truck was tendered back to **SHARON SUE HOGE** on May 20, 1996, with the Service Department noting on the Repair Invoice that a steering column and shaft were on order and informing **SHARON SUE HOGE** for the first time that the manufacturer suspected the vibration problem was caused by a design defect in the drive shaft and that the manufacturer would not have a new drive shaft available for several months. **SHARON SUE HOGE** picked up the **1996 Dodge Truck** from the Service Department on **May 21, 1996.**

18. The deposition of **ROBBIE YATES**, introduced and admitted into the record, and testified to by **ROBBIE YATES**, contains the following exchange:

Robert W. Detwiler:	Q:	"Is it your recollection that at the time the truck was sold to **WARLICK** that you or the Service Techs at National Dodge knew there was a vibration problem in this particular truck?"
Robbie Yates:	A:	"Yes."

19. **June 19, 1996** the Defendant paid off the **WARLICK** loan.

20. During the second phase of the trial relating to the Defendant's liability for punitive damages, the Plaintiff introduced the Defendant's 1995, 1996 and 1997 State and Federal corporate tax returns. For each of the years 1995, 1996 and 1997, the Defendant had a total income in excess of **$4,000,000.00**. The Defendant's gross assets exceeded **$7,000,000.00** each of the **three (3)** years. **HARRY BROWN's** compensation ranged from **$142,000.00 to $184,000.00** per year, with additional loans to **HARRY BROWN** from the corporation ranging from **$58,500.00 to $93,360.00**. The Defendant's annual advertising budget ranged from **$485,000.00 to $642,000.00** per year for each of the **three (3) years**, and the Defendant's charitable contributions ranged from **0 to $5,000.00** per year.

21. The jury having returned a verdict of **EIGHTY-ONE THOUSAND TWO HUNDRED FORTY-NINE AND 50/100 DOLLARS ($81,249.50)** as to **Issue #1**, the Plaintiff moved for and received a remittitur of this award to **SIX THOUSAND ONE HUNDRED AND NO/100 DOLLARS ($6,100.00)**.

22. The Defendants, without the knowledge of their counsel, offered evidence, the authenticity of which was questionable and misleading, and supplied documents to Plaintiff through discovery that were appeared to be other than genuine.

. 23, Plaintiff offered, and proffered for the record, after the Court sustained Defendant's objection to other evidence relating to subsequent events regarding the sale to **HOGE**. This Court has taken judicial notice of the Final Judgment of the **Honorable J. Allen Cobb, Jr.**, in the companion case of ***Sharon Sue Hog v. National Dodge Olds-Inc., Onslow County File No. 96-CvS-1499***. The evidence proferred by Plaintiff in this case is in conformity with Judge Cobb's Judgment.

24. Plaintiff offered evidence, which taken as a whole, tended to show that many **1996 Dodge Trucks** suffered from an inherent design defect, specifically, a defective driveshaft design, which cause driveline vibration problems. Plaintiff's evidence further tended to show that Defendant knew of such defects and did not disclose this fact to Plaintiff until after its purchase of the **1996 Dodge Truck.**

25. The Plaintiff has been represented by **Robert W. Detwiler** and **Georgann Geracos** of the Onslow County Bar. **Robert W. Detwiler** has practiced law in Onslow County for approximately **23** years, has an hourly rate of **$150.00** per hour and has an estimated **200** hours in the prosecution of this action. **Georgann Geracos** has practiced law in Onslow County for approximately **18** years, has an hourly rate of **$150.00** per hour, and has an estimated **250** hours in the prosecution of this case.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

1. All parties hereto are *sui juris* and properly served with notice and with process and this action is properly before the Court for trial.

2. The Plaintiff is entitled to recover compensatory damages from the Defendant in the amount of **SIX THOUSAND ONE HUNDRED AND NO/100 DOLLARS ($6,100.00).**

3. The evidence presented was sufficient to support the jury's verdict that the Defendant corporation acted fraudulently and was sufficient to support the submission of a punitive damage instruction to the jury.

4. The issues were properly submitted to the jury upon instructions approved by both parties without objection.

5. The jury properly considered in determining its award of punitive damages the purposes for which punitive damages are awarded pursuant to N.C.G.S. Section 1D-1 and 1D-35.

6. The Plaintiff proved by clear and convincing evidence the existence of actual fraud as required by N.C.G.S. Section 1D-15(e)(1) and after considering the evidence presented to the jury and the Court, and applying the standards set forth in N.C.G.S. Section 1D-35, the jury's award was reasonable under the facts and circumstances of this case.

