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***The Consumer Finance Podcast: Auto Finance – The CFPB Complaints Report***

**Host: Brooke Conkle and Chris Capurso**

**Date Aired: May 7, 2024**

**Brooke Conkle:**

Hello and welcome to a special edition of the Troutman Pepper *Consumer Finance Podcast* where we're going to discuss all things driving litigation and enforcement action in the world of auto finance. I'm Brooke Conkle. I specialize in litigation. I'm joined by my colleague, Chris Capurso, who specializes in all things compliance. Today, we're going to discuss the CFPB's recent annual report on responses to consumer complaints for 2023.

Morning, Chris. How are you doing?

**Chris Capurso:**

I'm doing good, Brooke.

**Brooke Conkle:**

Chris, can you give us a little bit of background on the CFPB's annual report?

**Chris Capurso:**

Sure. Brooke and I had talked about this for all the listeners out there in the past that we should have like a Premier League minute at the beginning of our podcast because we're both diehard fans. The problem is we don't know when this is going to be released. We don't know how bad things are going to be. So I'm only going to say congratulations to Manchester City. As a diehard Tottenham fan, I'm hoping that Arsenal does not win, and I'm hoping for at least fifth. So, my expectations are aligned. Congrats, Brooke, on winning the title as one of the few people I've ever met who rooted for Man City before the money came. Congratulations. Anyway, on to auto finance.

**Brooke Conkle:**

There you go! How about this, Chris? I will preliminarily congratulate you on qualifying for the Champions League. How about that?

**Chris Capurso:**

Thank you. Whether it's fourth or fifth, I'm a happy person. On the auto side of things, what this podcast is really about, we're discussing the CFPB's recent complaint publication where they summarize the complaints that they've received over the prior year. This is required of them under Dodd-Frank. This report outlines all the complaints they've released in the prior year and emphasizes the different areas that were big in complaints over the prior year.

This complaint report focuses pretty heavily on consumer reporting, but that doesn't mean that there isn't an auto finance section. This auto finance section specifically deals with loans and leases for vehicles. Just to put it in perspective, the bureau received over 1.6 million complaints. They received over 17,000 auto finance-related complaints. Normally, you would say, especially for those of us who are very quick with numbers, 17,000 over 1.6 million is not a heavy percentage.

But, the CFPB is pursuing auto finance actions. What better way to get an eye into what they're thinking than to see what they've highlighted in their complaint report as things the consumers are complaining about and things that they want to highlight in their special publication about what consumers see as problems in auto finance and what the CFPB could potentially go after in the future.

**Brooke Conkle:**

Yea. What's interesting are kind of some of the areas that the bureau highlighted as places where consumers were complaining to the Feds. Specifically, the bureau said, really, there wasn't a ton about loan origination. That's been one of the things that really was interesting about how the bureau sort of characterized complaints from consumers. Focus less on loan origination and really more towards loan servicing and repossession. Specifically, the bureau is a data-driven kind of place, and they specifically sort of plotted the categories of complaints that they received against just sort of general complaints.

One of the things that's really interesting is that the kinds of complaints that consumers were submitting to the bureau were not necessarily problems at the start of a loan, not necessarily problems with credit reports or credit scores as it impacted consumers abilities to get a loan, not necessarily problems getting a loan or a lease. Really, the problem areas that the bureau highlighted were problems in managing the loan or the lease and, again, in repossession. And, specifically, for managing the loan or the lease, the bureau highlighted servicing transfers. What has been problematic according to the bureau with servicing transfers are issues that related to incorrect payment histories, unauthorized add-on products that were in the servicing portion of a loan, repayment agreements, and unauthorized charges.

What's interesting and important for auto finance companies is the bureau is highlighting problems that are associated with servicing portfolio transfers. When servicers transfer, these are issues that the bureau is telling you auto finance companies this is what you should be on the lookout for to mitigate consumer problems. Then the other area as we mentioned repossessions. Chris, you and I know this has been a major focus of the bureau for a number of years. Specifically, I say repossessions, but it's really not just repossessions. It's repossessions and also voluntary surrenders.

