

FEDERAL TRADE COMMISSION

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In the Matter of:                    )  
Public Forum on Vehicle            ) Matter No. P964402  
Buyback Disclosures                )  
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Thursday, October 3, 1996  
Room 432  
Federal Trade Commission  
6th Street and Pennsylvania Avenue  
Washington, D.C. 20580

The above -entitled matter came on for public  
hearing, pursuant to notice, at 9:30 a.m.

APPEARANCES:

ON BEHALF OF THE FEDERAL TRADE COMMISSION:

For The Record, Inc., Waldorf, Maryland (301) 870 -8025

1 EILEEN HARRINGTON, MODERATOR

2 CAROLE DANIELSON

3 ALLEN HILE

4 JOSEPH MULHOLLAND

5 ADAM COHN

6

7 PANELISTS AT PUBLIC FORUM ON VEHICLE BUYBACK DISCLOSURES:

8 LORI COHEN, AMERICAN ASSOCIATION OF MOTOR VEHICLE

9 ADMINISTRATORS (AAMVA)

10 JOHN T. WHATLEY, ASSOCIATION OF INTERNATIONAL AUTOMOBILE

11 MANUFACTURERS, INC. (AIAM)

12 RICHARD RAINES and MARGARET SCHWARTZ, CARFAX

13 ROBERT GRAHAM, CENTER FOR AUTO SAFETY

14 LEWIS GOLDFARB and JACQUELINE GLASSMAN, CHRYSLER CORPORATION

15 JACK GILLIS, CONSUMER FEDERATION OF AMERICA! 3,,.3 ( ) TÖANU FEÔÁCLOHE

1 BERTA PHELPS, NATIONAL AUTO AUCTION ASSOCIATION (NAAA)  
2 J. PETER KITZMILLER, NATIONAL AUTOMOBILE DEALERS ASSOCIATION  
3 (NADA)  
4 R. B. GRISHAM, NATIONAL INDEPENDENT AUTOMOBILE DEALERS  
5 ASSOCIATION (NIADA)  
6 PHILIP R. NOWICKI, P. R. NOWICKI & CO.  
7 EDWARD MIERZWINSKI, NATIONAL OFFICE OF SAFETY PUBLIC  
8 INTEREST RESEARCH GROUPS (USPIRG)  
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MS. HARRINGTON: My name is Eileen Harrington, and I will be moderating our discussion today. I want to, before we have introductions, go over the ground rules. But first I'd like to thank all of you for coming, and particularly those of you who have filed comments on this issue. We have read them all.

I hope that those of you sitting around the table have read the comments of the other round table participants. That's one of the ground rules. But we found much in the comments to educate us and certainly to help us frame the issues which you see laid out on our discussion agenda.

These are the items that the staff of the Commission would very much like to hear you discuss among yourselves and with us today. Let me make a couple of prefatory statements and disclosures.

First of all, this workshop is being conducted by the staff of the Commission. And nothing that we say today reflects necessarily the views of the Commission or any individual commissioner. However, we expect that everything that you say will reflect the views of your organization.

(Laughter.)

MS. HARRINGTON: The format for today's meeting is a discussion format. We have found in a whole variety in

1 contexts in the past few years that our thinking is aided  
2 greatly by discussion among people who have a stake in  
3 whatever issue it is that we have under consideration.

4 So today, a great premium will be placed on  
5 participants talking to one another. Conversely, if you  
6 repeat your comment, your written comment, we might not call  
7 on you again.

8 I am the product of twelve years of Catholic  
9 education. And I, therefore, had ample opportunity to study  
10 at an early age how you keep order and impose discipline.  
11 And I have facilitated a number of these sessions and  
12 displayed what I learned at an early age and will today.

13 If you want to be recognized, participants, what you  
14 need to do is take, you will notice that at each one's place  
15 you have these little stickies, post-its. Stick one on your  
16 name plaque like this (indicating).

17 And I will be making note of who seeks recognition  
18 in the order that I see them. And generally I will call on  
19 you in the order of your sticky unless I decide that I want  
20 to call on someone else.

21 (Laughter.)

22 MS. HARRINGTON: And the reason that I will call on  
23 someone else is because the last time I called on you, you  
24 simply rehashed your comment and you didn't talk to what,  
25 you didn't participate in a way that was responsive to the

1 conversation that's going on.

2 This really is intended as an opportunity for all of  
3 us to talk to one another about the issues that are raised  
4 by this larger question of whether there is in fact a  
5 problem with the information that consumers receive or don't  
6 receive about vehicles that they purchase which had  
7 previously been the subject of a buyback.

8 That's what we want to talk about. So, please, let  
9 me encourage you to talk to one another and not to us. We  
10 have, trust me, we have all, the staff of the Commission  
11 here and others, read your comments so we know what's in  
12 them, what you've said, what you think; and we are looking  
13 to move the dialogue forward I think today.

14 Now let me give you a little bit of housekeeping  
15 information. We have a message board out in the foyer. And  
16 if people want to call in and leave messages for you, they  
17 may do that, although I have no idea how they may do that.  
18 Do we have a phone number?

19 MS. DANIELSON: It was on that general information  
20 sheet.

21 MS. HARRINGTON: On that general information sheet  
22 that you received there was a phone number that you could  
23 leave with your offices. And do we know what that number  
24 is?

25 UNIDENTIFIED PERSON: 326 -3238.

1 MS. HARRINGTON: 326 -3238. 326 -3238. Oh, that's  
2 Jody Bernstein's office. She's on vacation this week.

3 (Laughter.)

4 MS. HARRINGTON: Second, there are restrooms on this  
5 floor near the elevators; just look around. And third, if  
6 you need to make a phone call, there are two telephones  
7 outside this room.

8 One is right in the ante room and the other is in  
9 the sort of storage room off of it. If you're making a  
10 local call, dial nine. If you're making a long distance  
11 call, use a credit card, please. Are there any other  
12 housekeeping details?

13 (No response.)

14 MS. HARRINGTON: All right. Well, we're going to  
15 stick very rigorously to this agenda. What I would like to  
16 ask the participants at the table to do before we get into  
17 the, discussing the first question is to introduce yourself,  
18 say who you're with, and in one sentence, it can be a  
19 sentence of a lot of words I suppose, but in one sentence  
20 I'd like you to say what you hope to get out of this  
21 discussion today.

22 Now, because those of you at the table are just  
23 hearing this for the first time, maybe we'll start with  
24 someone from the FTC staff.

25 Let me start with Joe Mulholland from our Bureau of

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1 Economics. Joe, do you want to introduce yourself and say  
2 in one sentence what you hope to get out of today?

3 MR. MULHOLLAND: Hi. I'm Joe Mulholland. I'm an  
4 economist. And I'd just like to learn more about what the  
5 process is, what are the problems and how, what's the best  
6 remedy we can do for them.

7 MS. HARRINGTON: Now, we have a stenographer who is  
8 transcribing this discussion. And I'd like to ask everyone  
9 before you speak to please identify yourself for her; it  
10 will make her job easier.

11 Also, if the people who are seated along this front  
12 row could turn their name plaques in some way so that I  
13 could see your names. It's these folks (indicating).

14 Peter, thank you, that would be very good. That's  
15 helpful. If you'd just tip them a little now. Or you might  
16 want to tip them the other -- I don't know.

17 Can the people over there see the names of the  
18 people over here now? Do you all know each other?

19 (Laughter.)

20 MS. HARRINGTON: Okay. Anyway, if you could just  
21 tip them a little bit. Thank you. Phil, why don't we start  
22 over with you now.

23 MR. NOWICKI: I'm Philip Nowicki. I have my own  
24 automotive research company. And I hope to learn something  
25 today. I hope to contribute today. And I just see this as



1 a great opportunity here to bring all the parties together  
2 to try and have some resolution on this issue.

3 MS. HARRINGTON: Okay. Rosemary.

4 MS. SHAHAN: Rosemay Shahan, President of Consumers  
5 for Auto Reliability and Safety. And I'm hoping to find  
6 where there are areas of common ground, wherever they are,  
7 and to find out where there are areas of disagreements and  
8 get a sense of how we can address the areas of disagreement.

9 MS. HARRINGTON: Evan.

10 MR. JOHNSON: Evan Johnson with Montgomery County  
11 Consumer Affairs. I'm encouraged in reading the comments,  
12 and I think there is a fair amount of common ground among  
13 interests that in past issues I have been involved with  
14 aren't usually this apparent. So I'm looking forward to a  
15 productive discussion also.

16 MS. HARRINGTON: Okay. We need people to use  
17 microphones if you want to be heard, please. There are  
18 microphones all around the table. Thanks. Janet.

19 MS. SMITH: I'm Janet Smith, with the Florida  
20 Attorney General's Office. And I suppose like everyone else  
21 I'm looking for a productive discussion and to learn  
22 something about what some of the other companies and other  
23 people think about these problems.

24 Our state law is such that we could use a little  
25 assistance in learning in the area. And I'm hoping that

1           today we will come to some meaningful result.

2                   MS. HARRINGTON: Mr. Ducharme.

3                   MR. DUCHARME: My name is Gerry Ducharme. I'm a  
4 lawyer with --

5                   MS. HARRINGTON: Would you do me a favor and use the  
6 microphone?

7                   MR. DUCHARME: Sure.

8                   MS. HARRINGTON: We've got people on headsets in the  
9 back and also downstairs listening. Thanks.

10                   MR. DUCHARME: How's that? My name is Gerry  
11 Ducharme. I'm a lawyer with Ford Motor Company. I'm

1 too large.

2 MR. GOLDFARB: My name is Lou Goldfarb, with  
3 Chrysler Corporation. I'm hopeful that this will be a  
4 constructive, productive discussion that may allow us to  
5 shed some light on ways that we can deal with some of the  
6 contradictions and inconsistencies among the various state  
7 laws that may be getting in the way of, I don't know, some  
8 type of disclosures getting out to consumers.

9 MR. RAINES: I'm Dick Raines. I'm president of  
10 Carfax. We are a vehicle history business. And I'm just  
11 here to see whether there might be ways we can help address  
12 the problem as a business.

13 MS. COHEN: My name is Lori Cohen. I am with the  
14 American Association of Motor Vehicle Administrators. And  
15 our association facilitates uniformity among the Departments  
16 of Motor Vehicle. And that's part of what we're seeking  
17 about manufactured buybacks.

18 MR. DOWDY: I'm Lemuel Dowdy in the Division of  
19 Enforcement of the Bureau of Consumer Protection. That  
20 division enforces the Commission's used car rules, the rules  
21 that require dealers to post the buyers guide on used cars.  
22 So I'm interested in discussions about disclosure  
23 regulations.

24 MR. TATERKA: I'm Steve Taterka. I'm here on behalf  
25 of the National Association of Consumer Advocates. First

1 I'm interested in seeing the extent to which everybody  
2 agrees that there is a problem. And second of all --  
3 second, of course, the solution to that problem.

4 MR. WHATLEY: I'm John Whatley, with the Association  
5 of International Automobile Manufacturers. I guess we come  
6 to this looking, we also sense the great deal of consensus  
7 in the comments.

8 And we were hoping the consensus would move further  
9 towards a standard that is clear, simple, and uniform for  
10 disclosures.

11 MR. KITZMILLER: I'm Peter Kitzmiller, with the  
12 National Automobile Dealers Association. And I guess what  
13 I'm hoping to get out of today is to determine where the  
14 problem areas are and try to find some reasonable,  
15 consistent ways to deal with these disclosure issues.

16 MR. VELEZ: George Velez from General Motors  
17 Corporation. And I guess some of our colleagues here have  
18 already expressed the same hopes I have.

19 Lou did an excellent job of stating, I think, that  
20 what we are looking forward to here is getting some idea of  
21 ways to fix some problems that we see out there. But I  
22 think you do have a lot of common ground.

23 MR. GRISHAM: I'm R. B. Grisham. I'm with the  
24 National Independent Auto Dealers Association. We're here  
25 to contribute and to provide input and to listen and to help

1 General Motors all we can.

2 (Laughter.)

3 MR. MAIER: Peter Maier. I'm an attorney in private  
4 practice in Seattle. I do many lemon law cases. I'm

1 the FTC can do to help facilitate a solution to the problem.

2 MR. HILE: I'm Allen Hile. I'm the Assistant  
3 Director in the Division of Marketing Practices. And I hope  
4 that this discussion today will advance beyond what we see  
5 in the comments to the point where the staff that you've  
6 already met will be able to make a good and sound  
7 recommendation to the Commission on how it should deal with  
8 the petition that started this proceeding.

9 MS. HARRINGTON: Well, I've already introduced  
10 myself. I'm Eileen Harrington, and I'm the Director of  
11 Marketing Practices Division.

12 And I want to say that something has just happened  
13 that gives me a little bit of empathy with all of the people  
14 who are in the chain of selling these vehicles with respect  
15 to making sure that the right notices get passed along  
16 because we screwed up and forgot to print up a name tag for  
17 Jack Gillis, but we have just done that and seated him at  
18 the table.

19 And, Jack, we couldn't, we wouldn't dream of having  
20 this discussion without you or the CFA. But I apologize.  
21 And would you introduce yourself?

22 MR. GILLIS: Well, my name is Jack Gillis. I'm with

1 (Laughter.)

2 MS. HARRINGTON: Let me just say that the solution  
3 here is not that the FTC is going to print and distribute  
4 anything.

5 (Laughter.)

6 MS. HARRINGTON: We can't even get 25 name tags  
7 right, so --

8 MR. GILLIS: The private sector can do that quite  
9 well.

10 MS. HARRINGTON: Well, thank you very much. Let me  
11 also say that for those of you who are here but not seated  
12 at the table, there will be an opportunity at four for  
13 public participation.

14 And during that time we would like you and ask you,  
15 and we will insist that you please limit your comments to  
16 matters that have been discussed today.

17 Okay. Let's go get to it. We have tried in setting  
18 forth this agenda to tell you why it is that we are asking  
19 the questions that we are asking.

20 So the first series of questions that we're asking  
21 for some discussion on deal with the definition of a  
22 buyback; what is it, what ought to be included in this class  
23 of vehicles about which information is needed or should be  
24 provided.

25 What we see in the comments, as we have indicated on

1 the agenda, is that there is not complete agreement among  
2 the commentators on what it is that defines the vehicles that  
3 are in this class, if you will.

4 And so we'd like some discussion on that. And let  
5 me just open it up. How should buyback be defined? What  
6 vehicles ought to be in this class, about which there seems  
7 to be some agreement that there is additional information  
8 required.

9 (No response.)

10 MS. HARRINGTON: Well? I'm going to start to call  
11 on people if no one is -- Thank you very much, Gerry.

12 MR. DUCHARME: We talked about this extensively.  
13 And very frankly you can, if you look at defining buyback in  
14 terms of a process, I think you are going to find yourself  
15 with a definition that will not work.

16 If you define a buyback as a car and a person  
17 involved in a certain stage in the lemon law process in a  
18 particular state, you won't necessarily encapture the right  
19 kind of vehicles that really warrant disclosure.

20 Because, for instance, someone may be having  
21 substantial problems with their vehicle, may be attempting  
22 to get into the, this new settlement process board in a  
23 particular statement or the lemon law process in a  
24 particular state, but low and behold there will be a  
25 goodwill, so -called goodwill buyback and the vehicle will be



1 repurchased by the manufacturer and it will be resold.

2 Under some definitions that vehicle would not count

1 have a fairly simple standard to deal with so you would have  
2 to balance--this is kind of a schizophrenic process in a  
3 way--you have to balance out the need for clarity and the  
4 need for simplicity against the fact that you've got this  
5 whole range of things that manufacturers do, and you have  
6 humans making these decisions and humans make mistakes.

7 The result was, in our comments we proposed a  
8 standard that's in a couple of states, Florida and New York,  
9 where if there's been a submission to a state or a  
10 manufacturer program, that triggers these disclosures.

11 But looking at the other comments, there are other,  
12 there were other standards that are proposed. For instance,  
13 if the lemon law presumption is made. It's not as clear.  
14 It's not as simple.

15 But it's certainly another place you could trigger  
16 the disclosures. I think when you do that, though, you run  
17 some risk of putting, of doing away with some of the various  
18 things manufacturers may do now to help consumers of the new  
19 car.

20 And the question is how do you balance out the  
21 benefits to the consumer that buying the repurchased car  
22 against maybe some loss in consumer satisfaction because of  
23 the fewer goodwill efforts in other areas.

24 And I think there is a number of ways you can go at  
25 that. But our concern is above all that this standard,

1 whatever it is we come out with, be uniform so that we can  
2 figure out what our responsibilities are.

3 MS. HARRINGTON: You're suggesting, John, that if  
4 the definition of buyback or if the sort of the net is more  
5 broadly cast, that that may have a chilling effect on  
6 manufacturers' willingness to make goodwill buybacks; is  
7 that what you're saying?

8 MR. WHATLEY: I'm sure that there's -- and I can --

9 MS. HARRINGTON: That would be at variance with some  
10 of the other manufacturers.

11 MR. WHATLEY: I'm not sure that I can quantify that.  
12 But my concern is there are a number of laws. We have  
13 eighteen members. And they do a number of different, they  
14 have a number of different philosophies on how they satisfy  
15 their consumers.

16 Some do different things than others. I would hate  
17 to sort of make everything homogeneous. I think that would  
18 hurt competition in this area. And there is competition  
19 here in making consumers happy. How much, I can't tell you.

20 MS. HARRINGTON: Okay. Steve.

21 MR. TATERKA: I think that the, sort of the  
22 preliminary question, I think the preliminary question that  
23 has to be addressed before even defining buyback is who's  
24 going to apply whatever the criteria are.

25 And I think that's the biggest problem. Because

1 obviously consumers and manufacturers are already  
2 disagreeing as to whether or not the vehicle was a lemon in  
3 the first place.

4 And so consequently that disagreement is still going  
5 to carry over even after there may be a repurchase. So I  
6 think that the definition of buyback cannot allow for the  
7 type of discretion which is going to continue to reflect  
8 those disagreements between consumers and automobile  
9 manufacturers.

10 So consequently I would want all vehicles that are  
11 repurchased to be covered under the definition, of  
12 repurchase or trade assists, so forth, to be covered, making  
13 specific exclusions for the kinds of things -- I know  
14 General Motors in some cases has had their guaranteed  
15 repurchase programs I think on Saturns and so forth.

16 And if the vehicle is repurchased within the time  
17 frames under whatever the guaranteed repurchase program is  
18 advertised, then I think that kind of thing could be  
19 excluded. But otherwise I think they should all be  
20 included.

21 MS. HARRINGTON: Lou.

22 MR. GOLDFARB: Thank you. I mean, I don't want to  
23 oversimplify it. But isn't a buyback any time a  
24 manufacturer buys back a car? I mean, that's a buyback.

25 I don't think the issue is really difficult defining

1 the buyback. The issue is what do you disclose when you  
2 bought back a vehicle, put it through auction and it's being  
3 resold?

4 And, yeah, we're sort of skirting around this  
5 question. But the question is, is it a lemon law buyback or  
6 is it a buyback fitting into other category?

7 And I think that's the area of the most contention;  
8 when does it qualify as what states define as lemons and  
9 when does a vehicle, therefore, have to be called a lemon,  
10 designated a lemon, in some states branded as, having your  
11 title branded as a lemon.

12 That's where most of the difficulty comes. I think  
13 there is uniform agreement among the manufacturers that when  
14 a manufacturer buys a car back it's a buyback.

15 MS. HARRINGTON: Well, let me --

16 MR. GOLDFARB: And when we make disclosures --

17 MS. HARRINGTON: Hold that thought and let me check  
18 with John. John, do you people agree with that?

1 wait t bwhyb-2 t-1ÁQitR.

1       some unusual situations where there may not be, for  
2       instance, a buyer's remorse, overnight a car comes back  
3       that's not under the 30 -day return and goodwill program.  
4       But, yeah, they're going to check out the car and you may  
5       not notice.

6               MR. GOLDFARB:   Some manufacturers have programs  
7       where they actually let you keep the car for 30 days.  And  
8       if you don't like it for whatever reason, you don't even  
9       have to give the reason, you can have it bought back.

10              Maybe that category would not be included.  And  
11       that's rare.  By and large  -- John is speaking for 18  
12       manufacturers; that's a little more difficult.  But by and

1       them back and run them through the auction. I mean, and  
2       manufacturers have different definitions of what a trade  
3       assist is.

4               Some use different terminology. But in our case,  
5       the case of Chrysler, we will assist a dealer in bringing a  
6       car back that a customer is unhappy with very early on, very  
7       early on in the process for whatever reason.

8               MS. HARRINGTON: What's the problem with including  
9       trade assists in the definition of buybacks?

10              MR. GOLDFARB: I think, I think we do make  
11       disclosures that a vehicle has been sent back by the  
12       consumer and the reasons for the sending it back. Again,  
13       the vehicle never gets resold unless whatever was complained  
14       about gets repaired, if there is that kind of problem.

15              But trade assists covers a whole range of issues  
16       that people raise that don't rise to the level of a  
17       mechanical problem with the vehicle, necessarily. Some do.  
18       But, I mean, in many cases it goes beyond that.

19              MS. HARRINGTON: Now, Steve, does the 30 -day  
20       you -get-to-bring-it-back deal fall under your satisfaction  
21       guarantee exception?

22              MR. TATERKA: Yes. Yes, it would, sure. Yeah.

23              MS. HARRINGTON: Okay. So we seem to have some  
24       agreement there.

25              MR. TATERKA: Right.

1 MS. HARRINGTON: Lou, do you want to say anything  
2 else? I've been sort of putting you on the spot, but that's  
3 because you used to work here.

4 (Laughter.)

5 MR. GOLDFARB: If the lemon law issues are going to  
6 come up later, fine. But I mean I really think that --

7 MS. HARRINGTON: Yeah. Oh, no, it will.

8 MR. GOLDFARB: --that's where most of the difference  
9 in point of view comes when that has to be done.

10 MS. HARRINGTON: Okay. Evan and then Jack.

11 MR. JOHNSON: My perception when I sent the, I  
12 thought there was a lot of common ground. Actually I  
13 thought a lot of the common ground was on this issue. And  
14 maybe we need to be flexible in the agenda.

15 Because I hear, I think I hear the consumer  
16 regulatory side and Ford and General Motors in their  
17 comments and now Chrysler being pretty close on this issue.  
18 I mean, that's highly unusual.

19 MS. HARRINGTON: Well, we're going to test it in  
20 just a minute.

21 MR. JOHNSON: Okay. In terms of how you say and  
22 categorize vehicles on which some kind of disclosure is  
23 appropriate, then maybe the issue is the disclosure.

24 I think it's worth visiting here the terms. And I'd  
25 like to say for purposes of the audience, obviously, to try



1 and clarify some terms because people use them differently  
2 out there.

3 One is the term buyback. Sometimes people use that  
4 to mean a case just when a car is repurchased in cash. I  
5 think we are using that broader here to include so -called  
6 replacement. So we need to be clear.

7 I knew a very good consumer advocate who was  
8 completing a term of three years on her local Ford board  
9 here and she thought she was buying back cars that was  
10 determined in use, but at the time the board was only  
11 replacing the cars, not buying back.

12 And at the end of her term she finally realized that  
13 people weren't getting cash back for those cars. And Ford  
14 has since cleaned up their terminology and they are in fact  
15 repurchasing cars in that program, also I must add.

16 But that's why terms are important and we need to  
17 know what we're talking about. Trade assist is a term that  
18 Lou says manufacturers have different definitions of, and I  
19 want to hear it.

20 Because trade assist can mean several things, one of  
21 which, a placement transaction might be viewed as a trade  
22 assist.

23 I call replacement a situation where a manufacturer  
24 may say, consumer, okay, we'll take back your car to a  
25 dealer and maybe you paid for an upgrade in a cost of a new

1 vehicle that's more expensive than what your old one was and  
2 maybe you paid something for mileage, that's a replacement  
3 type transaction.

4 But sometimes trade assist is applied to that. And  
5 I can tell you when the paperwork is done, it's hard to see  
6 that that was a full replacement transaction sometimes.

7 The other term that might include trade assist is  
8 the policy of so -called certificates. A manufacturer,  
9 instead of working on a particular deal on an entire  
10 transaction will say, okay, consumer, we'll give you a  
11 certificate good for usually in the thousands toward the  
12 purchase of another vehicle of our make.

13 And you cut your best deal. It can be at the dealer  
14 you have been dealing with or someone else. And you may not  
15 even trade in your old car; you may get rid of it in some  
16 other way. But, I mean, that's a trade assist also.

17 Now what happens with those vehicles? I guess my  
18 thinking is, I mean, if a vehicle in which a certificate is  
19 given is traded in to a dealer of that vehicle  
20 manufacturer's make, then disclosures is appropriate there  
21 also. But I think we can talk about the terms a little  
22 more.

23 MS. HARRINGTON: Jack.

24 MR. GILLIS: That's essentially, I was just going to  
25 ask Lou what -- could you define trade assists? That's --

1           MR. GOLDFARB: A trade assist is a situation where  
2 we become aware because a customer is complaining to our  
3 customer relations office that that customer is unhappy with  
4 the vehicle for whatever reason.

5           Sometimes it's a mechanical problem and the dealer  
6 makes an effort to fix it. Sometimes it's buyers' remorse.  
7 Sometimes it's the noise of the transmission. Sometimes the  
8 person bought a truck and didn't realize what it was like to  
9 drive a truck.

10           But they're real unhappy and the dealer wants to do  
11 something for this customer. We want to do something for  
12 the customer. We will basically provide some amount of  
13 money to enable that customer to buy another Chrysler  
14 product.

15           Now, the vehicle they turn in becomes a used vehicle  
16 immediately, okay, so we then have to dispose of that  
17 vehicle. And my understanding is we make disclosures even  
18 in those situations of the history of that vehicle, what was  
19 complained about, what was repaired.

20           And those vehicles are put back on the market as  
21 used vehicles. But we basically provide some amount of  
22 funds to enable that new transaction to take place, the sale  
23 of another car.

24           MR. GILLIS: But the consumer is on his own in terms  
25 of trading in the problem car?

1 MR. GOLDFARB: Yeah, well, the consumer --

2 MR. GILLIS: Or is that contingent; you'll give me  
3 the money if I give you the car?

4 MR. GOLDFARB: Well, I mean, we don't give them the  
5 full price of the car. What happens is a negotiation takes  
6 place between the consumer and the dealer to buy another  
7 car.

8 And we will make up the difference in lost value  
9 because the car they're bringing back is a used car. And we  
10 will, you know, basically satisfy that customer with a car  
11 that's more to that person's liking than the one they drove  
12 out of the dealership with.

13 MR. GILLIS: But you in effect buy back their  
14 vehicle.

15 MR. GOLDFARB: Well, the vehicle comes back to the  
16 dealer; it does not come back to Chrysler. So it's a  
17 completely different process.

18 MS. HARRINGTON: But, if I understand you correctly,  
19 you don't have a problem with the notion that the class of  
20 repurchased vehicles for purposes of this discussion  
21 includes the vehicles that are bought back by the dealer or  
22 taken back by the dealer rather than the manufacturer.

23 MR. GOLDFARB: No, I don't have a problem with that.

24 MS. HARRINGTON: And I'd like to, Phil, before we  
25 call on you, I just want to, I want to check to see around

1 the table whether there is any disagreement on the notion  
2 that the class of vehicles that we are discussing here  
3 includes vehicles that are taken back by the dealer as well  
4 as vehicles that are taken back by the manufacturer.

5 Is there any disagreement on that? Could I just see  
6 a show of hands?

7 Disagreement on that; Gerry, George, John. Well, we

1 we have instructions to our field personnel not to use  
2 certificates for cars that are, and again we get into a  
3 definitional issue here, but cars that are lemon law  
4 eligible, our field personnel are informed they are not to  
5 use what we call certificates for the consumers.

6 MS. HARRINGTON: Well, what are these certificates?

7 MR. DUCHARME: Basically they're negotiated with the  
8 customer who is unhappy for a series of reasons. And I'm  
9 looking for some examples of the reasons. They're good for  
10 an amount of money on the purchase of a new vehicle.

11 Now, some, some consumers may well keep the vehicle  
12 they have and use a certificate to buy another vehicle for  
13 their spouse or their child. A certificate doesn't have to  
14 be used for the specific vehicle for which it was granted.

15 Now, they're used for a number of purposes.  
16 Somebody may well buy an Explorer and expect to tow their  
17 cabin cruiser around with it, and lo and behold they  
18 discover it just isn't capable of doing that.

19 We have a number of people who have their vehicle  
20 out of warranty, they have an expensive repair that they  
21 have to have on the vehicle, it's just out of warranty; so

1 use it quite often in those kinds of situations. We also  
2 use it in situations where people for some reason or other  
3 just lose confidence in the vehicle, if it stalls and the  
4 like a couple of times.

5 MS. HARRINGTON: Gerry, let me interrupt for a  
6 minute. That's all fine. But what we're really talking  
7 about here is what happens to the vehicle that they have  
8 when the dealer takes it back.

9 MR. DUCHARME: The vehicle that they have is not  
10 considered by us as a buyback, by Ford Motor Company. The  
11 dealer is, takes a trade -in just as a dealer takes a  
12 trade -in on any other vehicle at the dealership.

13 It's either sold by the dealer on his used car lot  
14 or the dealer wholesales it elsewhere as a used car. It's  
15 treated just as any other trade -in.

16 MS. HARRINGTON: What's the problem with treating it  
17 differently? What's your problem with that?

18 MR. DUCHARME: My problem is that there is no basis  
19 to treat it any differently than a regular trade -in. There  
20 is nothing wrong with these vehicles. They are just a  
21 trade -in car.

22 MS. HARRINGTON: So your assumption is that the  
23 vehicles that are in the buyback class have something wrong  
24 with them?

25 MR. DUCHARME: My assumption is that the vehicles in

1 the buyback, you know, class don't always have things wrong  
2 with them. But as a matter of degree, let's say, there is  
3 more of a chance that something is wrong with them than, of  
4 course, there is with a certificate card.

5 If we have a lot of cars in the buyback category,



1 MR. DUCHARME: Well, the point is many times with  
2 certificates, they are issued on the basis of who the  
3 consumer is and the degree of loyalty that we want to  
4 maintain with the consumer.

5 The certificate isn't necessarily issued because of  
6 a particular problem in a car that we think is a concern.  
7 That's the major difference.

8 When you get into the goodwill area and when you get  
9 into the so -called lemon law area, then you move from the  
10 customer -specific kind of action that you're taking to  
11 preserve loyalty into the let's -fix-a-problem-with-your-car  
12 category.

13 And there is vast difference between the two and I  
14 think a vast difference between how a manufacturer ought to  
15 react in the two situations. There is a lot of gray between  
16 the two.

17 And the gray, as I would say, I would think in the  
18 area of the goodwill car, if you can define a car as such, I  
19 think it's pretty black and white. And the certificate, it  
20 gets gray in the goodwill, and again it gets very, very  
21 clear in the so -called lemon law eligible vehicle. So it  
22 moves from customer specific to vehicle specific with a gray  
23 area in between.

24 MS. HARRINGTON: Okay. George.

25 MR. VELEZ: Yeah, let me take a shot at that because

1 we've got the same problem they do. We have the  
2 certificate. And the problem is we don't get the car back;  
3 it isn't a buyback. There is no obligation to trade that  
4 car in, so consumers often will buy a second car; they'll  
5 trade in a different car. And so --

6 MS. HARRINGTON: Do you have any idea how often in  
7 these certificate situations the dealer takes back the car?

8 MR. VELEZ: I don't know that because, again, you'd  
9 have to get that, that comes under the dealers' statistics.

10 MS. HARRINGTON: You don't do that?

11 MR. VELEZ: We don't, we don't do that, no. The  
12 other, with a straight trade assist with the dealer where we  
13 participate financially, again we don't buy back the  
14 vehicle; the dealer does.

15 We don't have a problem disclosing. In fact, we  
16 give the dealer our disclosure documents and encourage him  
17 to disclose. But we lose control over that vehicle. We're  
18 never in the chain of title.

19 The dealer has that and it's really up to him to be,  
20 to disclose. The third situation I think where it gets a  
21 little screwy is in lawsuits, for example, the consumer is  
22 absolutely convinced, he'd go and then we'd disagree, sues  
23 us over it; we settle that for cash.

24 That vehicle will go on for -- he'll keep the car,  
25 perfectly happy with the car, and who knows what's going to

1       happen to the car. We have, we certainly have no control  
2       over it, don't know when it's going to get traded in, if  
3       he's going to get rid of it, if it's going to get sold to  
4       another consumer. We don't know that.

5               MS. HARRINGTON: Lori.

6               MS. COHEN: If Motor Vehicle Administrators are  
7       disclosing on a title, say, or on a brand, something is in a  
8       manufacturers' buyback status, to brand something, there is  
9       an implication there is safety issues, there is a devalue  
10      issue.

