NADC
National Association of Dealer Counsel

DEFENDER

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Lessons for Car Dealers from Fast Food Workers Walkouts

By Rick Warren, *FordHarrison LLP*

What do walkouts by fast food workers making at or slightly above minimum wage have to do with dealerships that have a much better paid and different workforce? Given the legal job protections afforded employees involved in the walkouts and evolving union organizing tactics, perhaps a lot.

Unions have been struggling to improve their organizing in the private sector where less than 7.0% of the workforce nationwide is unionized. The AFL-CIO held its quadrennial convention in Los Angeles in early September 2013. The AFL-CIO announced plans to expand its partnerships with worker centers, community action groups, and other non-traditional labor organizations in an effort to promote unionization. AFL-CIO President Richard Trumka has called for inviting millions of nonunion workers into the labor movement even if their own workplaces are not unionized.

The fast food worker walkouts illustrate how unions are trying to implement these goals. The national campaign to increase the minimum wage to $15 per hour has received financial and technical support from the Service Employees International Union (SEIU). The SEIU also has enlisted various community groups to support the walkouts. The events are orchestrated to maximize media coverage. The SEIU and the community and labor advocacy organizations involved in these walkouts have specific instructions for employees to protect their jobs when they walk out.

Under Section 7 of the National Labor Relations Act (NLRA), employees have a right to "engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." This right to engage in protected concerted activity extends to non-union workplaces. Protected activity includes two or more workers acting together to improve wages or working conditions. The actions of a single employee may be concerted if he or she involves coworkers before acting or acts on behalf of others. The law prohibits an employer from interfering with employees' rights, which means that an employer may not terminate or take any adverse action against an employee for engaging in protected concerted activity such as a strike or walkout. Those rights do not extend to supervisors or managers who are not covered by the NLRA. Employees may not engage in repeat, intermittent, quickie-type strikes. A one-day strike or walkout is protected. Employees who have not been permanently replaced have the right to reinstatement upon making an unconditional offer to return to work.

Employees participating in the fast food worker walkouts give their employer a form letter. It states they are participating in a strike to improve working conditions. The letter lists the dates and times the one-day strikes begin and end. The letter includes the employees' unconditional offer to return to work at their next scheduled shift. The letter also warns employers that it is a violation of federal labor

law to retaliate against employees for engaging in this activity. When employees return to work they are escorted by someone from the SEIU or affiliated organizations.

The SEIU is not yet overtly seeking to organize the workers by these walkouts. However, the Union is seeking to demonstrate that it can be an advocate to improve employees' working conditions and to protect their jobs thereby laying the groundwork for potential future organizing.

Unions around the country have observed these tactics and are seeking to adapt them to their own organizing efforts. If a union is contacted by a disgruntled employee upset about a supervisor, unfair treatment, pay or benefits, or other working conditions, the union may consider using some of these tactics to build support for a union organizing campaign. The employee or employees might walk out briefly in protest guided by the union organizer. Management could not retaliate against an employee for doing so. It is important for management to understand these evolving union tactics, workers' legal rights, and management's legal rights. Dealerships should develop an action plan so that they can effectively and lawfully respond to such activities. ■

Rick Warren is a partner in the national labor and employment law firm FordHarrison LLP and is based in Atlanta. Rick handles all aspects of labor and employment law representing management, including traditional labor law, employment litigation and wage and hour matters. He has represented automotive dealerships throughout the country for more than 20 years. He has been recognized for his labor and employment expertise in Georgia Super Lawyers, Georgia's Legal Elite, Chambers USA: America's Leading Lawyers for Business, and The Best Lawyers in America where he was selected Atlanta Labor Law – Management "Lawyer of the Year" for 2013.

NADC Job Board

Please remember to check the NADC Job Board in the members only section of the website if you are seeking employment.

Please send any job postings to:
emurphy@dealercounsel.com

Executive Director's Message

Erin H. Murphy
NADC Executive Director

The NADC Fall Conference held October 6th - 8th in Chicago was by all accounts a great success! Attendees of the Fall Conference enjoyed a beautiful venue at the Trump International Hotel & Tower and nine informative, timely educational sessions. For the first time this year, the program was extended to 1 ½ days. There were an outstanding 140 members in attendance . . . record breaking numbers for the Fall Conference! Extending the program ½ a day on Tuesday was clearly a big draw and we will do so again next year for the 2014 Fall Conference.

NADC members who were not in attendance can benefit from the conference materials that have been uploaded to our website at www.dealercounsel.com. Please look under the Conference, Workshop and Webinar Handouts section in the eLibrary (2013 NADC Fall Conference) section of the website. Please don't forget that you can upload any documents that you wish to share with the membership in the eLibrary. If you have questions, please contact Charlotte Valentine at cvalentine@dealercounsel.com

I would like to thank all of our event sponsors for their contributions to the Fall Conference. Many thanks to Anderson Economic Group, Arent Fox, LLP, BMO Harris Bank, Counselor Library.com, LLC, Dixon Hughes Goodman LLP, The Fontana Group, Inc., Rosenfield and Company PLLC, and U.S. Trust. It is with the help of our sponsors that we are able to elevate the quality of the conference while keeping the cost low for members.

I would also like to thank the Program Planning Committee for putting together an excellent line up of sessions. Thank you to Patty Covington, Jami Farris, Melinda Levy-Storms and Oren Tasini. Well done all!

All NADC educational programs rely on members' suggestions for topics and speakers. If you have a suggested session and/or topic you think should be covered at future meetings please email me at emurphy@dealercounsel.com. If you are interested in speaking at future conferences please send me a presentation proposal to include session topic, session title, proposed speakers, proposed length of time and a brief description of the session. I encourage you to submit your suggestions soon as we will begin planning for the April Conference this November.