7. Based upon all the facts and circumstances, an award of punitive damages in the amount of **EIGHTY-TWO THOUSAND AND NO/100 DOLLARS ($82,000.00)** does not constitute an abuse of discretion.

8. The Defendant's presentation of seriously questionable and misleading evidence, and failure to attempt in good faith to resolve this matter prior to trial in the face of a previously rendered verdict of punitive damages in a closely related case in which much of the evidence was identical or the same, render the defense of this cause frivolous or malicious, and subjects it to liability for Plaintiff's attorneys' fees pursuant to N.C.G.S. §1D-45.

9. Counsels for the plaintiff do not have any time records upon which the court can base an award of attorney fees. This case was prepared jointly for trial with case number 96 CVS 1499, entitled Sharon Sue Hoge vs National Dodge-Olds, Inc., in anticipation of a joint trial of the two cases. The cases were not tried jointly, and 96 CVS 1499 was tried first. Nearly every piece of discovery used in the first trial was used in the second, and when discovery was completed in one, it was also completed in the other. The court has made a finding that the defense was frivolous or malicious, but counsel should not be paid twice for the same work. The court is of the opinion that the sum of THIRTY THOUSAND AND NO/100 DOLLARS ($30,000.00) is a fair and reasonable attorney fee for the two attorneys for the plaintiff to be

divided between them in any method desired by them. This is adequate compensation for one full week of trial time plus necessary trial preparation.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff shall have and recover of the Defendant the sum of **SIX THOUSAND ONE HUNDRED AND NO/100 DOLLARS ($6,100.00)** as compensatory damages, to bear interest at the legal rate from **June 13, 1996**.

2. The Plaintiff shall have and recover of the Defendant the sum of **EIGHTY-TWO THOUSAND AND NO/100 DOLLARS ($82,000.00)** as punitive damages, to bear interest at the legal rate from the **10th** day of **May, 2002**.

3. The Plaintiff shall recover as attorney's fees to **Robert W. Detwiler** and Georgann Geracos the sum of **THIRTY THOUSAND AND NO/100 DOLLARS ($30,000.00).**

It was stipulated, by counsel for plaintiff and defendant that this judgment could be signed by the presiding judge, out of term, out of county and out of district.

This the 15th day of May, 2002

James R. Vosburgh
Special Superior Court Judge

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 04-CvS-1473

STACEY N. GREENE,

Plaintiff,

vs.

WARREN O. ROYSTER, BARBARA R. JACKSON a/k/a BARBARA R. ROYSTER, KEVIN ROYSTER, and BRENDA J. McCLAIN, all d/b/a EAST COAST IMPORTS,

Defendant.

FILED
2005 OCT 13 PM 3:51
ONSLOW COUNTY, C.S.C.
BY

JUDGMENT

THIS MATTER coming on for hearing and being heard before the undersigned Judge Presiding at the **October 10, 2005** Term of Civil Superior Court in and for Onslow County, North Carolina, and the jury having answered the issues as follows:

Issue Number One:

Was the Plaintiff, **STACEY N. GREENE**, damaged by the fraud of the Defendants?

Answer: Yes.

Issue Number Two:

What amount is the Plaintiff, **STACEY N. GREENE**, entitled to recover as compensatory damages?

Answer: **$1,911.00**.

Issue Number Three:

Are the Defendants liable to the Plaintiff for punitive damages?

Answer: Yes.

Issue Number Four:

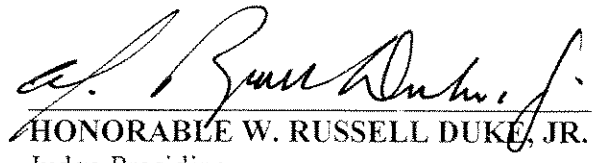
What amount of punitive damages, if any, does the jury in its discretion award to the Plaintiff?

Answer: **$500,000.00**.

And the Plaintiff, having elected to accept punitive damages in lieu of treble damages, and the Court pursuant to N.C.G.S. Section 1D-25 having reduced the punitive damages award to **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($250,000.00)**:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff shall have and recover of the Defendants the sum of **ONE THOUSAND NINE HUNDRED ELEVEN AND NO/100 DOLLARS ($1,911.00)** as compensatory damages and **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($250,000.00)** in punitive damages plus costs.

This the 13th day of October, 2005.



HONORABLE W. RUSSELL DUKE, JR.
Judge Presiding