



PA Dealer News

Affiliated with National Independent Auto Dealers Association

OCTOBER 2011

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DealerNews



OCTOBER 2011



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To keep the *Pennsylvania Dealer News* on schedule, certain deadlines must be observed. All information is due at the PIADA office in Harrisburg thirty days prior to the publication date of each issue.

The *Pennsylvania Dealer News* is a publication of the Pennsylvania Independent Automobile Dealers Association, 1501 North Front Street, Harrisburg, PA 17102. The magazine is published monthly in Harrisburg and mailed to over 8,000 Pennsylvania new and used licensed vehicle dealers. Advertising rates available on request. If you have any questions please call the PIADA office at (717) 238-9002.

The Association was established in 1955, and chartered in 1959 under the Non-Profit Corporation Laws of the Commonwealth of Pennsylvania.

The statements and opinions expressed herein are those of the individual authors and do not necessarily represent the views of the *Pennsylvania Dealer News* or the Association. Likewise, the appearance of advertisers, or their identification as members of PIADA, does not constitute an endorsement of the products or services featured.

Editorial and advertising requests should be directed to the Editor: Dealer News, PIADA, 1501 North Front Street, Harrisburg, PA 17102. Telephone (717) 238-9002, FAX (717) 238-3870 or e-mailed to dealernews@PIADA.org.

This magazine is a publication of the Pennsylvania Independent Automobile Dealers Association, but is mailed to all dealers in the state in an effort to encourage non-members to join the Association. For 50 years we have worked and represented the independent car dealer in Pennsylvania. We need your support.

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Pete Lukasiak

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WEATHERING THESE STORMS

Two and one-half years ago, PIADA's Board took substantive action to restore order and improve operations at the Association.

We've witnessed positive developments since that decision, which brought lots of challenges—financial, organizational, and reputational. We're proud to see the progress this Board and your Association has made. Hope you are, too!

All PIADA events and improvements, of course, were and continue to be impacted by those same business conditions persisting on your own lots, at our auto auction partners across this state—indeed, even across national financial networks and businesses supporting car businesses as well as this Association.

PIADA and its members 'weathered' challenges to date—with effort—but, like your own dealerships, we anticipate pressures on Association membership levels and your Association's expenses for months still to come: And we're constantly working to contain costs and expand revenues. Help us help you!

Help us by pointing-out to your fellow dealers—non-members—the many benefits PIADA membership brings you. Or, simply have those dealers call your Association! We'll get them full details on PIADA's expansive menu of dealer services. And, with your help, sign them up!

Our faltering economy and growing webs of new regulations (outlined in Congressman/Dealer Mike Kelly's enclosed OpEd) threaten dealer and Association financial choices. Passage of some proposals could even 'lean-out' membership if fully enacted. And neither you nor your Association want that! We need lots of voices to continue to be heard!

Every dealer reading this issue needs to take a pro-active stance to improve auto industry business conditions. Membership in this Association is the best way to raise the volume of dealer opinions. Congressman/Dealer Kelly says it well.

We're buoyed, too, by surprising volumes of entrepreneurs continuing to approach our Association to open new independent dealerships—ex-Chrysler and GM dealers among them—even in the face of economic pressures. Good for them! (and PIADA!).

Sure, industry-wide vehicle shortages affect each carlot, expansion plans, and business practices. But there are new electronic sources of vehicles and new, non-traditional tools available to members—who previously relied on only local sources. And that information is available through your Association and this publication.

We get to measure business activity through title-applications volumes flowing into PIADA offices and our auction partners. Our growing electronic business is a positive new source of Association revenue.

Still, sometimes when you take a moment to sit back and think, events seemed to pile-up on PIADA. In just these past two months, for example, your Association headquarters survived an earthquake, a 1,000-year rainfall (according to NOAA), and a major flood. Despite bits of broken mortar, minor computer and communications difficulties, and wicked travel for your loyal staff, this 57-year-old trade association is still open, offering greater varieties of service for members.

Although, given the times, I do wonder if we should expect "famine" and "pestilence" some time soon—apparently the only remaining Horsemen of the Apocolypse yet to appear!



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FLOOD INSURANCE

“AM I COVERED?”

The recent flooding here in Pennsylvania has everyone asking themselves “Am I covered?”

OUR OFFICE HAS BEEN INUNDATED WITH PHONE CALLS ASKING THE QUESTION “AM I COVERED?”

To answer this question, we had to look deeper into our client’s policies. In almost every circumstance, individuals and businesses did not carry “Flood Insurance.” Flood coverage is available through various carriers and a national flood program. However, this disaster was unique because the flood damages did not necessarily happen to just people in flood plains or flood zones! Instead there was massive flood damage from flash floods, run-off, and rising creeks. Thus, most individuals and businesses never thought about paying a premium or accepting a quote for something as outrageous as “flood” coverage!.

DOES THIS MEAN THAT I HAD NO COVERAGE FOR THESE DAMAGES?

The answer is No! There are many carriers that extend coverage to include “contents” or in some instances were able to provide some coverage inside a sublimit for “water and sewer back up.” The term “Flood” also does not apply to heavy rain damage that came from underneath a roof line or that was blown in from a second floor and seeped through the structure. Is my auto dealership covered? Coverage could be provided for “contents,” but in most instances the damage to outlying vehicles and inventory are not covered!

HOW CAN I PROTECT MYSELF FROM A FLOOD DISASTER IN THE FUTURE?

In terms of insurance, the fix is rather simple. Contact your agent and ask him or her to provide you with a flood quote and purchase a policy. You do not have to be in a flood plain or flood zone to purchase this coverage. After protecting yourself financially through the purchase of flood insurance, the rest is up to you. Take heed to the warnings announced by public officials, pay attention to your own surroundings, be ready to help your neighbors and then hold on for the ride!

If I can help with any of your insurance needs or questions, feel free to contact me at 717 757 2761; Fax 717 757 2768 or email: lee@dietz-bluet.com 🚗



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Mike Kelly was born in Pittsburgh and raised in Butler, PA. Mike attended the University of Notre Dame on a football and academic scholarship, and after college, returned to Butler to work at Kelly Chevrolet-Cadillac, Inc., which was founded by his father in the early 1950s. Mike took ownership of the dealership in 1995, expanding its operations to include Hyundai and KIA franchises.

Mike has served as Chairman of the Hyundai Eastern Region Dealer Council, Vice Chairman of the Hyundai National Dealer Council, and has served on the boards of the Chevrolet Dealers Advertising Association of Pittsburgh and the Cadillac Consultants of Western Pennsylvania.

Before serving in Congress, Mike was a Butler City councilman, and served on the boards of the Housing Authority of Butler County, the Redevelopment Authority of Butler County, and the Moraine Trails Council of Boys Scouts of America.

As the U.S. Representative of the 3rd Congressional District of Pennsylvania, Mike serves on the Oversight and Government Reform Committee, the House Committee on Foreign Affairs, and the Education and Workforce Committee.

