

Podcasts | June 16, 2026

The \$10 Million Oops: How One New Jersey Dealer's Penalty Got a Dramatic Makeover

SPEAKERS

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In this episode of *Moving the Metal: The Auto Finance Podcast*, hosts [Brooke Conkle](#) and [Chris Capurso](#) break down a New Jersey enforcement action against a dealer group that began with a 2018 consent order and escalated into a 2023 complaint packed with Consumer Fraud Act allegations — from gray market disclosures and duplicative add-ons to odometer violations and improper warranty sales. The trial court initially imposed over \$10 million in penalties before two rounds of reconsideration brought the final figure down to \$155,000, offering a striking look at how courts balance deterrence, proportionality, and ability to pay. Tune in for a practical breakdown of what this case means for dealers navigating compliance in an era where state enforcement is quickly becoming the front line.

Transcript

Moving the Metal: The Auto Finance Podcast

The \$10 Million Oops: How One New Jersey Dealer's Penalty Got a Dramatic Makeover

Hosts: Brooke Conkle and Chris Capurso

Aired: 6/16/2026

Brooke Conkle (00:10):

Welcome to *Moving the Metal*, the premier legally focused podcast for the auto finance industry. I'm Brooke Conkle, a partner in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Chris Capurso (00:20):

And I'm Chris Capurso, of counsel in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Brooke Conkle (00:24):

Today we'll be talking about a New Jersey case involving a dealer accused of fraud. We'll talk about what happened, how the penalties ballooned and then got reduced, and what this tells us about the interaction between state consumer law and federal regulation in the auto space. But before we jump in, let me remind you to please visit and subscribe to our blogs. We have two great ones that may be of interest to you,

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Brooke Conkle (01:42):

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Chris Capurso (02:17):

Let me take you back, Brooke, to a long time ago.

Brooke Conkle (02:20):

A simpler time, right?

Chris Capurso (02:23):

2018, pre-COVID, PC, as we'll call it. In 2018, the New Jersey Division of Consumer Affairs entered into a consent order with this dealer group, and it was to resolve a then-ongoing investigation into deceptive advertising and sales practices. And specifically, the investigation was highlighted by a failure to clearly disclose gray market vehicles or vehicles not intended for sale in the United States, but also just general advertising failures, disclosure failures related to warranties, and deceptive promotional programs. So there's this consent order from 2018. We fast-forward, we go through a pandemic, we go through all sorts of things, and then we get to 2023, specifically June of 2023, and there is a new complaint against the same dealer group for some similar issues, some new issues. Part of this investigation is an allegation that they violated the consent order, but there are some specific allegations to take note of.

Chris Capurso (03:24):

First off, there are several allegations that the dealer violated New Jersey's Consumer Fraud Act, specifically the prohibition on unconscionable commercial practices and deception for several different types of acts. First, selling after-sale items to consumers that duplicated or provided similar coverage to products or services already included

in the cost of the vehicle or that the consumer had already purchased. Sounds a little like the CARS Rule, which is some foreshadowing to the future, and there's gonna be a few things that are gonna sound CARS Rule-y. Failing to itemize all after-sale items. There we go again. Failing to include a price for a specific type of policy that consumers were required to sign. Failing to disclose or providing disclosures regarding gray market motor vehicles that were not compliant with the consent order. So for anyone out there wondering, do people come back after the consent order? They sure do. They monitor compliance with those consent orders, and this is a great example of that. Selling warranty packages to consumers who were purchasing vehicles that were over 10 years old, even though the warranties did not apply to vehicles older than 10 years old. That's also shades of the CARS Rule, selling something that's worthless to somebody, like I believe one of the examples is like selling a GAP waiver to somebody where the debt ratio would never work out. Having consumers waive the dealer's obligation to sell a used car that meets state inspection standards without providing a separate document containing what the known defects are with the vehicle that might affect its ability to pass inspection. That's a violation of a specific law, the Motor Vehicle Certificate of Ownership law. Failing to provide a copy of the signed odometer disclosure statement in violation of the federal odometer law. Failing to include on the website in the proper font size a specific state-required disclosure that prices include all costs to be paid by the consumer except for licensing costs, registration fees, and taxes. So you've got that, always call this the low-hanging fruit.

