

[1n]0.4 Revolving Repossession Case (Johnson)

[caption]

[court]IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION  
[plaintiff]ARTHUR JOHNSON, individually, and on behalf of all  
others similarly situated,  
  
Plaintiffs,  
[vs.]  
[defendant]MIDLAND FINANCE CO., and U. S. AUTO SALES, INC.,  
Defendants.  
[end caption]

### STIPULATION OF PROPOSED SETTLEMENT

The parties stipulate and agree as follows:

WHEREAS, the Plaintiff, Arthur Johnson, has filed the above-captioned action against the Defendants, Midland Finance Co., (hereafter "Midland") and U. S. Auto Sales, Inc., (hereafter "U. S. Auto"), alleging in three Counts that the Defendants had violated the Illinois Commercial Code Ill.Rev.Stats., ch. 26, § 9-504, the Illinois Consumer Fraud Act, Ill.Rev.Stats., ch. 121-1/2, §§ 261, et seq., and common law duties;

WHEREAS, on September 3, 1981, the Court entered an Order certifying this case as a class action with the class defined as

All persons who purchased a motor vehicle from U. S. Auto pursuant to a retail installment contract that was assigned to Midland Finance and from whom the secured collateral was repossessed by Midland Finance subsequent to August 1, 1977, and later resold to U. S. Auto.

WHEREAS, on July 30, 1982, the Court entered summary judgment as to liability only in favor of the Plaintiff class and against both Defendants on Counts I and II based upon a finding that the Defendants had not conducted commercially reasonable resales of repossessed automobiles and had not provided commercially reasonable notice to the debtors because the noticed repossession sales were not public marketplace sales;

WHEREAS, the Defendants have filed affirmative defenses and counterclaims against all of the Plaintiff class in amounts equal to all or part of the claimed damages and the Court has not ruled on any of the substantive contentions of the parties

regarding damages or the affirmative defenses and counterclaims, or expressed any opinion with respect thereto;

WHEREAS, the Plaintiff maintains that he, individually, and as class representative, would ultimately prevail on all issues in this action, but deems the proposed settlement set forth herein to be in his best interest and in the best interest of the class, and the Defendants deny all liability whatsoever and maintain that they would ultimately prevail on all issues in this action in the trial court or upon appeal but deem the proposed settlement set forth below to be in their best interests;

Now, therefore, it is hereby stipulated and agreed by and among the parties, that this action shall be settled and compromised, subject to Court approval, upon the terms and conditions hereinafter set forth.

1. The Class. The class, as defined by the Court in its September 3, 1981 Order, consists of the persons whose names will be set forth on Settlement Exhibit "A" which is to be filed with the court under seal within 21 days after entry of the Order set forth in paragraph 2 below, pursuant to an Agreed Protective Order in the form of Exhibit "1" attached hereto [not attached herein].

2. Submission of Stipulation to the Court. The parties shall promptly submit this Stipulation to the Court and jointly request the Court to enter its Order in the form of Exhibit "2" attached hereto [not attached herein].

3. Definitions. As used here, the following terms shall have the following meaning:

- a. The term "Effective Date" means the later of: (1) 30 days after the entry of the judgment approving this Stipulation and dismissing with prejudice and on the merits as to the Defendants the action brought by Plaintiffs, (or if the date for taking an appeal shall be extended, the date of expiration of the extension), if no appeal therefrom be taken; or, (2) if such appeal be taken, the date after which such judgment is affirmed and becomes final and the expiration of the time for filing a Petition For Leave To Appeal has expired, if none be filed, and if such filing be made, when action on the Petition or the merits thereof becomes final.
- b. The term "Settlement Fund" means the entire \$1,100,000.00 to be paid jointly by the Defendants, \$1,090,000 by Midland and \$10,000 by U. S. Auto, in the settlement of this action.

- c. The term "Class Settlement Fund" means the \$924,000.00 portion of the settlement fund to be distributed to claimant class members.
- d. The term "Escrowee" means American National Bank and Trust Company of Chicago, a national banking association ("American National Bank") acting in the capacity of escrow agent of the Settlement Fund.
- e. The term "Claimant Class Members" means those members of the class making a claim against the Class Settlement Fund.