Mike and his wife, Victoria, have four children and five grandchildren.

A CALL TO ACTION

By Mike Kelly

Like many independent auto dealers, Kelly Automotive is family-owned, spanning three generations over the course of our 58-year history. And like many family-run businesses, we've seen our share of highs and lows, experiencing both periods of rapid growth and expansion, and moments of uncertainty, where we've stood at the edge of the abyss, not knowing if payroll would be met or if our doors would remain open.

My father started his career as a parts picker in a Chevrolet warehouse in Pittsburgh, where he was paid by the piece and worked on roller skates so he could fill as many orders as possible. Before my father left to serve in World War II as a B-17 pilot, his boss told him that if my father survived the war, he could return to the warehouse with the possibility of getting a management position, which was an enticing prospect since no Kelly had ever worn a white shirt to work.

At the war's end, my father made his way back to the warehouse, where he eventually became a promotional manager, traveling to dealerships to help them more effectively market their products. At that point, after nearly 10 years working for GM, my dad grew to know the ins and outs, and, quite literally, the nuts and bolts of the auto industry.

By 1953, after scraping together \$10,000 from savings and friends, he opened his one-car showroom, where he did everything himself, from unloading the cars off the train to installing radios.

As you all know, no one is in the automobile dealership business for the easy money and light work load. Dealers work very hard to do what we do and succeed at doing it. Seven days a week on the lot working 10 hours a day is fairly standard, with our families making sacrifices right there along the way. It's an all for one, one for all business, and we do it because we have a love of the beautiful machines we sell, and the communities we serve.

Given my family's generational relationship with GM and our longstanding and hard-earned reputation within the community, you can imagine my shock when I received a call one day from a representative of the new, government-run General Motors, telling me that I could no longer sell Cadillacs as a result of the company's recent restructuring. I sat on that call in disbelief. After all, Kelly Automotive had met every established metric of success, exceeding customer service industry standards and meeting GM's own sales projections for our dealership.

As much as auto dealers sell the brands of the cars on our lots, we too are a brand in and of ourselves. The Kelly Automotive and Cadillac brands are inextricable; the relationships we've built with our Cadillac customers and the years of service and maintenance we've provided to them are very much a part of who we are, and I would be damned if I was going to let a few bureaucrats in Washington try to take that away.

So I fought back. I hired an attorney and we successfully challenged GM's newfound authority to effectively kill a part of our business that my family spent decades building.

One of the problems with the government takeover of GM was that every dealer's fate rested in the hands of an unelected board of directors, which served as the judge, jury, and executioner in the restructuring process.

Instead of letting the free market determine who was in and who was out, these appointed few, with their limited understanding of and experience in the industry, would choose the winners and losers, a game the federal government likes to play all too often.

I decided to run for Congress, in part, because of the fact that in the span of a five minute phone call, the federal government attempted to upend my father's legacy and the legacy I planned to leave to my children. It was a rude awakening and a clarion call to action, not only in defense of my family and business, but in defense of the limited government and free market principles on which our great nation was founded.

There is no denying that the size and scope of the government has reached unprecedented levels in recent years. From 2009 to 2010, the proposed rules in the Federal Register, which is a 34,000-page document weighing 340 pounds, surged from

2,044 to 2,439, an increase of 19.3 percent. In 2010, 43 new major federal regulations were imposed, with a total economic cost of \$26.5 billion, the highest total since at least 1981. In 2011, more than 340 regulations were proposed, and for 2012, there are 219 new regulatory actions, seven of which have an estimated economic cost of more than \$1 billion each, with a potential combined cost of more than \$100 billion in a single year.

Washington's regulations cost the U.S. economy approximately \$1.75 trillion a year, which amounts to \$8,086 per employee, with small businesses facing a higher than average burden. While the costs are steep now, they are projected to get worse in the near future.

According to the Federal Register, there are more than 4,200 new regulations in the pipeline, an estimate that doesn't even include the EPA's new clean air rules, any of the Dodd-Frank regulations, or the increasingly expensive and unpopular Patient Protection and Affordable Care Act, commonly known as Obamacare.

Taken alone, Obamacare will add \$701 billion to the deficit over the next 10 years and will cost \$2.6 trillion within the law's first 10 years of full implementation. In addition, the non-partisan Congressional Budget Office estimates that the law will lead to the loss of roughly 650,000 jobs, while a study by the National Federation of Independent Business suggests a possible hemorrhage of 1.6 million jobs. By either estimate, we are looking at a loss, not a gain, which is a losing proposition for a nation on the brink of insolvency.

The business community has already begun bracing for the devastating effects of Obamacare. To date, the Obama administration has granted more than 1,400 waivers to businesses and unions, temporarily exempting them from Obamacare's annual limit requirements.

These exemptions, which have been granted through an opaque and seemingly arbitrary process, are a harbinger of things to come. When the government takes over one-sixth of the U.S. economy through a partisan political process whereby Congress had to pass the 2,000-page bill to know what was in it, you know we're headed for trouble.

So what can be done about it?

In terms of Obamacare, we repeal it, giving the entire country a waiver from this ill-conceived, costly, and burdensome new entitlement program. In terms of the other onerous, job-crushing regulations, we work to take them off the books as well.

While oversight is important, overregulation is the death knell of the free market. When government grows too large,

it overshadows the very private sector that built our nation and made it the strongest economy in the world.

Keep in mind, since President Obama took office, there's been a 13 percent increase in employment at the various regulatory agencies, with a 16 percent budget increase as well. All the while, federal salaries have continued to grow. In 2010, the average federal employee made \$74,311, compared to \$49,777 for private-sector wages.

On so many levels, our country is trending in the wrong direction. Record debt, historically high unemployment rates, a stagnant GDP, all of these are signs that we're doing something terribly wrong.

We can right the ship, but it's going to take everyone reading this article to get our nation back on a path to prosperity.

Dealers have traditionally played a vital role in their communities, providing jobs, sponsoring little league teams, donating to local charities, and sponsoring school scholarships. We are often the most credible and visible business leaders in our towns, and with that recognition comes great responsibility.

I challenge you to take your community engagement to a new level by promoting the public's knowledge and understanding of basic civics. Sponsor an essay contest on the U.S. Constitution for local elementary school students; promote voter registration; provide information on how to cast an absentee ballot; do everything and anything to encourage civic involvement throughout your community. Sitting on the sidelines of democracy is not an option, and I'm calling on you to take the lead.

Through your example, we can inspire the next generation of Americans to better appreciate the history of our nation's founding and how our form of government actually works. When I hear people say, 'Mike, change isn't happening soon enough,' it seems that I have to remind them that we have two chambers in the Congress, and with control of only one-half of one-third of the federal government, my colleagues in the House and I can only do so much.

We are all in this together. The fate of our nation, the strength of our economy, comes down to what we do as citizens, business owners, and community leaders to keep the American Dream alive for generations to come.