Chris Capurso (05:15):

Anytime a state has model disclosure language that has to appear somewhere and you don't have it, that's the easiest thing for a regulator to check off. But finally, at least under that specific prong of the Consumer Fraud Act, failing to include preparation charges in the vehicle price. That's obviously vehicle price advertising right now. We've covered it several times on this podcast, and we know people are thinking about it constantly right now. This is just another example, and this is at the state level for a state violation of state unconscionable practices. So it's not just the FTC looking at these things, as we've reiterated time and time again. There were also violations of the Consumer Fraud Act specifically related to violations of state and federal law, and some of those are duplicated, like the Ownership Act, the Odometer Act, things like that, the specific disclosure. And finally, just generally the violation of the consent order that they had signed five years prior, specifically related to the kind of gray market advertising. That is a laundry list of things between the 2018 order and then with this 2023 complaint that the dealership is alleged to have violated. Like I said, some shades of the CARS Rule, some new things. It's a smorgasbord of different types of violations. No discussion of violations would be complete without talking about the penalties. As Brooke says, the money.

Brooke Conkle (06:33):

The money.

Chris Capurso (06:34):

That's right. We've said we have to mention it on every episode. We didn't talk about it with Kentucky, but we're back to it. We're back to the money. So, Brooke, we've talked about what the violations are. What is the money story here?

Brooke Conkle (06:45):

The money story takes a lot of twists and turns. Chris, really, the violations weren't necessarily sort of the soap opera that you might think they could be. The New Jersey trial court found that the dealer did violate the New Jersey Fraud Act, and frankly, a number of times. And with that underlying violation established, the trial court imposed more than \$10 million in civil penalties for treating the dealer as a second or succeeding offenses under the statute. And that's an eye-popping figure, frankly, \$10 million for violations of the Consumer Fraud Act. And the court also awarded over \$100,000 in attorneys' fees. So the dealer moved for reconsideration and argued, among other things, that the court had ruled on the state's request for maximum penalties and attorneys' fees without giving the dealer sort of a fulsome chance to respond. And frankly, the court partially agreed. It granted reconsideration and in January of this year issued a revised final judgment that really reduced the penalties from more than \$10 million down to \$793,500 and reducing the attorneys' fees award to roughly \$34,000. That's a huge reduction from \$10 million down to about \$800,000. But frankly, \$800,000 is still a lot of money.

Brooke Conkle (08:15):

So, of course, the story did not end there. In April of this year, the court again granted the dealer's motion for reconsideration, this time focused on ability to repay. And the dealer specifically presented evidence that paying close to a million dollars in penalties would effectively destroy the dealer's ability to continue operating. The court was openly critical of the dealer for not presenting that evidence earlier and previously indicating that ability to repay was neutral or irrelevant. But the court ultimately invoked its inherent equitable power, one of those phrases that can live in infamy with a court, to reduce the penalties even further down to \$155,000, to craft a penalty that could be satisfied without putting the dealership out of business. And this timeline from \$10 million to \$800,000 to settling essentially at \$155,000, you can see the court here really trying to balance the statutory amount with violations, deterrence, proportionality, fairness, and ability to repay. And it's one of those kind of scary things that we talk about, Chris, the ability to repay. When you're talking funny money, it isn't necessarily something that courts take into consideration, but this was a judgment that, frankly, was tailored to punishing the dealer for the violations, but also not putting them out of business. That's something you don't always see from the court system. Okay, we've talked money. We've checked that box. So let's talk a little bit about the New Jersey Consumer Fraud Act, consent orders, and how we can reach a penalty of \$10 million to begin with. First of all, the New Jersey Consumer Fraud Act is one of the more aggressive state consumer protection statutes. It authorizes substantial civil penalties on a per violation basis. And that's especially important here, where a dealer has a prior consent order, and that order, frankly, warned the dealer that future violations would be treated as second or succeeding offenses. And the penalty exposure can double from \$10,000 per violation to \$20,000 per violation. And as we just talked about, that is exactly what the court found. The court found the dealer was on notice of these issues because of the consent order and found that the violations were second or succeeding offenses under the statute.