4. Consideration For Settlement.

- a. Midland shall pay \$1,090,000.00 to the Settlement Fund and U. S. Auto shall pay \$10,000.00 to the Settlement Fund, thus creating a settlement fund of \$1,100,000. The fund shall be paid and distributed as set forth below.
- b. The Defendants will release each class member from any obligation to pay any balance purportedly still owing or claimed to either of the Defendants after the repossession and sale of a class member's automobile at issue. The parties hereto estimate that the aggregate value of said release is approximately \$1,350,000.00. Within 10 days after the Effective Date, the Defendants shall dismiss Appeal No. 83-2376 and within 60 days all pending actions seeking deficiencies against class members.
- c. The Credit Reporting Bureaus listed at the end of this paragraph will be notified, as to each class member, that all disputes over the repossession of the automobile at issue, deficiencies claimed, and deficiency judgment obtained, have been fully resolved. The Credit Reporting Bureaus will be requested to remove any adverse comments regarding the repossession, deficiencies and judgments. The notice to the Credit Bureaus shall be in a form substantially similar to the letter attached hereto as Exhibit "3" [not attached herein]. Defendants will prepare the letters, turn them over to Plaintiffs' counsel who will assume responsibility for mailing copies of the letters to the respective class members and the credit reporting bureaus, Trans-Union Credit Information Company, 444 N. Michigan Avenue, Chicago, IL 60611, and T.R.W. Credit Data, Inc., 1699 Wall, Mt. Prospect, IL.
- d. The class members will release the Defendants, their past and present officers, directors, employees, agents, attorneys, subsidiaries, parent corporations,

related entities and affiliates, if any, and their respective successors and assigns, whomever, from all claims of members of the class, their heirs, representatives, agents, attorneys, successors, or assigns or any one claiming on their behalf, which have been asserted in this action or arose out of the repossession or resale of the automobile at issue.

- e. On the Effective Date, Arthur Johnson, the named plaintiff in this action, will execute and deliver to each defendant a separate Release in the form of Exhibit "4", attached hereto [not attached herein].

5. Payment Of The Settlement Fund. The settlement fund shall be paid by the Defendants to an escrow account as set out below as follows:

- a. Approximately one-third, \$366,668.00, shall be paid within seven days after the entry of the Order set forth in paragraph 2 above, or any modified Order as agreed to by the parties, to an escrow account established at the American National Bank.
- b. The remaining \$733,332.00, shall be paid in 24 monthly installments of \$30,555.50 each, to the above named escrow account. The first installment shall be paid one month after the entry of the Order set forth in paragraph 2 above, and the remaining installments shall be paid on the same days of each successive month. Defendants shall not pay any interest on these installments.
- c. Time is of the absolute essence in making the payments set forth above. Upon the failure of the Defendants to make any of said payments when due, all of the remaining unpaid installments shall become immediately due and payable provided however, that Defendants have twenty days grace period after the due date of any installment payment to cure their default, and such cure shall not accelerate the balance of the unpaid installments.
- d. In order to secure the payments set forth above, Defendants agree to provide within seven days after entry of the Order set forth in paragraph 2 above, an Irrevocable Standby Letter of Credit, approved by plaintiff's attorneys, which shall remain in effect until June 13, 1985, to insure Defendants' performance of the Settlement when presented in conjunction with the following documents:
  - i. A copy of this Stipulation of Proposed Settlement; and,

- ii. An Order from a court of competent jurisdiction
  - (a) finding that Midland Finance Co. has defaulted under the terms of the Stipulation by failing to make one or more payments as required therein,
  - (b) ordering Midland Finance Co. to pay a specified amount, as a result of its default under the Stipulation, to the Escrowee
  - (c) requiring payment under the Letter of Credit in such amount, and
  - (d) finding no just cause for delay of enforcement or appeal.

If the proper documents are obtained, the Plaintiffs may present the Irrevocable Standby Letter of Credit for payment of sums owed to the Escrowee by the issuing bank.