If we disengage, if we distance ourselves from the role we are all called to play, then we have no one but ourselves to blame for letting the greatest nation that mankind has ever known fall by the wayside. 🚗

We can right the ship,
but it's going to take
everyone reading this
article to get our
nation back on a
path to prosperity.



Tom Kontos is Executive Vice-President, Customer Strategies and Analytics. In this position, Mr. Kontos interfaces with members of the media, Wall Street and automotive analysts, dealers, and key ADESA clients to provide information and insight on economic trends in the vehicle remarketing industry, of which ADESA is a major player. Mr. Kontos also provides analytical services to internal and external ADESA audiences in the form of annual market reports, periodic reports on used vehicle price trends, web-based information products, dealer surveys, and other strategic studies. He supplies monthly used vehicle price data to the U.S. Bureau of Economic Analysis (BEA) as part of the BEA's effort to estimate various components of Gross Domestic Product.

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CURRENT USED VEHICLE MARKET CONDITIONS

SUMMARY

Average wholesale prices continued to soften in August from their peak earlier this year, yet they remain at historically high levels. Much of this is seasonal, along with a shifting mix of vehicles towards more dealer-consigned units versus institutional vehicles. Used car supply remains tight, maintaining upward pressure on prices, although Fall de-fleeting may be easing this tightness somewhat.

DETAILS

According to ADESA Analytical Services' monthly analysis of Wholesale Used Vehicle Prices by Vehicle Model Class¹, wholesale used-vehicle prices in August averaged \$9,881 – down 1.0% compared to July and 1.2% lower than August 2010. Car segments appeared generally to adjust downward after price increases earlier this year when gas prices approached \$4.00 nationally. Fullsize cars, pickups and SUVs may be experiencing the opposite effect; their prices rose somewhat in August, perhaps in response to over-correction downward for higher gas prices earlier this year.

Manufacturers registered a 0.7% month-over-month price decrease and a 7.8% year-over-year rise. Fleet/lease consignors experienced a 0.5% sequential price increase and a 0.9% annual decrease. Dealer consignors saw a 3.7% average price decrease versus July and a 6.2% uptick versus August 2010.

ADESA Analytical Services estimates that auction industry inventory levels stood at 26 days at month-end compared to 28 days last August, as used vehicle supply remains tight, though less so than previously.

Based on data from CNW Marketing/Research, retail used vehicle sales in August were up 5.7% year-over-year for franchised dealers and 0.6% for independent dealers. On a month-over-month basis, used vehicle sales were down about 14% for both groups. Similarly, certified used vehicle sales in August were down 3.0% versus July but up 3.0% versus prior year according to Autodata. According to Edmunds, average new vehicle incentives in August stayed relatively flat with July at \$2,387.

WHOLESALE USED VEHICLE PRICE TRENDS

	Average Prices (\$/Unit)			Latest Month Versus:	
	Aug-11	Jul-11	Aug-10	Prior Month	Prior Year
Total All Vehicles	\$10,042	\$9,810	\$9,848	2.4%	2.0%
Total Cars	\$8,960	\$8,600	\$8,691	4.2%	3.1%
Compact Car	\$6,456	\$6,212	\$6,117	3.9%	5.5%
Midsize Car	\$7,495	\$7,091	\$7,001	5.7%	7.1%
Fullsize Car	\$6,609	\$6,994	\$8,124	-5.5%	-18.6%
Luxury Car	\$14,048	\$13,695	\$14,279	2.6%	-1.6%
Sporty Car	\$11,898	\$11,460	\$11,389	3.8%	4.5%
Total Trucks	\$11,261	\$11,147	\$11,140	1.0%	1.1%
Mini Van	\$7,738	\$7,632	\$7,220	1.4%	7.2%
Fullsize Van	\$9,120	\$8,689	\$8,632	5.0%	5.7%
Mini SUV	\$10,520	\$10,250	\$10,541	2.6%	-0.2%
Midsize SUV	\$10,349	\$10,132	\$10,565	2.1%	-2.0%
Fullsize SUV	\$13,835	\$14,031	\$13,562	-1.4%	2.0%
Luxury SUV	\$20,342	\$20,506	\$20,104	-0.8%	1.2%
Compact Pickup	\$7,146	\$6,954	\$7,090	2.8%	0.8%
Fullsize Pickup	\$11,469	\$11,385	\$11,440	0.7%	0.3%

SOURCE: ADESA ANALYTICAL SERVICES. DECEMBER DATA REVISED.

¹The analysis is based on nearly seven million annual sales transactions from over 170 of the largest U.S. wholesale auto auctions, including those of ADESA as well as other auction companies. ADESA Analytical Services segregates these transactions using the J.D. Power and Associates Vehicle Segmentation Guide to study trends by model class.

The views and analysis provided herein relate to the vehicle remarketing industry as a whole and may not relate directly to KAR Auction Services, Inc. The views and analysis are not the views of KAR Auction Services, its management or its subsidiaries; and their accuracy is not warranted. The statements contained in this report and statements that the company may make orally in connection with this report that are not historical facts are forward-looking statements. Words such as "should," "may," "will," "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," "bode", "promises", "likely to" and similar expressions identify forward-looking statements. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from the results projected, expressed or implied by the forward-looking statements. Factors that could cause or contribute to such differences include those matters disclosed in the company's Securities and Exchange Commission filings. The company does not undertake any obligation to update any forward-looking statements.

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In-Transit Tag Update

As announced in the June 2011 Bulletin, PennDOT is developing an electronic system to input and track in-transit tags. After the deployment of the PennDOT program you will no longer be able to issue in-transit tags manually.

CVR is partnered with PennDOT to bring you the new electronic in-transit tags plus much more!

Electronic Title & Registration Benefits

With the CVR solution for Pennsylvania you can increase the productivity of your dealership and help improve customer satisfaction. CVR connects dealers directly with PennDOT via a secure, high speed, reliable network. This unique access provides a number of benefits not available with manual title and registration methods:

- Pay only for what you use AND incur **no start up or monthly fees**
- Process electronic **in-transit tags** as required by PennDOT
- Automate the title and registration process reducing costly errors on titles, fee calculations, and incorrect registrations.
- Generate showroom traffic and increase profits by providing renewals, reissuance of registration cards, stickers and more
- Receive support and training from our highly trained PA team.

Please complete the following information and fax to 440-729-1875.

Dealership Name(s) _____

Address (Main Location) _____

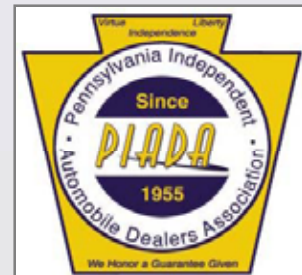
City, State, Zip _____

Contact Name _____

Phone Number _____

E-Mail Address _____

Please contact Merle Ziglear at 304.886.1493, mziglear@cvrreg.com or Bob Wacera at 201.491.2635, rwacera@cvrreg.com



CVR's partnership with PIADA to allows you to help your Association while improving your dealership!