11              And it seems that if it's important enough to  
12      disclose, there would be a safety or value issue, not that  
13      somebody took it back because there wasn't enough trunk  
14      space. I would think you would want to have the definition  
15      of a safety or value implication and not call it buyback.

16              MS. HARRINGTON: Phil.

17              MR. NOWICKI: Yeah, well, there's a lot of gray  
18      areas. We had looked at about several thousand of  
19      settlements, both from our own program and from the  
20      manufacturers' programs.

21              And they generally fall on a whole range of  
22      categories people who get the complete, as a settlement, the  
23      refund that they would be entitled to under the lemon law.  
24      This is for the Florida Attorney General's Office, by the  
25      way, for people in the audience.

1 Replacement vehicles where it is really a swap in  
2 accordance to the lemon law. And then it goes down a little  
3 bit where we look at something in the form of trade assists  
4 where it looks like some money was offered by the  
5 manufacturer to help the consumer get out of the car;  
6 partial refunds, if you will, where they don't give them  
7 everything they're entitled to under the lemon law.

8 Maybe they bill them for their entire mileage or  
9 they don't give them their interest. And then you get into  
10 buyer certificates that are used. You get into, as was  
11 mentioned, some people take straight cash and keep the car.

12 You get into some people accepting repairs or  
13 extended warranties. When we approach these, though, we  
14 also look at the buyer certificates that were used and try  
15 to identify how many times we saw that as a settlement and  
16 how many times that was actually used by the consumer and  
17 some evidence that the consumer did return the car.

18 And particularly with the manufacturers' programs,  
19 they have to keep that information under Rule 703. I'd say  
20 at least 90 percent of the time when we did see evidence of  
21 a certificate we were able to find, to the extent it was in  
22 the file, some evidence of what actually happened, that  
23 indeed it was used to purchase another vehicle of that make.

24 I would say the other issue that--again, it's  
25 drawing those lines on the use of buyer certificates; and

1 again this was primarily the three domestic manufacturers so  
2 I can't speak for each one specifically --but in general,  
3 between those things that were trade assists or buyer  
4 certificates or other types of partial refunds, to us it  
5 looked more like a product of what the consumer was willing  
6 to accept as a settlement, not so much as the condition of  
7 the car.

8 So, you know, as far as what we could tell in  
9 looking at buyer certificates, the nonconformity, how many  
10 times that it infects or how many days out of service,  
11 compared to trade assists or partial refunds we did not see  
12 a big difference.

13 MS. HARRINGTON: John.

14 MR. WHATLEY: I'm not sure what all 18 of my members  
15 do. Some of them I think would agree with Lou. I think  
16 some would agree with Gerry.

17 There is another way to look at it, too, though, and  
18 that is what is a disclosable buyback under current law?  
19 And a number of our companies try to draw that line. The  
20 problem is you have a number of different jurisdictions and  
21 a number of different definitions and it's difficult to say.

22 Some companies adopt the policy that they disclose  
23 the car, in our judgment it beats the lemon law presumption  
24 in whatever state it's bought back in. And that's, that is  
25 a little -- that's a lot gray.

1           What you do if you have that policy is you try to  
2           make certain you overdisclose. So if you buy it back for  
3           paint or for color of paint, not necessarily a paint defect,  
4           you don't disclose that because it wouldn't be a, it  
5           wouldn't be a substantial defect in best use, value, and  
6           safety.

7           But if it's something that breaks, maybe you do.  
8           There are other ways to sort of make this definition if you  
9           kind of look at it in terms of what's out there now. And  
10          part of the problem we have is there are so many different  
11          regimes, so many different definitions, it's hard to know  
12          what to do from state to state.

13          MS. HARRINGTON: Rosemary.

14          MS. SHAHAN: I start off by saying that we were  
15          pleased to see in the comments, I see around this table, I  
16          feel like I'm hearing, anyways, more movement than there was  
17          in the comments.

18          But I'm concerned about Gerry's comment regarding a  
19          vehicle that's returned after it stalled a couple of times  
20          and the consumer has lost confidence in the vehicle.

21          And one of the biggest problems we're concerned with  
22          is when there is an intermittent defect like that and  
23          consumers maybe have been scared because it stalls in  
24          traffic; and they have reason to be concerned about it.

25          And we don't want vehicles with a condition that is

1 a serious condition to not have full disclosure on them.

2 Our major concern is --

3 MS. HARRINGTON: What would you disclose, though,  
4 Rosemary? Tell me, tell me what that disclosure should be.

5 MS. SHAHAN: That it had a history of stalling,  
6 and -- or at least the consumer alleges that it has a  
7 condition. One of the biggest problem areas --

8 MS. HARRINGTON: Could the disclosure include -- I  
9 want to, may I press on this a little bit?

10 MS. SHAHAN: Okay, sure.

11 MS. HARRINGTON: Let's say that the disclosure is  
12 consumer alleges vehicle stalls in traffic. Would there be  
13 room on that disclosure for some comment from the  
14 manufacturer as well? Manufacturer says --

15 MS. SHAHAN: Figment of their imagination.

16 (Laughter.)

17 MR. GILLIS: Couldn't find the problem.

18 MS. HARRINGTON: Well, that doesn't seem to be a  
19 particularly marketable claim.

20 MS. SHAHAN: Well, nothing to say it's normal.  
21 Stalling in traffic isn't normal.

22 MS. HARRINGTON: No. But, I mean, if the disclosure  
23 was, you know, you know, car returned, you know, car bought  
24 back, you know, consumer says stalls in traffic.

25 MS. SHAHAN: Unable to diagnosis maybe.

1 MS. HARRINGTON: Manufacturer says, you know,  
2 problem is fixed or manufacturer says can't find the problem  
3 or manufacturer says there isn't a problem and the car is  
4 under warranty or something like that. Would that be  
5 acceptable?

6 MS. SHAHAN: Possibly. I think one of the concerns  
7 we have regarding disclosure is the implication that a  
8 problem has been fixed when it simply hasn't been adequately  
9 diagnosed. And we've run into this.

10 The implication is, you know, this was the problem.  
11 And especially if there is no indication that it was a  
12 repeated problem; a consumer would want to know, did this  
13 happen only once or did it just happen and it was returned  
14 for this 12 times?

15 I think there is a difference, and people would want  
16 to know that. And if the implication is that it's been  
17 repaired, that's kind of tricky, too.

18 Because sometimes with an intermittent problem it  
19 may appear to have been repaired but then, you know, it  
20 reoccurs under certain climactic conditions or a certain  
21 altitude again. Maybe it just wasn't tested adequately.

22 MS. HARRINGTON: Okay. Jack.

23 MR. GILLIS: I'm still going back to your original  
24 question. I'm a little confused. The auto manufacturer,  
25 are you saying that a buyback would apply to you but not



1 dealers?

2 MS. HARRINGTON: George? He's making significant  
3 eye contact with you.

4 (Laughter.)

5 MR. GILLIS: Or the NADA guy. I mean, I'd like to  
6 know what NADA is, where you guys are on this.

7 MR. VELEZ: No. I think the common perception is  
8 that buybacks apply only to manufacturers. I'm not taking  
9 issue with would it should apply to or that it does or it  
10 doesn't.

11 I'm just saying if you are looking to us and asking  
12 us to define a buyback in terms of what we buy back, which  
13 is the simplest definition, we don't buy those vehicles  
14 back. And so for those classes of vehicles you're going to  
15 have to look to someone else is all I'm suggesting.

16 MR. GILLIS: Okay. But they could be called  
17 buybacks as well, just because the dealer buys it back and  
18 not you.

19 MR. VELEZ: If someone buys it back, I think you can  
20 call it a buyback.

21 MS. HARRINGTON: Peter.

22 MR. KITZMILLER: Well, I think from our perspective  
23 with regard to trade assists, and again different  
24 manufacturers do different things with trade assists. We've  
25 heard about the coupons and sometime -- I mean, what I would

1 call a normal trade assist situation is where we have a  
2 customer who is unhappy with a vehicle for a particular  
3 reason and we go to the manufacturer.

4 And between the dealer and the manufacturer we give  
5 the person financial assistance and we trade them out of  
6 that vehicle. I don't think from NADA's perspective we have  
7 any problem in disclosing the fact that this was a trade  
8 assist vehicle to the customer necessarily.

9 I think in our comments our concern was that again,  
10 we talked about defining these terms, are we going to have  
11 to disclose with the same language a trade assist which  
12 someone traded a car in because they bought an Explorer and  
13 they never had a sport utility vehicle before and they  
14 weren't prepared for the fact that it drove like a truck  
15 with the same terminology that someone bought the car back  
16 because there was a problem with the brakes.

17 Are we just going to call that a buyback? I think  
18 we have some concern with that. But from our perspective,  
19 as long as we have some clear criteria that trade assists  
20 need to be disclosed, you know, and as long as we can factor  
21 that into the manufacture when we're figuring out  
22 financially what it's going to cost to buy, to get this  
23 customer in a different vehicle, I don't think we have a  
24 problem with that.

25 Again I think, and some other people have raised

1 this, I think that there has got to be some look taken at do  
2 you want to equate somebody bringing a car back because they  
3 don't like the ride characteristics with somebody brought a  
4 car back because there was a problem with the brakes.

5 You know, that I think we have some concern about.  
6 But in general, no. I think from a trade assist standpoint,  
7 if that's part of a buyback disclosure and we understand  
8 what we're supposed to disclose, I don't think we have a  
9 problem with that.

10 MS. HARRINGTON: Janet.

11 MS. SMITH: I just had a question for Gerald because  
12 I thought I heard him say that at least in Ford's buyer  
13 certificate program your instruction to your field people is  
14 that if it's a lemon law eligible car you won't use the  
15 buyer certificate?

16 MR. DUCHARME: Those are the instructions.

17 MS. SMITH: How does Ford define what a lemon law  
18 eligible car is?

19 MR. DUCHARME: It depends on the state law.

20 MS. SMITH: Okay. So under Florida's law our line  
21 for lemon disclosure has to occur is when a claim is filed  
22 with either your informal presale or procedure or the  
23 state -run arbitration process.

24 There is a period before that when the consumer has  
25 to notify the manufacturer directly if the vehicle has a

1 defect and give the manufacturer a final opportunity to cure  
2 the defect.

3 And we were interested in kind of knowing at what  
4 point there do buyer buyer certificates occur as a means of  
5 resolving that dispute? There is definitely notice of the  
6 defect.

7 It's not, under our law at least, a requirement to  
8 disclose if the vehicle is taken back. But it may be a line  
9 that's discussed here as a point where disclosure maybe  
10 should click in.

11 MR. DUCHARME: Well, I'd have to talk to my  
12 colleagues who have Florida specific knowledge in their  
13 repertoire; I don't at this time. However, the rule out  
14 there is that we have, though, with the use of these  
15 certificates is that they are not to be used for vehicles  
16 that would qualify for lemon law protection.

17 They are solely to be used for customer satisfaction  
18 purposes and the kinds of situations we discussed. When I  
19 mentioned the example of the car that stalled a couple of  
20

1 do with the car.

2 And that was an example that I put Ford had a  
3 problem that Rosemary was describing. But if you want the  
4 answer in Florida, I'm very happy to get that information  
5 for you.

6 But the message we have to our consumer affairs  
7 people is that these certificates are to be used for a  
8 particular kind of purpose. They are not to be misused.

9 And they are misused. But we have, you know, ways  
10 of tracking that in the company and we try to inspect that  
11 or stop that when we come upon it. But they are solely to  
12 achieve customer satisfaction in non lemon law kinds of  
13 situations.

14 MS. HARRINGTON: Lou, you were next on my list  
15 but --

16 MR. GOLDFARB: I withdrew.

17 MS. HARRINGTON: Okay. And, Gerry, I guess you --  
18 was there anything? You were next after Lou.

19 MR. DUCHARME: I think that's it.

20 MS. HARRINGTON: You're covered, okay. Robert?

21 MR. GRAHAM: The general tenor of the discussion I'm  
22 hearing today is sort of tension between underinclusiveness  
23 and overinclusiveness. And we've been talking a great deal  
24 I think about these trade assists and these so -called  
25 goodwill buybacks. I think we are talking about the

1 marginal cases here.

2 So when, if we're going to focus on the marginal  
3 cases, I'd like to know from the manufacturers if they can  
4 give us a sense of what percentage of the numbers of the  
5 vehicles that they say that they buy back per year, what  
6 percents of those include the goodwill buybacks?

7 I mean, if we're going to be that concerned about  
8 so -called goodwill buybacks, we've got to make sure that  
9 that's a substantial number.

10 MS. HARRINGTON: That's a very good question.

11 MR. GRAHAM: So, for instance, George, you mentioned  
12 in your comments that roughly one half of one percent of the  
13 vehicles under warranty at any given time are purchased,  
14 during a given year are repurchased by GM.

15 If you assume a two -year warranty, we can always  
16 roughly raise the cap and figure, what percentage of those  
17 would you say are buybacks for vehicles that are not  
18 strictly speaking lemons?

19 MR. VELEZ: First of all, let me say that number is  
20 wrong. It's grossly overstated. But in percentage terms I  
21 can tell you three percent of the vehicles we buy back are  
22 mandated to be bought back; 33 percent are bought back under  
23 guaranteed satisfaction programs. And you're talking, the  
24 rest of that from our perspective is mostly goodwill. So I  
25 would say well over 50 percent.

1 MS. HARRINGTON: So you're saying 64 percent of the  
2 cars that GM buys back you would classify as goodwill  
3 buybacks?

4 MR. VELEZ: No, I wouldn't go that far. I would say  
5 if it's in a gray area, if I'd say even being conservative  
6 and taking half of those, we're talking about 16 or  
7 something percent being goodwill and giving the benefit of  
8 the doubt. Because obviously we buy back cars that were not  
9 ordered that do meet lemon law presumptions.

10 MS. HARRINGTON: Early buybacks, as they're called.

11 MR. VELEZ: Yeah. Well, once arbitration has been  
12 filed in Florida, for example, then that's a vehicle that  
13 has to be disclosed. We weren't ordered to buy that car  
14 back but we chose to and it met the presumption and so we  
15 have to disclose that.

16 MS. HARRINGTON: Lou.

17 MR. GRAHAM: If I may just clarify what I'm trying  
18 to say. We have been talking today about certain things  
19 where you have got a long -time customer, somebody that is  
20 reputable, going to plead on them for General Motors,  
21 Chrysler, Ford vehicles.

22 What percentage of those cases where somebody has,  
23 somebody has bought a Ford Explorer, for instance, and they  
24 aren't able to tow the cabin cruiser. What percentage of  
25 the time are we talking about that kind of a case, bad color

1 or just not knowing how to drive a truck for instance?

2 MS. HARRINGTON: Lou.

3 MR. GOLDFARB: Well, we're talking, I mean, you put  
4 it into categories, goodwill and lemon or goodwill and  
5 mandated by my community. We don't consider every vehicle  
6 that is not a mandated buyback a goodwill buyback.

7 I mean, there are many, many -- and I think our  
8 percentages are probably the same as GM's; three percent may  
9 be mandated.

10 The vast majority of them are vehicles we bought  
11 back where a customer has complained of a problem. We  
12 believe we've fixed it. The customer disagrees. We buy it  
13 back. And we fully disclose what the problem was, what we  
14 did to fix it.

15 And we make sure that disclosure is given to the  
16 dealer and the dealer gives it to the customer. So, I mean,  
17 if we wanted to assume that we're assuming that all other  
18 than mandated buybacks are goodwill buybacks --

19 MR. GRAHAM: No, I understand that.

20 MR. GOLDFARB: --the product's worthiness has been a  
21 problem, and that problem has been fully disclosed.

22 MR. GRAHAM: I understand that. Great.

23 MS. HARRINGTON: But we're not -- Let me sort of  
24 clarify, Lou, then. We're not, though, talking, are we, in  
25 the double digits of percentages of cars that are bought



1 back about cars that are bought back because the customer  
2 thinks that the trunk is too small or doesn't like the color  
3 or --

4 MR. GOLDFARB: No, no.

5 MS. HARRINGTON: --you know, finds that it drives  
6 like a truck or, I mean.

7 MR. VELEZ: Yeah, we are.

8 MS. HARRINGTON: I mean, that's a small percentage  
9 you're saying in the sense of this?

10 MR. GOLDFARB: For us it's a very small, small. I  
11 mean, we don't have the term goodwill on our disclosure  
12 form. Now, we do have, you know, settlement of litigation  
13 or resolution of, you know, a dispute.

14 We have some, we have about four or five different  
15 items on the disclosure form. But most often there has been  
16 a problem. We made an effort to fix it. We think it's  
17 fixed, they don't, and we buy it back.

18 Now one could say that's for customer satisfaction.  
19 We wanted to satisfy that customer and hope that they buy  
20 another one. In many cases they do.

21 MS. HARRINGTON: Phil.

22 MR. NOWICKI: Yeah. I was just going to say, part  
23 of it is related to what, I believe it's Lori said, Cohen,  
24 as far as what the disclosure is going to be. Giving the  
25 example of the truck that rides bad. Well, yeah, to some

1 people that is true. They've had a car. They're now in a  
2 truck. It rides differently. They complain about it. And  
3 there is goodwill. And in some of those instances it's  
4 swapping people out or using buyer certificates.

5 Other instances, though, it may be a matter of  
6 degree. And maybe this truck does have a vibration problem  
7 that is real and genuine and it's bought back for that  
8 reason. It's hard to decipher what that difference is  
9 between what is goodwill and what is a legitimate problem.

10 And again, from the manufacturer's side when it  
11 clearly is something like color or like a bad ride or, I  
12 mean, adjusting to a different type of vehicle, to then say  
13 it's bought back because it wasn't repaired after a  
14 reasonable number of attempts may be somewhat excessive and  
15 may be something that misrepresents the history.

16 But it's, like I said, it's very, very hard to try  
17 and define what this problem is because you're going to have  
18 differences of opinions on it from people who handle the  
19 complaints from the government and from company people who  
20 may see it differently. So it's --

21 MS. HARRINGTON: Is it naive to think that it would  
22 be possible for either the dealer or the manufacturer to  
23 disclose the following: This car was bought back because,  
24 and then the "because" would be the previous owner  
25 complained of a problem and was not satisfied with, you

1 know, the efforts to repair, and identifying the problem; or  
2 the previous owner didn't like the way that the car drives.

3 Or, that is, about the reason for the buyback. I'm  
4 not talking here about lemons because those disclosures are  
5 already set. I'm talking about nonlemons. Can that, is it,  
6 is that something that can be done by dealers and  
7 manufacturers?

8 MR. GOLDFARB: Yes.

9 MS. HARRINGTON: And if it can be done, is that a  
10 satisfactory solution?

11 MR. GOLDFARB: Well, we think it is being done. I  
12 mean, that is what is happening today. I mean, we have  
13 disclosure forms that have a number of -- we don't use quite  
14 the verbiage that you suggest, though.

15 But, I mean, I think it says customer satisfaction.

1           In other words, how do you -- and wouldn't that be  
2           the best information to then pass along to the next buyer,  
3           provided it wasn't done under any duress, giving them the  
4           disclosure.

5           Yeah, they swapped it out because I didn't like the  
6           color. And I'm the first owner, and here's my name and  
7           address. And that would be a disclosure that would be  
8           passed along to the next buyer.

9           MS. HARRINGTON: Rosemary.

10          MS. SHAHAN: I think we are moving in the right  
11          direction. If we can address this without having what we  
12          call the loopholes. I mean, our biggest concern is that the  
13          manufacturers in a number of cases that were cognizant about  
14          have used this customer satisfaction.

15          We feel like it's been abused, that vehicles that  
16          are really very defective and serious defects have been  
17          designated as customer satisfaction. I feel like it would  
18          be helpful for us to see the disclosure forms that  
19          manufacturers are using.

20          And I appreciated the fact that Ford provided its  
21          disclosure form with its comments. And I feel like it would  
22          be helpful if we could get those from all the manufacturers,  
23          maybe the disclosure forms that have been in use in the last  
24          two to three years.

25          Because, for instance, the one disclosure form that

1 we noted that GM had been using, I don't know if GM is still  
2 using, indicated it was a customer satisfaction buyback.  
3 And then when you read the fine print about it, it said that  
4 it could also be a lemon buyback.

5           And to my way of thinking they're not, it's not the  
6 same. If it's customer satisfaction, that implies that it  
7 was a trivial concern or a matter of taste or something, not  
8 that there --

1           George, what about you? Is there more? I mean,  
2           what's the, what is it that you're saying on the these  
3           customer satisfaction disclosures?

4           MR. VELEZ: I'm sorry. What was the question again?

5           MS. HARRINGTON: When GM provides a disclosure on a  
6           buyback and the reason for the buyback is customer  
7           satisfaction or customer dissatisfaction, is there  
8           additional information provided about the nature of the  
9           problem or the, whatever, that left the customer  
10          dissatisfied?

11          MR. VELEZ: Yes, there is.

12          MS. HARRINGTON: And give me an example of what that  
13          would be.

14          MR. VELEZ: Well, here is a copy of our form. And  
15          the form has the different categories that you can check  
16          off. And then it has an area where you, in all instances,  
17          should write in what the reasons for repurchasing the  
18          vehicle were.

19                 The category Rosemary is talking about is titled  
20          mediated or customer satisfaction purchase. And then what  
21          the verbiage explains is this problem; we have put  
22          definitions.

23                 We're not going to argue about whether this was a  
24          lemon law or customer satisfaction. We're just telling you  
25          that's the general category it fell in and these are the

1 reasons we bought it back.

2 MS. HARRINGTON: Could you read us that paragraph,  
3 please?

4 MR. VELEZ: It says, "General Motors or the dealer  
5 voluntarily repurchased or reacquired this vehicle as a  
6 customer satisfaction measure.

7 Included in this category are vehicles repurchased  
8 under a guaranteed satisfaction program or reacquired to  
9 settle or mediate a dispute in the BBB Auto Line Program in  
10 which General Motors participates. These disputes could  
11 include claims that could fall under a state lemon law."

12 Now, the thing you have to understand is that many  
13 states have their own requirements. So this is filled out  
14 always in addition to whatever the state requirement is. So  
15 you would actually have two forms, as you do in California,  
16 that are handed along the chain that hopefully gets to the  
17 consumer.

18 MS. HARRINGTON: Thank you. Evan.

19 MR. JOHNSON: I guess my reaction to that is similar  
20 to Rosemary's. I mean, the disclosure isn't specific  
21 enough. When you include everything it doesn't tell the  
22 consumer anything. And that's what that does.

23 I have a philosophy of giving, I have no problem  
24 with giving information in the disclosures and I think we  
25 should discuss that specific information. I think when

1 you're talking about sort of a threshold cut -off, and  
2 something that needs to be in there is when a consumer was  
3 alleging, you know, a defect in the car. And we can get  
4 into specific how you want to word that, but I think FTC  
5 staff would work out things like that, I'm quite sure.

6 But if there is an allegation, then I think you're  
7 in a category where you need to, that needs to be said. And  
8 that's a fairly objective test that you don't want to get  
9 into too many judgment calls on the labels.

10 If I could digress just a moment, I have a question  
11 for Lou Goldbarb, and that is, the figures on buybacks in  
12 Chrysler's comments, Lou, now did those not include trade  
13 assists, which are the ones that you help the person into a  
14 new car on or not?

15 You seem to use trade assists pretty, pretty  
16 broadly. So I'm asking you if your figures of buyback  
17 exclude trade assists.

18 MR. GOLDFARB: Why do you say we use trade assists  
19 broadly? I mean, I gave no indication of what the number of  
20 trade assists were; I just defined the category, which is  
21 where the dealer takes the car back.

22 I can't break down that number. I didn't actually  
23 prepare the comments; Dave Husaka did. And I'll plead  
24 Gerry's defense; I'll get that information to you.

25 (Laughter.)



1 MR. JOHNSON: Okay.

2 MS. HARRINGTON: Gerry, you're next.

3 MR. DUCHARME: Thank you. In terms of disclosure, I  
4 know the forms asked us, at least our forms asked the people  
5 preparing them to check a box.

6 One is buyback was an effort to promote customer  
7 goodwill; another, a decision of the Ford Consumer Affairs

1 statement though, or is it -- I mean, I'm, I'm pretty car  
2 dumb. So if I were reading one of these statements would I  
3 have a clue about what this means?

4 MR. DUCHARME: Yes, you would. It's done in a, we  
5 try to do it in a self -explanatory way. There are people  
6 obviously who will not know what it means to change a brake  
7 rotor, and that will mean nothing to them. But there is not  
8 any other way of saying it.

9 So to some, yes, they won't understand it if they  
10 have no inclination to mechanical terms. But the  
11 disclosures are written we believe in clear terms. The  
12 dates are there for the repairs, and the full 24 -month  
13 history is appended to the disclosure.

14 Our view is the consumer is entitled to have the  
15 facts. Whether they're relevant or not is up to the  
16 consumer to decide in making his purchase. But the facts  
17 ought to be there.

18 Most of these service repairs during warranty  
19 probably will have nothing at all to do with the reason why  
20 the vehicle was repurchased. But yet they're there. If the  
21 consumer finds it relevant, fine; if he doesn't, that's  
22 fine, too.

23 MS. HARRINGTON: Jack.

24 MR. GILLIS: A couple things. One, I'd like to  
25 respond to your question, Rosemary, in terms of the common

1 understanding of customer satisfaction. I go back to  
2 something Gerry said.

3           You're buying this car back for two reasons. One,  
4 because there is something wrong with the customer, the  
5 customer is unhappy, or there is something wrong with the  
6 car.

7           So I think there is a pretty common understanding  
8 that customer satisfaction means we wanted to make the  
9 customer happy. And that implies there is nothing wrong  
10 with the car.

11           Because there is no reason without, with a few  
12 exceptions, for any smart business person to simply buy back  
13 a vehicle that has nothing wrong with it. I mean, we don't  
14 want to see you guys doing that because that's going to  
15 raise the cost of cars.

16           So I think that there is an understanding that the  
17 word customer satisfaction means the car is probably okay.  
18 We just have -- You know how customers can be. Gerry just  
19 said it earlier; hey, we buy back great cars that even the  
20 appeals board say are bad cars all the time; right,

1           The second thing is, George, in the thing you just  
2 read to me, you just said GM or the dealer buys back.

3           MR. VELEZ: Right.

4           MR. GILLIS: Now, earlier you had said, listen, we  
5 buy cars back and that's our deal. The dealer may even buy  
6 cars back, and that's their deal; we have nothing to do with  
7 that.

8           MR. VELEZ: Right.

9           MR. GILLIS: So --

10          MR. VELEZ: We give the dealer this form and say we  
11 suggest you fill it out and we'll hand it on to the next  
12 purchaser.

13          MR. GILLIS: Okay. So that's just a generic form

1 loyalty. But sometimes we have disagreements. We have  
2 allegations and claims mainly with respect to our cars that  
3 frankly astound many of us and we find ourselves faced with  
4 decisions of appeal boards that yet further astound us. And  
5 those vehicles --

6 MR. GILLIS: Well, if a car then rises to the level  
7 of becoming a lemon and goes through a state lemon law  
8 process, are you also saying that for the most part the  
9 reason why that happened is because we would have taken care  
10 of this a long time ago but we really think the car is okay?

11 MR. DUCHARME: There are all kinds of situations.  
12 I'm not saying in every situation that's the case. But  
13 there are many situations where we find ourselves buying  
14 back cars that we find nothing wrong with; there are no  
15 things wrong with it.

16 We resell those, you know, vehicles and we put a  
17 warranty on them. And we find in many, many cases that  
18 these vehicles are never back in for the repair, not a thing  
19 wrong with them.

20 MS. HARRINGTON: Steve.

21 MR. TATERKA: Let me make a couple of points. First  
22 I want to address something in the form that George read.  
23 The language that you read included both guaranteed  
24 repurchased cars and I think goodwill adjustments.

25 The reason I said earlier that I didn't have a

1 problem with excluding guaranteed repurchase cars is that  
2 typically guaranteed repurchase programs are going to extend  
3 for such a short duration that the vehicle wouldn't be  
4 nonconforming under a state lemon law anyway.

5 In other words, if the customer has the right to  
6 insist on a guaranteed repurchase within 30 days of when  
7 they repurchased it, it's unlikely that the vehicle would  
8 have met poor repair attempts or been out of service for 30  
9 days, which may be a typical lemon law criteria.

10 But I want to address sort of what I think is a more  
11 serious problem on the mechanics of disclosure. We are  
12 talking about the disclosure form that the manufacturer or

1 I mean, I can't tell you how many times I saw a dealer  
2 selling cars that they may have taken in on trade or bought  
3 at an auction and went ahead and sold; they couldn't even  
4 disclose the mileage properly because they didn't even have  
5 the title certificate from the prior owner.

6 And now we're talking about additional forms that  
7 presumably they're going to have and disclose to the next  
8 customer? It's not realistic.

9 MS. HARRINGTON: George?

10 MR. VELEZ: Yeah. I wanted to address I guess two  
11 issues that I just couldn't let go, silence sometimes being  
12 interpreted as assent.

13 One is that someone made the statement that it's a  
14 pretty objective thing when a consumer alleges that there is  
15 a problem with a car. There is -- Everyone here, most  
16 everyone here probably has owned an automobile.

17 It is a very emotional thing. And it is  
18 particularly frustrating when you believe there is a problem  
19 with the car and it can't be fixed to your satisfaction. So  
20 it becomes a very emotional thing. And there is absolutely  
21 nothing objective about it sometimes.

22 If you take a look just at the Florida statistics,  
23 56 percent of the cases that went to arbitration by their  
24 own statistics were settled in favor of the manufacturer.

25 If we had a customer satisfaction matter about those

1 car backs, they would then be titled lemons or they would be  
2 disclosed as lemons. So my only point is I don't think  
3 that's a valid assumption.

4 Second, you know, folks, if you want to take a look  
5 at this disclosure and read the whole thing, I'd be glad to  
6 pass it around and give you copies or whatever. But that's  
7 the catch -all category here.

8 There are specific disclosures for when it has been  
9 ordered to be bought back, adjudicated, or bought back after  
10 having been filed with either a state or a DSP arbitration  
11 system.

12 So that catch -all category there is specifically  
13 because we've got people out there in the field who are  
14 trying to do their job. They've got lots of other things to  
15 do and they happen to be human.

16 And we don't want to put them in the situation where  
17 they have to have a thousand boxes and have to pick the  
18 right pigeonhole. We give them the general category. They  
19 say I can't figure out what this is, but here it is and  
20 we're making disclosure about what the problems are.

21 MS. HARRINGTON: Would you reconsider that? I mean,  
22 for example --

23 MR. VELEZ: Oh, sure. As long as that's --

24 MS. HARRINGTON: --we have some very good, I see one  
25 of them here, Carolyn Shanna from our Office of Consumer



1 Business Education, who I'm sure would be glad to work with  
2 any of you on your forms.

3 MR. VELEZ: No, we would take input from whomever.  
4 We are not proud -- we're not, no pride in ownership here.

5 MS. HARRINGTON: Great. Well, Carolyn would be glad  
6 to work with you on your form because I, I have a problem  
7 with that paragraph that you read. I wouldn't know as a  
8 consumer what that meant. I mean, I don't, that doesn't,  
9 that doesn't hit it for me in terms of giving useful  
10 information.

11 MR. VELEZ: But you understand that the driver  
12 behind that is that you, first of all, you're getting a  
13 state form in some instances. And again, the driver behind  
14 it is you don't want to guess wrong.

15 MS. HARRINGTON: Sure.

16 MR. VELEZ: And you are getting presumably what  
17 happened, what were the mechanical problems. But, yeah,  
18 we'll take input.

19 MS. HARRINGTON: Peter.

20 MR. MAIER: I have two comments. One is that in my  
21 experience a pure customer satisfaction buyback, that is,  
22 because the customer doesn't like the color, for example, is  
23 extremely rare. And the discussion I think is, in focusing  
24 on that, is missing the much larger issue.

25 But the second question I wanted to ask the

1 manufacturers is there is an interesting suggestion in the  
2 comments by the California Department of DMV that the  
3 disclosure form have attached to it a printout of the  
4 warranty history. In my experience the manufacturers can  
5 easily print that out. I think Mr. Ducharme --

6 MR. DUCHARME: We do that. We do that in the  
7 format --

8 MR. MAIER: Ford does that. And I'm wondering if  
9 the other manufacturers do that. And if they don't, what  
10 they think about that suggestion.

11 MS. HARRINGTON: Okay, we're going to -- Lou is next  
12 on the list. So we'll hear from that manufacturer whatever  
13 it is that you were going to say after you answer Peter's  
14 question.