6. Settlement Notice To Class Members. All of the class members or their co-purchasers, except a few discovered subsequent to class certification, were notified of the pendency of this action by personal mailed notice and newspaper advertisements. Copies of the Advertisement, a list of the dates of its publication and appearance, and a copy of the notice mailed to class members or their co-purchasers on June 28, 1982, are attached hereto as Exhibit "5" [not reprinted in this appendix]. The class will be notified of this proposed settlement by mailing a settlement notice, a copy of which is attached hereto as Exhibit 6. Distribution of the notice will be made as follows as to reach the maximum number of class members.

- a. All class members whose notice of class certification was returned by the post office as undeliverable will have their addresses traced by United Exchange, Inc., 221 N. LaSalle Street, Chicago, IL, a professional tracing service, to attempt to find a more current address to use for mailing the settlement notice.
- b. All other class members will be mailed a settlement notice at the most current address known to Plaintiffs' attorneys. Any class member who has not responded in some manner within 30 days after mailing the settlement notice, will have his or her address traced by United Exchange, Inc. to attempt to find a more current address. He or she shall then be mailed or delivered another settlement notice to the more current address if one is found.
- c. If two or more persons are class members as the result of the single purchase of an automobile and said class members have the same last known address, only one notice shall be sent to such address. The notice shall be addressed to both class members and shall include two option cards.

- d. The settlement notice will give all class members the option of opting out of the class or staying in the class. The settlement notice will also explain the manner by which the class member may claim against the fund and the consequences of neither opting out nor making a claim against the fund.

7. Distribution Of The Settlement Fund. The settlement fund will be distributed as follows:

- a. In distributing the \$924,000.00 class settlement fund, payments will be made only to claimant class members. If two or more persons are claimant class members as a result of a single purchase of an automobile, they shall be deemed to be one claimant class member for purposes of distribution of the class settlement fund and shall receive one joint payment.
- b. All claimant class members who have paid any sums as a deficiency (including any sums paid on the claimant class member's behalf), first shall have those sums returned to them. The parties estimate that the total deficiencies paid by or on behalf of all class members is approximately \$430,000.00.
- c. The remainder of the class settlement fund, which will not be less than approximately \$494,000.00, shall be paid to all claimant class members on a pro rata basis. Each claimant class member shall receive a percentage of the remainder of the fund determined by dividing the individual claimant class member's maximum damages allowed under Illinois Revised Statutes, ch. 26, § 9-507 (the amount of the finance charge shown on the retail installment contract, plus 10% of the cash price shown on the retail installment contract) by the sum of the maximum § 9-507 damages of all claimant class members. However, no claimant class member may receive an amount in excess of his or her maximum § 9-507 damages under this subparagraph.
- d. The amount to be distributed to each claimant class member shall be determined prior to the fairness hearing. If the total amount to be distributed under subparagraph 7(b) and (c) is less than \$924,000.00, the difference shall be credited to the Defendants and applied against their final installment payments.
- e. Any amounts of the class settlement fund paid by the Defendants shall be held in an escrow account at the American National Bank.
- f. The class settlement fund shall be distributed to the claimant class members in two installments; January 25, 1984 and April 25, 1985, if this Stipulation is

effective as of these dates. On each distribution date, each claimant class member shall receive one-half of the total amount due him or her, plus his proportionate share of the accumulated interest. If a professional tracing service was used to locate any class member, the tracing fee shall be deducted from the January 25, 1984 payment to the claimant class member and paid to either the tracing service or LAFC if the fee was previously advanced. The escrow fee and the fee charged for preparing the checks and the cost of mailing will be deducted or paid from income on the Class Settlement Fund.

- g. In the event that any checks payable to a claimant class member for the January 25, 1984 distribution are not cashed within 80 days of mailing, then, upon order of the Court, said persons will be removed from the list of claimant class members. The amount of these uncashed checks will be returned to the class settlement fund. This amount and the amount of the removed claimant class members' second payment will be distributed to the remaining claimant class members in the April 25, 1985 distribution in the same manner and proportion as if it were interest on the class settlement fund.
- h. In the event that any checks payable to a claimant class member for the April 25, 1985 distribution are not cashed within 40 days of mailing, then, upon order of the Court, payment on the check shall be stopped. The class member whose payment was stopped will be traced by United Exchange, Inc. Any such class member who is found within 60 days after the stopped payment order will be issued a new check for the stopped one, less the tracing fee. The tracing fee shall be paid to United Exchange, Inc. In the event said persons are not found within 60 days of the order stopping payment, then upon order of the court, said persons will be removed from the list of claimant class members. Any amounts remaining after this shall be returned to Midland.
- i. \$175,000,000 to the Legal Assistance Foundation of Chicago (hereafter "LAFC") as attorneys' fees and expenses. This amount will cover all time and expenses already incurred and those to be incurred in the future in the administration of the settlement including but not limited to costs of preparing, printing and mailing the settlement notices and letters.