NADC 2014 Attorney Directory

Contact information for the directory will be obtained from your profile on the NADC website.

Please log in to make sure your profile is updated by **December 31, 2013**.

You can also purchase entry upgrades and ad space.
Please watch your email for details.

We are also recruiting topics for 2014 webinars. If you are interested in presenting a webinar or have a topic you would like to see presented please contact me at emurphy@dealercounsel.com.

Please make sure to save the date for the 10th Annual Member Conference being held April 27-29, 2013 at The Four Seasons Resort in Palm Beach, FL. For hotel reservations, please call 1-800-432-2335 or go online www.fourseasons.com/palmbeach and use the promo code 1404NADC20 to receive the discounted rate of $289.00. We look forward to seeing you in sunny Florida! ■

NADC Welcomes New Member

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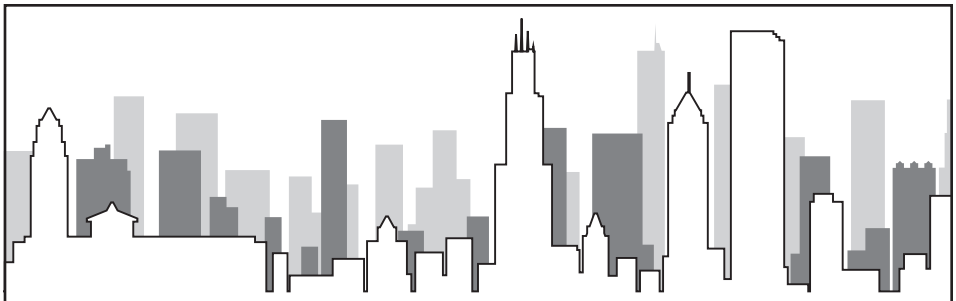
Duluth, GA



2013 NADC Fall Conference • October 6 - 8, 2013

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Confirming Settlement of a Lemon Law Claim

Feature Article

By W. Brett Mason, *Breazeale, Sachse & Wilson, L.L.P.*

It is no secret that customers who believe they purchased a defective vehicle may turn to a Lemon Law lawyer to help them pursue lemon law and breach of warranty claims. Knowing how to respond to customer complaints and resolve them prior to their hiring an attorney are valuable skills that can save time and money. If compromise discussions and negotiation are successful write down the specific terms and conditions of the settlement and have the customer(s) sign and date the agreement to acknowledge the terms of the settlement.

A recent case from the Louisiana First Circuit Court of Appeal illustrates why this is important. In *Cutrer v. Open Range RV Company,* decided on August 13, 2013, the Louisiana First Circuit Court of Appeal reversed a ruling in favor of a seller of a recreation vehicle trailer ("RV") regarding the enforceability of a settlement.

A. Background

Plaintiff, Larry Cutrer, bought a RV from Open Range RV Company ("Open Range") that contained numerous defects. He sued to rescind the sale and recover the purchase price, all costs of the sale, reimbursement for any note payments, attorney's fees and damages for aggravation and inconvenience.

To resolve the dispute, plaintiff's counsel sent a letter to counsel for Open Range proposing a settlement which included itemization of alleged damages (7 items), a blank line for attorney's fees, and a blank line for loss of recreation. The total settlement without attorney's fees and loss of recreation was $48,920.38. The letter was not signed by Mr. Cutrer.

Weeks later, a representative of Open Range faxed the same letter to plaintiff's counsel with added content. Specifically, the figure "$5,000" was inserted in the blank for attorney's fees, a zero was entered in the blank for loss of recreation, and a new total of "53,817.39" was inserted at the bottom. The fax signed by the VP of Operations for Open Range also provided "We accept this offer on the terms stated in your letter."

Open Range filed a Motion To Enforce Settlement Agreement claiming the case was settled. Plaintiff opposed the motion maintaining he did not agree to the amount of attorney's fees or damages. The trial court found there was a valid compromise and signed a judgment dismissing the case. Plaintiff appealed.

B. Discussion

Like any contract, a compromise is formed by the consent of the parties through offer and acceptance. A compromise is valid only if there is a meeting of the minds between the parties.

The Court of Appeal determined that the letter from plaintiff's counsel to counsel for Open Range included seven items plaintiff was willing to settle and an invitation to negotiate the claims for attorney's fees and loss of recreation. Open Range's purported acceptance of the offer was qualified by the condition that plaintiff accept $5,000 in attorney's fees and nothing for loss of recreation. Open Range's fax was a new offer to settle which required plaintiff's acceptance since additional terms were added.

The evidence failed to establish plaintiff's consent to the purported settlement because Open Range's fax was not signed by plaintiff. The Court of Appeal reversed the judgment of the trial court and remanded the case.

C. Why is this important?

Attention to detail is critical when negotiating and confirming a settlement.

1. Without a plaintiff's signature confirming the terms of a purported settlement the settlement may not be enforceable.

2. When confirming a settlement, identify the specific terms to which the parties agree in writing and have it signed by the plaintiff.

3. Acceptance of a settlement offer signed by a plaintiff's attorney, but not the plaintiff, may not be binding unless plaintiff expressly authorized his attorney to enter into the compromise.

Attention to detail is critical when negotiating and confirming a settlement.

4. Modifying the terms of a proposed settlement will likely result in a counter offer which is not binding unless the other party consents to the proposed modifications. ■

At Breazeale, Sachse & Wilson, we help Automobile Dealers in their desire to evaluate and manage business risk by consulting them on changes in the law and aggressively protecting their interests should a dispute arise.

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BE A CONTRIBUTOR!

We are always looking for submissions to publish in the Defender. Please send your contributions or proposals for articles to:

mike.charapp@cwattorneys.com

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