15 MR. GOLDFARB: Well, actually, it ties into what I  
16 was going to say which was to expound on what Jack Gillis  
17 said about how people interpret designation customer  
18 satisfaction.

19 I think, correct me if I'm wrong, Jack, I think you  
20 were suggesting that someone who sees customer satisfaction  
21 check things that had nothing to do with the car. I have  
22 trouble believing it. We don't buy cars back because people  
23 are unhappy with their marriages.

24 (Laughter.)

25 MR. GOLDFARB: You know, if someone is unhappy and

1 brings it to our attention it's because they're unhappy with  
2 the car. The important information on the disclosure is  
3 what was complained about, which we disclose, and what was  
4 done to fix that, which we disclose.

5 And that is the critical information. All these  
6 designations including, frankly, lemon law designation is  
7 confusing. It's misleading. The real information that's  
8 useful is what was complained about and why was this car  
9 bought back and what was done to fix it and was it fixed?

10 I'm not sure giving a three -year warranty history is  
11 going to be useful to consumers. Frankly, it could be  
12 information overload. I mean, a lot of that information is  
13 difficult to decipher. We shouldn't -- it may be too much  
14 information. I don't know.

15 I mean, I'm not saying it's impossible to do. If  
16 Ford does it, certainly it's doable. But, you know, I just  
17 think that no one is misled by a proper disclosure form,  
18 even if customer satisfaction is checked because we always  
19 disclose what was done, what was wrong, you know, where the  
20 vehicle is.

21 MS. HARRINGTON: Adam, question?

22 MR. COHN: Yeah. Actually maybe the other  
23 manufacturers should be given a chance to respond first

1 MS. HARRINGTON: Okay. We'll come back to you.

2 John, you were next on the list, do you want to  
3 respond to Peter's question?

4 MR. WHATLEY: Briefly two points. The first one was  
5 I wanted to take issue with a statement that no rational  
6 manufacturer were to buy a car back that wasn't defective.  
7 I mean, we can argue about how often it happens.

8 It does happen. Because manufacturers look at this  
9 in terms of the investment of their customer. They want  
10 their customer coming back. They want their customer  
11 talking to their neighbors about how good an experience  
12 they've had.

13 And there are a number of manufactures that will do  
14 that. They may not have a thirty days, a program in writing  
15 with a particular car back for whatever reasons. But  
16 they're very liberal about buying the car back in some  
17 situations.

18 The second thing is, when you start having to --  
19 this jumped to the question what you list on the form. If  
20 you start having to list the warranty histories, it's,  
21 manufacturers vary in the capacity to be able to do that for  
22 one thing.

23 Some have very sophisticated systems. Some don't.  
24 And if you're trying to get, unless you have a standardized  
25 national uniform way of doing it, you're going to have all

1 kinds of problems with the complexity and confusion that  
2 would result from this.

3           Everybody doesn't do that. Everybody I think has  
4 some problems doing it. And there would be a lot of  
5 problems, some shoehorn holding everything to that kind of a  
6 form.

7           MS. HARRINGTON: Gerry, do you have an answer to

1 the fact not that it was a lemon law buyback or part of the  
2 DSP settlement or the like, but the fact that it was  
3 repurchased by the manufacturer.

4 And the other relevant fact is why it was  
5 repurchased by the manufacturer. The third relevant fact is  
6 that it was fixed and here's how it was fixed by the  
7 manufacturer. It seems to me those are the three relevant  
8 things to be told to the consumer.

9 MS. HARRINGTON: Or that it wasn't fixed.

10 MR. DUCHARME: Or that it wasn't fixed. Okay. Or  
11 that it wasn't fixed is a relevant factor as well. And it  
12 seems to me that if we had that on a uniform form used  
13 throughout all the United States, then we'd have consumers  
14 who would know what to expect when they buy a car and they'd  
15 know how to understand it because they wouldn't be faced  
16 with all these 20 forms.

17 MS. HARRINGTON: All right. Well, let's test that  
18 proposition. If we had a form that said this car was  
19 repurchased and we included trade assists in this for the  
20 purposes of this question, so whoever does, whether it's the  
21 dealer or the manufacturer, the fact that the car has been  
22 repurchased is going to be disclosed, that it was  
23 repurchased because and there is going to be some fairly  
24 specific information filling, that is provided, and this is  
25 what has been done about that.

1 I mean, if it was repurchased because the trunk was  
2 too small, I assume that the statement is nothing was done  
3 to enlarge the trunk.

4 (Laughter.)

5 MS. HARRINGTON: Okay. So, I mean, I'm talking  
6 about specific, vehicle specific information. Would that  
7 fix, if that information was provided on every buyback,  
8 would that fix the problem?

9 Jack?

10 MR. GILLIS: I think it would.

11 MS. HARRINGTON: Okay. Evan?

12 MR. JOHNSON: I'm going to hedge a little on that  
13 one. I think that that sounds good. I'm wondering whether  
14 a little bit more information might be relevant. I mean, it  
15 might be relevant if the case, if it was a car that got  
16 bought back after a court action or something like that.  
17 That would be my hedge on that. But I think some categories  
18 like that might be relevant additional information. But  
19 that core information I think is going a long way toward  
20 where we need to be.

21 MS. HARRINGTON: Phil?

22 MR. NOWICKI: I have some reservations with that.  
23 You get into whether something is fixed and whether you want  
24 to bring in a third party in to determine whether it's fixed  
25 or whether you just say it's repaired.

1 MS. HARRINGTON: Didn't use the word fixed in my  
2 disclosure.

3 MR. NOWICKI: Okay.

4 MS. HARRINGTON: And this is what has been done  
5 about it.

6 MR. NOWICKI: Okay. I mean, it has potential.  
7 Yeah, I still get back that in the end maybe some bright  
8 line threshold just takes care of it and deciding where that  
9 bright line is.

10 MS. HARRINGTON: Robert.

11 MR. GRAHAM: My suggestion of that story is that if  
12 your, if somebody other than the manufacturer has got some  
13 control over the language, then that shows some promise.

14 Otherwise if the person buying it back, the party



1 structure it that way. But if there is a way of  
2 spot -checking the accuracy.

3 One concern that we have is that we're seeing, when  
4 manufacturers, or one, at least one manufacturer, Chrysler,  
5 I don't know if Chrysler is the only one, is buying back  
6 vehicles from the first owner, they're asking them to sign a  
7 confidentiality agreement not just regarding the terms of  
8 the settlement, which we have no problems with, but  
9 regarding the reasons why the vehicle was bought back.

10 And I'd like to know from Chrysler and the other  
11 manufacturers if this is becoming common or if this is rare.  
12 Because I think that kind of resolution has some real  
13 potential for being helpful, but I'd want to have some way  
14 of double -checking it for accuracy.

1           Also, I think it's very important to make the  
2 disclosure form not just be posted on the vehicle but  
3 actually be signed and a copy given to the purchaser.  
4 That's --

5           MS. HARRINGTON: All right. Well, let's test --  
6 Okay. Now we're going to give a -- I'm sorry, Peter.

7           MR. MAIER: And then there's, the other things I  
8 think that are helpful are, Ford, for example, is starting a  
9 program putting a door sticker similar to the odometer  
10 change sticker. I think that's a very useful concept.

11          MS. HARRINGTON: Okay. Lou. This is on my  
12 question, not Rosemary's at the moment.

13          MR. GOLDFARB: Well, I have to respond to both.

14          MS. HARRINGTON: No, you just have to do what I tell  
15 you to do.

16                 (Laughter.)

17          MS. HARRINGTON: We'll get back to Rosemary's  
18 question.

19          MR. GOLDFARB: Well, it relates to yours, actually.

20          MS. HARRINGTON: Okay.

21          MR. GOLDFARB: What is it, your solution is our  
22 solution, okay. But you can't avoid using the word repair.  
23 I mean, we don't want to say to these people, you know,  
24 writing, dropped the floor pad and put in new sleeves.

25                 I mean, if we put just the technical details of what

1 an automobile mechanic has done, okay, without bringing the  
2 conclusion into it that this has been repaired, that's the  
3 information that the buyer wants to know; has it been  
4 repaired?

5 We think it's been repaired. The consumer  
6 complained about the transmission. We spent X number of  
7 hours on it. We repaired it, okay. I mean, that has to be  
8 disclosed. You can't avoid doing that. I mean, that's  
9 critical information.

10 I'm not aware of ever requiring confidentiality as  
11 the reason for the buyback. That would be totally contrary  
12 to what we're doing. I mean we are giving the reasons for  
13 the buyback.

14 MS. SHAHAN: I have a copy of a --

15 MS. HARRINGTON: Ah.

16 MS. SHAHAN: Sorry.

17 (Laughter.)

18 MS. HARRINGTON: Gerry.

19 MR. DUCHARME: First of all, on the confidentiality  
20 in the buyback I, that is totally news to me. We have a, in  
21 a situation where we buy back a vehicle we ask for a release  
22 from the individual but there is no confidentiality in there  
23 at all.

24 And on the point you made too, Rosemary, about  
25 making people available to be contacted by subsequent

1 purchasers, I'm not sure a lot of people want to be caught  
2 up in that, quite frankly.

3 And I think very frankly if we were to require that,  
4 I think people would have some substantial concerns about  
5 their privacy. And just, you know, once they sell the  
6 vehicle they want to be out of the picture. So I think --

7 MS. HARRINGTON: I'm going to interject something  
8 here that's probably not going to make you happy. But we  
9 don't want to talk about agreements between manufacturers  
10 and car owners. That's not what we're here to talk about  
11 today.

12 What we are here to talk about today is information  
13 that goes to subsequent purchasers of cars that are bought  
14 back. So that's just not, that's not an issue for today.

15 MR. DUCHARME: I just want to make one further point  
16 if I could. That terms of the fix that was made on the car,  
17 you want to keep in mind that when someone buys a reacquired  
18 vehicle from us, they get a comprehensive 12 -month warranty  
19 on that vehicle, the entire vehicle.

20 So it's interesting to know what the fix was. But  
21 if anything else goes wrong with the vehicle or if in the  
22 very situation where the fix isn't quite, you know,  
23 effective, the consumer is protected with a full warranty  
24 for 12 months or 12,000 miles.

25 MS. SHAHAN: Could I just respond to what Gerry said

1 about having the first consumer contacted? Because I think  
2 there is a misunderstanding there. And I don't propose a  
3 formal way that the names of the first owners would be made  
4 available necessarily.

5 I can agree that there could be privacy concerns.  
6 But just that the potential be there for the first owners to  
7 communicate about the problems. We see that as desirable.

8 MS. HARRINGTON: Okay. Janet.

9 And then, Adam, is your question in order yet?

10 MR. COHN: I think it is.

11 MS. HARRINGTON: Okay. Well, let's hear from Janet  
12 and then we'll come back to you.

13 MS. SMITH: Well, in answer to Carole's original  
14 question, I think we're seeing what's happening. We are  
15 creeping in now into the area of instead of saying what's  
16 been done to address the reason for the buyback, everybody  
17 wants to say it's been repaired or it's not been repaired.

18 And that's -- Our experience has been that on those  
19 manufacturers who add a comment about repairs, a lot of  
20 times what we will see are things that were basically  
21 defenses raised at an arbitration hearing that were rejected  
22 by the arbitration board or dates of repair that were early  
23 in the process that obviously did not work or the vehicle  
24 would not have been declared a lemon.

25 And I think Phil's point, that was the problem that

1 Phil pointed out. If you start getting into allowing that  
2 kind of an explanation, and as Robert said, if the control  
3 of the explanation is the manufacturers' to control, then  
4 you're going to see things like that that are misleading  
5 because they are basically related to things that the next  
6 buyer is not going to know where that, where that worked in  
7 the chain of events.

8 But I think that's where you need to be careful in  
9 covering those three areas. I think your basic premise is a  
10 good start for what needs to be on the disclosure form,  
11 whatever form it takes.

12 MS. HARRINGTON: Adam.

13 MR. COHN: I had a question in general for the  
14 manufacturers, but specifically for Gerry. About -- I've  
15 heard a lot about what types of disclosure should be given,  
16 what types of protections should be given to the consumer  
17 that receives a buyback.

18 But I'm still unclear about the issue of trade  
19 assists. Is the 12 -month warranty that Ford gives, I assume  
20 that's just for manufacturer buyback.

21 MR. DUCHARME: That's correct.

22 MR. COHN: To what extent do you think and the other  
23 manufacturers think that when a manufacturer makes a good  
24 faith effort to help with a manufacturer buyback and  
25 alleviate the problem of disclosure and warranty with a

1 manufacturer buyback, does that put pressure on a  
2 manufacturer to increase the number of trade assists every  
3 so much?

4 I mean, what protects against trade assists becoming  
5 sort of a future loophole for vehicles that are currently  
6 being dealt with as manufacturer buybacks?

7 MR. DUCHARME: If I understand your question, you  
8 were saying that if no disclosure is required with respect  
9 to a vehicle that is traded in with a certificate, there are  
10 no restrictions on that at all, what's to stop us from using  
11 those rather than getting into --

12 MS. HARRINGTON: Buybacks.

13 MR. DUCHARME: --buybacks. I guess our own  
14 internal, our own internal policies. We instruct our people  
15 that they are not to use these for vehicles that are, quote,  
16 lemon law eligible.

17 Other than our own policies, I know of no state laws  
18 that, you know, creep into here and that require us to do  
19 one thing or the other.

20 We want to keep in mind, too, that under the law, at  
21 least as we understand it right now, the manufacturers are  
22 not under an obligation to buy back a vehicle until the  
23 state process has run its course.

24 All the rest of the buybacks are done at the  
25 discretion and voluntarily by the manufacturer. So, you

1 know, you're into a lot of gray areas here, Adam. I'm not  
2 sure exactly, I'm not sure exactly how to answer your  
3 question actually.

4 MR. COHN: The reason I was asking it is just in  
5 terms of defining a buyback. If we cast this wide net for  
6 all situations where manufacturers buy back the car, there  
7 was an earlier discussion of whether trade assists should be  
8 included.

9 MR. DUCHARME: Yeah. Well, the concern is, again,  
10 that first of all, as I tried to describe it before, perhaps  
11 I wasn't too articulate in doing so, but there is a spectrum  
12 here of things.

13 And you get into your certificates, which are at one  
14 end of the spectrum. And you get into state law mandated  
15 buyback at the other and you have this area in between. And  
16 we try to organize our processes within Ford so that  
17 certificates are used at this end of the spectrum.

18 And to get to a certain point, again, there are a  
19 lot of gray areas. Then you get into the goodwill  
20 situation, which is a buyback, a reacquired vehicle  
21 disclosure. And then you get into the other areas where you  
22 have mandated buybacks.

23 MR. COHN: But would there be, do you think there is  
24 an objective way of drawing some sort of line maybe based on  
25 some sort of dollar figure value for the certificate or



1 something like that?

2 MR. DUCHARME: Well, there may be. The concern I  
3 think is, I know in the request for comments there was a  
4 question in there about whether some regulation in certain  
5 areas would have a, quote, chilling effects on what the  
6 manufacturers do.

7 And very frankly, if we got into a situation--and I  
8 will speak for Ford; I can't speak for my colleagues--but if  
9 we were into a situation where suddenly we were to find that  
10 all vehicles that were traded in with the use of a  
11 certificate were deemed to be buybacks and would be required  
12 to have disclosures and all the process that we have views  
13 with respect to buybacks, I have to tell you that there  
14 would be a substantially chilling effect on the use of the  
15 certificates and a substantial reduction in their use.

16 It costs us a lot of money when we buy back a  
17 vehicle. And we buy back a great majority of our vehicles  
18 for purely goodwill purposes. And it costs us a small  
19 fortune with respect to each vehicle.

20 One, in terms of paying a dealer to process it; and  
21 two, in terms of paying a dealer to make disclosure. Three,  
22 in terms of administering the process that runs disclosure  
23 to us through the auction back down to the dealer and to the  
24 retail customer with follow up.

25 And I don't think as a company we'd be prepared to

1 extend that to goodwill certificates. Or if we had to, I  
2 think we'd have to find ourselves substantially limiting the  
3 use of goodwill certificates which in turn is going to  
4 reduce customer satisfaction, in turn is not good for the  
5 consumer.

6 MS. HARRINGTON: Jack, I'm not going to call on you.  
7 But do you want to be called on?

8 MR. GILLIS: Yeah, I would like to.

9 MS. HARRINGTON: Okay. Okay. I just couldn't tell.  
10 Your sticker has been up.

11 MR. GILLIS: It's a defective sticker.

12 (Laughter.)

13 MS. HARRINGTON: All right. Lou, Steve, and Jack,  
14 and Jack.

15 MR. GOLDFARB: I just wanted to get a clarification  
16 of Adam's question. Are you saying if we can give less  
17 disclosure with trade assists that we may move more in that  
18 direction and be less willing to have buybacks that have  
19 less disclosure? Is that --?

20 I mean, there is some confusion. Because you talk  
21 about trade assists, and Gerry referred to using the  
22 certificates. I mean that's a different kind of a system.

23 A certificate is one to three thousand dollars. A  
24 certificate is given to people that they can hold on to, you  
25 know, indefinitely. When they feel like buying a car, they

1 can use that to get another car.

2 They trade their car into any dealer, any Chrysler  
3 dealer in our case. And we have no control over, you know,  
4 what happens at that point to that vehicle.

5 A trade assist is much more contemporaneous with the  
6 complained of problem where someone is real unhappy but, you  
7 know, and the dealer wants to take him out of the car and we  
8 assist the dealer in doing that.

9 MS. HARRINGTON: And the dealer takes the car back.

10 MR. GOLDFARB: That's right, and the dealer takes  
11 the car back. The dealer takes the car back in both those  
12 two instances because it's traded in for another car. It  
13 may be at a later point with a certificate or the trade  
14 assist; it's more contemporaneous.

15 But I guess to answer your question, I don't think  
16 either of those objections is going to necessarily, or  
17 either anyway, going to get, going to get in the way with us  
18 buying back a vehicle that is seriously complained of and  
19 that has a problem that the customer is simply unhappy with  
20 the resolution of.

21 You know, it's wrong to talk about defects here. I.

1 we buy it back and we designate customer satisfaction if  
2 it's not, doesn't come under the statutory definition of  
3 lemon. But we make full disclosure of what was complained  
4 of and what was repaired. So I think the consumer is  
5 getting full information in all these instances.

6 MS. HARRINGTON: Steve.

7 MR. TATERKA: I have got just a couple of questions  
8 for the manufacturers. Gerry indicated that Ford issues a  
9 12 -month/12,000 mile warranty on buybacks. My first  
10 question is, does Chrysler and General Motors do the same,  
11 even in states -- well, in most of the states that don't  
12 mandate a warranty upon the resale of a buyback vehicle.

13 And my second question for all three of, Gerry,  
14 George, and Lewis, is would the manufacturers, how do  
15 manufacturers feel about a warranty which would go, which  
16 would be the greater of the one -year warranty, the greater  
17 of the one -year or what the original warranty was for the  
18 first purchaser?

19 MR. GOLDFARB: I don't think a vehicle loses its  
20 warranty if a vehicle has been bought back. If the vehicle  
21 has been bought back under warranty, that warranty is given.

22 So we give, we have since '88 given a full one -year  
23 warranty on every vehicle that we sold after we bought it  
24 back.

25 The original warranty continues, if it's on the

1 vehicle it remains. Because we don't revoke the warranty  
2 simply because we bought it back.

3 MR. WHATLEY: Everyone I have ever seen is done that  
4 way. You get the longer of the two.

5 MR. DUCHARME: That's true for Ford Motor Company,  
6 too. They get the longer of the two.

7 MR. VELEZ: It's true for General Motors, as well.  
8 But in some instances if the state law is unclear, you may  
9 have to give them the one year even though they have a  
10 longer term remaining on the original warranty.

11 MS. HARRINGTON: Okay. Jack.

12 MR. GILLIS: What I'd like to do is follow up on  
13 something Robert said earlier, and it really cuts to the  
14 heart of this issue.

15 We started off where it seemed like all the  
16 manufacturers liked the idea of disclosure. However, now we  
17 are finding, and I was really surprised at your remark,  
18 John, when you said manufacturers are very liberal in buying  
19 back cars for customer satisfaction.

20 We're not all here today because that is the  
21 presumed assumption. We're here today because there is a  
22 huge problem out there that we think is happening, we as  
23 consumer advocates think is happening.

24 We're not here because you guys are doing such a  
25 great job of buying all these cars back just because you

1 want to keep your customers happy. And I think part of the  
2 problem is we just don't know what the facts are.

3 We just don't know what, other than what we see in  
4 the lemon litigation, in the work that Phil has done, that  
5 there is a huge problem of people buying cars that have  
6 serious defects.

7 We're not talking about Lou fixing the car and the  
8 guy just didn't like the way he fixed it. We're talking  
9 about real big problems with cars. Now, are what you guys  
10 saying is this is not a, this is not a problem?

11 MS. HARRINGTON: Actually, Jack, if I could  
12 interject, why we're here today is because we want to know  
13 whether there is a problem with consumers not receiving  
14 information that's material about cars that are purchased  
15 after they have been bought back.

16 MR. GILLIS: Presumably because they need that  
17 information. Because the only reason consumers would need  
18 that information is if it's true that there are substantial  
19 numbers of cases where consumers are buying cars that are  
20 defective, that they don't have any idea they're defective.

21 Not because it doesn't happen very much. I mean,  
22 let's not get into it if it doesn't happen very much.  
23 You've got other things to do; we've got other things to do.  
24 If this is really not a problem, let's not do this.

25 But we think it's a problem. We think consumers are

1 getting a lot of cars that are bad. But if it's truly not a  
2 problem, let's not figure out how to disclose it.

3 MS. HARRINGTON: I just want to, you know, state for  
4 the record that the Federal Trade Commission staff is  
5 holding this workshop to find out, or in an effort to find  
6 out whether consumers are getting the material information  
7 that they need about cars that they buy, where those cars  
8 have been the subject of a repurchase. We are not asking  
9 the question about whether consumers are buying bad cars or  
10 whether there are a lot of bad cars there.

11 MR. GILLIS: Well, why do you want to know that?

12 MS. HARRINGTON: Because the Federal Trade  
13 Commission's role is to facilitate commerce by seeing to it  
14 that material information is made available in the  
15 marketplace. That's our concern. That's what the Federal  
16 Trade --

17 MR. GILLIS: But I would assume that information has  
18 to have relevance. You know, you don't --

19 MS. HARRINGTON: Well, it has to be material, that's  
20 right.

21 MR. GILLIS: And relevance to the consumers'  
22 purchase.

23 MS. HARRINGTON: Right.

24 MR. GILLIS: I mean, in other words, if all cars  
25 have four tires, you're not investigating whether consumers

1 are being told whether the car has four tires on it because  
2 you assume that all cars have four tires. I presume we're  
3 into this thing because we assume there's a problem out  
4 there of consumers getting bad cars.

5 MS. HARRINGTON: No. You may assume that but we  
6 don't. And I just want to make the record very clear on  
7 that point. The reason that the staff of the Federal Trade  
8 Commission has asked for comment and has invited you here is  
9 to discuss the issue of whether material information is  
10 being provided to consumers when they purchase cars that  
11 have been the subject of buybacks. That's our agenda. So I  
12 just, you can bring whatever assumption --

13 MR. GILLIS: Regardless of how often consumers get  
14 bad cars.

15 MS. HARRINGTON: You can bring, you can bring  
16 whatever assumption to this you want to, but it's our  
17 meeting. And so I'm going to say why we're here. And why  
18 we're here is to explore the issue of whether consumers are  
19 receiving adequate information, adequate material  
20 information about cars.

21 The Federal Government, the Federal Trade  
22 Commission's role is not to guarantee the quality of cars  
23 that are purchased or that are available in the marketplace.

24 MR. GILLIS: I think I am miscommunicating then. I  
25 don't say that that's your role. But I assume there is



1 something behind why you are concerned about whether or not  
2 they get this material information.

3 MS. HARRINGTON: What's behind it is a petition  
4 that's been filed and alleges that they're not getting  
5 material information. And we want to find out what kind of  
6 information consumers are getting.

7 We want to find out whether they're not getting  
8 information. We want to find out whether there's something  
9 that could be done or needs to be done to improve the  
10 information that consumers are receiving. But we are  
11 responding to a petition that has been filed asking that the  
12 Commission take action.

13 Now, let's see. Janet.

14 MS. SMITH: I'm getting back to your original  
15 question about the three things you think might be good for  
16 disclosure. And I think probably, after thinking about it a  
17 little more, my concern about the third part of that, now  
18 what's been done to address the reason that a vehicle has  
19 been bought back, I think probably, and I will throw this  
20 out to the group, it might be better to remove that third  
21 one and just have the first two and try to deal with them at  
22 the front end in terms of where you draw the line to  
23 determine when the disclosure has to be made.

24 And the reason I would suggest that is because I  
25 really think based on everything I am hearing and based on

1        what we've seen in our state experience, there is too much  
2        potential for abuse of that last part of the information,  
3        particularly if it's coming from the manufacturers.

4                And I think that you're trying to keep it away from  
5        whether or not the problem has been repaired, but that's  
6        essentially what the industry wants to be able to tell  
7        people. And I think it might be better to deal with it at  
8        the front end rather than dealing with it at the back.

9                MS. HARRINGTON: Phil.

10               MR. NOWICKI: Yeah. And I would say along the same  
11        lines, I think we may be going in the wrong direction as far  
12        as trying to figure out which cars fit the buyer certificate  
13        category, trade assist, and so forth, when I think maybe in  
14        everybody's interest some bright line, and deciding where  
15        that bright line is, kind of simplifies things.

16                And then anything that happens after that bright  
17        line in terms of where the car is, returned to the dealer,  
18        the manufacturer, and then another car is swapped out is  
19        probably the simplest way.

20                Because the other way, you're just going to bring  
21        more government interpretation into what all these other  
22        categories are or what the first consumer felt or what the  
23        second consumer thought they should have known. And it just  
24        seems to, you know, confuse more than simplify it.

25                MS. HARRINGTON: Okay. George. And let me just

1 clarify, Rosemary, do you have your, your thing up? Did you  
2 want to be called on?

3 MS. SHAHAN: Yes.

4 MS. HARRINGTON: Okay. George.

5 MR. VELEZ: Yeah, I wanted to respond to a couple of  
6 things I guess. One, to Adam's question, why we wouldn't  
7 just buy, step up and buy cars voluntarily rather than  
8 giving them to the lemon law.

9 It's very simple economics; it would cost too much  
10 money to do that. So it is never our first instinct to  
11 offer to buy back a vehicle. It's only when it's clear that  
12 that's, the customer can't be satisfied any other way.

13 I also wanted to address, I guess an underlying  
14 problem here is just the lack of product that we're going to  
15 have. And maybe there is no way of getting beyond that.  
16 But there is no normative implication, I guess, when we use  
17 the word repair.

18 It is a jargon in the industry. When a mechanic  
19 does something to a vehicle, he calls that a repair. So,  
20 you know, we're certainly not trying to say that the vehicle  
21 is free from defect.

22 In fact, that's why we offer the warranty and why we  
23 don't have a problem offering the extended warranty, the 12  
24 months on the vehicles that are out of warranty.

25 But if you are going to describe what happens to

1       that vehicle, if you ask the mechanic off the street he'll  
2       say I repaired that vehicle. And he's not making any  
3       normative judgment about how the car works or --

4               MS. HARRINGTON: Joe, do you have a question?

5               MR. MULHOLLAND: Yeah. I was curious whether there  
6       is any evidence out there on how consumers interpret  
7       different disclosure statements.

8               Because I think a lot of what we are doing here is  
9       speculating, if you will, on how consumers do interpret the  
10      different types of information, whether we are getting  
11      information overload or not. I just throw out the question  
12      whether anybody has done any work in that area.

13              MS. HARRINGTON: I think that's an excellent  
14      question. If I may, I'd like to ask everyone to think about  
15      it and be prepared to talk about that in the 1:15 session;  
16      if that's agreeable with you, Joe. Because I think that  
17      really does get to the heart of part of what we're talking  
18      about.

19              Ed and Rosemary.

20              MR. MIERZWINSKI: Well, I mean, I just wanted to  
21      follow up on what Jack said. And if we're not here to talk  
22      about the extent of the problem--I mean, are the  
23      manufacturers and the FTC, it doesn't sound like either of  
24      you are willing to stipulate to the facts or the allegations  
25      in our petition on the enormity of the problem--when is the

1       FTC going to investigate that part of our petition which I  
2       think involved some serious characterizations that the  
3       problem is enormous and ought to be looked into further.

4               MS. HARRINGTON: Well, the petition alleges --

5               MR. MIERZWINSKI: Is there a separate investigation?

6               MS. HARRINGTON: No. I think that's, that's not the  
7       way that I read the petition at all, Ed. The petition  
8       alleges that information isn't being given to consumers  
9       about car that they're buying and that the information is  
10      very important to them.

11              And that's what we're looking at here; what  
12      information is being provided, when is it being provided,  
13      does that need to be improved, and what are the facts  
14      underlying that.

15              Rosemary.

16              MS. SHAHAN: Two points. One is, in what you  
17      suggested, I think it's extremely helpful including the  
18      trade assist, based on our experience.

19              MS. HARRINGTON: So you would include trade assist  
20      in the class of vehicles about which information should be  
21      provided.

22              MS. SHAHAN: Absolutely. Because just as an  
23      example, we had a board member who bought a vehicle that had  
24      bad brakes. It had a history of bad brakes. The original  
25      owner returned it with a trade assist and it continued to

1 have that serious problem.

2           And the severity of the problem isn't always  
3 reflected by the stage at which it's repurchased. If a  
4 manufacturer wants to make a legal point, for instance, they  
5 could litigate over a relatively minor problem; not safety,  
6 not functioning of the vehicle, maybe it's the paint, say,  
7 to make a legal point.

8           And that gets litigated and indicated as a lemon if  
9 we use litigation as a standard. But it might not relate to  
10 the severity of the problems that the consumers are  
11 experiencing.

1           And to me that says the vast majority of vehicles  
2           that GM is repurchasing require repair, and repairs are  
3           being made and that they're not customer satisfaction.

4           But I thought I earlier today heard you say only  
5           about three percent of vehicles are not customer  
6           satisfaction. So I'm more, so I'm confused about the  
7           percentage of customer satisfaction vehicles at GM.

8           MR. VELEZ: Okay. I guess a couple of things there.  
9           One, we have, as I said, a third of our vehicles we buy back  
10          under guaranteed satisfaction programs. And the number one  
11          reason for buying those back is either paint or I wanted a  
12          two door rather than a four door or vice versa.

13          So you can't repair that. We're not going to take a  
14          car and make it a four door which was built as a two door.  
15          We're not going to repaint a car. So there is no, there is  
16          no repair required there.

17          Second, the other vehicles are repaired as I've just  
18          explained. A mechanic worked on them. There was a  
19          complaint. The mechanic tried to fix that complaint. And  
20          we wouldn't put a vehicle back into commerce if we thought  
21          that it still had something wrong that could be repaired.

22          And the ones that can't be repaired we scrap, we  
23          donate to -- like we said in the comment, we take those out.  
24          There's going to be an argument, and as I said, we're not  
25          here to argue.

1                   And so we will take whatever assumption you want  
2                   about that 60 percent in between, whatever, whether those  
3                   are customer satisfaction, whether they fall under some



1 on how broadly you draw the category of what is going to be  
2 disclosed. If the category is very broad and includes  
3 everything, maybe there is a need for some explanation.

4 But my comment was you're better off drawing that  
5 line at the beginning and not having that explanation.  
6 Because there is, number one, there is too much potential  
7 there for the explanation not being accurate or it being  
8 misleading.

9 Number two, allowing explanation as to why the  
10 vehicle was repaired or the defect was cured, particularly  
11 if they were bought back under the lemon law, is really kind  
12 of empathetical to what lemon laws are.

13 A lemon law says if you don't do it within a certain  
14 time period the vehicle is a lemon. The fact that you may  
15 or may not do it later is something that should not enter  
16 into that equation at that particular repurchase point.

17 MS. HARRINGTON: It's not material to the  
18 repurchaser to know whether there have been subsequent  
19 repairs made?

20 MS. SMITH: I think in this situation where the  
21 vehicle was bought back under a lemon law --

22 MS. HARRINGTON: Uh -huh.

23 MS. SMITH: --no. I don't think it's -- Because the  
24 problem is it was the vehicle's history or the inability to  
25 fix the problem before that gave rise to the repurchase.

1 And to then allow a company who was not able to either  
2 diagnose or fix the problem prior to that time to then say,  
3 well, on this one time after we bought it back we shipped it  
4 out to X repair facility and it's all fixed now I think  
5 would be very misleading.