- j. When the Defendants make the initial payment of \$366,668.00 to the settlement fund, LAFC shall immediately receive \$58,600.00 as attorneys fees and expenses. Out of each monthly payment made by the defendants, LAFC shall receive \$4,850.00. In the event that this settlement does not become effective, LAFC will return all funds received under this sub-paragraph, except those amounts expended subsequent hereto in administering this settlement (including, but not limited to, tracing fees, costs of preparation of the class list and costs of preparing, printing and mailing the settlement notice), to the Defendants.
- k. \$1,000.00 to the named Plaintiff, Arthur Johnson, in exchange for a full and complete release covering all claims he may have, specifically including those not the subject of this lawsuit. Mr. Johnson will also claim against the fund as a class member.
- l. Arthur Johnson shall receive the \$1,000.00 set forth in sub-paragraph (k) above on the Effective Date, without interest.

8. Judgment To Be Entered Upon Approval Of The Settlement.

If the Court enters its Order in the form of Exhibit "2" attached hereto, or any other form thereof agreeable to the parties, all other conditions of this Stipulation are satisfied, and the Court approves the settlement embodies in this Stipulation and the Exhibits hereto without modification of any provision, then, final judgment shall be entered in this action as follows:

- a. Approving the settlement contemplated in this Stipulation as lawful, fair, just, reasonable and adequate, after considering among other things, that the settlement was reached after good faith, arm's length negotiations by experienced and capable counsel for the class and in the absence of collusion; the amount of the settlement; the likelihood of Plaintiffs' success in obtaining all relief prayed for; the cost, complexity, and duration of litigation if pursued; potential claims of Defendants against certain class members; the disruption of the business of the Defendants; and any other matters bearing on the best interests of the parties, and directing its consummation and that all parties perform in accordance with the terms of this Stipulation and the Exhibits hereto.
- b. Permanently and finally certifying a class, enumerated by name, consisting of all members of the class who do not timely request exclusion from the class. For each



class member who is a claimant class member, the Order shall also indicate the principal amount to be paid that claimant class member.

- c. Providing for the release of the Defendants, their past and present officers, directors, employees, agents, attorneys, subsidiaries, parent corporations, related entities and affiliates, if any, and their respective successors and assigns, whomever, from all claims of members of the class, their heirs, representatives, agents, attorneys, successors, or assigns, personal representatives, or anyone claiming on their behalf, which have been asserted in this action.
- d. Dismissing Plaintiffs' complaint and all claims asserted therein with prejudice and on the merits.
- e. Reserving jurisdiction over consummation of the settlement provided for herein.
- f. Determining there is no just reason for delay of enforcement or appeal.

9. On the Effective Date, Arthur Johnson will execute and deliver to the Defendants a separate Release in the form of Exhibit "4", attached hereto [not attached herein].

10. Additional Conditions To Settlement: In addition to the entry of the orders described in paragraphs 2 and 8 above, without modification except as provided herein, and the performance by the respective parties of all obligations herein described, and the effectiveness and finality of any or all orders to be entered, this Stipulation and the settlement contemplated hereby is conditioned as follows:

