

# RECENT DEVELOPMENTS

## DECEPTIVE TRADE PRACTICES AND WARRANTIES

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### CAR DEALER DID NOT MISREPRESENT THE NATURE OF THE DEALER'S INVENTORY TAX

Gifford v. Don Davis Auto, Inc., 274 S.W.3d 890 (Tex. App.—Fort Worth 2008).

**FACTS:** Billy Don Gifford purchased a vehicle from Don Davis Auto, Inc., which used a form retail installment sales contract for the transaction. The contract between Gifford and Don Davis included a small charge for a dealer's inventory tax paid to seller. Gifford took possession of the car, became unable to pay and the vehicle was repossessed. Gifford sued Don Davis for fraud, violations of the Texas Finance Code and under the Deceptive Trade Practices Act ("DTPA"). Gifford asserted Don Davis misrepresented the nature of the dealer's inventory tax because it misled him into thinking he owed the taxing authority instead of Don Davis. Don Davis moved for summary judgment. Without specifying the basis for its ruling, the trial court granted summary judgment for Don Davis and Gifford appealed.

**HOLDING:** Affirmed.

**REASONING:** Gifford contended the vehicle inventory tax

was not a tax that could be included as an itemized charge in an installment contract. The court stated that if the dealer's inventory tax is a tax within the meaning of any taxes as used in the Texas Finance Code, then the seller is authorized to include it as an itemized charge in an installment contract. The court agreed with Don Davis that the itemized charge was not a misrepresentation. The unit property tax value is a tax pursuant to the Texas Tax Code, and Texas Finance Code authorizes dealers to include the amount of the unit property tax value for a particular vehicle at the time of sale as an itemized charge. The court explained that Gifford's subjective belief about what the words "dealer's inventory tax paid to seller" meant was not dispositive of whether those words amounted to a misrepresentation. The language used in Don Davis's installment contract was taken almost verbatim from the model contract published by the Office of the Consumer Credit Commissioner, which requires motor vehicle sales contracts include dealer's inventory tax as an itemized charge. Accordingly, the court found Don Davis did not misrepresent the nature of the dealer's inventory tax, and the trial court did not err by granting summary judgment for Don Davis.

## INSURANCE

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### INSURANCE CODE PENALTY DOES NOT APPLY TO AMOUNTS UNCONDITIONALLY OFFERED IN SETTLEMENT

GuideOne Lloyds Ins., Co. v. First Baptist Church of Bedford, 268 S.W.3d 822 (Tex. App. 2008).

**FACTS:** GuideOne Lloyds Insurance Co. issued an insurance policy to First Baptist Church of Bedford ("FBCB"), insuring FBCB's commercial property for hail damage. After a hail storm damaged its roof, FBCB notified GuideOne. A GuideOne adjuster inspected the roof, acknowledged the damages, and stated the roof needed repair. The adjuster recommended paying a certain amount, less the depreciation value to FBCB. GuideOne sent a letter to FBCB with a check in the amount the adjuster recommended in order to settle the claim. FBCB refused the offered settlement, and sent a letter to GuideOne requesting over twice the amount GuideOne offered as settlement, which included the roof replacement cost and attorneys' fees.

GuideOne declined the request and instead offered \$164,000 and a check for \$7,000 to cover emergency repairs. FBCB refused the \$164,000 but accepted the \$7,000 for emergency repairs. GuideOne then offered \$155,000 as "unconditional" tender to replace the roof. FBCB rejected the settlement offer. A jury found in favor of FBCB and the trial court signed a judgment in favor of FBCB in the amount of \$765,105.44 which included an 18% penalty interest. GuideOne filed a motion for new trial but the trial court did not rule on the motion. GuideOne appealed.

**HOLDING:** Affirmed as modified.

**REASONING:** GuideOne argued the court failed to subtract the unconditional tender of \$155,000 and the 18% penalty should not have been applied to that amount. The court found Article 21.55 of the Texas Insurance Code provides for 18% interest on claims unpaid by the insurer. Additionally, the court found the amount of the claim on which a penalty is calculated should be the amount ultimately determined owed by the claimant, less any partial payments made. The court stated the interest penalty may be assessed against the

insurer on the full amount of the claim if the insurer's payment was not unconditional. GuideOne stated twice the payment was unconditional in the letter sent along with the \$155,000 check. The court also found the letter implicitly recognized there remained a disputed amount of money on the claim. FBCB argued the payment was not unconditional, because GuideOne continued to contest its liability. The court held the trial court erred by disregarding the consequences of the jury's finding that tender of the \$155,000 was unconditional. The court modified the judgment by applying the \$155,000 first to the amount of the prejudgment interest then to the remaining \$286,596.63 principal balance. The court then affirmed the judgment.

**The court stated the interest penalty may be assessed against the insurer on the full amount of the claim if the insurer's payment was not unconditional.**