6 MS. HARRINGTON: Lou.

7 MR. GOLDFARB: There's a lot that's misleading here,  
8 I think both the categories of the, the generic categories  
9 of customer satisfaction. Customer satisfaction is really a  
10 misnomer because it's only, you know, we may check that box.

11 But the fact is we disclosed what was wrong with it  
12 and what we've done to fix it. We don't sell irreparable  
13 vehicles. I mean, if someone is complaining about a problem  
14 and we can't fix it, we crush it or we donate it to a tech  
15 institute.

16 When someone complains about a problem and we have  
17 made an effort to fix it, and we have fixed it, we will put  
18 down repaired. Or we will put down could not find the  
19 problem the customer complained about.

1 customer is left with. And they can make their own judgment  
2 a to whether they want to buy a vehicle under those terms.

3 These generic descriptions of, you know, customer  
4 satisfaction, lemon law, arbitration board, I mean, that  
5 tells people nothing beyond the fact that it was bought back  
6 by the manufacturer, which itself is useful information.

7 But it would really be a disservice not to disclose  
8 that the customer complained of the transmission, an effort  
9 was made to fix it, the manufacturer believes it was fixed  
10 or the manufacturer couldn't find the problem. Then the  
11 second buyer can make the judgment as, on the basis of that  
12 information. But that is necessary information.

13 MR. KITZMILLER: I'd just like to make one follow -up  
14 point on that. I mean, the customers get to -- if it's not  
15 on there the customer is going to ask.

16 And I certainly think it would be better for the  
17 person, the manufacturers in this case if they're the ones  
18 that repaired the vehicle, to put down what they did to  
19 repair the vehicle instead of having the dealer try to  
20 determine whether, what they did or didn't do.

21 I mean, the customer is going to ask the question.  
22 If you put down that this vehicle is repurchased for a  
23 specific problem, they're going to ask what was done to  
24 address that. I mean, I just think that's logical they're  
25 going to ask that question.

1 MS. HARRINGTON: We are not going to have any more  
2 discussion on this issue during this decision. So if you  
3 can figure out a way to finagle your comments on this into  
4 the next session, good for you.

5 (Laughter.)

6 MS. HARRINGTON: I want to conclude this part of our  
7 discussion by just testing here to see where we are on these  
8 issues.

9 Is there anyone who disagrees with the proposition  
10 that the class of vehicles about which information should be  
11 provided includes both dealer buybacks, takebacks, and  
12 manufacturer buybacks, takebacks?

13 Is there any disagreement? Okay. Mr. Ducharme from  
14 Ford disagrees with that. Is there -- And Mr. Goldfarb from  
15 Chrysler disagrees also out of solidarity with Ford.

16 (Laughter.)

17 MS. HARRINGTON: Actually, I don't know that. The  
18 record should reflect that we don't know why Mr. Goldfarb  
19 disagrees with that.

20 (Laughter.)

21 MS. HARRINGTON: We have talked some about the  
22 notion that the following information should be provided on  
23 cars that are buybacks: That the car was bought back. A  
24 statement about why the car was bought back, where that  
25 statement has sufficient specificity to tell the repurchaser

1 in a meaningful way why it was bought back. That is,  
2 customer satisfaction isn't enough; customer satisfaction  
3 because the customer believed that the brakes squeaked and  
4 they didn't stop squeaking would be enough.

5 And noting the disagreement of the Assistant  
6 Attorney General from Florida already, a statement that the  
7 manufacturer or the dealer have taken the following steps to  
8 address the problem or has done nothing.

9 That three part sort of disclosure. How many think  
10 that that would provide, that type of disclosure would  
11 provide the material information that the subsequent  
12 purchaser needs and should have?

13 How many think that three part disclosure would  
14 provide adequate and material information to the subsequent  
15 purchaser?

1           Phil Nowicki thinks that it's inadequate. PIRG  
2           thinks it's inadequate. Peter, Peter, what's your last  
3           name, Maier. And Steve and Rosemary and Janet and Jack.  
4           Was your hand up?

5           MR. GILLIS: I was scratching my arm.

6           MS. HARRINGTON: Jack was scratching.

7           (Laughter.)

8           MS. HARRINGTON: And the others of you abstain? And  
9           everyone else abstains. So that's where we are at the end  
10          of this first session.

11          We will, it is now 11:00. And we will resume  
12          promptly at 11:15. And the restrooms, as I said, are right  
13          out beyond the elevators.

14          (Whereupon, a brief recess was taken.)

15          MS. HARRINGTON: We are now starting the second  
16          portion of the program entitled Implementing Change. Would  
17          everyone please be seated and stop talking?

18          (Laughter.)

19          MS. HARRINGTON: If you don't stop talking, we're  
20          going to make you share with the class. Well, I think that  
21          the first session, I would say from my perspective it went  
22          well. I think that I've managed probably to annoy or offend  
23          everybody but the car auction people. But you're next.

24          (Laughter.)

25          MS. HARRINGTON: I need to remind everyone that we

1 do have at 4:00 an hour set aside for public participation.  
2 And if you are here and would like to participate during  
3 that that hour, we have three -by-five cards in the back, out  
4 in the foyer.

5 And you need to fill out one of these cards during  
6 the day with your name and your affiliation, if any. And we  
7 would like you to say generally what part of the agenda it  
8 is that you would like to comment on, discuss, or respond  
9 to.

10 And Tom Rowan from our staff, who is standing in the  
11 back door, the tall gentleman with his jacket draped  
12 stylishly over his arm, is the person who you should give  
13 your card to if you are here and would like to participate  
14 during the public participation part of the program.

15 And I will be making this announcement again and  
16 again as we go through the day. We want to make sure that  
17 anyone who is here who wants to participate between four and  
18 five has an opportunity to do that and knows how to do that.

19 And for those of you who have just come in, Jack,  
20 for example, I have observed that I think that the first  
21 session went well because except for the car auction people,  
22 I think I have managed to offend or interrupt all of the  
23 other interests seated around the table.

24 (Laughter.)

25 MS. HARRINGTON: And we're going to get to the car

1 auction people. I'll find a way to offend you.

2 (Laughter.)

3 MS. HARRINGTON: So we're now on to the 11:15  
4 session, Implementing Change. I think that during the first  
5 section of the day we had discussed a great deal about  
6 information, the information that is currently being given  
7 to consumers.

8 I would like to focus beyond that now on information  
9 resources. So we're not talking here about the information  
10 that manufacturers and dealers and car auctions and others  
11 are presently passing through the pipeline to end -use  
12 consumers, but rather other information resources that may  
13 be available to consumers.

14 And I think that the main part of what we hope to  
15 discuss here concerns vehicle information number databases,  
16 the viability of establishing those and so on and so forth.

17 Does everyone understand sort of the general  
18 parameters of the discussion?

19 Okay. Well, let me just kick this off then with a  
20 basic question. What information resources are readily  
21 available to consumers to enable them, if any, to enable  
22 them to learn about vehicle, a vehicle's history? Let's  
23 just say car. Vehicle sounds like we're all on Cops.

24 (Laughter.)

25 MS. HARRINGTON: We know we mean motor homes, too,



1 and, you know, motorcycles and those little pickup trucks  
2 and things. We know we mean all that, but we'll just say  
3 car. Robert?

4 MS. HARRINGTON: Or we don't know that.

5 MR. GRAHAM: Actually, we really don't know that  
6 because I don't think motorcycles are covered under lemon  
7 laws. And I think anything over 10,000 pounds gross vehicle  
8 weight rating is not necessarily covered in the lemon law.  
9 So, just to mention that.

10 MS. HARRINGTON: Cars. Okay. Well, we'll say cars  
11 mean cars.

12 MR. GRAHAM: We can say cars among us.

13 MS. HARRINGTON: Cars meaning cars. Richard.

14 MR. RAINES: I assume you're not asking for an  
15 advertisement about Carfax.

16 (Laughter.)

17 MR. RAINES: We are obviously in the vehicle history  
18 information business. And dealers and consumers can get  
19 access to the history of a car if they have the 17 digit  
20 VIN.

21 We generally have title information. And in four  
22 states that title information--the four states are  
23 California, Connecticut, Indiana, and New Hampshire--would  
24 include a manufacturer's buyback brand.

25 So from that point of view, that's an information

1 resource that consumers can use or dealers use and pass that  
2 information on to consumers that would notify them about  
3 some elements of the history of the car.

4 MS. HARRINGTON: Adam, you have a follow -up  
5 question?

6 MR. COHN: I have a question for you, Mr. Raines,  
7 about Carfax. I'd like to know what types of difficulties  
8 your organization or other vehicle information organizations  
9 have in getting adequate information; and what types of  
10 things manufacturers, government, states, consumer groups,  
11 or consumers could do, what types of things would you like  
12 to see change in the industry, whether that be regulatory or  
13 not, that would make it easier for you to compile the  
14 information you need to get it to consumers?

15 MR. RAINES: That's a good question. I mean there  
16 are sources of information, earlier this morning we talked  
17 about warranty information. The manufacturers have warranty  
18 repair information.

19 We know in talking to our consumers and in consumer  
20 research that consumers are very interested in that kind of  
21 information in general. Even if it's confusing, they're  
22 still interested in it.

23 So that's one source of information that we believe  
24 would be helpful to our marketplace to consumers that get  
25 information.

For The Record, Inc.,

1 Another element to your question I think is what  
2 happens at the state level in terms of the difficulty of  
3 getting this information. As I said, we get branded  
4 information about manufactured buybacks from only four  
5 states.

6 I think we're aware that there are up to 16 states,  
7 and I'm not sure how accurate my information is, that in  
8 fact have some sort of manufacturer buyback brand. So we  
9 certainly could use help.

10 And I think we've talked to various states as well  
11 as FTC about where that information is and how we could  
12 make, you know, get access to information so that we then  
13 could provide it to the consumer.

14 So there's a state level issue that we certainly,  
15 you know, are working on but, you know, we haven't made the  
16 full progress on.

17 MS. HARRINGTON: Lori. And let me just check, Adam,  
18 do you have any follow -up there?

19 MR. COHN: I guess I'd like to hear some more first.  
20 I think I will have a follow -up.

21 MS. HARRINGTON: Okay. Lori.

22 MS. COHEN: The American Association of Motor  
23 Vehicle Administrators is in the -- Oh, okay. The American  
24 Association of Motor Vehicle Administrators is in the  
25 process of building a system called National Motor Vehicle

1 Title Information System.

2 Congress said in the 1992 Antitheft Car Act, they  
3 said build this system to help prevent car theft. We are in  
4 that process. It will track a vehicle from birth to death.  
5 It will include any brands that have been placed on a  
6 vehicle, whether salvage, floor, or whatever. It can also  
7 include manufacturers' buybacks.

8 MS. HARRINGTON: Can, but isn't presently  
9 compensated to?

10 MS. COHEN: It is, it is programmed now. It is  
11 programmed now.

12 MS. HARRINGTON: Uh -huh.

13 MS. COHEN: It will have to have the reporting from  
14 the American --

15 MS. HARRINGTON: And when is this database going to  
16 be up and running?

17 MS. COHEN: It will be in pilot by October of '97,  
18 so this month it will be in pilot with five different  
19 states.

20 MS. HARRINGTON: This is '96.

21 MS. COHEN: '97, I'm sorry. Next year it will be in  
22 pilot with five different states.

23 MS. HARRINGTON: Okay.

24 MR. HILE: Which five states?

25 MS. COHEN: I've got it. Virginia, New York,

1 Indiana. I've got two others.

2 MR. GILLIS: Florida is one of them.

3 MS. COHEN: Florida is one.

4 MS. HARRINGTON: Florida?

5 MS. COHEN: And I don't remember the other one right  
6 now. Okay.

7 MS. HARRINGTON: And not Wisconsin?

8 MS. COHEN: Thank you. And New Jersey also.

9 MS. HARRINGTON: New Jersey, okay. And how will  
10 consumers be able to obtain information from that database?

11 MS. COHEN: We can work with the third -party  
12 providers, and they will provide the information to the  
13 consumers through -- they will have access to the system.

14 MS. HARRINGTON: "We" being the Motor Vehicle  
15 Administrations of the states? Or who's the "we"?

16 MS. COHEN: Through the system the states can work  
17 with third -party providers, okay.

18 MS. HARRINGTON: But consumers won't be able to get  
19 it directly?

20 MS. COHEN: They will most likely go through the  
21 third -party providers.

22 MS. HARRINGTON: And the third -party providers are?  
23 Give me some examples of who these third -party providers  
24 are.

25 MS. COHEN: It could be something similar to Carfax

1 or anyone who wants to use it, anyone who wants to provide  
2 this information.

3 MS. HARRINGTON: Well, are groups like, for example,  
4 the CFA or CAS, you know, cars likely to become providers?  
5 Is that, do you contemplate that as a fee -for-service  
6 arrangement. Or I mean what, how is this -- I'm trying to  
7 sort of understand how this information is going to get to  
8 consumers from this database.

9 MR. GRAHAM: Well, for our part, we still have IBM  
10 AT computers in our office. So the odds of us being  
11 anywhere beyond punch cards in the next ten years --

12 (Laughter.)

13 MR. GRAHAM: --getting on the Internet, being able  
14 to use the services of the databases is fairly slim. It's  
15 not really the business that we're in.

16 MS. HARRINGTON: Is there, Mr. Raines, you think  
17 that there's some sort of market for this information I  
18 guess.

19 MR. RAINES: We have a business that provides the  
20 information right now. Just to give you a sense of it again  
21 without making it an advertisement, eight million cars a  
22 year in the last year were checked through Carfax, used  
23 cars, for their history.

24 We have over three hundred million records of used  
25 cars in our database. It takes less than a second to get a

1 response from that database.

2 We have a very technically sophisticated system.  
3 We're due on the net two to three to four weeks. My staff's  
4 here checking on the deadline. But we'll have an Internet  
5 page up where the consumer can enter the VIN and access the  
6 vehicle's history.

7 MS. HARRINGTON: Do you know how many individual  
8 consumers used your, have, you know, dipped into your  
9 database in the last year?

10 MR. RAINES: Consumers are not our primary market.  
11 So of the eight million --

12 MS. HARRINGTON: Who is?

13 MR. RAINES: Dealers are our primary market, as well  
14 as auctions that we furnish.

15 MS. HARRINGTON: Uh -huh.

16 MR. RAINES: And they provide -- Dealers in general  
17 will do two things with information. They'll check out the  
18 trade -in, make sure that they want to buy that car. Then  
19 they'll show the Carfax information to the consumer to help,  
20 you know, them understand what they're buying.

21 MS. HARRINGTON: Jack, you've got a pretty good  
22 finger on the pulse of what, what the market is for  
23 information, what the consumer market is for information.

24 MR. GILLIS: I, this is the first time I've heard  
25 about this being available on a nationwide basis. And if

1 it's funded by Congress, I'd certainly hope the consumers  
2 are going to be provided access to it at little or no cost.

3 MS. COHEN: It's part of the act. This information  
4 will be provided to consumers, law enforcement officers.  
5 Junkyards and salvage are going to be determining --

6 MR. GILLIS: But not having to go through a  
7 third -party and pay extra for it.

8 MS. COHEN: I'm really not sure. I don't think it's  
9 a difficult thing. Our companies worked through third -party  
10 providers before. It's something that will be available to  
11 consumers. I mean, this is part of the act.

12 MR. GILLIS: I think there's a tremendous market for  
13 it.

14 MS. COHEN: This is something that every state will  
15 eventually participate in. So you're going to have it.  
16 Manufacturers can report right into it, okay, so that it  
17 will be on -line updated.

18 There is a similar bill out right now having to do  
19 with salvage vehicles, HR2900. And it requires owners of  
20 salvaged vehicles, insurance companies to report within 15  
21 days, okay. And we can have a similar sort of requirement  
22 from manufacturers to get the information directly into the  
23 system.

24 MS. HARRINGTON: Lou.

25 MR. GOLDFARB: Yeah. I just had a quick question



1 for Richard and Lori, actually. And that goes to what kind  
2 of security is built into these systems. I mean, there is  
3 some concern among some of us that there is a very small  
4 segment of the legal profession actually that tries to  
5 access this information. I know, I know it's hard to  
6 believe.

7 (Laughter.)

8 MR. GOLDFARB: From trying to access this  
9 information for the purpose of creating class action  
10 lawsuits and other misuses of the information. I'm just  
11 wondering is there, is there, you know, ways that you, that  
12 you can limit access to it, just the people who legitimately  
13 need that information?

14 MS. HARRINGTON: Would somebody extend you the same,  
15 you know, sharp rebuke that I did to Jack, you know, if the  
16 representative from Chrysler wants to assume that a class  
17 action lawsuit is a misuse of information, you know, that's,  
18 that's your, that's your view but not necessarily the view  
19 of the Federal Trade Commission in the past.

20 MR. GOLDFARB: I mean generated by lawyers. I'm  
21 fine with consumers doing it, but lawyers are another thing.

22 (Laughter.)

23 MR. RAINES: We don't restrict who wants to have  
24 access to our information. We clearly have security in,  
25 security in our system. And generally a dealer of business

1 who has access has a, has an I.D. number and a password to  
2 get into the database.

3 But if someone calls us on the phone, if it's a  
4 consumer or anybody else, we provide that information to  
5 them. We're very careful about explaining what the  
6 information is and making sure that, you know, we don't come  
7 to any conclusions about the vehicle. But we can't restrict  
8 access to it.

9 We don't include, but I'm not sure if this is your  
10 question either, the name and address of the individual that  
11 owned the car or anything like that. So we've, we've, you  
12 know, drawn a bright line about the privacy concern.

13 MR. GOLDFARB: And is use of the VIN number the only  
14 way you can access the information?

1 instance, and Virginia, they both restrict access to  
2 registration record and I believe title records. Does that,  
3 has those proposed any obstacles to you?

4 MR. RAINES: No. In both California and Virginia we  
5 get their title data. California has, the only issue with  
6 California has been they have not been in compliance with  
7 TIMA, Truth in Mileage Access.

8 Some of their data about odometer readings is less  
9 deep. And each state has different information. One of the  
10 things we track is the odometer reading so we can look at  
11 whether the odometer has been rolled back.

12 MR. GRAHAM: The second question is, I noticed in  
13 the comment there was reference to a service called Paccar  
14 which I believe is run through TC Corporation. I understand  
15 they're probably competitors of yours. Do you have any  
16 understanding of how their business is similar to yours or  
17 different from yours?

18 MR. RAINES: Generally, you know, it's not good to  
19 represent a competitor's exact information. I know their  
20 primary source of information is insurance, from the  
21 insurance industry when a car, their business when a car has  
22 an accident.

23 An adjuster has to process, you know, evaluate the  
24 amount of repair of that car. And the car may in fact be  
25 totaled. And they pick up that information about whether

1 the car is totaled or not and went through the process of  
2 being totaled.

3 They're picking up information at a different chain  
4 in really the accident than the total history of that car.  
5 We're picking up information from the state, the official,  
6 whether it was branded or not. They're picking it up from  
7 the point, the time of the processing of the total is being  
8 done.

9 MR. GRAHAM: And my question for Lori, finally. The  
10 authorization for the establishment of this database back in  
11 1992, did that actually explicitly include information  
12 concerning vehicle buybacks, manufacturer buybacks or was it  
13 limited just to stolen cars and salvaged vehicles, flood  
14 vehicles, and the like?

15 MS. COHEN: The purpose of the act was to do what  
16 you need to do to track that vehicle so that if it's stolen  
17 you'll have the information. If it's salvaged vehicles, if  
18 there is chop shops and things, it's trying to track the  
19 vehicles for all the reasons.

20 Since it's tracking brands for those reasons,  
21 manufacturers buybacks is a different category. But it's  
22 easily absorbed by it. And we've already planned in before  
23 we even knew of this hearing to track manufacturers  
24 buybacks.

25 MS. HARRINGTON: Let me ask you a question, Lori,

1       though. The one vehicle administrators in the comments take  
2       a narrower view of what ought to be classified as a buyback  
3       than do many of the other commentors. Is this database  
4       going to incorporate the vehicle administrator's narrower  
5       view, or might it use a broader definition?

6               MS. COHEN: It's been an interesting discussion.  
7       Our assumption going in was that buybacks have a connotation  
8       of lesser value and a safety problem, okay. We've been  
9       talking here being inclusive; if you buy it back for any  
10      reason, include it.

11             So we can still call it a buyback. It sounds like  
12      something that people are saying, well, yes, we will call it  
13      a buyback now and forever. I know that's a future  
14      discussion, how long.

15             But our assumption is a brand or a buyback is a  
16      permanent brand. From the discussion we have been having  
17      here, you will need disclosures to explain serious buyback,  
18      lesser buyback. And disclosure is another aspect.

19             Our particular system has the capability for vehicle  
20      history. We need to look into that more, especially from  
21      the discussion here today, how much history can this system  
22      go ahead and track.

23             It's something that can, it can be accommodated but  
24      I can't tell you right at this moment it will include all  
25      the disclosures we've been talking about. But the

1 possibility is there.

2 MS. HARRINGTON: Okay. Adam, question?

3 MR. COHN: Just a follow -up question for Lori. The

1 what they're talking about.

2 MS. HARRINGTON: But my understanding from you,  
3 Lori, is that you're willing to work with people. You think  
4 the association would be willing to work with people to come  
5 up with a broader definition than the Motor Vehicle  
6 Administrators might have held coming into this.

7 MS. COHEN: If it's uniform, easily understood, can  
8 be passed along, yes, um -hmm.

9 MS. HARRINGTON: Okay. Janet.

10 MS. SMITH: I had a question for Lori and then a  
11 comment about one of the things Richard said.

12 Lori, if I understand the comment that AAMVA  
13 submitted correctly, the way this title thing is going to  
14 work is the states will have to apply through some kind of  
15 grant type of program to be able to either utilize it or --  
16 Can you kind of tell us a little more how it is going to  
17 work and whether or not there is money appropriated for  
18 these grants or is that something that you're still working  
19 on?

20 MS. COHEN: There was 890,000 appropriated from  
21 Congress to get it started. We just got another million  
22 that's going to get us through the pilot for those five  
23 states; possibly more can join us.

24 Once the pilot is complete and you have got your  
25 comments and your revisions and whatever, we open it up to

1 all the states. We are still seeking more Federal money.

2 MS. HARRINGTON: When do you think that will be?

3 When is that?

4 MS. COHEN: In one year.

5 MS. HARRINGTON: One year after the pilot starts?

6 MS. COHEN: It starts October, '97.

7 MS. HARRINGTON: Okay, so October '98?

8 MS. HARRINGTON: So hopefully October, '98.

9 MS. HARRINGTON: It will be opened up to all the  
10 states.

11 MS. COHEN: Yes.



1 in who buys that resold vehicle.

2 And that is one piece of information that Carfax  
3 does not presently provide. So I would just simply say that  
4 if we're talking about the kind of national database, that  
5 should be one piece of information that should be included.

6 MS. COHEN: I don't know if there is privacy  
7 concerns on that. We certainly were not planning on giving  
8 any previous owner information.

9 MS. SMITH: Not -- well, what I'm talking about is  
10 present, well, if you're looking for who it is that bought  
11 the resold vehicle to determine whether they got the  
12 disclosure they're entitled to, depending on what kind of  
13 disclosure there is, that's the, that's the identity we're  
14 trying to get.

15 MR. RAINES: Could I respond to that? We don't  
16 include the name and address. What our customers would  
17 typically do is at least they have the title number of the  
18 previous owner.

19 And if the customer wanted to pursue additional  
20 information, they would then contact the states and the  
21 states have different, you know, laws on disclosure and  
22 privacy. So that's how we would handle that.

23 MS. HARRINGTON: Lori and then Larry.

24 MS. COHEN: Oh, I, I said it.

25 MS. HARRINGTON: Okay. Larry.

1           MR. KANTER: We actually have some experience using  
2 the Carfax data. And I have to say that the experience  
3 we've had was not entirely satisfactory in terms of easy  
4 access to it.

5           I'd like to explain that. We gathered several  
6 hundred VIN numbers from state officials of cars that had  
7 been bought back. And at first Carfax was giving us the  
8 data of the title histories on these vehicles.

9           What we found after doing several hundred cars that  
10 our access was limited or restricted to getting further  
11 title history. And the way it was presented to us, if I can  
12 paraphrase it, was that we could have the data so long as,  
13 so long as we did not tie any particular manufacturer or  
14 dealer to a failure to disclose. So the question that we  
15 have will consumers have open access to the data in Carfax  
16 to other providers?

17           MR. RAINES: The answer to that is yes. They do now  
18 and they will in the future. And we're making the access  
19 more available. The concern that we have with any customer  
20 accessing our data, and we're very careful about it, is no  
21 database is perfect when you have three hundred million plus  
22 records.

23           And I think anybody who is trying to develop this  
24 kind of business can conceive what kind of challenges it  
25 takes. We have to be very careful that we don't have

1 conclusions drawn from our database about the condition of  
2 the vehicle that would be tied to our company because that's  
3 not the business we're in.

4 We're in the business of providing data, not  
5 conclusions about vehicles. But there is no restriction on  
6 access to our data by anybody. And in fact we believe the  
7 consumer market is probably the most important market  
8 ultimately for this information.

9 That's going to drive. You know, it's a need for  
10 any buyer and seller of a car to, you know, have this  
11 information. So we make the consumer access, that's why we  
12 don't restrict it. That's why we felt that things like the  
13 Internet would make it more and more accessible.

14 MR. KANTER: If the data were expanded to include  
15 more of the kinds of things that we are talking about this  
16 morning, would that raise more problems for you or would it  
17 be just as completed for buybacks?

18 MR. RAINES: It would be, if that's a benefit to our  
19 market, it's ultimately a benefit to us. And we know  
20 consumers want more information. We know that they want  
21 repair information. We know that they want accident  
22 information.

23 The research has been done. The number one thing  
24 the consumers want that they're not getting in terms of used  
25 cars is more information about the history of the car. So

1 that's our market. That's what we're going to.

2 And we're expanding the way we allow consumers to  
3 access this. And we're expanding the kind of information  
4 about a car that they get.

5 MS. HARRINGTON: Peter.

6 MR. MAIER: Yeah. Carfax and the related service  
7 are providing useful service. But I think it would be a  
8 misconception to say that the information that we've been  
9 talking about this morning is already available.

10 As a customer of Carfax on occasion, the information  
11 provided is spotty. It doesn't always work. And I don't  
12 know why that is. I'm not faulting Carfax; it's probably  
13 because the input of data is incomplete.

14 But we're far from there in terms of consumer or  
15 consumer representative accessing that kind of information.  
16 And obviously the Motor Vehicle Administrators database will  
17 move us in that direction.

18 But it's important to recognize that to a large  
19 degree what Carfax or any other service can provide would  
20 depend on the input. And it's only as good as the data  
21 that's put in.

22 MS. HARRINGTON: I want to compliment everyone for  
23 talking to each other and having actually some dialogue  
24 here. That's what we were hoping for.

25 I have a question about the Motor Vehicle

1 Administrators database. If the database were expanded to  
2 include buyback information that goes well beyond what is  
3 required under state lemon law to be branded or, you know,  
4 if the notion of what's going to be included in the buyback  
5 category on this database is more inclusive so that it goes  
6 well beyond legal definition of lemon and that sort of  
7 thing, where would that information come from?

8 MS. COHEN: I assume we're talking about, we've been  
9 talking about definitions. How are you, what are you going  
10 to call this.

11 MS. HARRINGTON: Yes.

12 MS. COHEN: If a manufacturer has a buyback, they  
13 can call it a buyback with a disclosure for what it was  
14 bought back for. I'm not sure beyond that --

15 MS. HARRINGTON: So the information would come from  
16 the manufacturers.

17 MS. COHEN: They bought it back for a reason so  
18 they're providing the reason for the buyback. It would be  
19 the manufacturers saying that.

20 MS. HARRINGTON: And is this, is your designing this  
21 database and your data capture system, is it set up to  
22 receive information like that from other than Motor Vehicle  
23 Administration sources? I mean, how are you going to get  
24 this data into the database?

25 MS. COHEN: I would need to get back to you. I'm

1 not, don't have all of that information. But I will  
2 certainly get back to you on it.

3 MS. HARRINGTON: Allen, do you have a question?

4 MR. HILE: And my question for you, Lori, is is this  
5 system that you're setting up only prospective, or are you  
6 doing what Carfax did, I believe I'm correct on this, that  
7 you have old records that you put into your system from the  
8 states? Is yours going to go back in time at all or is it  
9 just from this point forward that your database --

10 MS. COHEN: From the time they participate I would  
11 imagine it's going to be that point forward. I do imagine  
12 that's the way it would be.

13 MS. HARRINGTON: All right. Let me test something  
14 here. Let's assume that it's October of 1998 and the Motor  
15 Vehicle Administrators database is up and running. And we

1 consumers? And this database is made available through  
2 third -party providers. And we're going to assume that there  
3 will be some sort of market there. Is that, will that do  
4 it?

1 hundreds of millions of dollars, yeah.

2 MS. HARRINGTON: John.

3 MR. WHATLEY: I'm not sure we can do it for the cars  
4 the dealer buys back. I know we could probably do it with  
5 the coupons.

6 MS. HARRINGTON: You are definitely not Lou  
7 Goldfarb. Who are you?

8 MS. GLASSMAN: Jackie Glassman, also from Chrysler.

9 MS. HARRINGTON: Okay. Jackie.

10 MS. GLASSMAN: Yeah. The same as George and John.  
11 As long as we can work out the definitional standard. And  
12 obviously we can't provide what the dealer buys back.

13 MS. HARRINGTON: All right. Well, lets talk to the  
14 dealers.

15 Peter? What about what the dealers buy back?

16 MR. KITZMILLER: I'm not sure what the question is.

17 (Laughter.)

18 MS. HARRINGTON: The question is can you provide  
19 that information to the Motor Vehicle Administrators  
20 database?

21 MR. KITZMILLER: Certainly. Again, I think the same  
22 category that the manufacturers have, as long as there is a  
23 clear understanding as to when we're supposed to do that and  
24 what we're supposed to do and that there is not a major cost  
25 factor involved, certainly.



1 MS. HARRINGTON: All right. Discuss among  
2 yourselves.

3 (Laughter.)

4 MS. HARRINGTON: What do we think of this idea? It  
5 sounds to me like we may have, we have the potential in  
6 terms of an information resource for consumers. We may have  
7 something on the horizon here that at least prospectively  
8 would be of great benefit.

9 Robert?

10 MR. GRAHAM: Yeah. I think by the resounding  
11 silence that you're looking at right now there is not a  
12 whole lot of conflict on the value of the database. I think  
13 everybody sees that it's a good thing to have a good flow of  
14 accurate information. I think that we're not talking about  
15 substance or form of disclosures but rather we're talking  
16 about the conduit.

17 MS. HARRINGTON: Well, we're also talking about the  
18 content. We're talking about conduit and context.

19 MR. GRAHAM: So if you're talking about the  
20 disclosure that the manufacturers were uncomfortable with  
21 and that we abstained on, then I suppose to some extent I'm  
22 going to have to abstain. But I think that the, that the --

23 MS. HARRINGTON: Well, there has to be something in  
24 that. If the consumer groups abstain and the manufacturers  
25 are a little uncomfortable, we must be heading toward a

1 middle ground here.

2 (Laughter.)

3 MS. COHEN: Something we are looking for is we want  
4 to pass along as much as possible through the system. We  
5 are trying to decrease as much as possible papers that have  
6 to go from place to place.

7 You may have to come up with codes for defective  
8 idling for brake problems or a list of things, whatever it  
9 is. Excuse me. So we are looking to pass along as much  
10 through the system because that's the most reliable way so  
11 that when the vehicle changes owners, it's going to pass  
12 from state to state to owners.

13 MS. HARRINGTON: Okay. I'm going to go a little out  
14 of order because R. B. has his tag up and we haven't heard  
15 from you yet.

16 MR. GRISHAM: Thank you very much.

17 MS. HARRINGTON: Would you say your name for the  
18 recorder?

19 MR. GRISHAM: R. B. Grisham for the National  
20 Independent Automobilers Association. When you asked the  
21 dealers' perspective, I thought for a second.

22 And actually what comes to mind, having been a  
23 former director of a motor vehicle commission for a state,  
24 is what sort of paperwork or paper processed at the time of  
25 transaction that the dealer would be responsible for once he

1 receives, he or she receives information either on a  
2 trade -in or whatever type of transaction we're having at  
3 that particular point and time.

4 And then where does that dealer actually physically  
5 send that information? Would it be to the State Department  
6 of Motor Vehicle? Are they going to be able to handle the  
7 influx of information?

8 Where is the clearinghouse of any database? Right  
9 now I contend it's with the motor vehicle departments. And  
10 if you're talking about adding more forms, as was just  
11 mentioned, if you added more forms on one end you're adding  
12 more detail.