- a. If the Court approves this Stipulation and judgment is entered thereon as provided in paragraph 8 and an appeal or petition for leave to appeal is taken therefrom or from any other order entered in this action, and, on appeal or hearing after the grant of petition for leave to appeal, if such be granted, such judgment or order is modified so as to change any of the terms of this Stipulation, or such judgment or order is finally reversed, then absent the written consent to the contrary by all parties to this Stipulation, within thirty (30) days from the date of such ruling, this Stipulation and all orders entered in connection herewith shall become null and void in all respects without further act by any party hereto and funds restored to Defendants in accordance with the provisions of paragraph 11(c).
- b. If 50 or more persons elect to be excluded from the class, Defendants may, at their option, elect to

terminate this Stipulation by giving written notice of said election to the Court and counsel for each of the parties hereto, within ten (10) days of the last day designated by the Court as the deadline for filing any such requests for exclusion. Upon Defendants' election to terminate this Stipulation, this Stipulation and all orders entered in connection herewith shall become null and void in all respects without further act by any party hereto and funds restored to Defendants in accordance with the provisions of paragraph 11(c).

11. Effect of Failure To Consummate Settlement. If the settlement contemplated hereby is not consummated for any reason, except for Defendants' failure to comply with any provision of the stipulation or order:

- a. This Stipulation, all documents executed or prepared, acts done, and orders entered pursuant to it shall be null, void, and of no force or effect whatsoever without further act of any party hereto and shall not be offered or received in evidence or construed as an admission by the Defendants or any of them of the validity of any claim asserted or any wrongdoing of any kind or as a waiver, abandonment, or release of any claim, position, or defense;
- b. The parties hereto and the actions herein and all issues therein shall thereupon forthwith be deemed to have reverted to their respective status as of January 2, 1983, and the action shall proceed in all material aspects as if this Stipulation and related Orders and papers had not been executed, all substantive and procedural issues having been fully preserved for litigation; and
- c. Any sums advanced by Defendants to Plaintiff under this settlement will be returned to Defendants immediately upon demand including interest earned thereon except for tracing fees, costs of preparation of the class list and costs of preparing, printing and mailing the settlement notice.

12. Miscellaneous Provisions.

- a. The named Plaintiff and the Defendants shall not, directly or indirectly, in any way exercise, and they, and all of them, do hereby waive, any and all rights they, or any of them, may have to appeal from any Order of the Court entered pursuant to an in accordance with this Stipulation.
- b. Neither this Stipulation nor any documents executed or prepared, acts done, or orders entered shall be

construed as an admission by the Defendants or any of them of the validity of any claims asserted in this action or of any Defendant's liability herein or of any wrongdoing or of any act or omission by them or any of them, nor construed as an admission of any fault or omission in any statement or document, nor offered or received in evidence in any civil, criminal, or administrative action or proceeding against any party other than such proceedings as may be necessary to consummate or enforce this Stipulation and the Exhibits hereto, and other than to the extent necessary to prove the terms of this Stipulation and the Exhibits hereto in any other action or proceeding.

- c. All of the Exhibits hereto are incorporated herein by reference.
- d. This Stipulation, the Exhibits hereto and the acts done shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, officers, directors, employees, agents, related entities, successors and assigns, as the case may be.
- e. This Stipulation and its Exhibits may be executed in one or more counterparts, all of which together shall be and shall be deemed to be on instrument, and true and correct copies may be used in lieu of the originals.
- f. Counsel for Plaintiffs and Defendants agree that they will not solicit or advise potential class members to request exclusion from the class and will not represent, or arrange representation for, any potential class member in requesting exclusion from the potential class and/or filing a separate action.
- g. Plaintiffs and defendants will make every attempt to give notice to as many class members as possible, and will make a good faith effort to foster the maximum res judicata effect of this settlement.
- h. Plaintiff and his counsel will cooperate with Defendants or any of them in resisting a collateral attack on the judgment contemplated hereby.
- i. Plaintiff agrees that neither he nor his counsel shall seek, or cooperate in, any publicity of this settlement through radio, television or newspapers of general circulation.
- j. All documents and other communications required to be forwarded to the parties or their counsel pursuant to this Stipulation shall be mailed, postage prepaid, to counsel at the address shown below:

[Insert Addresses]

- k. All documents relating to discovery in the possession of Plaintiff or Plaintiff's counsel shall be returned to Defendants within one month of the last payment to the class members.

IN WITNESS WHEREOF, the parties by their counsel have signed this Stipulation this [date].

[Attorney for Plaintiffs]  
[address]

[Attorney for Defendants]  
[address]