Brooke Conkle (10:40):

Now, second, consent orders can essentially be used as escalation devices. This case really underscores the fact that consent orders, just as you mentioned, Chris, they're not just settlement paperwork. They can become the lens through which future conduct is judged. So once you're under a consent order, compliance failures are no longer essentially... First offenses, no harm, no foul, we're all trying to get it done. They can become aggravated violations with enhanced consequences. And then lastly, we've got enhanced penalties and really equitable considerations. So, as we talked about, on the one hand, the court emphasized that inability to pay is not a free

pass, and it criticized the dealer for its litigation strategy of, frankly, kind of hiding the ball and then once the penalty hadn't been decreased a ton, coming back and asking for a further reduction. On the other hand, the court recognized that penalties that are so high that they effectively liquidate a business, they can exceed what's necessary to achieve deterrence and consumer protection. So the court really was trying to look at a balancing act here of deterrence, but also not putting this dealer out of business. So it creates a framework where courts can find financial condition, but only if the defendants are candid, timely, and consistent in presenting information about their financial condition.

Brooke Conkle (12:11):

So, Chris, this enforcement action and the court litigation, that all comes in the backdrop of what we've been talking about, the federal regulators really receding from the space. So tell us a little bit about where this fits in. How does the deregulation backdrop fit in to the New Jersey story?

Chris Capurso (12:31):

It's interesting because, as we've noted several times in recent podcasts, the FTC, at least on paper, I don't even know if that's the right term, but it sounds, it hasn't happened yet outside of sending the warning letters, but the FTC on paper has been very aggressive looking at price advertising. And here we are with a state AG action about price advertising. But it's true, in the broader scheme of things, it's kind of this idea that the federal government, Trump 2.0, the regulators are just off. They're just not doing these things. And the thought is always, well, the states will step in. This is a good example of the state stepping in. And it's also a good example because this isn't a joint FTC-AG action, which is the type that we typically cover. I mean, the Lindsay action we covered from the FTC a couple podcasts ago was a joint action. This is purely New Jersey. And obviously, it was something that had been percolating since it was a 2018 consent order and a 2023 complaint, all pre-Trump 2.0. But it's just another example and something to keep in mind that the states are here, and they're going to dive into these types of areas if they see their consumers being allegedly wronged, if they're getting complaints about these types of things. And it's also an example of how state enforcement mechanisms can be very strong. We've talked about the Consumer Fraud Act.

Chris Capurso (13:52):

Brooke, you just talked about all the potential damages available. Now, granted, the court took a more lenient approach to it because of the ability to repay and all those types of things, but the state has a lot of power to enforce these things. And so it's really a reminder to everyone that the states are still there. And it's also a reminder that federal issues or things that federal regulators maybe previously looked at prior to Trump 2.0 or are currently looking at, like price advertising, those things are still looked at by the state AGs because we say this over and over again that state AGs have their own unfair, deceptive acts or practices authority. And we always say, watch out for that, even if the federal regulators aren't necessarily enforcing UDAP in the same way, the states could. And lo and behold, here we are with New Jersey enforcing a laundry list of potential UDAPs against this dealer twice over with the consent order originally and now this. So it's just a reminder that the states are there and that everyone needs to be aware of that and not just think, oh, this is the time that we got a four-year vacation here until we see who comes in next. Always important to consider the states as well as the federal government. So, Brooke, if we're talking lessons, we like to talk about lessons, it's like we're teachers. We like to

talk about lessons for dealers and auto finance companies. What can dealers and auto finance companies glean from this action and all that went into it?