13 And having been a state regulator, when you add that  
14 detail you add a heck of a lot of items that must go into  
15 that database. So from that perspective, where from the  
16 dealer point would such a clearinghouse be?

17 MS. HARRINGTON: Do you have an answer to that,  
18 Lori?

19 MS. COHEN: No.

20 MS. HARRINGTON: Okay. Well, there's a good  
21 question.

22 MS. COHEN: It's definitely to be worked out.

23 MR. GRISHAM: We would love to see it. We would  
24 love to see disclosure as much as possible. Because being  
25 at the very tail end of that marketing chain, it is our

1 people that the car comes back to initially because the  
2 customer has the dealer that they have to go back to to  
3 start unraveling this chain of where the information dropped  
4 out of the system.

5 And that is a very important problem to solve is  
6 where did the information get lost; not who's responsible,  
7 but where did it get lost?

8 Because when you're dealing in the type of, the  
9 number of transactions across the United States, and I can  
10 only speak for one state, from the years 1989 to 1993 we had  
11 about 15 million transactions per year.

12 Now, that was a medium -sized state. Now, throw in  
13 New York, Florida, and California and you've got another  
14 country in processing, data processing. And information  
15 drops out of the system.

16 And when it drops out of the system and then gets  
17 down to the dealer and customer level, and I stop there  
18 because what do you do?

19 MS. COHEN: Yeah. We need to get the information  
20 about that buyback into the system, not papers, but into the  
21 system and carry it everywhere the vehicle goes.

22 MR. GRISHAM: I, we agree.

23 MS. COHEN: Uh -huh.

24 MR. GRISHAM: No, no problem with that.

25 MS. COHEN: Okay.

1 MR. GRISHAM: It's the mechanics of that --

2 MR. COHEN: Right.

3 MR. GRISHAM: --that is just --

4 MS. COHEN: Absolutely.

5 MR. GRISHAM: That's the problem. And if we can  
6 come to some conclusions on that mechanisms, you're going to  
7 make our constituency very happy.

8 MS. HARRINGTON: Are the Motor Vehicle  
9 Administrators working with these people? I mean, who's  
10 working with you on the mechanics of this database?

11 MR. GRISHAM: We are working with Larry Greenberg.

12 MS. HARRINGTON: Okay. Who is Larry Greenberg?

13 MR. GRISHAM: He's the head of AAMVA.

14 MS. COHEN: He's the head of vehicle services area  
15 in AAMVA.

16 MR. GRISHAM: Right.

17 MS. COHEN: And the person I report to.

18 MS. HARRINGTON: Great.

19 Allen, do you have a question?

20 MR. HILE: I wonder if there might a paperless way  
21 of doing this through the Internet, for the dealers and  
22 manufacturers to enter it into your database?

23 MS. COHEN: We've got paperless proposals for  
24 transferring titles and all kinds of things. This system,  
25 paperless is exactly what now? What were you saying,

1 meaning when you say paperless?

2 MR. HILE: A paperless system for the data to get  
3 from the dealers, since we're talking about dealers here,  
4 into your --

5 MS. COHEN: Well, we are talking about having the  
6 dealers, manufacturers, whomever is providing that  
7 information, enter that information --

8 MR. HILE: The concern that I'm hearing from him is  
9 paper.

10 MS. COHEN: Yeah, no.

11 MR. HILE: It's more paper for us to do our --

12 MS. COHEN: We don't want the paper; we want the  
13 information entered. And there are precedents, by the way.  
14 This system has others already, as you were saying, how do  
15 manufacturers gets the information in. The system as  
16 already envisioned has law enforcement entering reports and  
17 getting it into the system. So there is ways to do it. I  
18 don't have the details on it.

19 MS. HARRINGTON: Okay. Jack.

20 MR. GILLIS: First of all, I'd like to, I hope that  
21 the AAMVA is getting consumer input on this whole process.  
22 I think it's really important. Ultimately we consumers are  
23 paying for it and we are the only true beneficiaries of it.

24 So I hope that you guys will set up some mechanism  
25 so that we can, or some other consumers can provide some

1 input.

2 Secondly, I think this solves a ton of problems.  
3 Sure, we can work out the details. I don't want to belittle  
4 the paperwork. But it gets back to what is going to be on  
5 that document or what is going to be on that printout?

6 I can't imagine a consumer in America who wouldn't  
7 add a dollar to the cost of their vehicle registration fee  
8 or whatever to get a valid printout of the history of that  
9 vehicle.

10 So it may even not be a cost factor. That whole  
11 issue can be taken care of. But what's going to be on it?  
12 And that's where I hope that you will look to consumer input  
13 as well as input from the manufacturers.

14 MS. HARRINGTON: Phil?

15 MR. NOWICKI: Well, you said at the end of the last  
16 session if we could a way to go back to where we were at the  
17 last session in this one, and I'm going to try and do that.

18 I don't know how far apart we are in, you know, we  
19 were far apart on what the reasons are for the buyback; we  
20 didn't have agreement.

21 But getting back to the bright line and just in  
22 talking to manufacturers over the years and knowing sort of  
23 their feelings on positions, I think John Whatley indicated  
24 like in Florida if we had that bright line when someone  
25 filed for arbitration, that's something that is generally

1 acceptable.

2           Some states use a notice requirement. But if you  
3 had the reason for the vehicle was being bought back was  
4 just really one or two reasons, one it was bought back after  
5 notice of defect or after filing for arbitration or if it  
6 was like a court order, so forth, that is the only  
7 information there that really is the only real reason, I  
8 think it simplifies things for the people with the, the  
9 title branding people.

10           It helps gives you a mechanism now that's out there.  
11 You could tie it into some form. For example, in Florida,  
12 and manufacturers are very familiar with our form in  
13 Florida, and this doesn't necessarily have to be in the  
14 manufacturers, I mean, it doesn't have to be the state  
15 giving out a booklet, but we have a defect notification  
16 form.

17           Now what if manufacturers put in their warranties,  
18 something along those lines, that was triggered by this  
19 reporting mechanism, anything that was bought by, after that  
20 period of time was then fed into this database, does that  
21 add a little clarity or agreement here?

22           MS. HARRINGTON: Well, the next person on my list is  
23 Gerry. So I'm going to ask you to respond to that and then  
24 say whatever else it was that you have.

25           MR. DUCHARME: Thank you. The simple answer, Phil,



1 is yes, that would be an objective act that one could look  
2 at and use as a benchmark to decide whether is disclosable  
3 or not, even with respect to the use of certificates or any  
4 other kind of mechanism for so -called customer satisfaction  
5 purposes.

6 So in principle I think the use of something like  
7 that, as long as the message was clearly given to consumers  
8 as to when this is to be used and as long as there was some  
9 safeguards so that it would not be used inappropriately, I  
10 would think yes, that would be a good bright line that we  
11 could work with.

12 And if we were to use certificates that we discussed  
13 in our last session after the point in time where one of  
14 these documents was properly served on us, well, then we  
15 could very easily call that vehicle a so -called buyback  
16 vehicle and make disclosures with respect to it. So yes,  
17 the simple answer is yes.

18 The comment that I wanted to --

19 MS. HARRINGTON: Let me ask a question, though, of  
20 both of you. Since every state doesn't have the same  
21 requirement that Florida has and some states don't have a  
22 similar requirement, what do we get in the database about  
23 the vehicles that are purchased by consumers who live in  
24 those states where there isn't --

25 MR. DUCHARME: Which was the next part of my

1 comment.

2 MS. HARRINGTON: Yeah, okay. Gerry.

3 MR. DUCHARME: What we would like to see, quite  
4 frankly, is uniform standards throughout the whole country.  
5 It is incredibly difficult for a manufacturer who does  
6 business in all the states to be able to monitor all of the  
7 differing state laws, to be able to 100 percent comply with  
8 all of them, notwithstanding all of our efforts to do.

9 Cars, no doubt, are incredibly mobile things. And  
10 to have their transfer and their, you know, pedigree covered  
11 by individual state laws when in minutes a car can be in a  
12 totally different jurisdiction and with, you know, customers  
13 and with dealers in a totally different jurisdiction frankly  
14 is an issue that everyone should focus upon.

15 And I think all attention should be directed in  
16 getting uniform, preemptive legislation or rulemaking that  
17 would govern this, you know, throughout the whole country.  
18 We've talked about disclosure forms before.

19 Frankly, it's incredibly difficult for manufacturers  
20 to have different disclosure forms in different states.  
21 It's incredibly confusing to consumers who take the car from  
22 one state to another that maybe have two disclosure forms.

23 One, it doesn't comply with the law of the state  
24 where they were buying the vehicle. So we would push very  
25 much for some sort of uniform legislation.

1           Also, we at Ford are very much in favor of having a  
2 national database that would monitor the pedigree of  
3 so -called buyback vehicles.

4           But the caveat on that, we are not excited about  
5 having additional rules and additional requirements to  
6 overlay all the different regulations in all the states. We  
7 would favor a national database as part of a uniform Federal  
8 rule or regulation that would govern this whole situation.

9           We think it would be a very important part of such a  
10 rule. We think it would be incredibly consumer friendly.  
11 And for all the reasons we'll probably get into this  
12 afternoon when we get into this in detail, we would support  
13 it a thousand fold.

14           MS. HARRINGTON: Okay. Ed.

15           MR. MIERZWINSKI: Eileen, getting back to a point  
16 you had made earlier about getting more information to  
17 consumers and also about this, I don't know a lot, I don't  
18 know very much about this database at all.

19           But I think it is a step forward. I would encourage  
20 your staff, and I can provide you with names of people, I  
21 have some grave concerns about the cost to the consumers who  
22 seek the information.

23           And I think we have to worry about the chilling  
24 effect on them of if there would have to be a fee for a  
25 consumer to ask this database for information. And I

1 realize there is no such thing as a free lunch.

2 But the SEC went through a problem where it actually  
3 created a database and some monopolistic information these  
4 sellers thought that they had a monopoly on government  
5 information and wanted to resell government records for an  
6 enormous fee per hour.

7 Now, the SEC ended up, now you can get it on the  
8 Internet free, the Edgar database. And so I think that we  
9 ought to go down this line but at the same time make sure  
10 that we can get to the point where we can continue to  
11 provide more information to consumers at a lower cost.

12 MS. HARRINGTON: Has there ever been any thought,  
13 Lori, about somehow making the ability to search this  
14 database available on the Internet?

15 MS. COHEN: I really can't answer what's been,  
16 what's been looked into so far.

17 MS. HARRINGTON: Okay. Evan.

18 MR. JOHNSON: I guess I have more of a question than  
19 a comment. And I guess my question is of you, Eileen. You  
20 asked Jackie for us in general what we thought of this.

21 And was I understanding your question to say, are  
22 you asking us if this ideally could take care of the problem  
23 or perceived problem? Was that the question or?

24 MS. HARRINGTON: No. No, no. I think the question  
25 is what do you think, what do you think of this?

1           MR. JOHNSON: I think everybody thinks it's good. I  
2           just want to make sure that it's clear that, and this could  
3           be wonderful. And even if you got it free, et cetera, I  
4           have questions whether it's, whether it's accurate. Because  
5           a lot of people still may not use it even though we're  
6           getting more into the computer age, no doubt about it.

7           MS. HARRINGTON: John and then Phil.

8           MR. WHATLEY: A couple of comments and a question, I  
9           guess. I enthusiastically second, enthusiastically second  
10          what Gerry said a minute ago.

11          But I guess I wonder, looking at this database,  
12          whether it's really going to be a full provision of all  
13          information the consumer needs or just enough to put them on  
14          inquiry notice that, gee, you better check out the history  
15          of this vehicle because it's a lemon law buyback or a  
16          manufacturer repurchase.

17          And I don't quite understand, I've had other  
18          discussions about this, and I'm not quite sure how much  
19          information is planned on being in there right now. I  
20          thought it was the title brand or.

21          MS. COHEN: Right now it is extremely minimal. And  
22          that's why I say brands will be passed on. Vehicle history,  
23          there is a capability there. It's not standardized. States  
24          have not been told you must carry X information. We would  
25          need codes.

1           We would need things where states understood  
2 uniformly you would have to carry certain vehicle history  
3 information. It is not planned into the system at the  
4 moment.

5           And I start out by saying we are open to that  
6 possibility. But it is not planned into the system yet.  
7 There is a lot that needs to be defined.

8           And also I just wanted to say you can't put in all  
9 the information that we've been talking about, you know, all  
10 the repair history and things like that. It would be  
11 lesser, less of what you could put into this electronic  
12 database.

13           We'd have to come up with that happy medium of  
14 something that's transferable and standard and still  
15 satisfies what the consumer needs to know.

16           MR. WHATLEY: Do you have -- follow-up. Do you have  
17 a -- question again. Do you have a projection as to how  
18 long it will be before all fifty or fifty -one jurisdictions  
19 are actually on this?

20           MS. COHEN: I don't have a projection right now.

21           MR. WHATLEY: We've got four or five --

22           MS. COHEN: We'll have it ready, tested, ready to go  
23 October, '98. We will be seeking additional funds so all  
24 states can participate. Some will without funds, perhaps.  
25 Additional programs.

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1 MR. WHATLEY: Well, it will take more, it may take  
2 more funding from Congress; am I right?

3 MS. COHEN: We are seeking it. We are definitely  
4 seeking it. It will help the states do it. It's something  
5 they want to do. But I can't say say right now how many how  
6 soon.

7 MR. WHATLEY: Thanks.

8 MS. HARRINGTON: Phil and then Peter.

9 MR. NOWICKI: Just to revisit what I said earlier,  
10 the role of the Federal Government as far as that they might  
11 want to play, recent research that I just did, nearly forty  
12 states have some written notification requirements.

13 So it wouldn't be the Federal Government putting a  
14 great burden coming in and saying maybe under Magnuson -Moss  
15 under disclosure that manufacturers will provide a form that  
16 consumers must use to notify the manufacturer of a product  
17 defect, and that will go in the warranty or in the owners  
18 manual materials.

19 And I think getting over that threshold is, and I  
20 know it's a state rights issue, but it may be an issue where  
21 the uniformity may in the long run be in the best interest.  
22 What people are giving up in these other ten states, it's  
23 not necessarily, well, now we are putting a notice burden  
24 on, on consumers.

25 In many states some of the difficulty is that they

1 are not even aware they have to give them notice. So if you  
2 provide them with a form, our experience in Florida has been  
3 that that has worked out exceptionally well.

4 They get it. They use it, as manufacturers can  
5 attest to. And the role of the Federal Government might be  
6 to consider something under the Magnuson -Moss sort of  
7 disclosure aspect of the requirement.

8 MS. HARRINGTON: Peter.

9 MR. MAIER: The database we have been talking about  
10 is mainly of use after the resale of the repurchased  
11 vehicle. Because as a practical matter, the consumer buying  
12 a vehicle that's been repurchased already is unlikely to  
13 access that database at the car lot.

14 So that we also need to address how the information  
15 needed from that database and/or from other sources is  
16 actually given to the consumer at the point of sale and  
17 during the sales transaction.

18 MS. HARRINGTON: Has the AAMVA thought about that?

19 MS. COHEN: How the consumer will know? When it  
20 comes to branding, okay, that's not lots of disclosure  
21 information.

22 MS. HARRINGTON: Right.

23 MS. COHEN: But if you want to know if the vehicle  
24 has been branded, in the HR2900 bill for salvaged vehicles  
25 it proposes a sticker that you put on the doorjamb and it



1 says that is a salvaged vehicle, repaired vehicle, whether  
2 it's been inspected or not. It's on the doorjamb. If we  
3 want to use that same standard for one type of brand, we  
4 could see use the same for another.

5 MS. HARRINGTON: Allen, a question?

6 MR. HILE: I have a question for Raines. How long  
7 does it take a buyback brand to gets into the Carfax  
8 database? Would it be quick enough for it to be useful for  
9 the first repurchaser of a buyback, before the purchaser --

10 MR. RAINES: That's going to depend on the process  
11 of the state. That would depend on the process of the  
12 states and, you know, what happens before we get it.

13 MS. HARRINGTON: How long does it take roughly?

14 MR. RAINES: Once we get it, we put it in  
15 immediately. But it would --

16 MS. HARRINGTON: Can you give us a range of how long  
17 it takes for that information to get to you after it's been  
18 branded?

19 MR. RAINES: It's really state by state. I mean, we  
20 don't know.

21 MS. HARRINGTON: Does it range from two days to two  
22 years? Does it range from a month to two months? Can you  
23 give us a --

24 MR. RAINES: What's the "it" here in terms of the  
25 time limit so I can be more specific in the answer?

1 MS. HARRINGTON: What is the, how long, what is the  
2 lapse of time, how much time passes between the title being  
3 branded and the information reaching Carfax?

4 MR. RAINES: Anywhere from a week to a month  
5 probably.

6 MS. HARRINGTON: Okay. Jack.

7 MR. GILLIS: I have a question maybe Janet or one of  
8 the car makers could answer. Phil reminds me of the  
9 Magnuson -Moss Act. If this disclosed the fact that you did  
10 repair the problem, is that a warranty? And will I have any  
11 recourse if in fact you didn't?

12 MS. SMITH: That's an interesting question.

13 MS. GLASSMAN: I think the thing to remember is that  
14 every buyback has a warranty, has an additional,  
15 supplemental 12 -month warranty that goes along with it. So  
16 any subsequent problems that may arise are always going to  
17 be covered under that 12 -month warranty.

18 No vehicle goes out before it is repaired. And if  
19 it can't be repaired, the disclosure notice says that it  
20 can't be repaired.

21 The one problem that it sounds like in this system  
22 is that because it requires so much coding and specificity,  
23 the kind of information we were talking about before is  
24 going to be hard to put into it.

25 MR. GILLIS: Well, I'm not actually talking about

1 that system. I realize that's too much for AAMVA. But what  
2 about the case where the guy said it had stalling problems,  
3 you said you looked at it, couldn't find any stalling  
4 problems. So now I have a stalling problem. Do you have  
5 any responsibility there?

6 MR. DUCHARME: You have a 12 -month warranty.

7 MR. GILLIS: So everybody gives an automatic  
8 12 -month warranty to every single car they buy back?

9 MR. DUCHARME: Every one that we resell we give a  
10 12 -month warranty. Ford does.

11 MS. SMITH: In Florida that's statutory also.

12 MR. WHATLEY: I'm not sure. I don't know whether  
13 everybody does it in every state. It's required in a number  
14 of, several states.

15 MR. DUCHARME: I thought a lot of the states  
16 required that you warrant the particular problem. We go  
17 farther than that and we warrant the entire vehicle. I  
18 believe Chrysler does as well.

19 MS. GLASSMAN: Yes.

20 MR. DUCHARME: I think General Motors does, too.

21 MS. HARRINGTON: We have heard the discussion that  
22 we were hoping to hear during this segment. And we have no  
23 additional questions. The staff has no additional  
24 questions.

25 We do have approximately four minutes and twenty -two

1 seconds left in this segment. Do any of the participants  
2 have any additional questions?

3 (No response.)

4 MS. HARRINGTON: Otherwise, we can build four  
5 minutes of additional time into lunch.

6 (No response.)

7 MS. HARRINGTON: Good. Well, you're doing very  
8 well. We will resume promptly at 1:15.

9 Thank you.

10 (Whereupon, a lunch recess was taken.)

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1                   A -F-T-E-R-N-O-O-N   S-E-S-S-I-O-N

2                   MS. HARRINGTON: We have lemonade this afternoon  
3                   that we are serving out in the foyer. So if anyone needs  
4                   something cold to drink, go pour yourself a nice cup of  
5                   lemonade.

6                   We are ready to go with the first afternoon session

1 which combination of proposed remedies do you think would  
2 give consumers the information that they need?

3 And while you're all thinking, I hope that you found  
4 nice lunches in the neighborhood. The food situation has  
5 improved immeasurably. Some of you who have been coming  
6 here for years will no doubt notice that.

7 MS. PHELPS: I'll start.

8 MS. HARRINGTON: Okay. Good. Berta.

9 MS. PHELPS: Within our industry, we are strictly  
10 wholesalers. We feel in order for this to be effective, we  
11 all have to strive for uniformity. And we see the problems  
12 nonuniformity causes in our industry right now, i.e., with  
13 salvage.

14 Where some states have a brand that another state  
15 does not recognize, the vehicle will travel across to that  
16 other state, the brand gets washed off, and the dealer and  
17 subsequently the consumer well not be aware of the fact  
18 until there is possibly a problem.

19 As far as remedies, we feel title branding, vehicle  
20 branding is very effective if it is done uniformly so the  
21 auctions will have access to that information. We realize  
22 that in most instances the retail customer, the consumer  
23 will not see the title since the lending institution will  
24 get the title and the brand. Obviously the lending  
25 institution generally does not look at the title itself.

1           So if in conjunction with you also brand the vehicle  
2           that it is whatever you want to label it, then it would be  
3           visible to the consumer.

4           Also, we find that a brand on a title is very  
5           effective because of the available databases. Most of the  
6           member auctions within the interplay access databases for  
7           brands.

8           So when they pass the vehicle on from the seller to  
9           the buyer, everybody is assured that the proper disclosures  
10          were made. And again, we beg to the body here that will  
11          decide of how to label the vehicles, that they will arrive  
12          at a uniform procedure because otherwise it will defeat the  
13          purpose.

14          MS. HARRINGTON: Thank you. Robert.

15          MR. GRAHAM: I think there are two concepts that are  
16          at play here, at least two concepts of some importance in my  
17          view in the way of disclosure.

18          Those two concepts are permanence and prominence.  
19          Prominence is important to the extent that that's what's  
20          required to get information to consumers, to make sure that  
21          they take note of the salient information.

22          And you can achieve that through, as Berta  
23          recognized, an on -vehicle sticker, something that will be  
24          prominently displayed at the point of sale before any  
25          consideration changes hands so that that information figures

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1 into the consumer's decision whether or not to purchase a  
2 vehicle.

3 Permanence is important because we don't want  
4 disclosure just to go to the initial resale customer but for  
5 that information to go to subsequent repurchasers of the  
6 vehicle.

7 You can achieve that through title branding. You  
8 can achieve it through registration branding and a number of  
9 states can achieve it through something in the way of a  
10 doorjamb sticker, although there are going to be certain  
11 unscrupulous vehicle owners who are going to peel off that  
12 doorjamb sticker.

13 But now you've got the theories there. And I think  
14 if we keep those, keep both prominence and permanence in  
15 mind, I think to the extent we're able to achieve that we're  
16 better off.

17 MS. HARRINGTON: Lori?

18 MS. COHEN: Yeah. Just to be very brief, I agree  
19 with Robert that you want to have the, to show that there is  
20 a brand to have the sticker on the doorjamb. That will help  
21 the consumer at the time of the purchase. And then to  
22 ensure that it's carried from owner and owner, do the title  
23 branding as well.

24 MS. HARRINGTON: Gerry.

25 MR. DUCHARME: We'd like to see, frankly, use of the



1 Used Car Buyers' Guide as a mechanism for disclosure at the  
2 retail or at the point of retail sale. And that coupled  
3 with the 1 -800 number of the central database that we talked  
4 about this morning seemed to me to be a mechanism to ensure  
5 discontinued disclosure.

6 Title branding, you know, typically isn't as  
7 effective as a lot of people would like to think it is. But  
8 normally people don't have sight of their title until after  
9 they've paid for their cars. Most people finance their  
10 cars.

11 So in terms of being a mechanism to inform the  
12 consumer of the pedigree of the car before they take their  
13 purchase decision to my mind is largely ineffective. So  
14 it's one of those things you do when you have to do.

15 And I guess a lot of states require that we do it so  
16 we do it. But in terms of effectiveness and in terms of  
17 bang for the buck, in terms of the money we spend doing it,  
18 I really don't think it's there in terms of consumer  
19 benefit.

20 MS. HARRINGTON: Lou?

21 MR. GOLDFARB: We agree with what Robert said a few  
22 minutes ago about permanence and prominence. What's even  
23 more important than that is content; what are people being  
24 told?

25 You know, the State of California until January of

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1 this year had the requirement to put on the brand on  
2 vehicles that qualified to the consumer warranty law,  
3 warranty wrecked or warranty returned, abbreviated to  
4 warranty wrecked.

5 No one knew what that meant. Finally, after seven  
6 years they decided to modify that to lemon law buyback, I  
7 think. But the point is that we still have to wrestle with  
8 the issue of what is disclosed through whatever, you know,  
9 uniform nationals?

10 I agree it would have to be uniform. Maybe a term  
11 manufacturer buyback would cover all these buybacks and then  
12 it would also give disclosures that we were talking about  
13 earlier of what was claimed to be wrong with the vehicle and  
14 what was repaired.

15 Just to have a uniform system that has information  
16 does not give you very revealing or could be misleading to  
17 the consumer. I mean, lemon law buyback is a misleading  
18 term.

19 It doesn't say a lot. It may overstate the extent  
20 of the problem. It may discourage someone from buying a  
21 vehicle that could be in very good, good shape. So I think  
22 we need to focus as well on the issue of what is disclosed.

23 MS. HARRINGTON: Steve.

24 MR. TATERKA: Let me respond to something that Gerry  
25 said about the title branding. And that was also raised I

1 think in some of the comments from some of the other  
2 industry folks.

3 Obviously in most states the lender holds the title  
4 so that the customer isn't going to see the title right  
5 away. Obviously, in a cash transaction of course they would  
6 get the title.

7 In those states where the lender does not hold the  
8 title, the customer would see it right away; I know  
9 Wisconsin, I think Kentucky also, there is a few others.

10 But the purpose of title branding isn't to in and of  
11 itself give the disclosure to the customer. The purpose of  
12 title branding is to make sure that the chain of disclosure  
13 continues every step down the line.

14 Because if you don't have the title brand, there is  
15 no way to know. I mean, the manufacturer may do a superb  
16 job of giving the disclosure to their franchise dealer when  
17 they sell it at a closed auction.

18 Whether that dealer retails it or wholesales it to a  
19 dealer, another franchise dealer or an independent dealer,  
20 the manufacturer has no control over that. The one thing  
21 that's constant is the title certificate with the branding  
22 information.

23 Likewise under the Federal Odometer Act, it's the,  
24 the Federal law already now requires that there be an  
25 odometer brand on the title every time a title is issued.

1           And that's the information that a customer can use  
2           to impute knowledge to the seller that the vehicle has a  
3           certain amount of mileage. And likewise a title brand for  
4           buybacks can do the same kind of thing.

5           So I just want to sort of clarify that the purpose  
6           of the brand is not to directly give disclosure to the  
7           consumer but so that you can impute knowledge to the seller  
8           that the vehicle is a buyback and consequently make sure  
9           that the seller has an incentive to give the consumer the  
10          appropriate disclosure.

11          MS. HARRINGTON: Okay. John.

12          MR. WHATLEY: I guess a lot of our reservations  
13          about title branding has to do with the current situation.  
14          Because it doesn't do that now because only a few states  
15          have it and there are ways that the brands can get lost from  
16          titles.

17          Not only does it not provide the disclosure to the  
18          consumer at the time -- we can quibble about whether it  
19          really does or not. It doesn't provide a reliable source of  
20          the, for law enforcement purposes because things can be done  
21          to lose the title.

22          We prefer something that, A, gets notice to  
23          consumers who are the ones who really care about giving  
24          notice to. And two, we can have some assurance that  
25          essentially it's going to get from us to the ultimate

1 consumer.

2 And the only way I know of to do that, and it's not  
3 the perfect way, is through a series of contract disclosures  
4 where each and every person in that chain has the  
5 responsibility to pass that information along and have some  
6 evidence that they passed it along in case there's a need to  
7 track back up and find out where that information would  
8 arrive, where it was lost.

9 Title branding might be just, not only does not  
10 provide consumers the information they need, but it is just  
11 not very reliable in the current state of things. We need a  
12 uniform, maybe if you had a uniform standard that was  
13 nationwide, title branding would have to provide some  
14 information. But it doesn't in the current circumstances.

15 MS. HARRINGTON: Peter.

16 MR. MAIER: Yeah. On the question of title  
17 branding, it does, I agree with Steve, it does have a useful  
18 purpose in perpetuating the information.

19 In addition, it does have some information to the  
20 buyer, because typically it also goes on the registration.  
21 And even if the buyer does not see the title if they finance  
22 the car, they do see the registration.

23 But I think what we really need is a blend of  
24 information. There are five things I think at a minimum  
25 will be required. Because these things serve different

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1 purposes.

2 One is to have a disclosure on the car itself of its  
3 repurchase status. That is, some kind of window sticker.  
4 Because that information is a part of the, it then becomes a  
5 part of the informed bargaining process in purchasing a car  
6 or not purchasing a car. I think that the door sticker is  
7 useful. Ford apparently is doing it or is about to do it.

8 MR. DUCHARME: We do it nationwide.

9 MR. MAIER: You are doing it now? Starting?

10 MR. DUCHARME: Starting four months ago. Thank you.

11 MR. MAIER: Four months ago, okay.

12 MS. HARRINGTON: Do you have one of your stickers  
13 here?

14 MR. DUCHARME: I sure do. This is the only, the  
15 only one we use in California. The nationwide one I don't  
16 have a copy of. But this is the sticker. It goes in the  
17 doorjamb. It looks small from a distance, but a doorjamb  
18 isn't that big. So this is the sticker. And it goes on a  
19 doorjamb right below the VIN.

20 MS. HARRINGTON: Could you pass it around so that we  
21 could all --

22 MR. MAIER: Yeah. That would be very useful.

23 MR. DUCHARME: I've got a couple of them here I  
24 think.

25 MR. MAIER: And there is the model for that of

1 course under the odometer law which has a similar kind of  
2 sticker. Granted they can be removed, but at least it, if  
3 somebody removes it they are themselves doing a bad act.

4 And so that has a, that has the kind of purpose that  
5 the title branding has in terms of permanence but in a  
6 different form. There's title branding, which we've talked  
7 about.

8 Then I think it's important that there be a point of  
9 sale disclosure which would typically happen towards the end  
10 of the sale process. And that would be a form used in some  
11 states, and I have an example from the State of Washington,  
12 what the form they have.

13 And the critical point here is that it's signed and  
14 dated by the consumer. The consumer retains a copy. And so  
15 there is an actual instrument that demonstrates the  
16 disclosure was actually made.

17 And then there is the database, which would be the  
18 fifth way of doing it, which would be a way of both for the  
19 dealer to access information to confirm, make sure that  
20 something hasn't gotten lost along the way.

21 And if there is a question that arises later,  
22 somebody is having difficulty with their vehicle and they  
23 suspect perhaps incorrectly that this might have been a  
24 repurchased vehicle, they can confirm or have their  
25 suspicions allayed by accessing the database.

1           These things, no one disclosure or information  
2           perpetuation mechanism by itself is going to work. You need  
3           to have these things work in concert.

4           MS. HARRINGTON: Adam, do you have a question?

5           MR. COHN: Yes, about title branding. Someone said  
6           earlier that title branding, the purpose of it was for  
7           continuity.

8           With regard to that, to what extent is it important  
9           that there be a single, I heard some talk about there needs  
10          to be a single title brand.

11          But wouldn't the purpose of continuity be served  
12          merely by requiring one state to at least acknowledge that  
13          another state has branded that title?

14          Wouldn't that serve the purpose of continuity  
15          without necessarily coming up with some sort of mandatory  
16          statement that it would have to be branded on all titles?

17          For instance, if you had a California title, merely  
18          be required to say branded in Wisconsin and not really  
19          necessarily give the entire statement that Wisconsin might  
20          require. What do people think about that?

21          MS. HARRINGTON: Steve.

22          MR. TATERKA: The question of how to deal with  
23          carryover brands is really more of an issue in the salvage  
24          business already because you've got states using completely  
25          different brands.



1           And states have taken two approaches. One has been  
2 to simply carry over the other state's brand literally. The  
3 other has been to convert it to what they believe is the  
4 closest brand.

5           I guess for, I mean we're going to talk about  
6 uniformity later on this afternoon. But I suppose, at least  
7 to respond to your question I think, it probably would be  
8 useful for there to be a uniform title brand so that, you  
9 know, addressing, you know lemon law buybacks.

10           Now what that brand should be is something that I'm  
11 sure can be the subject of a lot of discussion. But  
12 something that certainly would be understandable and would  
13 be the same might not be a bad idea.

14           MS. HARRINGTON: Gerry.

15           MR. DUCHARME: I find some of the things that are  
16 being discussed here to be a little bit disturbing because I  
17 gather that we are talking about adding things to what other  
18 people are, what manufacturers currently are doing. And I  
19 think that's most troublesome.

20           What we would like to see is a fresh set of rules  
21 that would make the right things happen at the right time.  
22 Not, for instance, the gentleman from Washington mentioned  
23 that we have to do all of these things.