So, consumers are complaining that they were not afforded the opportunity to reclaim a vehicle after they had caught up on their loan. Consumers are complaining about unexplained repossessions where they said they were current on their loan. But suddenly, their vehicle was repossessed. It seems like a problem. Repossessions that violated SCRA protections. Then finally, consumers complained that they were working on a workout plan with an auto finance company but nevertheless had their vehicle repossessed.

With all of that background, Chris, these are the problems that the bureau itself is highlighting. So, what do you see kind of coming out of these complaints? Where do you think the bureau is going to go next?

**Chris Capurso:**

Well, I was just going to say one of the interesting things I saw in this report was they did provide a nice little chart to show, Brooke has been mentioning, these are problems with loans or leases. I thought it was interesting. They put at the beginning a chart showing how many of these complaints were related to loans and how many were related to leases. And, it's overwhelmingly loans which, I guess, wouldn't surprise too many people. It's 88% loan to 12% lease.

I guess what I'd be curious about going forward is this is for the prior year. Rates rose, pretty steadily, over the last year. I'd be curious if the lease number goes up a little bit as these finance rates start to go up, and who knows when they're going to drop this year. But as these rates go up, maybe people are looking a little bit more at the lease route and more concerned with the monthly payment, things like that, although we have retail installment contracts going out for more years now to try to get that monthly payment down. That's one thing I thought was interesting and going forward, I'd be curious to see if that lease number goes up a little bit.

Another thing that I thought was interesting was you mentioned the repossession numbers. As Brooke said, they have all these nice charts showing complaints over the last couple years. The repossession chart is very interesting looking because as you might have expected, it was kind of a low line, almost a flat line during the pandemic when servicers were working on workouts, and they were working on trying to allow people to make their payments while being under the stresses of the pandemic and it's kind of a flat line. Then all of a sudden, in the last year and a half, two years, the repossession complaint figures just have this enormous spike, same with and almost right together with problems at the end of the loan or lease. Right when you're at the end of the loan or lease, any complaints related to that, it's interesting that they both spike together right around 2023 and continue to go up. That's something interesting, and I suspect we're going to be seeing even more of that as people start to come out of their arrangements made during the COVID pandemic and especially as the student loan embargo has ended in the last couple months last year. That's another cost that consumers are going to have to be paying.

For some people, it could be the very first time that they've had to pay their student loans. Who knows? Combine that with rising auto finance costs, it'll be curious which one are they going to choose if they have to make a choice on which one to potentially be behind on or not commit the full payment to, things like that. I think that'll be something interesting going forward as there becomes more weight on consumers just trying to figure out how they're going to make their payments on these.

**Brooke Conkle:**

Yes. Another thing that you brought up, Chris, was really the volume of complaints, or I should say the lack thereof. The bureau has kind of categorized for us what they have highlighted from the complaints that they have received from consumers, but one sort of data point that is

undeniable is just as you mentioned, essentially 18,000 consumer complaints. When you contrast that to a million complaints in other areas, a million complaints about credit reporting, there's this huge disparity between kind of the number of folks who are complaining about auto finance companies, auto finance lending, car sales, anything that would sort of fall into that bucket.

But, then you also have – what it always brings me back to is one of the big initiatives of the FTC that we've been talking about which is the new proposed CARS Rule. One of the challenges to the CARS Rule as the challengers have said in their petition is this rule is a solution looking for a problem. Specifically, the petitioners have challenged this idea that the FTC in the CARS Rule is going after, kind of looking to resolve complaints that only represent just the tiniest minority of all vehicle transactions. We're seeing that data just kind of play out here with the CFPB annual report where auto finance complaints only make just the narrowest slice of all of the complaints that the bureau is receiving in a calendar year. Yet we're still seeing kind of really, really important and significant enforcement actions from the bureau, from the FTC related to these issues that maybe really aren't on the radar of consumers so much.

**Chris Capurso:**

Yea. Arising out of, we said, 18,000 complaints if, for example, the problems at the end of the loan or lease, 15%, which they said amounts to 1,900 complaints. Well, those 1,900 complaints are related to items such as lean release and not getting titles in time which is a state wall issue that the CFPB could certainly take a UDAAP approach to but also gap refunds upon full prepayment or total loss. Again, a state issue. A lot of these states have their gap refund laws or their gap waiver, gap insurance-type laws that outline refund requirements. The CFPB can pursue this under a UDAAP theory.