Brooke Conkle (15:21):

There are three that are on my blackboard. And the first one is to treat consent orders as high-risk status, not sort of a box to be checked. If you are under a state AG consent order, you are living in a high-penalty, high-risk environment. A consent order is a sign that your compliance programs need to be upgraded and not just maintained. So especially, especially this means looking at your disclosure practices, advertising, and any specialty products that you are marketing along with vehicles. So that's lesson one. Lesson two; gray market and specialty inventory needs special compliance. So gray market vehicles, cars not originally intended for the US market, bring unique disclosure and warranty issues that require unique solutions. So dealers really need to clearly disclose gray market status, address warranty coverage explicitly, and ensure that advertising and retail installment sales contracts line up with how those vehicles are being represented. And then my third lesson, it wouldn't be a [Moving the Metal](#) podcast if I didn't say documentation, documentation, documentation. So in a case like this, what is on the buyer's order, the retail installment sales contract, and the equivalent label, that needs to be what's in the advertisement. All of that is going to get scrutinized. Misalignment between what's promised and what's delivered, that's where a lot of the per-violation counts can come from. Chris, what stands out to you?

Chris Capurso (16:59):

From your discussion, I think another lesson is, especially with these ability to pay arguments, which turned out to be very valuable here, they require some forethought. You can't just come out at the end and say, I'm gonna have trouble with this. If you anticipate needing to raise this kind of argument, this ability to pay, you want to develop that early in your litigation. You want to avoid inconsistent positions about how well you're doing. You don't want to have an inconsistency there. And you want to present credible evidence, be it financials or whatever, rather than just saying, I'm gonna have a tough time with this. It all goes to the point that you're kind of at the whim of the judge. And developing a good record, developing a consistent posture, and just showing that it is good faith, I think is kind of the overarching thing, is very important because you don't want to just... If you come in out of nowhere with this kind of argument from the clouds, I don't think a judge is gonna be super receptive to it. Whereas, like in this case, there was some development, some forethought to it, and it ended up working out. So that's very important.

Chris Capurso (18:07):

And just to go back to and put a bow on it, my final point earlier, don't assume that this Trump 2.0 atmosphere just means lower risk across the board. Obviously, the FTC is proving that wrong at the federal level, at least on paper again. But states are still here. And obviously New Jersey has a reputation for being maybe one of the more strict states, but we always talk about this is not a red versus blue thing. This is not, you go to the red states, you're gonna be fine, you go to the blue states, you might have some trouble. It is truly... It could be anywhere, depending on what the complaints are, what the laws are, what the mechanisms are to enforce those laws. A red state could have a very detailed dealer advertising law under its UDAP statute the same as a blue state could, like New Jersey's. So you don't want to try to approach this from a bifurcated, I'll be okay in these states and I'll have to

be a little bit more careful in these states. You should be careful everywhere because just because the federal government seems to have dialed back in certain areas doesn't mean the states have. And much like we talked about the FTC and the question is, does the FTC have the horses, as it was referred to in the NADA webinar, to kind of go after these things? Some of the states do have those horses, and they're perfectly ready and willing to go after these types of things. So it's just don't assume that there's just this broad deregulatory push and that you're gonna be fine not worrying about laws, regulations, or just general UDAP principles. Those should always be on your mind.

Chris Capurso (19:42):

And with that, that'll wrap it up for today's podcast. Thank you to our audience for tuning in. Don't forget to check out our blogs where you can subscribe to the entire blog or just the specific content you find most helpful. That's the [ConsumerFinancialServicesLawMonitor.com](https://www.ConsumerFinancialServicesLawMonitor.com) and the [TroutmanFinancialServices.com](https://www.TroutmanFinancialServices.com) blogs. And while you're at it, why don't you head on over to [troutman.com](https://www.troutman.com) and sign up for our Consumer Financial Services mailing list so you can stay abreast of current issues with our insightful alerts and advisories and receive invitations to our industry insider webinars. And of course, please mark your calendars for this podcast, *Moving the Metal*, which we will be releasing every two weeks in 2026. That will be generally on the second and fourth Tuesdays of each month. As always, if you have any questions or if we can help in any way, please reach out to us. Until next time.

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