24           We have to have the paper there. We have to have  
25 the database. We have to have the sticker. We have to have

1 I don't know God knows what to make sure the consumer knows.

2 Well, there is a point beyond which people just  
3 shouldn't have to tread in terms of complying with these  
4 kinds of rules and regulations. We all share your goals.

5 As a matter of fact, Ford has been in the forefront  
6 in making sure there has been adequate disclosure to the  
7 consumers. But you can overregulate. You can overkill.  
8 And very frankly, I think if we were to follow along those  
9 lines I think we'd be in the overkill area.

10 In terms of title branding, I really wonder whether  
11 that's overkill if we have a national database. That's  
12 something that's permanent. That's something that a  
13 consumer is going to have reference to, he's going to have  
14 recourse to any time at all.

15 If someone goes to buy a used car, they can call a  
16 1-800 number, they can punch in a VIN and they can find out  
17 whether there is something they ought to know about that  
18 car. That's there forever, and that's there potentially  
19 before the consumer buys the vehicle, not six months after  
20 when he pays for it.

21 MS. HARRINGTON: Okay. Let me stop right there,  
22 Gerry. For those who are recommending that part of the mix  
23 include title branding, if there was a national database and  
24 an 800 number that consumers could access to search by  
25 vehicle identification number, would title branding be

1 necessary?

2           Lori, Steve, I want to ask both of you to respond to  
3 that.

4           MS. COHEN: I don't see how it would not be  
5 necessary. Our plan right now for National Motor Vehicle  
6 Title Information System is to do pretty much what Adam was  
7 saying.

8           If California branded it as salvage and Wisconsin  
9 takes it in, Wisconsin will have to carry the brand but  
10 they'll have to know it came from California and apply that  
11 definition.

12           It gets confusing. We'd rather have a uniform  
13 definition. You'll have to go back and look up which state  
14 it came from and how they define salvage.

15           So National Motor Vehicle Title Information System  
16 will carry over the brands. But uniformity would be much  
17 nicer. So should there be a brand? I think you need it  
18 definitely with the system. I'm not sure how you could not  
19 have the brand. I'm not sure about your --

20           MR. DUCHARME: Can I plug in? I think there is a  
21 misunderstanding what I was saying.

22           MS. COHEN: Yes.

23           MR. DUCHARME: If we define what is caught by our  
24 overall regulation, in other words, what is a reacquired  
25 vehicle, if we are able to define that, and we were talking

1 about that this morning, let's say we have a category of  
2 vehicles, the rule could be that when a manufacturer has one  
3 of these, right, then the manufacturer is obligated by law  
4 to put certain information on the database.

5 And it doesn't matter whether that vehicle has been  
6 branded. That's got nothing to do with it. The important  
7 thing is that the data gets from the manufacturer to the  
8 database and that consumers have access to it. And whether  
9 the title is branded is to my mind totally irrelevant.

10 MS. HARRINGTON: Steve.

11 MR. TATERKA: See, I don't think you can separate  
12 the two. Because it's the, normally when the title is  
13 submitted, in states that now require title branding, the  
14 manufacturer submits the title from the first owner, the  
15 person that the car has been reacquired from, along with the  
16 title application, that goes into the state motor vehicle  
17 division.

18 And then they will issue a new title to, you know,  
19 in the manufacturer's name with whatever the appropriate  
20 title brand is for that state. That creates the computer  
21 record which Carfax now picks up and presumably, hopefully  
22 MVA will pick up on their system also.

23 So the fact that that title brand appears on the  
24 title itself, that's not out there alone. I mean, it's that  
25 computer record that the databases pick up which would

1 provide the information that consumers could then access via  
2 an 800 number or otherwise.

3 MR. DUCHARME: I guess the point is where is the  
4 source of the core data? You're saying the source of the  
5 core data ought to be the vehicle registration bureau in the  
6 state.

7 I guess I was saying what's the matter with having  
8 the manufacturer be the source of the data to the central  
9 database? If the manufacturers were the source of the data,  
10 you wouldn't have to go through other bureaucracy within the  
11 state to have them input the data. So I think that's where  
12 we differ, I think.

13 MR. TATERKA: I'm not sure the proposals are  
14 mutually exclusive. I guess to answer Eileen's question,  
15 which was if there was a database would we also want the  
16 title branding.

17 When I heard the question I understood it to mean  
18 not necessarily a separate manufacturer -run database. But  
19 again, you know, I don't know how many consumers would  
20 access the database, how many consumers would have knowledge  
21 of the database. I mean, I would still want the title  
22 branding.

23 MS. HARRINGTON: Question, Allen?

24 MR. HILE: Yes. This is for Lori. Under the  
25 current state of the law that governs your pilot project and

1 your, whatever administrative regulations you have, would  
2 you be able to put data into your system without the  
3 predicate of a title brand?

4           Could you do what Gerry is suggesting here and take  
5 information directly from the manufacturers and possibly the  
6 dealers and put it into the database without it being a  
7 brand? Or does the law contemplate as a predicate to  
8 putting it in your database it has to be supplemented  
9 privately?

10           MS. COHEN: The very way that this system is  
11 organized, it has four files. The VIN is the pointer and it  
12 gets you to everything else.

13           The other files on it is theft, an MCO, and the  
14 brand file. And for us to identify this as a buyback, it's  
15 the brand file that's key.

16           MS. HARRINGTON: But earlier when we asked whether  
17 you could expand that, you said yes, you could.

18           MS. COHEN: Okay. There are --

19           MS. HARRINGTON: There wouldn't have to be a brand.

20           MS. COHEN: All right. I have to explain a little  
21 more about the system. There is the VIN pointer file. And  
22 the pointer file has certain minimal information. It won't  
23 even have driver name, not driver name, owner name or  
24 address.

25           To get more specific information from the VIN file

1 about who owns the vehicle, you shoot the inquiry to the  
2 state itself which holds the more complete database. It  
3 helps for privacy purposes that way, too.

4 So you're getting the more specific information out  
5 of the state itself. The state would hold the vehicle  
6 history information, the more specific information. It's  
7 hard for me to explain how they all interact. There's a  
8 brand file, there's a VIN file, there's a state file, but.

9 MS. HARRINGTON: Well, earlier when we were  
10 discussing this database, my understanding was that it  
11 would, that it will be possible with this database to expand  
12 on the information that it captures to include, if we wanted  
13 to, if you wanted to, if the world wanted to, any car that

1 interested in how; I'm more interested in what. And that is  
2 what can, what could this database capture and produce in  
3 response to a consumer query?

4 MS. COHEN: Right now I'd have to say we're very  
5 open. It is brand oriented. Vehicle history is a  
6 possibility that has not been developed much at all.

7 MS. HARRINGTON: Okay.

8 MS. COHEN: It's a possibility. And it's really



1 situation. But I have to agree with what Gerry said and  
2 expand on it a little bit. And that is we are really  
3 getting to overkill here.

4 I mean, first of all when you talk about title  
5 branding, and this is responding to Adam's point, it would  
6 be very difficult, Adam, to direct the state DMV to do what

1 process. It really isn't. I mean, the most important piece  
2 of information is the information that's given at point of  
3 sale.

4 I mean how many consumers are really going to go  
5 into their computer and access some national database when  
6 they're contemplating buying a used car? All right? I  
7 mean, these are people that buy used cars, okay.

8 And they see a good deal with a car that was bought  
9 back by a manufacturer. They see it's costing a lot less  
10 than the blue book is for that particular vehicle. They go  
11 in. And the most valuable information is what they get at  
12 point of sale.

13 And, you know, we make every effort to see to it  
14 that these disclosure forms go through the whole process. I  
15 will acknowledge that in many instances they don't. In some  
16 instances they don't.

17 Very often when dealers sell cars to other dealers,  
18 dealers of other brands, those forms don't necessarily  
19 follow. And greater efforts can be made to make sure those  
20 forms follow.

21 But the really best disclosure is that which appears  
22 at point of sale when someone is negotiating to buy the  
23 vehicle. That's when they can negotiate a lower price for  
24 whatever they see in this disclosure.

25 To have all these high tech overlays, it's nice. I

1 mean, it's nice in theory and we have the equipment and the  
2 computer technology to do it. And it's interesting.

3 But when you really get down to it, (A) you can't  
4 impose these huge responsibilities on DMVs, they don't have  
5 the resources to do it; and (B) I'm not sure how meaningful

1 the brand or the information recorded in a proper fashion so  
2 we can find out where that information did drop off.

3 And we're talking about remedy, that's where we can  
4 go back and discuss how and why that information dropped out  
5 of sight. So we feel like that branding is a part of this,  
6 as long as I come back to the term uniformity.

7 But branding ensures that the information gets  
8 passed by transaction by transaction by transaction. And  
9 the states are already the repository of that information.  
10 And it's used every single day.

11 Titles in most states have to be present at the  
12 dealership to sell the car. I know in the State of Missouri  
13 you cannot sell a car unless the title is present at the  
14 dealership. And a lot of states have that.

15 And as long as we hold dealers responsible for what  
16 they should have known at the time of the sale, then you  
17 have got to give the dealer the opportunity to go back  
18 through the chain to find out when this information was  
19 lost.

20 MS. HARRINGTON: George.

21 MR. VELEZ: Yeah. I guess a couple of comments.  
22 When you're introducing complexity into anything, and in the  
23 chaos theory, the people here, they can expound on it, but  
24 anytime you ask our field people to do one more thing, you  
25 increase multifold the chances of it not getting done or not

1 getting done right.

2 That goes to Gerry and Lou's point about you need to  
3 simplify this thing. You can't just keep adding layer upon  
4 layer upon layer on this and hope that we're all going to be  
5 in compliance because it's going to get hopelessly chaotic  
6 and everything is going to go wrong.

7 But I think, there is a lot of us who think that  
8 something is doable. But it goes back to uniformity and it  
9 goes back to keeping it simple.

10 This form that we developed we developed  
11 specifically with the State of Pennsylvania to settle some  
12 differences we had with them. They approved the form. It  
13 was the first of its kind. And now everyone thinks it's  
14 useless and, you know, confusing and everything else.

15 I mean, it just shows you what happens. And, you  
16 know, we tried adapting it to different states'  
17 requirements. And that's why it gets longer and whatever.  
18 And you want to keep the print big so you don't get accused  
19 of making the print small.

20 And everything you do to try to accommodate someone  
21 because there is so much distrust gets interpreted as trying  
22 to evade something.

23 So I think it's just absolutely paramount, you're  
24 going to drive up costs dramatically. I don't think anyone  
25 here wants to see consumers pay more for cars. I know we

1 don't.

2 I mean, whenever we price vehicles, one of the  
3 things we take into consideration is, you know, there's a  
4 segment of the population that can't afford these vehicles  
5 anymore.

6 And it's just, it's driving costs up and it's  
7 driving compliance down because it's just so hard to do. So  
8 I just, I think we've got to simplify this thing.

9 MS. HARRINGTON: Phil, and then we'll go to Adam for  
10 a question.

11 MR. NOWICKI: I don't really have a position one way  
12 or the other on title branding. I would just in our  
13 experience with our investigation in Florida, a number of  
14 problems we have had are "6"s look like "G"s in the VIN and  
15 "8"s look like "B"s and "4"s "Y"s, "1"s and "L"s.

16 Sometimes it doesn't have all the characters. And  
17 one of the things we were able to do if we had the title  
18 number was run it that way and to find the VIN that way.  
19 And sort of as a cross -check mechanism it has some value.

20 Now, if there is some other mechanism out there  
21 that's going to help you make sure you have the right VIN  
22 for the right car, maybe there are other alternatives. But  
23 we saw value at least in accessing the title from that  
24 perspective.

25 MS. HARRINGTON: Adam, question?

1 MR. COHN: About, about the necessity for our  
2 uniform title brand. I still don't think I'm clear on the  
3 issue of the importance of branding in terms of continuity.  
4 Because it seems to me that after October, 1997, at least, a  
5 dealer would be on some sort of notice for any car if there  
6 is a database that the dealer could just access and see  
7 whatever brands were on that VIN in any state.

8 You wouldn't necessarily have to have a title that  
9 said branded in whatever state. You could have a title that  
10 was free and clear of all brands to your, to the best, you  
11 know, just looking at it.

12 But if you dialed that 1 -800 number, you'd see that  
13 there were four brands on that car. And I still don't know,  
14 I'm not convinced that requiring the states to do anything  
15 to change their branding would achieve anything, or even to  
16 require them to carry over a brand from another state once  
17 you had an adequate functional database. I mean, I'm not  
18 sure I understand --

19 MS. HARRINGTON: Are you addressing this? Who are  
20 you addressing this to?

21 MR. COHN: To R. B. particularly.

22 MR. GRISHAM: Having experienced both sides, my  
23 experience is over on the salvage side, so let me step back  
24 on that side as opposed to the lemon side. But let me tell  
25 you that it, the dynamics is probably a little bit different

1 on this side of the equation.

2 But it's very easy when there is no uniformity to  
3 wash a title from state to state to state because it gets  
4 dropped in the mechanism. And again, states don't recognize  
5 other states' brands. They don't recognize other states'  
6 legal descriptions of that vehicle.

7 Now, what the specs on the AAMVA system that I've  
8 seen shows us that a pointer system, if you will, toward the  
9 problem could exist and function and work. But if you start  
10 dropping the problem from state to state to state  
11 transaction, then the pointer system, once again I go back,  
12 the information is going to be lost.

13 If Alabama doesn't recognize Mississippi's brands in  
14 some sort of way, then if that brand is lost the information  
15 is going to be lost and the information is not going to be  
16 transmitted at the point of sale when it's finally between  
17 the consumer and the dealer.

18 MR. COHN: Presumably the brand is still on the  
19 database. Just because it's not on the title itself doesn't  
20 mean that the record of that car having a brand is lost.

21 MR. GRISHAM: So the question becomes the point of  
22 knowledge. If the dealer does not know, and again say he  
23 purchased the vehicle at a wholesale level or say he takes  
24 it as a trade -in. And he takes that vehicle as a trade -in  
25 and there is no brand on that title, what would give the



1 dealer the idea that maybe I should check all of my brands  
2 or all of my vehicles on the lot?

3 Maybe from a business standpoint that's a very good  
4 practice. But from a business standpoint also it's going to  
5 be a very expensive practice. Because there will be a  
6 charge somewhere along the line for the utilization of these  
7 databases because you don't build them for free.

8 And the other aspect of that is, if it's right there  
9 on the title in the dealership, then they don't have to  
10 check; it's there on the document. And now that document is  
11 being, is required to show to the consumer.

12 And there you have the problem solved at the point  
13 of sale: Here's the disclosure, here's the information on  
14 the car, now make the decision on whether you wish to  
15 purchase or not.

16 Now again, that's how it's supposed to work on the  
17 salvage side. And it doesn't always work that way. But on  
18 the, on this, on what we're talking about here where you  
19 don't have any, and I go back to uniformity, we're going to  
20 have to come up with some pretty basic definitions before we  
21 can move towards this uniformity. But then I think branding  
22 is a part of that ultimately.

23 MS. HARRINGTON: Berta.

24 MS. PHELPS: As I said earlier, uniformity in our  
25 business is really very important. It's one of the most

1 important factors. We examine, our member auctions examine  
2 literally millions of title documents a year.

3 And if you don't keep the process as simple as  
4 possible for our industry and for the dealer industry and  
5 for the AAMVA industry, the Motor Vehicle Administrators  
6 themselves, I really truly believe you're losing the control  
7 of it.

8 Branding the vehicle itself is very effective. You  
9 might not have the document in front of you. You might not  
10 have access to the title base at that point in time. But  
11 you certainly can open the door and the doorjamb is labeled  
12 that it is a, whatever you want to call it.

13 That is a visible fact. It's a visible fact for us.  
14 If it's a dealer, he opens the door, he can inspect the  
15 vehicle. He knows immediately, i.e., the odometer is not  
16 right or it's branded or it's salvaged.

17 So again, I really have to ask that all the parties  
18 involved look at the simplicity of it. To pass on the  
19 documents, the disclosure documents on the initial sale is  
20 good.

21 We dispose of dissatisfaction buybacks or  
22 satisfaction buybacks for the manufacturer. We pass on the  
23 documents. The manufacturer sets very stringent  
24 requirements on the auctions to pass down the documentation  
25 that goes with the car disclosing why the vehicle was bought

1 back, what has been done with it.

2 The purchasing dealer has to sign for that. But you  
3 cannot expect that these documents will follow the life of a  
4 car; that is impossible. Because most likely within  
5 possibly another year, another two years, that car will get  
6 sold again.

7 And it then will truly go out into the used car  
8 wholesale market. And there is no way you can expect those  
9 written documents to follow the vehicle.

10 So we need to come up with some procedure that lets  
11 the subsequent buyer --and I don't mean the first buyer on  
12 the dissatisfaction buyback but the subsequent buyer --know,  
13 hey, this is really a dissatisfaction buyback.

14 And whatever procedures, they need to be simple.  
15 You cannot expect the public nor can you expect again the  
16 dealers and the entire motor vehicle community to deal with  
17 this massive paperwork.

18 MS. HARRINGTON: Rosemary.

19 MS. SHAHAN: I'll probably make some history here by  
20 agreeing with Lou Goldfarb of Chrysler --

21 (Laughter.)

22 MS. SHAHAN: --that the bottom line interest is in  
23 getting disclosure to the consumer that's usable at the  
24 point of sale or prior to the point of sale. And I'm not  
25 sure, I don't think I have the answers on how to resolve

1 with the database and title branding because there are other  
2 people more experienced with that end of things.

3 I just wanted to raise a question I haven't heard  
4 raised yet and see if people could address it. And that is

1 Right now the only thing a manufacturer has to do in  
2 the states that require title branding is to simply apply  
3 for a title in their name and submit whatever form to DMV  
4 that says this car has to be branded as a buyback. That's all  
5 the manufacturer has to do.

6 In terms of what the Motor Vehicle Divisions have to  
7 do, they just have to brand it that they already are geared  
8 up to put all sorts of brands.

9 I know in Indiana where I was for several years, the  
10 Bureau of Motor Vehicles there has, I think they have the  
11 ability to put up to ten different brands in the branding  
12 fields. I mean, we're not talking adding anything that  
13 isn't already I think in the infrastructure.

14 MS. HARRINGTON: Ed.

15 MR. MIERZWINSKI: I just, along with the Federal  
16 Trade Commission have been in a seven -year battle with the  
17 credit bureaus over the referential integrity of their  
18 databases, over the mistakes in the credit bureau databases.

19 Congress just passed the law to improve credit  
20 reporting. And I would say that if we were to remove the  
21 title brands as the source of the database, that I think  
22 you're going to end up with a database that has got a lot of  
23 chaos theory in it.

24 I don't know chaos theory. But I think that's what  
25 you'd end up with is a mess just like the credit bureaus

1 have. It sounds to me like title branding is a critical  
2 part of the database.

3 MS. HARRINGTON: Richard.

4 MR. RAINES: I was going to address the issue of the  
5 national database and title branding to reflect back I think  
6 on Gerry's comments.

7 You, I don't think you have to have title branding  
8 in order to have the national lemon database. I think it  
9 would help. It certainly would replace. We have a lot of  
10 experience with state title brands and it is quite  
11 confusing.

12 I don't want to walk through the technical details.  
13 But states themselves do have a hard time handling brands  
14 as a number of brands proliferate. They may have a code for  
15 certain brands. They drop them. If they drop them, and we  
16 receive these brands.

17 And a lot of times there is a lack of information  
18 about the brands. So it's a tough job handling brands. If  
19 your only objective was to have a national database of lemon  
20 information or manufacturer buyback information, you could  
21 do that independently of title brands.

22 You could do it yourself or do it through private  
23 parties like ourselves. But you could also probably get  
24 that done a lot sooner than mixing it into the title brand  
25 area because that is a complicated area.

1 MS. HARRINGTON: We're halfway through this segment.  
2 And because we just had lunch a little while ago I'd like to  
3 take one minute for everyone to stand up and stretch and  
4 just move about, and then we'll sit right back down and  
5 resume. And I have, the next ones who has to be called on  
6 are on the list.

7 (Whereupon, a short break was taken.)

8 MS. HARRINGTON: Let get back to our discussion.  
9 Let's see. Richard. Richard. Where did Richard go?

10 MS. SCHWARTZ: Richard had to leave, so I'm taking  
11 his place. My name is Margaret Schwartz.

12 MS. HARRINGTON: Okay. Hi, Margaret.

13 MS. SCHWARTZ: Hi.

14 MS. HARRINGTON: All right, Jack. I have you next.

15 MR. GILLIS: I also agree with Lou in terms of point  
16 of disclosure is the key. And, Berta, I'm interested to  
17 hear you say that you are under tremendous pressure from the  
18 car makers to keep all this paperwork with the car. And I  
19 assume you comply with their requests.

20 MS. PHELPS: Correct.

21 MR. GILLIS: Two questions. One, what kind of  
22 pressure, I mean, what do they do to you if you don't do  
23 this? And can you do the same thing to the next person down  
24 the channel?

25 MS. PHELPS: Obviously, they --

1 MS. HARRINGTON: Now it's getting good; "what do  
2 they do to you?"

3 (Laughter.)

4 MS. PHELPS: They can pull the contract from us.  
5 Obviously we have to, we sell their cars. We're they're  
6 agents so we have to represent the merchandise that they  
7 sell exactly as they tell us to do. If we fail to do that,  
8 we fail our obligation, our contractual obligation.

9 MS. HARRINGTON: And what do they do? Do they sue  
10 you?

11 MS. PHELPS: They could. Yes. They could stop --

12 MS. HARRINGTON: Do these things happen?

13 MS. PHELPS: Well, we're very diligent in passing on  
14 the right paperwork. So I hope it will not happen.

15 MS. HARRINGTON: So the auto makers have sort of an  
16 interim effect on the auction people. What do you do, Lou?

17 MR. GOLDFARB: That's all to the good. I mean, we  
18 actually have one of our employees at the auction who walks  
19 these vehicles through.

20 The employee is standing there with the forms, okay,  
21 and puts that form on the vehicle, makes sure the dealer



1 as best that we can do to the point of sale. And most  
2 dealers, I mean, you know, don't get the wrong idea. Most  
3 dealers are complying.

4 I mean, dealers want to do the right thing by and  
5 large, and there are always exceptions. But most of the  
6 time dealers will make these disclosures to consumers and  
7 people get the information.

8 Again, you know, our concern is overkill. I mean,  
9 you know, we're talking about title branding. But again,  
10 refer back to George's comments about the percentage of  
11 vehicles that GM title, I mean, that are actually defined as  
12 lemon, lemons under state lemon law is three percent.

13 So the rest of the vehicles are not even involved in  
14 this whole branding idea. No one knows what the impact of  
15 including all manufacturer buybacks in some national  
16 so -called branding scheme.

17 That raises a whole different magnitude of problems.  
18 And we want to take a very close look at that. But, I mean,  
19 if what you're talking about is simply the branding of those  
20 that qualified as lemons, it's a very minuscule part of the  
21 issue.

22 MS. HARRINGTON: Jack, did you have anything else?

23 MR. GILLIS: No.

24 MS. HARRINGTON: Okay. Lou, did you have anything  
25 else?

1 MR. GOLDFARB: No. That was it.

2 MS. HARRINGTON: Okay. Janet.

3 MS. SMITH: Well, I just wanted to kind of give the  
4 state enforcement views since I'm the only state person  
5 here.

6 MS. HARRINGTON: Let me also just add that the  
7 National Association of Attorneys General filed a very  
8 thoughtful comment and had planned on having a  
9 representative here today, but the press of other business  
10 kept all of them from being able to be here unfortunately.

11 So, Janet, we're very glad that you're here.

12 MS. SMITH: Thank you. I just primarily wanted to  
13 disagree with Lou that title branding is totally useless. I  
14 think, yes, I would agree that the most important aspect of  
15 this whole thing is to get the disclosure to the purchaser  
16 of the resold vehicle at the point of sale.

17 But title branding is useful as an enforcement tool  
18 to make sure that the person did get that disclosure. It's  
19 a means of finding out, lets the enforcing agency finding  
20 out later who that person was and checking to make sure that  
21 they got the disclosure. So it does have that value. And  
22 it is something --

23 MS. HARRINGTON: And how often is that done?

24 MS. SMITH: Well, I can't speak for Florida because  
25 we just initiated title branding two days ago.

1 (Laughter.)

2 MS. HARRINGTON: Does anyone know?

3 MS. SMITH: It is something that we will do.

4 MS. HARRINGTON: Does anyone, with great regularity  
5 does anyone have any experience with this, that is, with  
6 state enforcement authorities following up to see whether  
7 disclosure was given?

8 Peter.

9 MR. MAIER: In Washington State it is done and is  
10 quite effective.

11 MS. HARRINGTON: Is it done a lot or randomly or?

12 MR. MAIER: The enforcement?

13 MS. HARRINGTON: Yeah.

14 MR. MAIER: It's done a lot. In fact, Washington  
15 State is probably in the leadership in this area. But every  
16 vehicle that is repurchased, bought through the program, the  
17 state attorney general's office which actually runs the  
18 program then follows up to make sure that it in fact has  
19 been branded.

20 MS. HARRINGTON: Like 248 vehicles or something last  
21 year, as I recall from the comments?

22 MR. MAIER: It's on the order of several hundreds of  
23 vehicles so it's possible. Also, there is a state funded  
24 organization that the attorney general's office does it.

25 MS. SMITH: Sometimes how much the state can do is

1 driven by the case load that it has to deal with. But one  
2 of the things we're trying to get started in Florida,  
3 because our system has been so full of holes with a form  
4 that's supposed to move with the vehicle, that just does not  
5 work.

6 It's, with the exception of title branding, working  
7 with our motor vehicle department so that we can track where  
8 these vehicles are going.

9 MS. HARRINGTON: Okay. Did you have an answer to  
10 that question, Rosemary, about the enforcement, how often is  
11 this?

12 MS. SHAHAN: Yes. Obviously we're not a state  
13 agency, but we've taken a very careful look at what  
14 California's DMV has done to enforce this.

15 And there does seem to be a trend for more states to  
16 be paying attention to lemon buyback resales in general.  
17 The title branding is only one component of that. And I  
18 would like to note that the state DMVs have been in  
19 disagreement with the car companies over which vehicles  
20 would qualify as lemons.

21 As you know from our comments, they've come up with  
22 a lot of internal documentation from the car companies on  
23 vehicles that they would characterize as customer  
24 satisfaction buybacks where they had requested, in  
25 California they had requested the tax refund for those as

1 lemons and they weren't branded in the states we believe  
2 they should have been.

3 MS. HARRINGTON: We're aware of that controversy.  
4 George?

5 MR. VELEZ: Yeah. I guess I hate to keep harping on  
6 the same things, but I guess we're just disagreeing at a  
7 very fundamental level here. We're not saying that -- We're  
8 willing to do anything at this point that people think is --  
9 but we question how effective any of it is.

10 Because we've got -- And everyone has anecdotal  
11 evidence. And I'm sure that for every example I throw out  
12 somebody is going to come up with a dozen other examples.

13 But we know that consumers, handing a consumer  
14 another piece of paper to sign at closing is in most  
15 instances futile because they've got so much paperwork that  
16 one more just doesn't make an impression on them.

17 If it does, they'll swear two months later that it  
18 didn't do it. It's just, it's human nature. You forget  
19 those sorts of things; you're excited about the car.

20 But fine. If that's the thing to do, let's do that.  
21 But let's do it uniformly so we don't have 50 different ways  
22 or 52 different ways of doing it. If we're going to have  
23 title branding, let's do it.

24 Great. If the State of Indiana can figure out how  
25 to do it, that's great. Why don't you teach Connecticut and

1 New Jersey and California and some other states, where in  
2 Georgia we could not get a car branded because we don't have  
3 a business office in the state.

4 I mean, these things are just silly. And, you know,  
5 we're not against any of that. We will do whatever anyone  
6 wants us to do they think it's a consumer benefit to do that  
7 doesn't cost a whole lot, and in fact that costs which is  
8 going to have to be passed on to the consumer and that  
9 really is benefiting the consumer.

10 MS. HARRINGTON: Gerry.

1 to be doing.

2 If we don't get the form over a certain period of  
3 time, we have a process where we write the dealer, ask where  
4 the form is and get a status of it. Maybe the vehicle is  
5 still in inventory or the like.

6 If we discover that in fact the vehicle has been  
7 sold and the disclosure form has not been signed, then we  
8 implement what we call our recontact program. We write the  
9 consumer and we say we understand you bought a vehicle. We  
10 want to tell you about it.

11 And so we disclose at that point and time. This has  
12 resulted in our dealers becoming a little more adept at  
13 making disclosures at the appropriate time.

14 MS. HARRINGTON: Gerry, I read this in your comment  
15 and I had a question about it.

16 MR. DUCHARME: Sure.

17 MS. HARRINGTON: What is it that they disclose when  
18 they recontact? What's the content of that disclosure?

19 MR. DUCHARME: I think we have form letters here,  
20 don't we?

21 UNIDENTIFIED PERSON: The disclosure form and the  
22 cover letter.

23 MR. DUCHARME: Yeah. It's the disclosure form that  
24 he should have seen with the cover letter. So we give him  
25 what he should have gotten at point of sale.

1           But my point is not to describe our process. My  
2 point here is that manufacturers ought not to have to be  
3 doing this kind of thing. It is ridiculous that a company  
4 in order to make sure consumers are being told what they  
5 ought to have find out has to go to the lengths that we're  
6 going through.

7           And that's one of the reasons why Ford Motor Company  
8 is here today is to see whether we can get some sensible  
9 preemptive Federal legislation to get the law enforcement  
10 people in this country to be doing what some of us felt that  
11 we've had to do ourselves to make sure that the right thing  
12 is happening.

13           In my mind we don't want to have some sort of a  
14 system that overlays what we're doing. That's ridiculous  
15 because we're spending a fortune on that right now. We need  
16 a system that is self -operative and that is going to work.

17           And in my mind if we had a 1 -800 number central  
18 database for this information and we use a mechanism that's  
19 out there right now, the Used Car Buyer Guide that will  
20 travel with the vehicle every time it's sold, the guide goes  
21 every time it's sold by a used car dealer, the guide goes on  
22 the window, the used car dealers have to call the 1 -800  
23 number and get the pedigree of the vehicle and put the  
24 information on, then we can ensure in a simple,  
25 straightforward way that this information is carried on it



1 as long as that vehicle is on the road.

2 MS. HARRINGTON: Steve.

3 MR. TATERKA: Let me just respond, Eileen, to your  
4 inquiry a little earlier about what states have used title  
5 branding. And I can do that in a somewhat different  
6 context.

7 When I was with the Tennessee Attorney General's  
8 Office, we used another state's flood salvage brand to  
9 identify cars that had been resold to Tennessee consumers  
10 and then sent contact letters or actually questionnaires to  
11 those consumers asking whether they knew the car had been  
12 flood salvaged in the other state.

13 So that information can be pretty useful depending  
14 on how it's managed. I also just want to respond to  
15 something that Lou said a little earlier, because I'm not  
16 sure that we were sort of all on the same plane on this.

17 The question I think had to do with, or the comment  
18 had to do with the percentage of vehicles that are buybacks.  
19 And I thought the implication in that --

20 MR. GOLDFARB: A lemon buyback.

21 MR. TATERKA: A lemon buyback. But I thought the  
22 implication that was that only that three percent figure is  
23 the ones that would be branded. And let me say that at  
24 least Indiana, their statute is much more comprehensive and  
25 would apply to any vehicle that's repurchased, whether it

1 was denominated as such or was through settlement or  
2 arbitration or whatever.

3 But I think that the answer to the question as to  
4 which vehicles should be branded is going to be determined  
5 by the outcome to this morning's discussion about what  
6 vehicles are ultimately determined to fall within the  
7 definition of buybacks.

8 My only point is that I just didn't want to, I  
9 didn't want us to proceed on the assumption that 97 percent  
10 of the vehicles would not necessarily be branded. Because I  
11 think most of the consumer representatives here would feel  
12 that, anything that went back to the manufacturer or trade  
13 assists and then certain certificate cars that we could talk  
14 about also should also be branded.

15 MS. HARRINGTON: Lou.

16 MR. GOLDFARB: Except for maybe Indiana, no state in  
17 the country now requires that. That's a major step beyond  
18 what exists today in terms of the rather severe remedy, and,  
19 you know, a questionable value remedy of branding a title.

20 I mean, branding a timeoinÊemioonl b17( t,Øno oihat'TOmo"10° tiitloi,

1 saying. I just think that that's a very different approach.

2 MS. HARRINGTON: R. B. and then Phil, please.

3 MR. GRISHAM: I just want to step back up and ask  
4 for sort of a clarification. If, at this point if we have  
5 theoretically determined what the lemon is, then the brand  
6 is necessary if, unless the accountability for continuing  
7 the information flow ends at the first or second level of  
8 sale, which I don't think it should.