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CHOOSING THE RIGHT RETIREMENT PLAN FOR YOUR SMALL BUSINESS

Did you know that NIADA and NADART have partnered to offer members the exclusive opportunity to sponsor a plan that affords small businesses the same features and advantages as those of larger businesses?

A retirement plan is a valuable tool for recruiting and retaining quality employees, as well as an excellent investment for a small business. For small dealers its a unique opportunity to set aside for your future. Both employers and participating employees reap a number of benefits for starting and contributing to a retirement plan.

Employers can benefit from starting a retirement plan because their employer contributions are tax deductible. As an added benefit, small businesses may qualify for a tax credit associated with starting the plan. According to the Department of Labor, this credit equals 50 percent of the cost to set up and administer a plan, up to a maximum of \$500 per year for each of the first three years of the plan.

Employees benefit from participating in a retirement plan in several ways. High contribution limits (\$16,500 for pre-tax contributions for 2011) let them save large amounts for retirement and catch-up contributions allow those age 50 or older to save an additional \$5,500 beyond the regular contribution limits. If the plan has adopted the Roth 401(k) Contribution feature, participants may invest their after-tax dollars for retirement, and are not constrained by the wage limitations of a Roth IRA. Certain low- and moderate-income employees can also earn a tax credit, known as "Saver's Credit", for participating in their employer-sponsored retirement plan.

NADART retirement plans offer you fiduciary assistance in your role of sponsoring a plan. In order to help you administer the plans, we (NADART) will assume the role of Plan Administrator and recordkeeper. NADART has provided automobile dealers with affordable, high-quality retirement plans since 1957. This experience, combined with easy-streamlined administration, allows NADART to provide PIADA members with exclusive services at an affordable cost. Our Sub20 Plan, designed for companies with 20 or fewer employees, was specifically designed and focuses on the needs of small businesses, including:

- Trustee and Custodial services
- A variety of different investment options
- 24/7 online plan account access
- Online Investment Guidance
- Comprehensive educational materials
- Roth 401(k) Contributions

Additional information about NADART's products and services, including the Sub20 Plan, can be found online at www.nadart.org/retirement. You may also contact NADART at (800) 462-3278 or by e-mail at nadart401k@nada.org or, just call PIADA!



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NIADA CAPITOL HILL REPORT

MOTOR VEHICLE AND HIGHWAY SAFETY IMPROVEMENT ACT

Federal Advocates met with staff of the Senate Commerce Committee for a briefing on a draft of the “Motor Vehicle and Highway Safety Improvement Act” (the National Highway Traffic Safety Administration reauthorization bill). Of particular interest is Section 411, Used Passenger Motor Vehicle Consumer Protection. That section comes from the so-called “Toyota Bill” of last Congress. It focuses on limiting the sale or lease of used motor vehicles with respect to notification of defects, etc. The Commerce staff has asked for NIADA’s comments in writing in September. NADA opposes the bill.

THE WHITE HOUSE

On January 18, the President issued Executive Order 13563, “Improving Regulation and Regulatory Review.” The purpose of the Order, as stated by the President, was to “strike the right balance” between health, safety and environmental regulations and economic growth. Section 6 of the Order required all Executive Branch agencies to review their existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agencies’ regulatory program more effective or less burdensome. Pursuant to that section and at the request of Steve Croley, Special Assistant to the President for Justice and Regulatory Policy, Office of Domestic Policy, NIADA has been asked to submit comments regarding the current motor vehicle regulatory scheme and the Association’s experiences to date. Keith Whann has already provided informal views to Croley. Recently, the Department of Transportation submitted its review and analysis of existing rules under its jurisdiction. Other agencies are to follow suit.

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Per request of Holly Petraeus, Director, Office of Servicemember Affairs, materials are made available to the CFPB on an ongoing basis regarding NIADA’s treatment of, and programs focused on, servicemembers. Via Federal Advocates, CFPB is briefed on ongoing activities of the Association, both general and those that relate to the “servicemember issue” (example, educational programs Keith Whann has/is developing).

DEPARTMENT OF DEFENSE (DOD)

Following up on initial meetings with DOD, Pam McClelland, Senior Program Analyst, Office of Military Community and Family Planning, Office of the Undersecretary of Defense, has asked for additional materials/thoughts on how NIADA could be of assistance to DOD in its development/pursuit of programs to assist servicemembers in dealing with various motor vehicle sale issues. Keith Whann has provided initial information. He is developing the follow-up information per coordination with Federal Advocates.

SMALL BUSINESS ADMINISTRATION (SBA) FLOOR PLAN FINANCING PROGRAM

Following up on meetings and phone conversations with Steve Smits, Associate Administrator, and Patrick Kelley, Senior Advisor, Keith Whann, per coordination with Federal Advocates, is in the process of arranging a workshop of motor vehicle financing entities for a presentation by, and discussion with, Smits/Kelley regarding implementation of SBA’s revised Floor Plan Financing Program, which based upon NIADA’s past experiences, raises some concerns.

CONTINUED ON PAGE 20



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OTHER LEGISLATION OF INTEREST

S.474, the Small Business Regulatory Freedom Act of 2011

Reforms the regulatory process to ensure that small businesses are free to compete and to create jobs, and for other purposes.

S.330, the Consumer Recall Protection Act of 2011

Prohibits a person from selling to consumers any covered product that is subject to a recall. Exempts from such prohibition the sale of a covered product that was subject to a recall because of a defect in such product if: (1) such defect was remedied prior to such sale; and (2) the seller of such product notifies such consumer of such recall, defect, and remedy. Defines a “covered product” to include a motor vehicle or replacement equipment, food, drugs, devices, cosmetics, a biological product, a consumer product, a meat or meat food product, a poultry or poultry product, and an egg or egg product. Defines “recall” for each type of covered product. Treats a violation of such prohibition as a violation of a rule defining an unfair or deceptive act or practice described under the Federal Trade Commission Act. Requires the Consumer Product Safety Commission (CPSC) to establish, maintain, and make available to the public a searchable list of covered products that are subject to a recall.

H.R.860 and S.110, Amends the Internal Revenue Code – Charitable Tax Deduction

Amends the Internal Revenue Code with respect to the charitable tax deduction for contributions of qualified vehicles (i.e., highway motor vehicles, boats, or airplanes) to: (1) set forth revised acknowledgment requirements for vehicles valued at \$2,500 or less and vehicles valued at more than \$2,500; and (2) revise the penalty for submitting a fraudulent acknowledgment.