But, these are all based on what according to the bureau is about 1,900 complaints which is not a significant portion of their total complaint volume, but it means absolutely nothing as far as what they could potentially prioritize in the future. Again, they put it in the report. It meant enough for them to type it out, so it's certainly something that they could be looking at in the future.

**Brooke Conkle:**

Yea, and what else is interesting to me is the bureau did provide us with data on sort of the resolution of consumer complaints. As you mentioned, approximately 18,000 complaints, and you see sort of the bureau is providing us with how companies responded to those complaints. There's only a very narrow slice of those where consumers are receiving monetary relief in response to complaints; some complaints being closed with non-monetary relief, the vast majority being closed with an explanation from the company in response to the consumer complaint.

So, what does this mean for auto finance companies? It means that your complaint response processes really need to be buttoned up. If the bureau is sending you complaints from consumers, having a process to address and respond to those complaints is going to... it always has been really important... but it's going to continue to be extremely important moving forward.

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**Chris Capurso:**

Yes. To build off that, auto finance companies need to make sure they have a root cause analysis in place, so they can figure out where these complaints come from. I mean, there could be some things that are just a glitch. There could be one or two that don't normally happen. But companies need to be able to prove that. By the same token, they need to be able to see if there's some kind of trend happening where, "Oh, we are getting a lot of complaints in the specific area of our auto finance," whether it's related to repossessions or whether it's related to gap products or, whatever it could be. Auto finance companies need to be able to identify trends and say, "Okay, we're getting a lot of complaints in this area. How do we address it?"

The bureau has this data. They know where they're getting their complaints from. You want to be the company that not only responds to the complaints, as Brooke said, but also understands where the complaints come from and are able to address any kind of systematic issues that may be leading to those complaints.

**Brooke Conkle:**

That's right. Even in those cases where you're not necessarily getting complaints from consumers, if the CFPB is highlighting areas where they are seeing complaints, then it's a good idea to focus on those areas, even if you're not getting consumer complaints. If you're not getting complaints about repossession, the bureau is still highlighting that as a major focus for them. Even absent complaints, it's always important to focus on those areas for your compliance efforts.

**Chris Capurso:**

Absolutely. The word gift is a bit strong, but it's an opportunity that if you're not getting those complaints, but you're reading this complaint report. Oh, my goodness. A lot of auto finance companies have been getting this specific complaint. That's an opportunity for you to look over your procedures, look over your systems, and figure out could this potential issue be happening to us. If not, that's great. But if you can see the beginnings through your monitoring, that maybe this could become an issue later on that a consumer may complain about, then this CFPB report has been a warning. That it's a way to kind of fine-tune your system so that you're looking for the things that the regulators are looking for.

**Brooke Conkle:**

That's exactly right. We're getting an early spring peak at the regulators playbook for the coming year and these are the areas that they've identified as important and. We'll see these coming up in enforcement action. Won't we, Chris?

**Chris Capurso:**

That's right, Brooke. These will probably be the types of things that the CFPB will be looking for over the next year. As we've hammered home several times in this podcast, it was important enough to write about, even in a complaint report where auto finance was, again, 17,000 of 1.6

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million. It was important enough for them to devote several pages, too, about these different auto finance issues.

So, again, opportunity. We will be positive on this podcast, it's an opportunity for auto finance companies to really check their systems, make sure that their compliance systems are in place, that they're monitoring the right things, and that if you're not getting the complaints yet, that system is fine-tuned, so you don't get them going forward because the CFPB is, obviously, looking at these things.

And with that, we want to thank everyone for listening to this first episode of this special edition of *The Consumer Finance Podcast*. Brooke and I really appreciate everyone taking the time to listen on whatever platform you choose, and we really encourage everyone to be on the lookout for the next episode. Until then, keep on the lookout for any blog post in our [Consumer Financial Services Law Monitor](#). With that, see you next time.

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