9 But what I think I'm hearing is that once it goes  
10 past the point of the franchise dealer to that first sale  
11 from that point, once it's been branded after we've  
12 determined what that brand is, then that information is not  
13 necessarily through the livelihood of the vehicle to be  
14 necessarily there with documents behind the titles and all  
15 sorts of phone numbers or databases that may or may not have  
16 the information at that point and time.

17 But if it's branded on that title all through the  
18 subsequent chain, then that information is always present at  
19 the point of sale. If it's not branded and the  
20 accountability ends at the point where the brand comes off,  
21 then that's fine with us.

22 But that accountability won't end there, and we know  
23 it. We're realistic about it. It will not end at that  
24 point.

25 So the question on brand or not to brand, if the car

1 does meet that criteria that it is the cars we're talking  
2 about, the lemon, the three percent, it's got to be branded.

3 MS. HARRINGTON: Phil and then Jack.

4 MR. NOWICKI: I would just add that the norm is the  
5 15 states plus the District of Columbia that have title  
6 branding because it does apply to the standard which is most  
7 of these states: California, Connecticut, even Florida now,  
8 New York, Utah. It's various settlements and so forth. So  
9 I don't think the three percent if it's represented as a,  
10 you know, a decision of some sort is accurate.

11 MS. HARRINGTON: Okay. Jack.

12 MR. GILLIS: I think that, at the risk of offending  
13 the Chairperson, I'm really concerned about the fact that if  
14 we go with Lou's idea or we brand, your idea, we just brand  
15 all the lemons, I don't think that's where our concern is.

16 MR. GRISHAM: I asked for a clarification.

17 MR. GILLIS: Yeah. It's clear to us that there is  
18 some, there is a lot of confusion and there's probably some  
19 legitimate buybacks; it's not fair to devalue that car in  
20 the marketplace by somehow tagging it as a buyback.

21 But I think from the consumer perspective, our  
22 concern is these nonlemons that are being purchased back.  
23 Because I can tell you on the surface it seems to me if I  
24 were a manufacturer, I would buy them back like crazy just  
25 before they go into some branding, forced branding

1 situation.

2 It's in my best interest to do that. I can get more  
3 money for the car when I sell it over there to Berta. I  
4 don't have to disclose it. I don't have to spend the three  
5 hundred bucks to do all this stuff.

6 So there is a huge, at least on the surface,  
7 incentive to pull these cars back just before they get  
8 tagged. And I think that's what we're concerned about. And  
9 that's why the numbers are so important.

10 MS. HARRINGTON: Now, Jack, does that incentive  
11 exist more in terms of the value of the car at wholesale  
12 than it does to the repurchaser?

13 That is, what I've heard from Lou, for example, is  
14 that the information that goes to the consumer who purchases  
15 that car is the same information whether or not the car  
16 qualifies as a lemon under state law and is repurchased  
17 because of a legal obligation under the law.

18 So are you suggesting that the financial incentives  
19 for the manufacturer exists in the wholesale market rather  
20 than in the retail market?

21 MR. GILLIS: Yes. That's exactly what I'm  
22 suggesting. But, Berta, you can answer that. I mean, you  
23 can get more for a car that's not branded than you can for  
24 one that is.

25 MS. PHELPS: That is true. But remember, the

1 manufacturer declares the vehicle -- and we do not buy  
2 vehicles, to correct you, when you said he's selling the car  
3 to us. We are just an auction house providing a service.

4 But when the manufacturer sells that vehicle, in  
5 their closed sale to the buying dealer, they do disclose  
6 whether it is a lemon or whether it is a goodwill buyback or  
7 whatever; and it affects the price, yes.

8 So the vehicle, actually whether the title is  
9 branded, the manufacturer discloses on the block that there  
10 is some cloud, if you want to call it that, on the vehicle.

11 MS. HARRINGTON: Why would I be offended?

12 MR. GILLIS: Well, because, if this is happening ten  
13 times, let's go home. If it's happening a hundred thousand  
14 times a day, let's deal with it. And we don't know.

15 MR. GOLDFARB: If what's happening?

16 MR. GILLIS: The fact that there are bad cars being  
17 sold in this gray area of just before they become branded.

18 MS. HARRINGTON: Well, let me phrase the question a  
19 little differently. Your question is how many cars are  
20 being bought back and resold every year.

21 MR. GILLIS: Right, right.

22 MS. HARRINGTON: And it would appear from the  
23 comments in the record that number is between twenty -three  
24 and fifty thousand. Is that -- That's the record that we've  
25 got.

1           MR. GRAHAM: Again, I think George would take issue  
2 with this. But based on the comments that Chrysler  
3 submitted and also General Motors submitted, we're talking  
4 about a minimum of over two thousand. It's a very  
5 substantial number. Now, that obviously is going to  
6 include --

7           MS. HARRINGTON: And how many cars were sold, new  
8 cars are sold every year in the United States, Phil?

9           MR. NOWICKI: Fifteen million, roughly.

10          MS. HARRINGTON: So --

11          MR. VELEZ: And how many are under warranty?  
12 Because it doesn't cover just the first year.

13          MR. NOWICKI: Three times that much.

14          MR. VELEZ: Right. So we're talking 45 million.

15          MR. GILLIS: So, just let me make sure I understand.  
16 So you've got 45 million cars; three percent of them you're  
17 buying back for lemons?

18          MR. VELEZ: No. Three percent of what we buy back  
19 are lemons.

20          MR. GILLIS: Okay. But what you're not saying is  
21 how many you're buying back.

22          MR. VELEZ: That's right.

23          MR. GILLIS: Okay. Now, if you're buying back .0001  
24 percent, then this is not an issue. If you're buying back  
25 10 percent --

1 MS. HARRINGTON: Hold on a sec, Jack. Didn't GM's  
2 comments say that they were buying back one half of one  
3 percent of cars sold?

4 MR. VELEZ: No.

5 MS. HARRINGTON: Is that what it says?

6 MR. VELEZ: We were saying less than one half of one  
7 percent of cars under warranty.

8 MS. HARRINGTON: Okay. Less than one. It's less  
9 than one half of one percent of cars under warranty.

10 MR. VELEZ: Right.

11 MR. GILLIS: So, Robert, that's where you got the  
12 fifty thousand.

13 MR. GRAHAM: We get the forty -six thousand looking  
14 at, assuming a two -year warranty. And well, forty -six  
15 thousand for General Motors assuming a two -year warranty and  
16 assuming that we're looking at one half of one percent.

17 Now, if it's less than one half of one percent, if  
18 it's a quarter of a percent, then we're talking about, you  
19 know, twenty -three thousand for General Motors plus the  
20 fifty -one hundred that Chrysler talked about and an addition  
21 of two thousand from the programs.

22 But in any event, it's a substantial number. If  
23 we're going to look at Chrysler and General Motors as  
24 indicative to the market, then we're talking about well  
25 over fifty thousand.



1 MS. HARRINGTON: Lou.

2 MR. GOLDFARB: I thought Berta answered Jack's  
3 question but I don't think you fully understood it. I mean,  
4 the point is that let's assume fifty thousand. Let's assume  
5 it's sixty or seventy thousand.

6 Disclosures are being made. The incentive you talk  
7 about is not there. Because whether we have to disclose as  
8 a lemon law buyback or disclose it as a manufacturer buyback  
9 and give the reasons in both cases, the point is that when  
10 we buy it back we know we're going to take a loss on resale  
11 at the auction.

12 MS. HARRINGTON: I thought I heard Berta say,  
13 though, that the devaluation is more substantial if the car  
14 is branded a lemon than if it is bought back with the  
15 disclosure but not branded.

16 MS. PHELPS: It has a, the value of the car is  
17 diminished. When you announce, as I said, and I'm calling  
18 it a could on the vehicle, whether or not you have a branded  
19 title or you announce that the vehicle is a buyback by the  
20 manufacturer, it has a definite effect on the price. But --

21 MR. GOLDFARB: It does have a greater effect if the  
22 word lemon buyback is on there as opposed to manufacturer  
23 buyback. Sure it does because lemon connotes something  
24 worse than a normal buyback.

25 MS. PHELPS: Right. It is a safety issue.

1           MS. HARRINGTON: Well, then Jack's point, which is  
2 then there is an incentive to buy back before it reaches  
3 that point.

4           MR. GOLDFARB: But the distinction is really, the

1 roof was the one that went through a lemon law mechanism.

2 Okay. So the dealer pays more credence to what is  
3 disclosed as the problem rather than the titles or the  
4 designation that's given to them, intuitively.

5 MS. HARRINGTON: I mean, do any of the dealer people  
6 have anything to say about that? Does that sound right?

7 MS. PHELPS: That sounds about right.

8 MR. KITZMILLER: I think certainly how much the  
9 dealer feels the car is going to devalue depends on exactly  
10 what Lou said, what the problem is. And the fact that it's  
11 a lemon in and of itself doesn't mean that it's going to be  
12 worth less than if it was, doesn't have a problem.

13 Again, I think it goes exactly to what he said,  
14 whether or not the problem has been addressed. The other  
15 point I want to make is we keep coming back to this issue of  
16 the, that there is a financial incentive that's been  
17 directed for the manufactures but by inference it's directed  
18 toward us, that there's somehow some financial incentive to  
19 grab these bad cars right before they have to be disclosed  
20 and then dump them on the next person.

21 I mean, that just doesn't make any sense from a  
22 business perspective. We've heard Ford Motor Company,  
23 General Motors, Chrysler all go through their procedures,  
24 how much money it costs them to buy these cars back.

25 And so to my mind it makes no sense at all to assume

1 they're going to jump at the chance to dump these bad cars

1 various types of disclosures or even dealer perception on  
2 disclosures and what effect that might have?

3 MR. GOLDFARB: I'm not aware of any studies.

4 MR. MULHOLLAND: I'm not.

5 MS. HARRINGTON: Jack.

6 MR. GILLIS: Well, disclosure is certainly not a be  
7 all end all remedy, as we can tell by how many people smoke.  
8 But what I think is a more salient question is, I mean, what  
9 do you think, Peter? Is this much to do about nothing? I  
10 mean, you're in there every single day. Your dealers are in  
11 the front line.

12 MR. KITZMILLER: Do I think it's much ado? I would  
13 say it's much ado about nothing. If you're asking me do I  
14 take fifty calls a week from our dealers who have problems  
15 with lemon law buyback cars, the answer is absolutely not.

16 I'm not trying to minimize the problem. I don't  
17 know the figures or the numbers, and I don't think that this  
18 is an issue that we shouldn't be addressing. But I'm not  
19 going to sit here and tell you that it's something that I  
20 get fifty calls a week from our dealers who have a problem.  
21 And frankly, if they were having a problem, we'd be hearing  
22 it.

23 MR. HILE: How many do you get?

24 MR. GILLIS: Well, I don't think they're having a  
25 problem. It appears that they're just pushing these cars

1 back out on the market without disclosure so therefore this  
2 is no problem

3 MR. KITZMILLER: Well, no. First of all, that's not  
4 correct. And second of all, when I say have a problem, we  
5 get calls from dealers all the time who have problems with  
6 customers, consumer problems where they didn't make a  
7 correct disclosure or they did something incorrectly.

8 There are certain issues where a theme comes up and  
9 we see a consistent problem with different types of dealers.  
10 We had a problem way back before I started when they dealt  
11 with the used car rule, maybe not doing that correctly or  
12 doing some of those things correctly.

13 So I'm not saying it's much ado about nothing. But  
14 I mean, I know you want to keep harping on the fact someone  
15 is going to give you a magic figure as to how many of these  
16 cars are out there; I don't know. We don't build the cars.

17 I take exception with the fact that we don't have a  
18 problem because we're turning around and handing these cars  
19 back out to people. Again, the majority of our dealers pass  
20 on the disclosures that they receive from the manufacturer  
21 to the customers.

22 We can talk about whether those disclosures are  
23 effective or not or whether or not we need to change the  
24 language. But again, I would take exception to the fact  
25 that we don't do the disclosures because I don't think

1 that's the case.

2 And, you know, again, I don't know the scope of the  
3 problem. But based on, you know, the issues that I deal  
4 with, I don't get a lot of questions from dealers or  
5 concerns or problems, either if the manufacturer has a  
6 problem what they've done or consumers have had a problem  
7 with what they've done.

8 MS. HARRINGTON: Jack, I was interested in your  
9 comment about smoking. And I wonder if you were here to  
10 advance the theory that cars are a medical vice.

11 (Laughter.)

12 MS. HARRINGTON: This could be the answer. The FDA  
13 should regulate this.

14 (Laughter.)

15 MS. HARRINGTON: How many of you think that's a good  
16 idea?

17 MR. GILLIS: I think that we have some preemptive  
18 problems there, serious preemptive problems.

19 MS. HARRINGTON: Okay. Let's go to Rosemary.

20 MS. SHAHAN: I don't have the answer regarding how  
21 much vehicles are devalued, but I'd like to suggest some  
22 places to look. And one would be to maybe ask lenders or  
23 insurers.

24 Because I know we heard from consumers who were  
25 informed that they had a buyback vehicle. Then they found

1 out it had a history of safety defects. And their lender  
2 wanted to call the entire note due because they said it was  
3 not collateral for their loan.

4 MS. HARRINGTON: How many times are you aware of  
5 that having happened?

6 MS. SHAHAN: Not real often. It was when they, when  
7 they had like bad brakes, bad steering.

8 MS. HARRINGTON: Single digit, double digit?

9 MS. SHAHAN: Right. And it was partly because --

10 (Laughter.)

11 MS. HARRINGTON: Which of those two?

12 (Laughter.)

13 MS. SHAHAN: Single. Single digits.

14 MS. HARRINGTON: Okay.

15 MS. SHAHAN: And it's because it had to be a  
16 combination of things. One, they had to become aware. And  
17 consumers aren't always aware.

18 The other was they had to find out the history of  
19 the vehicle included the safety defect. And the third was  
20 that their lender insurer found out. In a lot of cases they  
21 don't even, they don't know.

22 Because the title is not branded, the lenders or  
23 insurers don't have a way to know that the vehicle has  
24 problems. But these were cases where it got publicity in  
25 their lender insurer that they had got in touch with them



1 and said.

2 MS. HARRINGTON: It would be pretty costly for the  
3 FTC to ask all the lenders and insurers about this on the  
4 basis of --

5 MS. SHAHAN: A few.

6 MS. HARRINGTON: --a single digit number. I mean, I  
7 think, you know, you have to think about what the cost to  
8 the consumers who are getting those loans would be as the  
9 lenders absorb the cost of responding to subpoenas from the  
10 Federal Trade Commission.

11 MS. SHAHAN: I understand. I'm just thinking if we  
12 were to be branding more titles, lenders and insurers might  
13 take more notice of that. You know, they aren't around the  
14 table, but obviously they have a concern.

15 MS. HARRINGTON: Okay. Gerry.

16 MR. DUCHARME: We have not done it, this is in  
17 answer to Carole's question earlier. We have not done a  
18 real survey on all of this. But we have had some experience  
19 in connection with our recontact program that I described a  
20 little while ago.

21 And funny enough, the great majority, the  
22 overwhelming majority of people that we contacted were  
23 delighted with the fact that they get a twelve -twelve  
24 warranty that they weren't aware of.

25 They evidence delight with the car. And we've had

1 very, very few, I can just count them on one hand, you know,  
2 single digits here, where we've had, you know, sticky  
3 situations where they wanted to take some action because  
4 think felt that there was some wrongdoing.

5 And these are people who did not receive disclosure  
6 at the dealership at the point of sale. So when you're  
7 looking at magnitude of the problem out there, I guess we've  
8 come to learn that you may get several people in several  
9 states who make a lot of noise, maybe go to the media and  
10 get a lot in the press.

11 But in the real world the common person buying a  
12 car, once they find out what's happened sort of look at it  
13 as kind of a no -brainer. I don't want to deflate this whole  
14 thing, but that's our experience.

15 MS. HARRINGTON: Evan.

16 MR. JOHNSON: Well, one is I think Ford's experience  
17 might be certainly different than other industry members.  
18 But I think Ford's done a pretty good job and they've  
19 certainly done a good job of telling us they do a good job.

20 (Laughter.)

21 MR. DUCHARME: Thank you very much.

22 (Laughter.)

23 MR. JOHNSON: But there are other problems here. No  
24 one is going to be able to totally quantify this. The  
25 record is replete with the problem of cars going between

1 states and disclosures not being made.

2 When we took a quick look at GM's disclosure  
3 earlier, and I guess Pennsylvania at one time said it was  
4 fine. But I think the quick reaction of people here is that  
5 it was not.

6 While I'm not intimately familiar with Chrysler's  
7 disclosures, I would be willing to bet that a fair number of  
8 us could find some problems with them. The need for studies  
9 is probably true. We probably need focus groups, et cetera.

10 But I think with too much work we can show that  
11 disclosures as a status quo are not adequate even when  
12 they're given.

13 The -- I'm curious. You know, we've gone on and on  
14 about the title branding. I think we beat it to death. And  
15 I'll throw out something that I sort of did in my comments.  
16 Some people have told me it was stupid to do it then, it's  
17 probably stupid now.

18 But the title branding does seem to be somewhat more  
19 severe. And certainly there is more opposition to it, and  
20 my perception is than other disclosure forms.

21 So do you do something different if you have a, if  
22 we have a fairly broad universe of vehicles that we do a  
23 written disclosure on, as we were discussing this morning  
24 but couldn't quite reach agreement on?

25 But for branding do you take a smaller universe,

1       like maybe a quite small universe of those that are actually  
2       lemons for branding because of it being more severe? Does  
3       it make any sense to not have the same threshold for all  
4       different mechanisms that are used? I don't know. But I  
5       think that has to be thought about.

6               MS. HARRINGTON: Okay. Janet. I would just remind  
7       you all that we have about six minutes left here.

8               MS. SMITH: I thank Evan for helping me get found  
9       again because I got lost there for a few minutes. That's  
10       what I was going to say.

11              And I thought I heard people saying this morning  
12       that we disclose all our buybacks; it doesn't matter what we  
13       buy them back for. And then I was convinced. But we don't,  
14       but title branding is horrible, horrible and useless and  
15       terrible.

16              So I guess I was trying to figure out what are we  
17       talking about, what the problem is. And thank you, Evan,  
18       for helping me get found again. It sounds like one form of  
19       disclosure is okay and another is not. I guess I'm  
20       interested in knowing why.

21              MS. HARRINGTON: Well, I would offer one answer, and  
22       that is it's probably different to say lemon than it is to  
23       say bought this car back because the original purchaser  
24       complained of a leaky roof and the manufacturer says we  
25       fixed it.

1 MS. SMITH: That sounds like lemon to me.

2 MS. HARRINGTON: Well, but, I mean, a brand has a  
3 more succinct and disparaging, potentially, connotation I  
4 would think. I would think. That'd be my guess. I don't  
5 know.

6 Lou, you're next on the list. What do you think?

7 MR. GOLDFARB: Well, actually I put this up here  
8 when you were accepting single digit studies.

9 MS. HARRINGTON: Oh.

10 (Laughter.)

11 MR. GOLDFARB: Speaking to Carole's point about the  
12 effectiveness of disclosures, we do have some experience  
13 with, not large numbers but the number of consumers who we  
14 brought up to testify at a proceeding.

15 And a significant number actually got into double  
16 digits that our disclosure was very meaningful to them along  
17 with the one -year warranty and that they do not feel that  
18 having a brand lemon, or actually warranty read on their  
19 warranty return, gave them significantly more information  
20 and would have affected their decision at point of sale  
21 either in terms of the amount they bargained for or whether  
22 to buy the vehicle, so. But, Carole, there is too little  
23 out there to really make a definitive determination.

24 MS. HARRINGTON: I would think that there might be  
25 some interesting developing work on your part. I mean, if

1 it costs seven times more to get a new customer than keep  
2 one, you know, satisfied, it seems like this would be pretty  
3 useful information.

4 MR. GOLDFARB: That was Peter's number.

5 MR. KITZMILLER: That was mine.

6 MR. GOLDFARB: I'm not sure that's our experience.

7 MS. HARRINGTON: Peter, you're next on the list.

8 One of the Peters.

9 MR. KITZMILLER: No, I'm down.

10 MS. HARRINGTON: Peters are all down.

11 George.

12 MR. VELEZ: Yeah. I guess I'm not going to let our  
13 disclosure form be attacked that way without a response. I  
14 think the key to that disclosure form is the fact that it  
15 has space to write in what was wrong with it, the problem.

16 And I don't know that we've had any consumers who  
17 have actually seen the form complain that it's confusing,  
18 first of all.

19 Second of all, we're not arguing about whether title  
20 branding is good, Janet, or whether we ought to disclose at  
21 point of sale. From General Motor's perspective, we'll do  
22 whatever anyone wants that is effective as long as it's  
23 uniform.

24 What we do have a problem with is, when I was in,  
25 for example, when I was in high school the State of Texas

1 decided that pie was going to be equal to seven over three  
2 or whatever, two point one three, whatever fraction or  
3 approximation there is. It doesn't make it so.

4 And a state can brand something. And that's fine;  
5 we don't care about that. But it doesn't necessarily mean  
6 that that's a bad car just because it was branded. It tells  
7 something about the history of that vehicle.

8 And we don't have a problem disclosing the history  
9 of the vehicle. We do disclose in every single instance.  
10 And Lou's gripe with that, as is mine, is that that doesn't  
11 mean that's a lemon and it doesn't mean it's a bad car and  
12 ought to be thrown away.

13 MS. HARRINGTON: I'm reading a note from one of my  
14 colleagues. I should have worn my progressive bifocals  
15 today. I have no idea what that is.

16 (Laughter.)

17 MS. HARRINGTON: Adam, what do you want to know?  
18 What's the question?

19 MR. COHN: Well, I'd like to hear what people think  
20 about something that. We talked about a database earlier in  
21 a lot of detail. And we've been talking about branding and  
22 disclosures on the vehicle later today.

23 I just wanted to hear what people thought about

1 that into the notification that would be either on the title  
2 brand or on the vehicle itself or in the disclosure at the  
3 point of sale and then rely on the database for more  
4 detailed information.

5 In other words, the consumer might get that point of  
6 sale notice that they need to be on alert that there might  
7 be something wrong with the car, and then they can access  
8 the database by an 800 number or whatever.

9 MS. HARRINGTON: Well, we have one minute. And my  
10 hunch is that the answer to that question is it depends on  
11 what the content of the disclosure is.

12 But, Lou, do you want to give that --

13 MR. GOLDFARB: Well, you have to keep in mind what a  
14 transaction is like. People who buy used cars, from our  
15 experience, don't consult their computer initially. I mean,  
16 they go out to used car lots and see a car.

17 And whatever information that they rely on  
18 negotiating that car, it has to be there, okay. They're not  
19 going to be giving those go look somewhere else and come  
20 back a week later and see whether you want to buy this car  
21 and what you want to pay for it.

22 So nothing is really meaningful unless it's there.  
23 And that's why we give a disclosure and have been at point  
24 of sale.

25 And the only real shortcoming that I think has been



1 demonstrated to some extent is that in some cases that  
2 disclosure doesn't make it all the way through. We need to  
3 look at ways to make it go all the way through.

4 MS. HARRINGTON: Well, another, probably another  
5 perspective on that is that a different shortcoming is that  
6 the content of the disclosure isn't significant, that it's  
7 too, that it glosses over.

8 MR. GOLDFARB: It's inadequate.

9 MS. HARRINGTON: It's inadequate, it's, you know. I  
10 mean, some of the, and I'm not endorsing it.

11 MR. GOLDFARB: I would agree with that.

12 MS. HARRINGTON: Right. No. I'm just sort of, some  
13 of the comments that we've heard suggest that some think  
14 that saying something about the manufacturer having made  
15 repair is misleading. Others think that, you know, the  
16 characterization of the buyback is misleading. So, I mean,  
17 I think that gets us to content.

18 MR. GOLDFARB: Well, I'd really like to know from  
19 Janet what should be in place of, you know, the  
20 manufacturer's statement of what it has done. I mean,  
21 either it's been repaired or it's not or there is some  
22 dispute as to whether it's been repaired.

23 But the most important thing a consumer could want  
24 is what's happened to this? I mean, what is this --

25 MS. HARRINGTON: Janet's comment earlier was that

1 that shouldn't included at all one way or the other.

2 MR. GOLDFARB: What do you say?

3 MS. SMITH: I don't know.

4 MR. GOLDFARB: Nothing?

5 MS. HARRINGTON: Janet says nothing.

6 (Laughter.)

7 MS. HARRINGTON: Jack, you're going to have the last  
8 word. Then we're done with discussion.

9 MR. GILLIS: Okay. I think from CFA's perspective,  
10 I'm just speaking for CFA, we think that's a good idea, a  
11 big, bold warning, this is a buyback.

12 There is a whole bunch of issues associated with  
13 that; how do you find out why it was bought back, was the  
14 problem fixed, so forth.

15 But right now we sense, regardless of all these  
16 papers that we've seen here, consumers aren't being told.  
17 So it's got to be a big, bold warning, do something else,  
18 but this is a buyback.

19 MS. HARRINGTON: Warning?

20 MR. MIERZWINSKI: On a lemon yellow background.

21 MR. GILLIS: Yeah.

22 MS. HARRINGTON: All right. We are at a breaking  
23 point here only in terms of our schedule but not our spirit.  
24 And we will resume promptly at three p.m. to discuss the  
25 issue of uniformity.

1                   (Whereupon, a short recess was taken.)

2                   MS. HARRINGTON:  Toward uniformity.  This is where  
3 we talk about how the United Nations is going to take over  
4 the world.

5                   (Laughter.)

6                   MS. HARRINGTON:  This is where we talk about whether  
7 or not we need a uniform national standard or approach to  
8 the information that's provided to consumers about vehicles  
9 that have been the subject of repurchaser buyback.

10                  Ruth, are you back there?  Ruth, we need a little

1 repeating one another.

2 So would someone like to begin the discussion?  
3 Assuming that there should be some uniformity, what is it  
4 that should be uniformly required by way of disclosure?

5 John?

6 Now, Robert, I wanted to point out that your little  
7 sticky was up at the end of the last session and you didn't  
8 get called on, and that was two times today that that  
9 happened; twice.

10 MR. GRAHAM: Twice running.

11 MS. HARRINGTON: Do you want to say anything about  
12 this?

13 MR. GRAHAM: Well, I had something to say on a  
14 separate topic before, which I've forgotten.

15 MS. HARRINGTON: Well, we won't allow you to speak  
16 on another topic.

17 MR. GRAHAM: But I will share my very broad views on  
18 uniformity.

19 MS. HARRINGTON: Okay.

20 MR. GRAHAM: I think uniformity does serve a  
21 purpose. To the extent that it serves to effectuate better  
22 disclosure to the consumer, it's a good thing. As soon as  
23 it stops serving that interest, it's a bad thing.

24 And so our general view, before we get into, deeper  
25 into the details, is that a fully preemptive Federal

1 standard is a bad thing. It's a, you've got, the states  
2 have to have the freedom to provide an extra measure of  
3 protection to the citizens.

4 It's a reserve power that they've had for two  
5 hundred and some odd years to safeguard the health, safety,  
6 and morals of their citizenry. And I think that if you're  
7 going to have a, if you're going to have a fully preemptive  
8 law, you've got to have a very, very, very good reason.

9 MS. HARRINGTON: John.

10 MR. WHATLEY: Well, I'm all in favor of a fully  
11 preemptive Federal law so I'm going to start out with  
12 initial disagreement. And the reason is relatively  
13 practical.

14 And you said what disclosures must be. I think it  
15 falls into two categories. The first is a standard itself  
16 on which you've got, you trigger the disclosure. That needs  
17 to be uniform so that it can be applied by the customer  
18 relations departments of the manufacturers throughout the  
19 country and do it uniformly so that there is sort of a less  
20 chance of making mistakes. It is a very practical problem.

21 If you have one standard to apply, you can apply it,  
22 you can get better at applying it and you'll do it right.  
23 Under current systems, a lot of the problems I think that  
24 arise here are because the dealers and the customer  
25 relations departments have to apply a number of different

1 standards, and it's tough keeping them straight and making  
2 the right standards, making the right disclosures in the  
3 right state.

4 So the standard itself for disclosure I think needs  
5 to be uniform, and I think it needs to be the same  
6 everywhere. There doesn't need to be a more protective one.  
7 If you need to make more, give more protection, give it at a  
8 Federal level. Make it uniform, make it preemptive.

9 And the other thing that needs to be uniform I think  
10 is sort of the path you follow after that. If it's going to  
11 be title branding, make it the same. I don't know how, I  
12 don't endorse title branding, but it needs to be the same  
13 procedures from state to state.

14 If it's going to be contract disclosure, which I  
15 said in the last session I thought was the way to go, that  
16 needs to be uniform to state to state. Otherwise problems  
17 fall into the process and you make mistakes and you're going  
18 to --

19 And that I think right now something we could do, if  
20 there is a problem with title disclosure in this country, it  
21 follows from the fact that there is too much vulcanization.  
22 There are too many pratfalls for those people who have to  
23 make the decision on what to do.

24 MS. HARRINGTON: One question that I would like to  
25 throw out here, and we'd appreciate it if the next two or

1 three that I call on would comment on it, and anyone else,  
2 is whether there is any possibility for consensus around the  
3 following equation.

4 A trigger that is very inclusive of the sort that we  
5 discussed this morning, that is, what would trigger the  
6 disclosure requirement would be the buyback of the car but  
7 content that is less inclusive, shall we say.

8 That is, is there any -- Because I think that  
9 historically at least, the differences of view have been  
10 that the states favor a Federal law that leaves intact state  
11 requirements because the state, because the content of the  
12 state disclosures is more to the liking of the individual  
13 state.

14 The state believes that that, that the content gives  
15 better protection to its citizens. But on the other hand,  
16 other consumer advocates argue that the trigger isn't  
17 inclusive enough.

18 And so I'm just wondering if there is any, if there  
19 is any room for compromise along the lines of the equation  
20 that I suggest; a very inclusive trigger, a less inclusive,  
21 if you will, content, broader categories of information in  
22 the disclosure rather than, you know, whatever it is that  
23 the states require that is currently, at least, that is more  
24 detailed.

25 Lou.

1 MR. GOLDFARB: We put a tremendous value on  
2 uniformity. We would go very, very far along the road to  
3 inclusiveness if there could be uniformity. We'd even go  
4 down the road to more data being disclosed if we could have  
5 uniformity, but --

6 MS. HARRINGTON: What in your mind is the more  
7 burdensome statement of disclosure?

8 MR. GOLDFARB: Well, wait a second. But uniformity,  
9 uniformity coupled with fifty different requirements means  
10 uniformity doesn't exist. So that is really what the  
11 concern here is. I mean, all the virtues of uniformity are  
12 gone without uniformity.

13 MS. HARRINGTON: Right. Well, is there a state that  
14 you, you don't even have to name the state, but can you  
15 describe a disclosure requirement that is more inclusive?

16 Is there a state that you think has, or is there a  
17 particular state requirement disclosure requirement that you  
18 think is particularly detailed and maybe overkill, as you  
19 call it?

20 MR. GOLDFARB: There are a number of state  
21 disclosure requirements which are in two parts. One, if it  
22 comes within their definition of a lemon, be branded a  
23 lemon, and then give the reasons that it was, the problems  
24 complained of and the things that were done to repair it.

25 If it's not branded a lemon, you say it was a



1 manufacturer buyback and give the reasons that were  
2 complained of and what you did to repair it. That is what  
3 we're doing, and that is the right way to go.

4 That is the most informative way to get the  
5 information to consumers in a meaningful way. And there are  
6 states that come close. They give autonomy as to what  
7 specifically is said as far as the problem complained of and  
8 the action taken by the manufacturer. That's up to the  
9 manufacturer.

10 MS. HARRINGTON: I guess what I'm asking is whether  
11 the manufacturers and others who complain that the lack of  
12 uniformity among state disclosure requirements really is a  
13 problem for you, that it creates burdens, whether you can  
14 live, whether you could live with a Federal law that  
15 required that disclosures be those that would be set forth  
16 in what you think of is the most burdensome state disclosure  
17 law.

18 MR. GOLDFARB: We could accept that. But the only  
19 problem with the varied state laws is the branding  
20 requirement, because we can't go among states and have the  
21 same branding implemented in various states. So, I mean,  
22 that is the problem with varying state requirements. But as  
23 far as what's disclosed --

24 MS. HARRINGTON: Well, let's set aside the branding  
25 issue for the moment and just think about what you think of

1 as the most burdensome state, set of state disclosures. If  
2 that were, if the most burdensome were the national  
3 standard, would that be acceptable?