H.R.1449, the Motor Vehicle Owners Right to Repair Act of 2011

Requires the manufacturer of a motor vehicle sold, leased, or otherwise introduced into U.S. commerce to: (1) provide to the vehicle owner and service providers all information necessary to diagnose, service, maintain, or repair the vehicle; (2) offer for sale to the vehicle owner and service providers any related tool or equipment; and (3) provide the information that enables aftermarket tool companies to manufacture tools with the same functional characteristics. Exempts trade secrets, so long as the information is not disclosed to authorized dealers or service providers. Authorizes enforcement of this Act by the Federal Trade Commission (FTC) and civil actions by state attorneys general.

H.R.527, the Regulatory Flexibility Improvements Act of 2011

Amends the Regulatory Flexibility Act of 1980 (RFA) to revise the definition of “rule” under such Act to exclude a rule of particular (and not general) applicability relating to rates,

wages, and other financial indicators and to define “economic impact” with respect to a proposed or final rule as any direct economic effect on small entities from such rule and any indirect economic effect on small entities that is reasonably foreseeable and that results from such rule. Includes tribal organizations within the definition of “small governmental jurisdictions” for purposes of such Act. Requires initial and final regulatory flexibility analyses to: (1) describe alternatives to a proposed rule that minimize any adverse significant economic impact or maximize the beneficial significant economic impact on small entities, and (2) include revisions or amendments to a land management plan developed by the Secretary of Agriculture or the Secretary of the Interior under specified Acts. Expands elements of initial and final regulatory flexibility analyses under RFA to include estimates and descriptions of the cumulative economic impact of a proposed rule on a small entity. Repeals provisions allowing a waiver or delay of the completion of an initial regulatory flexibility analysis. Requires the Chief Counsel for Advocacy of the Small Business Administration (SBA) to issue rules governing federal agency compliance with RFA requirements. Authorizes the Chief Counsel to modify or amend such rules, to intervene in agency adjudication relating to such rules, and to inform an agency of the impact of its rulemaking on small entities. Revises requirements for agency notification of the SBA Chief Counsel for Advocacy prior to the publication of any proposed rule. Requires agencies to provide the Chief Counsel with: (1) all materials prepared or utilized in making the proposed rule, and (2) information on the potential adverse and beneficial economic impacts of the proposed rule on small entities. Requires each agency to publish in the Federal Register a plan for the periodic review of existing and new rules that have a significant impact on a substantial number of small entities to determine whether such rules should be continued, changed, or rescinded. Provides for judicial review of an agency final rule for compliance with RFA requirements after the publication of such rule. Grants federal courts of appeal jurisdiction to review all final rules issued in accordance with RFA.

H.R.229, the Michael Jon Newkirk Transportation Safety Enhancement Act of 2011

Directs the Secretary of Transportation (DOT) to withhold a graduated percentage of federal-aid highway funds of states for FY2014 and thereafter that do not enact or enforce a law that requires the annual inspection of registered motor vehicles so that they meet or exceed state motor vehicle standards (including the operability of vehicle seatbelts and speedometers).

H.R.164, the Damaged Vehicle Information Act

Directs the Secretary of Transportation (DOT), through the National Highway Traffic Safety Administration (NHTSA), to issue a regulation to require persons who terminate a motor vehicle contract due to flood or water damage, collision, fire damage, theft and recovery, or any circumstance that adversely affects the fair market value of the vehicle to disclose information of such vehicle damage to the public. 🚗



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FORMS

DESCRIPTION

DESCRIPTION	QUANTITY	*MEMBER	NON-*MEMBER	MEMBER EXT	NON-M EXT
"As is" Supplemental Statement	_____	\$22.00	\$44.00	\$ _____	\$ _____
Buyers Guide Plastic Holders (50)	_____	\$35.00	\$70.00	\$ _____	\$ _____
Buyers Guide Window Form	_____	\$16.00	\$32.00	\$ _____	\$ _____
Buyers Guide Window Form (Spanish)	_____	\$16.00	\$32.00	\$ _____	\$ _____
Consignment & Sales Agreement Form	_____	\$16.00	\$32.00	\$ _____	\$ _____
Deal Jackets	_____	\$22.00	\$44.00	\$ _____	\$ _____
Fees Chart (wall mount)	_____	\$12.00	\$24.00	\$ _____	\$ _____
Installment Sales Contract	_____	\$37.00	\$74.00	\$ _____	\$ _____
Key Tags (250)	_____	\$30.00	\$60.00	\$ _____	\$ _____
Lease Agreements	_____	\$51.00	\$102.00	\$ _____	\$ _____
Limited Warranty	_____	\$24.00	\$48.00	\$ _____	\$ _____
No Purchase Required Disclosure	_____	\$22.00	\$44.00	\$ _____	\$ _____
Notary Receipt Pad	_____	\$12.00	\$24.00	\$ _____	\$ _____
Notary Register	_____	\$12.00	\$24.00	\$ _____	\$ _____
Odometer Mileage Statement	_____	\$16.00	\$32.00	\$ _____	\$ _____
Power of Attorney Disclosure Forms	_____	\$16.00	\$32.00	\$ _____	\$ _____
Privacy Policy (Customer Choice)	_____	\$24.00	\$48.00	\$ _____	\$ _____
Rental Agreements	_____	\$30.00	\$60.00	\$ _____	\$ _____
Retail Buyer Order Form	_____	\$30.00	\$60.00	\$ _____	\$ _____
Secure Power of Attorney	_____	\$40.00	\$40.00	\$ _____	\$ _____
Secure Power of Attorney Log Book	_____	\$12.00	\$24.00	\$ _____	\$ _____
Title Release Authorization	_____	\$12.00	\$24.00	\$ _____	\$ _____
Used Vehicle Record	_____	\$12.00	\$24.00	\$ _____	\$ _____

ADP FORMS

Authorization to Release Payoff	_____	\$26.00	\$52.00	\$ _____	\$ _____
Customer Delivery Check List	_____	\$26.00	\$52.00	\$ _____	\$ _____
Customer Proposal	_____	\$26.00	\$52.00	\$ _____	\$ _____
Damage Disclosure	_____	\$26.00	\$52.00	\$ _____	\$ _____
Delivery Confirmation	_____	\$26.00	\$52.00	\$ _____	\$ _____
Deposit & Cash Receipt Book	_____	\$26.00	\$52.00	\$ _____	\$ _____
Goodwill Repair Acknowledgement	_____	\$26.00	\$52.00	\$ _____	\$ _____
Insurance Coverage Acknowledgement	_____	\$26.00	\$52.00	\$ _____	\$ _____
Interpreter Confirmation of Translation	_____	\$26.00	\$52.00	\$ _____	\$ _____
Interpreter Coverage Acknowledgement	_____	\$26.00	\$52.00	\$ _____	\$ _____
Notice to Co-Signer	_____	\$26.00	\$52.00	\$ _____	\$ _____
Test Drive Agreement	_____	\$26.00	\$52.00	\$ _____	\$ _____
Trade-In Appraisal	_____	\$26.00	\$52.00	\$ _____	\$ _____
Wholesale Purchase Agreement	_____	\$26.00	\$52.00	\$ _____	\$ _____
Subtotal		\$ _____	\$ _____	\$ _____	\$ _____
PA Sales Tax		\$ _____	\$ _____	\$ _____	\$ _____

Shipping \$ per pound + Special Shipping \$ at cost. Total w/o shipping \$ _____

Member: If you are a member, only fill out the white areas (Dealership, Phone & Credit Card info)

Non-Member (Membership Application is on page 23)

Members: Make checks payable to: PIADA, 1501 North Front St., Harrisburg, PA 17102

Members may fax orders to 717-238-3870 & be billed later, upon approval from PIADA

Non-Members MUST use & Members may use a credit card by mail, or fax

Dealership _____

Contact _____ Date _____

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____ DIN _____

Card Type: VISA MasterCard American Express Discover

Name on Card _____ Exp. Date _____

Card Number _____ Security Code _____

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County _____ E-mail _____

Phone (____) _____

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(Contributions or gifts to IAD PAC are not deductible as charitable donations for Federal tax purposes; however, the \$375 dues payments are deductible by members as an ordinary and necessary business expense.)

By my signature below, I affirm that: I support the PIADA Code of Ethics and want to strengthen the business and public image of the Independent Automobile Dealer; I request membership in the **Pennsylvania Independent Automobile Dealers Association**, 1501 North Front Street, Harrisburg, PA 17102, (717) 238-9002, Fax (717) 238-3870, www.piada.org, and I authorize PIADA to fax or e-mail important information to me.

Signature _____

My check(s) in the amount of \$ _____

\$375 plus a voluntary PAC fund contribution to IAD Pac of \$24 for a suggested total of \$399 is/are enclosed. (Corporate checks for PAC fund contributions are not permitted by PA law.)

Or please charge this amount to my credit card:

Card type: Visa MasterCard American Express Discover

Name on Card _____

Card Number _____

Expiration Date _____

Signature _____

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OR

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If using a credit card, you may fax this application to PIADA at (717) 238-3870

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Kristi Kohl, GM
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Linda Elliott, Sales/Marketing
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Dave Hermann, Customer Support Manager
Troy Moyer, Commercial Accounts Manager
Tuesday 9:30 A.M.
TRA Sale - Tuesday 1:00 P.M.
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Cranberry Twp., PA 16066
Phone: 724-452-5555 / Fax: 724-452-1310
Jon Schlegel, GM
Shawn Byers, Commercial Accounts Manager
Melissa Robison, Customer Support
Wednesday, 9:00 A.M.
www.manheim.com

NORTH EAST PENNSYLVANIA AA

860 N. Keyser Ave.
Scranton, PA 18504
Phone: 570-207-CARS / Fax: 570-207-1860
James Gaughan, Owner
Joseph Gaughan, Dealer Contact
Lisa Cohowicz, Dealer Contact
Kevin Jennings, Dealer Cnt/F-L
Tuesday 10:00 A.M.
www.nepautoauction.com

ORANGEVILLE AUTO AUCTION

2040 St., Rt. 487
Orangeville, PA 17859
Phone: 570-683-4006 / Fax: 570-683-4018
Karen Sorce, Dealer Contact
Brenda Hartzel, Dealer Contact
Jenn DiFebo, Dealer Contact
Wednesday 10:00 A.M.
www.orangevilleautoauction.com

PITTSBURGH INDEPENDENT AA

378 Hunker Waltz Mill Rd.
New Stanton, PA 15672
Phone: 724-925-4700 / Fax: 724-925-4701
Denny Angelicchio, Dealer Contact
David Angelicchio, Owner & GM
Tuesday 11:00 A.M.
www.pittautoauction.com

PERRYOPOLIS AUTO AUCTION

Route 51 S. Perryopolis, PA 15473
Phone: 724-736-4445 / Fax: 724-736-0466
Renee Smith, Director of Operations
Friday 10:00 A.M.
www.perryautoauction.com

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11 R. South Keyser Ave.
Taylor, PA 18517
Phone: 570-961-3800 (Scranton)
Phone: 570-823-2800 (Wilkes-Barre)
Fax: 570-562-1344
Justin Priblo, Dealer Contact
Melissa Smith, Office Manager
Joe Gaughan, Gene Scagliotti, Owners
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www.swadeaa.com

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Mike Phillips, Assistant GM
Bob Rice, Fleet Lease Manager
Nancy LaTona, Sales Manager
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www.adesa.com/buffalo

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GM Factory Sale Bi-weekly Wednesday 10:00
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Michelle Nichols-Neff, Vice President
Cindy Mitchell, VP of Fleet Operations
Douglas A. Rodriguez, Dealer Sales
Chuck Wenzel, Dealer Sales
John Bellus, Dealer Sales
Christina Thomeycroft, Dealer Sales
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Joe Ruch, AGM
Mark Lee, Dealer Sales Manager
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730 Route 68, P.O. Box 188
Bordentown, NJ 08505
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Pete Sauber, GM
Greg Conover, AGM
Wednesday 9:00 A.M.
www.manheim.com

MANHEIM NEW YORK AA

2000 Dealer Drive
Newburgh, NY 12550
Phone: 845-567-8400 / Fax: 845-567-8410
Gary Charlesworth, GM
Wednesday 9:30 A.M.
Office: M-T-Th 9-5 W 7-6 F 9-3
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MOUNTAIN STATE AUTO AUCTION

Route 2, Box 835,
Shinnston, WV 26431
Phone: 304-592-5300 / Fax: 304-592-3510
Chad Garrison, GM
Joe Pyle, Owner
Monday 10:30 A.M.
Office: 9-5:00
www.mtstateaa.com

STATE LINE AUTO AUCTION

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Tom (thudson@hudco.com) and Nikki (nmunro@hudco.com) are partners in the law firm of Hudson Cook, LLC. Tom is the author of a book, **CARLAW**®, and is the Editor/author of the **CARLAW**® **F&I Legal Desk Book**. The books are available at www.counselorlibrary.com. Tom is also the publisher of **Spot Delivery**®, a monthly legal newsletter for auto dealers, and the Editor in Chief of **CARLAW**®, a monthly report of legal developments in all states for the auto finance and leasing industry (not to be confused with the book). Nikki is a contributing author to the **F&I Legal Desk Book** and frequently writes for **Spot Delivery**®, **Spot Delivery**®, **CARLAW**® and the books are produced by CounselorLibrary.com LLC. For information, call 410-865-5411 or visit www.counselorlibrary.com. Copyright CounselorLibrary.com 2011, all rights reserved. Single publication rights only, to the Association.
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THE CARLAWYER®

by Thomas B. Hudson and Nicole Frush Munro

Here we are again with our monthly collection of selected legislative and enforcement highlights, and a recap of some of the many auto sale and financing lawsuits we follow each month. Remember - what we report here is not every recent development. We just review the ones we think should be important to car dealers - and note that this column does not offer legal advice. You should consult your dealership lawyer with any legal questions.