4 MR. GOLDFARB: Yes.

5 MS. HARRINGTON: Now, states. We only have one  
6 state, unfortunately. Do you think that the, Janet, do you  
7 have any sense of whether the states think that, would see  
8 their disclosure requirements as being somewhere on a  
9 spectrum of more inclusive, more burdensome, or is it a  
10 matter of, you know, different and better information that's  
11 required by one state versus another?

12 I mean, is there, would there be any way that you  
13 think that the states could come to some agreement on sort  
14 of a most inclusive disclosure standard? Any idea?

15 MS. SMITH: That is a hard one. Because I don't  
16 know, it's hard for me to speak to all the states because  
17 all the requirements are so, are different.

18 I think, at least speaking for our state, it's not  
19 so much that it's burdensome, because I'm not sure how  
20 you're defining burdensome.

21 If you're saying burdensome meaning burdensome on  
22 the manufacturers, our concern is more that the information  
23 be complete and accessible to the consumer at the point of  
24 sale and that we have a means of monitoring and enforcing  
25 the compliance with that information. Whether or not that's

1 burdensome on somebody, that's not a big concern.

2 MS. HARRINGTON: Okay.

3 MS. SMITH: I can't speak for any other states.

4 MS. HARRINGTON: Phil, do you have a point of view  
5 on that?

6 MR. NOWICKI: Well, I'll give you my personal point  
7 of view and then I'll give you what I think I sense the  
8 states' reaction might be. Maybe I'll go in that order.

9 I think the states will be somewhat ambivalent to  
10 anything that's preemptive. I think they think that new  
11 problems may develop that, they may be at a local level,  
12 that they would like to think that they could handle in a  
13 more specific fashion.

14 I will give you my point of view as I have looked at  
15 this situation, as I have done research, as I have looked at  
16 all of the states and what they require. And right now we  
17 have something that even with great, strong standards we  
18 have something that doesn't work very well as far as  
19 accomplishing its objective.

20 And when I hear people willing to make some  
21 concessions on the broadness of a disclosure standard and so  
22 forth and perhaps seeing some kind of uniformity, even if it  
23 has a preemptive element, I think that has merit and I think  
24 it is maybe one of the ways to solve this problem.

25 I don't know about total preemption. But I would

1 think there would have to be some preemption there to  
2 achieve a common standard that I think would work for the  
3 states.

4 The states can look at it from an idealistic

1 that. But I think you would have to include everyone who  
2 sells cars. But, yeah.

3 MS. HARRINGTON: John.

4 MR. WHATLEY: Can I ask a point of clarification?

5 MS. HARRINGTON: Um -hmm.

6 MR. WHATLEY: You initially premised this on the two  
7 pieces.

8 MS. HARRINGTON: Um -hmm.

9 MR. WHATLEY: Trigger and then the content.

10 MS. HARRINGTON: Um -hmm.

11 MR. WHATLEY: Are you saying both would be uniform  
12 or just the trigger would be uniform?

13 MS. HARRINGTON: Both the trigger and the content  
14 would be uniform.

15 MR. WHATLEY: Then I think the answer is yes.  
16 Because we would say --

17 MS. HARRINGTON: Talking about a more inclusive  
18 trigger --

19 MR. WHATLEY: A more inclusive trigger.

20 MS. HARRINGTON: --and a more, for lack of a better  
21 word, more burdensome disclosure or more --

22 MR. WHATLEY: As long as they're both uniform and we  
23 can figure out what to do under those standards, I think yes  
24 is the answer.

25 MS. HARRINGTON: Lori, do you have a point of view

1 on that?

2 MS. COHEN: There are so many things I've been  
3 wanting to respond to. You're asking the state point of  
4 view. We do represent state motor vehicle administrators.  
5 They could have a little different opinions than the state  
6 attorneys general on the enforcement side.

7 We strongly believe in uniformity. It's hard to get  
8 it; we've been trying for a long time. Sometimes Federal  
9 laws are helpful. It would be helpful in coming up with a  
10 common definition. And on the salvage side, that's what the  
11 HR2900 is about.

12 So many things here. What kind of disclosure for  
13 the state motor vehicle administrators? You would want to  
14 have the least burdensome and yet something that's  
15 meaningful.

16 You need standard definitions. That would be  
17 extremely helpful. And something that you can transmit  
18 electronically so you don't have to rely on the paper state  
19 to state.

20 So it's all a balancing act that we need to work  
21 together and come up with these definitions and the right  
22 mix of some things. Manufacturers agree we don't want lots  
23 of forms, lots of procedures, lots of requirements.

24 MS. HARRINGTON: Okay. Ed.

25 MR. MIERZWINSKI: Well, from the standpoint of

1 consumer groups, the "P" word really gets us very upset.  
2 And the preemption of state laws just for the sake of  
3 uniformity I think is, I think is going too far for where  
4 this debate really is at.

5 And I would prefer that we start from the point of  
6 minimal standards and then see if we need to discuss the  
7 idea of uniformity.

8 If we're talking about minimal standards, that is,  
9 to have a Federal standard that takes away the weaker state  
10 standards, we're for that. But if we're talking about also  
11 taking away the stronger states' standards --

12 MS. HARRINGTON: No, we're not. We're saying we  
13 would take the strongest state standard.

14 MR. MIERZWINSKI: And take away the right of the  
15 states to go farther.

16 MS. HARRINGTON: Yes. Yes.

17 MR. MIERZWINSKI: Well, we're against that. But the  
18 first part of your system is good.

19 MS. HARRINGTON: So you're against preemption,  
20 period.

21 MR. MIERZWINSKI: Well, if you took the strongest  
22 state standard, I would strongly argue that very few states  
23 would go further unless that strongest standard turned out  
24 to not be adequate enough and that you would achieve your  
25 goal without eviscerating the rights of the states to go

1 farther.

2 That is, no state that has a number of problems  
3 before it is going to have either attorneys general,  
4 consumer groups or other people agitating for a different  
5 law.

6 It's going to, they're going to give your law a  
7 chance to work because there are many other things to deal  
8 with. But if you take away their right to work on another  
9 law that is better, there may be other problems that come  
10 up.

11 And then we've got to come back to the Federal  
12 Government. And moving the Federal Government is kind of  
13 like moving a, well, it's hard to move the Federal  
14 Government.

15 (Laughter.)

16 MR. MIERZWINSKI: And it's better to be able to move  
17 a couple of states. And then once you've moved a couple of  
18 states, then you can move the Federal Government. I mean,  
19 that's why we don't like to give away that right.

20 But again, if you bring the bar -- and I, you know,  
21 this industry here, I don't doubt what everybody is saying  
22 here is sincere.

23 But when we work on the Hill, when we talk about  
24 bringing it up to the level of the strongest state, we  
25 usually end up with a level of the weakest state. In the



1 end those are the fights we end up with. And that's one of  
2 the other reasons we get kind of concerned when we get to  
3 the preemptive battle.

4 MS. HARRINGTON: Okay. Berta.

5 MS. PHELPS: Again, in our industry we handle  
6 roughly fifty million cars a year. And we see the problem  
7 with nonuniformity in the salvage end, the problems it  
8 causes for us, for the dealers, for the consumers.

9 What happens, they are in every walk of business and  
10 every walk of life, there are unscrupulous people,  
11 unscrupulous dealers.

12 They will take advantage of the states that have  
13 less stringent requirements for disclosure and move those  
14 vehicles in those states and sell them there. Unless you  
15 have a uniform law, make the Federal law preemptive so all  
16 the states will have to comply the same way, I really don't  
17 they you're accomplishing it.

18 MS. HARRINGTON: Okay. Jack.

19 MR. GILLIS: CFA views preemption much in the way  
20 Lou Goldfard views the American Trial Lawyers. Having said  
21 that, we are very open to a uniform set of standards that  
22 would be, in the contingency is that we would have to have  
23 an extraordinary good faith effort by the manufacturers to  
24 hammer out a set of standards that truly are meaningful and  
25 that can be subject to outside verification.

1           It's not just the car company putting data into this  
2 system. So with those two exemptions, I think we're very  
3 open to a uniform set of standards.

4           MS. HARRINGTON: But not a preemptive, not a Federal  
5 standard that is preemptive.

6           MR. GILLIS: CFA's position is --

7           MS. HARRINGTON: Lou is stalking out now that you've  
8 made reference to his views about the American Trial  
9 Lawyers.

10          MR. GILLIS: I know. Well --

11          (Laughter.)

12          MR. JOHNSON: He's probably going out to find one.

13          MR. GILLIS: He's probably going out to find one,  
14 right. I'm not saying no to preemption. I am saying there  
15 is a long, long history and concern, as Ed said, about the  
16 issue of preemption. But I'm not saying no.

17          MS. HARRINGTON: Peter.

18          MR. MIERZWINSKI: Yes. I know from Washington

1           And I think there are other states who would share  
2           that point of view. And it's not only the content of the  
3           disclosure, but it also has to do with the manner in which  
4           it occurs.

5           That is, things like prominence, where it is on the  
6           vehicle, at what point it occurs during the transaction, how  
7           visible it is, whether there is a signature, all those  
8           things are just as important if not more important than the  
9           actual wording of it.

10           So that's very important to address. Because the  
11           words on it, and many of us here are wordsmiths, but it's  
12           the process of how it actually occurs that really determines  
13           in many cases the actual effectiveness of the document.

14           MS. HARRINGTON: Okay. Phil.

15           MR. NOWICKI: Actually, I'm going to pass and come  
16           back if other people have comments.

17           MS. HARRINGTON: Okay. Steve.

18           MR. TATERKA: I guess I would express some of the  
19           same concerns that some of the other consumer

1           So you could, you could have the uniformity. But  
2 yet if some states wanted to mandate something over and  
3 above what was already Federally mandated, that might work  
4 in terms of what disclosures have to be made.

5           That might pose a problem in terms of what the  
6 trigger is. Because I still wouldn't want to preclude a  
7 state from having a trigger that might be more  
8 comprehensive.

9           And I think the whole difficulty in having this  
10 discussion is is that although you have posed the question  
11 in terms of the most comprehensive definition of buyback and  
12 the most all inclusive requirements in terms of disclosures,  
13 you know, the devil is in the details.

14           And as a consumer representative, I'd hate to sign  
15 off on something without looking at whatever those details  
16 might be.

17           MS. HARRINGTON: Well, we're very familiar with the  
18 history of the debate over preemption in consumer protection  
19 matters here at the FTC. So I don't want to have that whole  
20 discussion again.

21           What I'm looking for here is a sense of whether  
22 there's been any movement. Because I know where the states  
23 have been. I know where consumer groups have been. I know  
24 where industry has been.

25           Do we have any movement here on this I guess is one

1 of the questions that I'm asking. We will hear from Evan.  
2 And, Peggy, you had your flag up but it's down now?

3 MS. BOWERS: I just had one more point I wanted to  
4 add.

5 MS. HARRINGTON: Well, you were up before them. But  
6 I didn't know whether you didn't want to speak.

7 MS. BOWERS: I just, I just want to respond to  
8 Peter's point. He talked about not the content but the  
9 prominence.

10 And one of the things about uniformity that I think  
11 is something we don't want to overlook is the resources that  
12 we have, if we can address them all to one standard for  
13 training purposes of our people, it makes it so much easier  
14 for us to be able to make sure that the content is correct,  
15 that the prominence is there and that all of these things  
16 are properly addressed as opposed to trying to use our  
17 resources for fifty different standards.

18 So I think that, you know, if you can do one  
19 standard, you really can make it more effective in addition  
20 to having the threshold that you're looking for.

21 MS. HARRINGTON: Evan and then Phil.

22 MR. JOHNSON: The, I think there is more of an  
23 argument for uniformity in the topics that we're dealing  
24 with now on used car disclosures, and in many other aspects  
25 of lemon laws, et cetera.

1           When you start to get into possible titling areas or  
2 other disclosures, you'll have the pressings of the FTC Used  
3 Car Rule, the strong Federal presence in the area. Though  
4 it is not totally preemptive, you have become almost uniform  
5 with the exception of a couple states into something a  
6 little bit in addition.

7           But it does preempt anything inconsistent. And that  
8 sort of approach here may make sense. The problem, one  
9 problem is of course that you have a lot more states with  
10 something apparently on the books than we did in the used  
11 car rule. And so that's a problematic area.

12           But I think if you come up with a good, strong  
13 Federal approach, you're going to accomplish uniformity  
14 virtually totally whether or not you make it absolutely  
15 preemptive, in my view. You're going to accomplish what you  
16 want.

17           MS. HARRINGTON: Phil.

18           MR. NOWICKI: I was just going to say on the used  
19 car rule you have that; it's basically preemptive unless the  
20 state can show a stronger need. I think there's three  
21 states, though, that have the separate requirements for the  
22 disclosure.

23           So I don't know if that lends any support to how you  
24 might want to approach this problem. But I gather that's  
25 been relatively successful and not overly burdensome, so.

1 MS. HARRINGTON: Peter.

2 MR. MAIER: Actually, that's a good example.  
3 Because the used car rule actually in Washington State is a  
4 big problem because it requires an as -is denomination, when  
5 under Washington State law that is hardly ever the case. It  
6 is a very good example where we should not have preemption.

7 MS. HARRINGTON: Peter, I'm not quite sure I'm  
8 following how this actually plays out in Washington State.  
9 Would you enlighten me?

10 MR. MAIER: You mean in used car?

11 MS. HARRINGTON: Yeah. Why is it a problem?

12 MR. MAIER: Well, because under Washington State law  
13 to disclaim an implied warranty takes specific negotiations  
14 and so forth which hardly ever occurs except in a  
15 theoretical sense.

16 MR. HILE: So you just leave the box unchecked.  
17 There's usually a sticker. There's a box on the used car  
18 sticker than says "as is." If you check it, it's as -is. If  
19 you leave it unchecked, then there's no warranty.

20 MR. MAIER: Yes. But the sticker is required and  
21 they always check it. And there should be more on there.  
22 And this is not on our point here. But the point is that  
23 under Washington's law it does not, it actually, I think  
24 it's counterproductive because it misleads people that in  
25 fact it is an as -is state when in fact it is not.

1 MS. HARRINGTON: Evan. Did you want to be  
2 recognized?

3 MR. JOHNSON: No, I have nothing more to comment.  
4 Private conversation.

5 MS. HARRINGTON: Share with the class, Evan.

6 (Laughter.)

7 MS. HARRINGTON: Well, it seems to me that we  
8 started out on a bright note and things have sort of slid  
9 downhill here on this topic. That is, we began with some  
10 sense that there was an equation for a compromise. But my



1 MR. GRAHAM: Uniform preemptive standard?

2 MS. HARRINGTON: Let's start, let's start with  
3 uniformity.

4 MR. GRAHAM: That's the whole thing.

5 MR. GILLIS: Let's start with the uniform. Let's  
6 start with uniform.

7 MS. HARRINGTON: Start with uniformity.

8 MR. GRAHAM: Okay. Sure.

9 MS. HARRINGTON: What would, you know, what would  
10 -- I mean, I think that we've heard that the manufacturers  
11 would be willing to, could live with a more inclusive  
12 trigger and a uniform, would go for a more inclusive trigger  
13 if the disclosure standard, the content standard was  
14 uniform.

15 MS. BOWERS: If there were uniformity.

16 MS. HARRINGTON: Theoretically, yeah, if there were  
17 uniformity. Is there a very small group of you that would  
18 be willing to try to come up with something that we would  
19 mail around to all of the participants, sort of a straw,  
20 just a straw poll, nothing binding. It would be on the  
21 record.

22 Is there an OMB problem with that? Does anyone  
23 know? Lee, you're here. You know about those things. No?

24 MR. GRAHAM: Don't you have to file a reduction of  
25 paperwork in?

1 MR. HILE: If it's more than twenty people.

2 MS. HARRINGTON: If it's more than twenty people.

3 Good. Well, we won't poll all of you.

4 (Laughter.)

5 MS. HARRINGTON: You know, I think that there -- You  
6 know, we would really be interested in knowing what the  
7 prospect for consensus might be on a uniform disclosure.

8 MR. GILLIS: Why don't we have like two or three  
9 manufacturers, database person, and a couple consumer people  
10 just -- I'm not sure we can come to a consensus.

11 MS. HARRINGTON: It would be interesting to see.

12 MR. GILLIS: Right.

13 MS. HARRINGTON: It would be interesting to see.

14 Now, the last one of the these kinds of public workshops  
15 that I moderated was in a completely different subject area,  
16 but we sent a group of six people out of the room and told  
17 them to pretend that they were stranded on a desert island  
18 and they couldn't get off until they came to a consensus on  
19 how to make a particular disclosure. And they're, still  
20 they're starving.

21 (Laughter.)

22 MS. HARRINGTON: So I think you're right. It may  
23 not be possible. But I think that a good follow -up to this  
24 discussion today would be to see whether there really is any  
25 prospect for agreement on uniform, on the content and

1 trigger of uniform disclosure.

2 Phil?

3 MR. NOWICKI: I don't know if we have to entirely  
4 reinvent the wheel. Five years ago on a task force that I  
5 was involved with in NAAG we put together a model law  
6 dealing with resold lemons.

7 And Connecticut adopted most of it. Utah adopted  
8 most of it. Indiana adopted most of it. And I guess if we  
9 throw California into the formula, you could probably pick

1 meeting.

2 MS. HARRINGTON: But did they take a position?

3 MR. NOWICKI: Well, I think John was at the meeting  
4 in Fort Lauderdale when it was adopted. And Lou Goldfarb  
5 was there. I mean I --

6 MR. WHATLEY: We didn't take a position.

7 MR. NOWICKI: Again, it was from the issue that it  
8 was not preemptive. It was just states wanting to do that.  
9 I mean, I don't think it's in the context to consider how  
10 they felt about it knowing that this is just the highest  
11 standard and every state was going to go out and whether  
12 they were going to adopt it or not adopt it. I think if we  
13 had to work preemptive with that there might have been a  
14 different response, so.

15 MS. HARRINGTON: Do you know, Peggy, did Ford have a  
16 position on that?

17 MS. BOWERS: No, I'm sorry, I don't know.

18 MS. HARRINGTON: Jackie?

19 MS. GLASSMAN: Apparently Lou was there, but I was  
20 not so I don't know what it was.

21 MS. HARRINGTON: Okay. Are you suggesting that to  
22 be a starting point, Phil?

23 MR. NOWICKI: I think it would simplify things. And  
24 based on my research that I've done over the last few  
25 months, it seems to be the case that you're trying to find

1 the highest standard. And the elements there that I think  
2 would satisfy consumer people is probably in those four  
3 states.

4 MS. HARRINGTON: Does anyone have any other comment  
5 on uniformity, in this section because we may move to the  
6 public discussion portion of the program if no one has  
7 anything else to say.

8 MS. SHAHAN: I have a question.

9 MS. HARRINGTON: Um -hmm.

10 MS. SHAHAN: And that is, I'd appreciate, I need  
11 some clarification from the manufacturers and the dealers  
12 possibly and maybe other companies as well regarding whether  
13 they, what they really want is uniformity or whether  
14 preemption in and of itself is what they're after.

15 Now, if you could have a hundred percent uniformity  
16 through regulation that sets the standard that all the  
17 states love and don't supersede, are you accomplishing what  
18 you're after or are you after preemption for reasons other  
19 than uniformity?

20 MS. HARRINGTON: John.

21 MR. WHATLEY: In my view preemption guarantees  
22 uniformity.

23 MS. SHAHAN: That's like begging the customer, isn't  
24 it? You've saying you have to have preemption in order to  
25 get --

1           MR. WHATLEY: In a theoretical world, in a  
2 theoretical world if all 51 jurisdictions got together in  
3 agreement, we'll do this and no more, which I don't think  
4 they can do anyway, that would be fine. But they're not  
5 going to do that.

6           If they were going to -- they didn't even agree on  
7 the NAAG proposal on Federal regs. In fact, four or five  
8 states did. A lot more didn't adopt it. And we got no  
9 uniformity here.

10          MR. GILLIS: Is there a critical mass that you would  
11 be happy with, if 40 states agreed or something? I mean,  
12 that's better than 50 different.

13          MR. GRAHAM: But then you've got 11 different  
14 states.

15          MR. WHATLEY: Yeah, you've still got to keep -- I  
16 mean, the problem we have, as I said in the first comment I  
17 made, the more standards you have the more chances you have  
18 to make a mistake.

19          And that's what we're concerned about. If we have a  
20 clear, simple uniform standard you make fewer mistakes.  
21 Consumers benefit, we benefit. That's our view. If it's  
22 two standards as opposed to one, there is that much more  
23 chance for mistakes.

24          It's clearly more palatable. But my real preference  
25 is give us one stand, make it tough, and we'll live with it.

1 MS. HARRINGTON: Evan.

2 MR. JOHNSON: Well, you see, I think this is  
3 different than past things that I've seen. And I'm more  
4 optimistic than you, Eileen, because I don't recall the  
5 industry saying --

6 MS. HARRINGTON: Wow.

7 MR. JOHNSON: --that we'll go to the, we'll go to  
8 the strongest. I mean, I'm sure there's a limit there  
9 somewhere to how far I'm willing to go for uniformity. But  
10 I haven't, I haven't heard that before. And I, you know, I  
11 think that's a major --

12 MR. GILLIS: See, they don't know about this new law  
13 in Maryland that you're passing.

14 (Laughter.)

15 MR. JOHNSON: That's right. I think that's a major  
16 concession. And it changed from some of what we heard  
17 earlier, you know, throughout the day. I mean, it seems to  
18 me they've said they're willing to reconsider everything for  
19 uniformity. And that's where there is a chance to do  
20 something.

21 MS. HARRINGTON: Berta.

22 MS. PHELPS: Unless you have preemption, I don't  
23 think you can accomplish uniformity. And I see this in our  
24 daily business life. And I'm giving you one example. I  
25 guess I have to keep harping on salvage because this is an

1 issue we are very familiar with.

2 I will not name the state. They just passed a new  
3 salvage law, 85 percent is rebuildable, 95 percent is scrap.

4 The legislature had enough power behind them from the, from  
5 one segment of the industry which now allows the 95 percent  
6 to be rebuildable.

7 Even so, the law says it is scrap. So the states  
8 within themselves, their own laws they cannot come up with  
9 uniformity. And we deal with all the motor vehicle  
10 administrators throughout the United States.

11 And if you hear one common theme among them is that  
12 they cannot accomplish uniformity among themselves. That is  
13 why they all supported the anti car -theft act. That's why  
14 they supported the uniformity with salvage, because among  
15 themselves they cannot come up with uniformity.

16 There are such strong lobbyists in certain states  
17 that will not allow uniformity. So truly just take a poll  
18 among the state administrators, motor vehicle administrators  
19 and see how they feel about achieving uniformity on their  
20 own. And you will find that they will tell you it is not  
21 possible. So.

22 MS. HARRINGTON: Evan, did you want to speak again?

23 MR. JOHNSON: No, I don't.

24 MS. HARRINGTON: Okay. John. Hurry, get those  
25 post -its down.



1                   Well, I want to see whether we might in the wake of  
2                   this discussion test whether we really have moved, whether  
3                   we have had some movement by putting a little work group

1 MS. SHAHAN: Good.

2 MS. HARRINGTON: It's up to you guys to figure out  
3 how to meet. But it would be an interesting follow -up to  
4 see whether you can come up with something that you all can  
5 agree on.

6 Jack.

7 MR. GILLIS: Is John included?

8 MS. HARRINGTON: No, but he could be. I mean, the  
9 larger the group, the more difficult the task.

10 MR. WHATLEY: I think it would a liability if I'm  
11 not.

12 MR. GILLIS: I think we need an international.

13 MS. HARRINGTON: I think --

14 MS. SHAHAN: Could we, I'm not sure if you included  
15 Garry Desjardins. He's not here so he can't say no.

16 MS. HARRINGTON: Janet, Garry can talk to Janet.  
17 Does anybody have a problem with that? All right. Do you  
18 think, Jack, since you're the first name on my list, would  
19 you chair this?

20 MR. GILLIS: Yes.

21 MS. HARRINGTON: And could you, could this group,  
22 through whatever means of conversation you can arrange, get  
23 back to us in a month to tell us whether you have been able  
24 to come to a consensus?

25 MR. GILLIS: Okay. As you indicated, this is not a

1 opportunity for us to propose that the FTC --

2 MS. HARRINGTON: Yes.

3 MR. GILLIS: --present a law. I would also like to  
4 say that if we don't come to a consensus, we preserve our  
5 options here.

6 MS. HARRINGTON: Sure. Yeah. No. I think --

7 MR. GILLIS: We're going to give it a good faith to  
8 come to a consensus.

9 MS. HARRINGTON: Yeah. I -- Understood.  
10 Understood.

11 MR. GILLIS: Good. I'll be happy to do that.

12 MS. HARRINGTON: This is, this is, you know,  
13 everyone just making a good faith effort to see whether  
14 consensus can be achieved.

15 And so what we're looking for back from you, Jack,  
16 is, yes, we achieved consensus and here's what it is; no, we  
17 didn't. And then if you can give us anything additional, we  
18 came really close, you know, but this group just couldn't  
19 agree.

20 MR. GRAHAM: That might be a mistake in disclosure.

21 MS. HARRINGTON: Nah. But it would be, and so, you  
22 know, let's say November 3rd we'll hear back from you. And  
23 this group will conference over the phone.

24 MS. PHELPS: Can I make one comment?

25 MS. HARRINGTON: Yes.

1 MS. PHELPS: I do want to make clear that I have  
2 absolutely no experience with dealing with consumers.

3 MR. GILLIS: You're going to love it.

4 (Laughter.)

5 MS. PHELPS: I tried to get out.

6 MS. SHAHAN: Would it be possible to have a little  
7 more time?

8 MS. HARRINGTON: No. No.

9 MS. SHAHAN: It's going to be before the election.

10 MS. HARRINGTON: Well, it has nothing to do with the  
11 election. It has to do with a month from today. If you  
12 want it to be a month and four days from today so that  
13 you're after the election, that's fine.

14 But, you know, this is, if you can't agree on this  
15 in 30 days, you're not going to agree on it in 60 days or 90  
16 days or 120 days I don't think. And, you know, you might  
17 disagree, but that's why it's our meeting.

18 (Laughter.)

19 MR. JOHNSON: How much specificity are you looking  
20 for from this?

21 MS. HARRINGTON: Jack will worry about that.

22 MR. GILLIS: Yeah.

23 MS. HARRINGTON: That's, you know.

24 MR. GILLIS: I mean, it's going to be very specific.  
25 Because I don't want any fooling around later. I mean,

1 let's just make it specific. If we can't agree on something  
2 really tight and really strong, then we just can't do it and  
3 we'll move forward.

4 MS. HARRINGTON: All right. Now we're at the  
5 portion of the program where we're going to hear from  
6 members of the audience.

7 Tom, you have the index cards, please.

8 MR. ROWAN: Three of them were distributed and none  
9 of them have been returned.

10 MS. HARRINGTON: Okay. Well, there is someone who  
11 wants to return his index card, and it's the gentleman from  
12 Mazda.

13 Okay. We have Robert Mathieson from Mazda Motor of  
14 America, Inc., who would like to discuss the definition of  
15 buyback and the issue of standards for uniformity.

16 And if we could give him the microphone that's right  
17 near you, Evan, that one comes off.

18 And Jack Oprah Gillis is at the mike.

19 (Laughter.)

20 MR. MATHIESON: Oh, thank you. Am I supposed to  
21 stand up?

22 MS. HARRINGTON: You're supposed to talk in the  
23 other end. There you go.

24 MR. MATHIESON: Am I supposed to stand up?

25 MS. HARRINGTON: No.

1           MR. MATHIESON: Ah. Well, I think this has been  
2 most interesting from my point of view. I should say right  
3 away that I'm not an attorney, and that's one of the points  
4 of why I wanted to speak.

5           We've heard a lot of high level gentlemen and ladies  
6 at the meeting. And I think we have seen that there's been  
7 a lot of disagreement as well as some agreement.

8           The point that I would like to make is that all this  
9 uniformity and definition trickles down to blokes like me  
10 who actually have to write the process for the manufacturer.  
11 And that is very difficult. As you can gather, if we can't  
12 reach agreement at this high level, it's even more difficult  
13 at my level.

1 Toyota.

2 MS. BAKER: Yes. Is

3 MS. HARRINGTON: Did I mispronounce your name?

4 MS. BAKER: Lestanja is correct. Thank you. And I  
5 also have enjoyed the conversation today but wanted to at  
6 least make the same plea that Bob made. So my statements  
7 are going to be redundant at this point.

8 Because I also am charged with the responsibility of  
9 knowing when a car has to have a disclosure and what the  
10 disclosure must say and when a title has to be branded.

11 And the overwhelming I think here is the variety of  
12 triggers and the variety of disclosure that has to be made.  
13 And so I would strongly request again simplicity. I think  
14 we support John 100 percent when he says we would take the  
15 toughest standard out there.

16 And as long as we had to do it in all of the states  
17 where we resell vehicles, we would be happy to do that  
18 because it not only serves us but it serves our consumers.

19 And I would like to, at least on Toyota's behalf,  
20 say that we are interested in the consumers having  
21 information about the history of these vehicles when they go  
22 in to buy them.

23 MR. MATHIESON: Here, here.

24 MS. HARRINGTON: Thank you, Lestanja.

25 We're going to conclude. And I'm going to do the

1 same thing at the closing that we did at the outset this  
2 morning. And that is, I'd like to ask each of the  
3 participants this time to give me in one sentence your sense  
4 of whether we came close to meeting your expectations as you  
5 stated them at the outset.

6 And I know it's hard to do that in one sentence.  
7 But yes or no, you know, would work. And we would take  
8 more. But, you know what, I'd like to know whether we came  
9 close to meeting your expectations today.

10 Let me start with Rosemary, the Petitioner.

11 MS. SHAHAN: I think, I feel like it remains to be  
12 seen.

13 MS. HARRINGTON: Okay.

14 MS. SHAHAN: I definitely appreciated the  
15 opportunity.

16 MS. HARRINGTON: Okay. Jack.

17 MR. GILLIS: Yes.

18 MS. HARRINGTON: Janet.

19 MS. SMITH: I'd have to say yes. And there's one  
20 more thing I'd have to say. If there was one thing I could  
21 take back to my boss as to what impressed me the most today,  
22 it would have to be the last part where the manufacturers  
23 did express almost uniform agreement that if they had to  
24 meet the toughest standard, they would go along with that.  
25 I think that would be something that will impress at least



1 my attorney general.

2 MS. HARRINGTON: Phil.

3 MR. NOWICKI: Yes.

4 MS. GLASSMAN: Yes.

5 MR. JOHNSON: No.

6 MS. HARRINGTON: Lori.

7 MS. COHEN: Yes.

8 MS. BOWERS: Yes.

9 MR. TATERKA: I think the dialogue was real helpful.

10 But I guess I still just don't know whether or not we're  
11 going to be able to work out some of the details. I'm  
12 hopeful that we are. But at least I think the dialogue  
13 really was helpful.

14 MR. GRAHAM: I agree with Steve. I have been in  
15 enough of these meetings where people start screaming and  
16 yelling at each other that this is certainly refreshing.  
17 But I think the result is unclear.

18 MR. KITZMILLER: Yes.

19 MS. SCHWARTZ: Yes.

20 MR. MAIER: I think we need to know more about where  
21 exactly the next step would be headed.

22 MR. DOWDY: I think the idea of having the group  
23 come together in terms of the disclosure, the actual  
24 disclosure is very helpful because then, once knowing what a  
25 disclosure, the content of the disclosure is, we can then go

1 on to the vehicle for that disclosure.

2 MS. PHELPS: Yes.

3 MR. WHATLEY: I guess in my mind it depends on what  
4 happens with the smaller group.

5 MR. COHN: I agree. I think that remains to be  
6 seen. I think some progress was made. So a hesitant yes.

7 MR. VELEZ: Yes.

8 MR. HILE: I think substantial progress was made  
9 toward the goal that I had here, which was to get additional

1 Commission is reviewing the petition that gave rise to this  
2 workshop. We will look forward to hearing in a month from  
3 Jack on behalf of the work group or the whole work group.

4 And we will continue to study these issues. And it  
5 is our goal, the staff's goal, to make a recommendation to  
6 the commission, but I don't know what it will be, with  
7 respect to the petition that the Commission has received.

8 So that is what we expect will be happening at some  
9 point in the not terribly distant future, but certainly it  
10 will be after we hear back from this group that's going to  
11 see whether consensus is possible.

12 Does anyone among the participants have any  
13 questions about process for us? Otherwise we will conclude.

14 (No response.)

15 MS. HARRINGTON: Well, thank you very much.

16 (Whereupon, the proceedings concluded at 3:50 p.m)

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