We include items from other states. Why? We want you to be able to see new legal developments and trends. Also, another state's laws might be a lot like your own state's laws - if AGs or plaintiffs' lawyers are pursuing particular types of claims, those laws and claims might soon appear in your state. As always, though, there is no substitute for checking with your own lawyer before you rely on anything we report or if you have any questions.

FEDERAL LAW

The Federal Trade Commission announced is seeking public comment on its rules and guidance regarding product warranties under the Magnuson-Moss Warranty Act. The FTC is seeking comment on its interpretations of the MMWA, the FTC's Guides for the Advertising of Warranties and Guarantees, and three rules governing disclosure requirements for written warranties on consumer products, requirements for sellers and warrantors to make written warranty terms available to consumers before a sale, and procedural standards for warrantors who want consumers to use a dispute resolution process before suing for breach of warranty. Comments are due by October 24, 2011.

The Consumer Financial Protection Bureau issued Bulletin 11-3, stating that the CFPB has adopted a policy on *ex parte* presentations in rulemaking proceedings in order to promote openness and transparency. An *ex parte* presentation is a presentation by one party only, without notice to or participation by the other party. The policy generally requires public disclosure of *ex parte* presentations made to CFPB staff concerning a pending rulemaking so that members of the public can be informed of the input the CFPB is receiving. The *ex parte* policy does not apply before a rule has been proposed, only once the CFPB publishes a proposed rule in the Federal Register or on the CFPB's website. The policy also applies when the CFPB publishes an interim final rule with a request for comment. The policy addresses the procedures and deadlines for preparing summaries of *ex parte* presentations. The policy also explains certain circumstances in which public disclosure is not required.

On July 28, the CFPB adopted an interim final rule, effective immediately, relating to investigations in order to describe the CFPB's procedures for investigations under Section 1052 of the Consumer Financial Protection Act of 2010. The CFPB also adopted another interim final rule, effective immediately, establishing procedures for the conduct of adjudication proceedings under Section 1053 of the CFPA. The comment period for both rules ends on September 26, 2011.

STATE ENFORCMENT ACTIONS

On August 4, Maryland Attorney General Douglas F. Gansler announced a \$25 million final order for restitution and penalties against U.S. Fidelis, Inc., and the company's owners for deceptively marketing vehicle service contracts that promised to extend existing manufacturers' warranties and provide "bumper to bumper" repair coverage. In July 2010, the Attorney General's Consumer Protection Division charged U.S. Fidelis and its owners with violating the Maryland Consumer Protection Act and Telephone Solicitations Act by misleading consumers regarding the coverage offered in the vehicle service contracts and regarding the company's relationship with manufacturers.

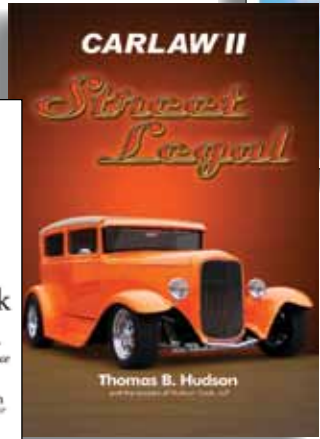
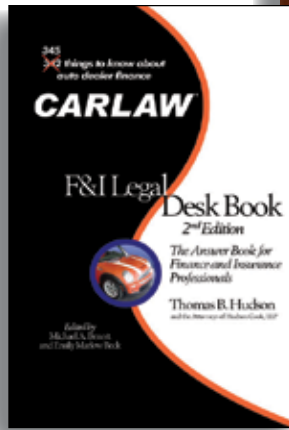
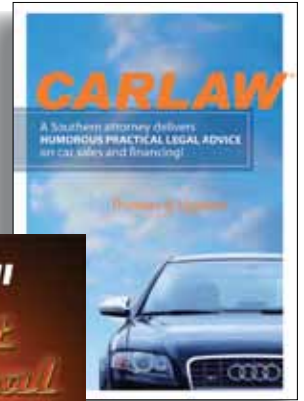
LITIGATION

Arbitration Provisions in Three Separate Documents Were Confusing, Inconsistent, and, therefore, Unenforceable: A car buyer signed a number of documents in connection with her car purchase and financing. Three of the documents - a retail installment contract, a GAP

CONTINUED ON PAGE 28

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INDEPENDENT AUTO AUCTIONS



addendum, and a separate arbitration document – contained arbitration provisions. A dispute arose concerning the amount the buyer was charged for the vehicle, and the buyer brought a class action against the dealership, alleging federal and state law claims. The trial court dismissed the complaint and referred the dispute to arbitration, but the Superior Court of New Jersey, Appellate Division, reversed. The appellate court noted that the arbitration provisions in the installment contract, GAP addendum, and separate arbitration document, read as a whole, were “too plagued with confusing terms and inconsistencies to put a reasonable consumer on fair notice of their intended meaning” and, therefore, concluded that the arbitration provisions were unenforceable for lack of mutual assent. The appellate court found that the documents did not clearly and consistently express the nature and locale of the arbitration forum, did not make clear the time limit in which arbitration must be initiated, did not make clear the costs of arbitration and who would bear those costs, and contained class action waiver provisions that were confusing and inconsistent. See NAACP of Camden County East v. Foulke Management Corp., 2011 N.J. Super. LEXIS 151 (N.J. Super. App. Div. August 2, 2011).

Lessor Owes No Duty to Inspect or Maintain Leased Vehicle:

A company leased a car to a lessee under a lease that required the lessee to maintain the car and have any mechanical problems fixed at her own expense. After she failed to have a state-required annual inspection, and had some faulty brake repairs done to the car, the brakes failed, and the car collided with another car, resulting in a person’s death. The decedent’s representative sued the lessee and the lessor. A jury returned a verdict against the lessor for \$1.1 million after the trial judge instructed the jury to find whether the lessor owed a duty of care to take reasonable steps necessary to assure that the car was in good repair and capable of being operated safely and without posing a danger to others. The lessor moved for a new trial, claiming that the jury instruction was improper because a lessor has no duty to keep the leased car in a safe mechanical condition, and the judge ordered a second trial. In the second trial, the jury found that the lessor owed no duty to maintain the car. This time the decedent’s representative appealed, arguing that the lessor was not entitled to a second trial. The Appeals Court of Massachusetts affirmed, finding that a lessor’s duty is governed by the common law of bailment under which a bailor’s only duty is to deliver non-defective property to the bailee. Although a bailor could assume a larger responsibility, the lease agreement in this case made clear that the lessor did not assume any responsibility to maintain the car while it was in the lessee’s possession under the lease agreement. See Kassis v. Lease and Rental Management Corp., 2011 Mass. App. LEXIS 1035 (Mass. App. July 14, 2011).

Creditor that Granted Credit under Maryland Credit Grantor Closed End Credit Provisions May Repossess Vehicle Solely for Debtor’s Failure to Reaffirm Debt in Bankruptcy:

A car owner sued the company that financed her car purchase for repossessing her car after she received a bankruptcy discharge, even though she was current on her payments, because she did not reaffirm her debt to the creditor. The bankruptcy court certified to the Maryland Court of Appeals the following question: “Whether the repossession of a vehicle based solely on the violation of an ipso facto clause of a vehicle retail installment contract, in the absence of any other breach, is permissible under Maryland law.” The high court found that, in this case, where the creditor elected to have the Maryland Credit Grantor Closed End Credit Provisions apply to the transaction, repossession was proper because those provisions prohibit only acceleration, and not repossession, where a creditor deems itself insecure. See Ford Motor Credit Company, LLC v. Roberson, 2011 Md. LEXIS 443 (Md. July 15, 2011).

Creditor Violates State and Federal Laws by Repossessing Vehicle without Giving Notice of Strict Compliance after Accepting Late Payments:

A car owner moved for summary judgment on his claims that the defendants, including the company that financed his vehicle purchase, violated state and federal laws in the course of repossessing his vehicle for a second time. The U.S. District Court for the District of Minnesota granted the motion. The car owner claimed that the defendants violated the FDCPA and breached the peace because they did not give him proper notice and, therefore, had no right to repossess his vehicle. The court noted that Minnesota Supreme Court precedent provides that if a creditor “has repeatedly accepted late payments, it must ‘notify the debtor that strict compliance with the contract terms will be required before the creditor can lawfully repossess the collateral.’” The court found that such a notice was required in this case where the creditor accepted late payments both before and after repossessing the owner’s vehicle the first time and after giving him notice about his delinquent payments. See Buzzell v. Citizens Automobile Finance, Inc., 2011 U.S. Dist. LEXIS 75820 (D. Minn. July 13, 2011).

Inflated Sale Price Is Not Finance Charge:

A car buyer sued the used car dealership where she bought her car for violating the Truth in Lending Act when it financed the sale of its cars, alleging that the dealership was burying finance charges in the sales prices of the cars. The trial court dismissed the complaint, and the U.S. Court of Appeals for the Second Circuit affirmed. The buyer claimed that the dealership advertised newer cars in its inventory by listing prices that tracked the prices for similar cars in the NADA Used Car Guide but did not advertise prices for its older cars. When a nonprime-credit customer came to the dealership, the dealership allegedly steered the customer to the older vehicles and negotiated prices substantially higher than the prices for similar vehicles in the NADA Guide. The buyer argued that the excess cost was a hidden finance charge, but the appellate court disagreed, noting that although the buyer may have entered into a bad bargain, the purchase price did not include a finance charge. See Poulin v. Balise Auto Sales, Inc., 2011 U.S. App. LEXIS 15001 (2d Cir. (D. Conn.) July 22, 2011).

So there you have it! Stay legal, and we’ll see you next month.





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Reg Evans is a shareholder with Shumaker Williams, P.C., a law firm with offices in Pennsylvania and Maryland. He is chairman of the firm's Automotive Industry and Financial Services Practice Groups. Reg is a former chief counsel with the Pennsylvania Department of Banking. He and the firm represent dealerships and auctions regarding transportation, vehicle board, finance, compliance, and enforcement issues. Reg can be reached at evans@shumakerwilliams.com or 717.763.1121.

A YEAR LATER, THE GRASS IS ALWAYS GREENER...

By Reginald S. Evans, Shumaker Williams, P.C. (PIADA Outside Counsel)

How much new regulatory burden is being assessed toward our used car industry's financing arm by Congress and the federal regulatory agencies? This question is asked especially since it has been just over a year since the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA") was passed into law by Congress. Let's take a comparative look to find out whose grass is really greener (who has less regulatory burden) when it comes to the regulation of financing consumer vehicle purchases.

Our customers need financing. They can obtain it from our dealerships (best bet) that are licensed as installment sellers. Then our dealers either keep the installment sale contract paper in their loan portfolios (Buy Here Pay Here) or assign it to licensed sales finance companies. In the alternative, our customers may pay all cash, which does not happen often, or they may obtain third party financing from a bank or credit union. Due to the mortgage crisis that erupted into a financial crisis in 2008, the banks, credit unions, mortgage lenders, and mortgage brokers have been the focus of new federal legislation, the above referenced DFA. The DFA became law in July 2010 but had a one year ramp up to becoming fully operational. What do we mean by operational? When there is a new federal law from Congress - in this case the DFA is 2,000 pages long - Congress often requires federal government agencies to write new regulations to implement the laws. Such is the case with the DFA.

The finance industry is trying to adjust and comply with the DFA and its many regulations. It's like a hurricane of new requirements with some, but fortunately not a majority, of the winds affecting used car financing. Most of the hurricane is affecting the third party lenders, meaning the banks, credit unions, and the mortgage industry.

For our industry, loan disclosure rules have changed and Buy Here Pay Here dealers will be subject to regulations of a new federal agency created by Congress, meaning the Bureau of Consumer Financial Protection ("CFPB"). The CFPB has been the subject of much controversy regarding who will run it, whether it should have more oversight so as not to have an excessive amount of power, when it may regulate which may depend on when and whether Congress ever approves of an agency head for the CFPB, and how it will regulate Buy Here Pay Here dealers.

But the banks, credit unions, mortgage bankers, mortgage brokers are the ones who are taking the brunt of the regulatory hurricane that is the Dodd-Frank Act and its implementing regulations. Imagine 121 proposed regulations to implement the DFA, 38 of which are finalized, 26 missed deadlines for regulations, one year after the DFA became law. The new credit scoring disclosure requirements of the Federal Reserve and the Federal Trade Commission that became effective in July 2011, which implement section 1100F of the DFA, alone are over 20 pages long and are applicable to all consumer lenders including dealerships licensed as installment sellers. Remember that new rule? It says that if a credit score is used in setting material terms of credit or in taking adverse action, then the DFA requires creditors to disclose credit scores and related information to consumers in notices issued under the Fair Credit Reporting Act ("FCRA").

There are many more provisions that the banking institutions are living with from the DFA: capital raising restrictions, risk management policy enhancement (that means addition), risk retention in securitization of loans (pooling and selling loans to investors), interchange fee limitations (a major issue for the larger banks that restricts their income), ability to repay underwriting requirements mandated, restrictions on executive compensation at public companies ("say on pay" vote by shareholders), deposit insurance coverage changes, whistleblower anti-retaliation rules, and the list goes on.

Granted, this comparison of consumer financing of used car purchases regarding dealers versus banking institutions does not include regulatory burden from dealership licensing rules. But it provides an idea of how much regulatory burden there is out there, and how much is on the dealerships as compared to the banking institutions. May you have greenest of industry pastures as you sell and finance for your customers. 🚗



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