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The Ghost of CARS Rule Past: FTC and Connecticut Team Up on Junk Fees

SPEAKERS

Brooke K. Conkle | Christopher J. Capurso

In this episode of *Moving the Metal: The Auto Finance Podcast*, hosts Brooke Conkle and Chris Capurso break down a recent $4 million settlement between the FTC and the Connecticut Attorney General's Office against an auto dealership accused of deceptive pricing, unauthorized add-on charges, and phantom vehicle certifications. They discuss the significance of naming individual owners and managers as defendants, the growing coordination between federal and state regulators using UDAP authority to enforce what amounts to the "ghost" of the vacated FTC CARS Rule, and why junk fees, price transparency, and express informed consent remain top enforcement priorities regardless of administration. The hosts close with practical takeaways for dealers and finance companies on aligning advertising, add-on sales practices, and compliance monitoring to avoid similar exposure, including private litigation risk under state consumer protection statutes and the Holder Rule.

Transcript

Podcast: *Moving the Metal: The Auto Finance Podcast*
Episode: The Ghost of CARS Rule Past: FTC and Connecticut Team Up on Junk Fees
Hosts: Brooke Conkle and Chris Capurso
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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 (00:25):
Today, we'll be discussing a recent $4 million settlement, showing the combined force of the FTC and the Connecticut Attorney General's Office. 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: troutmanfinancialservices.com, and consumerfinancialserviceslawmonitor.com. And also, we have a bevy of other podcasts that you might find interesting. *The Consumer Finance Podcast*: which, as you might guess, is all things consumer finance related. *The Crypto Exchange*: devoted to trends, challenges, and legal issues in Bitcoin, blockchain, fintech, and regtech.

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For today, as I mentioned, we'll be discussing a recent settlement with the FTC and the Connecticut Attorney General's Office, targeting that old chestnut, junk fees. So Chris, tell us a little bit about how we got here. This is not a new case, is it?

Chris Capurso (02:10):
It is not. And this is very similar to the case with the FTC and the Maryland Attorney General, right around the time that the Notorious 97 came out, where it had been in process for quite some time. In this case, the original lawsuit was filed January 2024. So we're talking over two-and-a-half years ago. And that complaint alleged that this dealership had done several different things. First, advertising that it would sell certified pre-owned vehicles for a specific price, but that when customers attempted to purchase the vehicles, the dealer would charge them hundreds to thousands of dollars in additional fees. So all part of the FTC's push. Very related. The price that they thought they were going to pay, wasn't, in this case, even close to the price that they were asked to pay. The dealership would, allegedly, often charge consumers twice for certifying a vehicle that they did not actually certify. So there's no additional warranty, even though it was promised. Including add-on charges for ancillary products, without obtaining consumer consent. Again, one of those things… We saw it in the dealership action from earlier this year, that same kind of express informed consent to add-on products… Was alleged to have not been gotten. Falsely telling consumers that the dealership, or the finance company, required add-on products. So making add-on products mandatory when that actually wasn't the case. And then finally, just tacking on additional amounts in fees without the consumer's consent. And actually, one of the examples provided in the original complaint was… This is just kind of a misrepresentation… But allegedly told one consumer that the Connecticut registration and other state fees were $345, when in reality, at the time, those fees were just above $200. So that's just run-of-the-mill misrepresentation; saying it's one thing when it's actually another.

So those were the bases for the original complaint. We don't hear anything. It's just stewing in the background this entire time. We get a change of administration, and we come back. Obviously this FTC, as we have discussed many, many, many times, is very active in this space. And then, lo and behold, here we are with this specific action.

Brooke Conkle (04:26):
Well, Chris, let's talk dollars. A $4 million settlement, that's a lot of money. What happened here? What are the terms of the deal? And what is the relief that the state and the FTC are getting?

Chris Capurso (04:37):

Well first off, as is the case with everything with the FTC right now, 2-0 vote. The two friends at the FTC, coordinating together for this 2-0 vote. And obviously, more than two years from when the complaint was first brought. Again, different administrations, different people involved. We've frequently gone back to Chairperson Ferguson's prior opinions as a commissioner. That's out the window here. He wasn't there. This is an action brought forward that he's signing off on, that was from the prior administration. And as you said, $4 million. I think the very interesting part here, is the $4 million is solely to the state. FTC is not part of that $4 million payment. That's going to the state, under the state's UDAP authority. Which brings up its own questions and comments that we'll talk about in a bit. But there's also injunctive behavioral relief requirements around putting in compliance procedures, maintaining that you're not going to do these practices again.

Notable named defendants include the dealership entity, its owners, and its managers. Also something very notable. And as I said, all of the different things that were alleged in the original complaint, it did sound like a greatest hits list. There's kind of the certified pre-owned angle to it, but it's still, at its heart, price advertising, consent for add-ons, consent for additional charges, all the types of things that are the things that the FTC has been looking at. And in fact, with this release, FTC Bureau of Consumer Protection Director, Chris Mufarrige, said, "This marks another critical step in the Commission's goal of advancing price transparency in the auto marketplace."

They're consistent. This has been the consistent theme, since the notorious 97, and since that dealer action was announced in April. And now we've got it again. The FTC is really looking at this stuff, and they are very consistent in the types of things that they are looking at. So I don't think there's anything shocking in what the allegations are, but it is yet another reminder of what the FTC is doing. And Brooke, why does this continue to matter? Why do these actions continue to matter?

Brooke Conkle (06:47):
Chris, you mentioned one of the things that immediately popped out to me, and it's the individual liability angle. The dealership was named, but also the owners and the managers. So this is not an action that is solely against the corporate entity. This is also against the people. And that is not what we see a lot of times. Usually, it's the corporate entities that are named as the defendants. Here, there are people listed. And that can dramatically raise the stakes. And that, as we say in the industry, that's a choice. That is an intentional decision to include individuals in this liability, and to call out these folks based on the allegations that were in the complaint.

There's also the coordination between the feds and the state. And we saw that pretty consistently in the prior administration. I don't think we've seen that as much with this administration. But Chris, to your point, auto regulation is a significant enforcement priority for this administration. Just because things are a little bit quieter, that does not mean that things are not moving. And it does not mean that this version of the FTC, is not coordinating with its compatriots at the state level, to bring enforcement actions, and to regulate auto finance issues.

Additionally, there is the Connecticut Unfair Trade Practices Act. The power of that statute, using it as a broad state consumer protection statute, it really demonstrates how state attorneys general can use their UDAP statutes, along in partnership with the FTC, to pursue dealers using really parallel legal theories. Additionally, there's the private litigation exposure. And also, we've talked about junk fees. It was a major priority for the prior administration. It's still not going away. That was one of the things that, I think, was, for many folks in the industry, most objectionable about what is a junk fee. A lot of folks had frustration with that in the prior administration, but it's not going away. And that junk fee characterization matters, because once a regulator labels your practice a junk fee, regardless of how fair that characterization is… Once you have that label tagged on to specific charges, that's going to be a really difficult thing to come back from.

So what does this signal for broader enforcement trends? Well, we've talked junk fees, it's not slowing down. In the federal regulatory environment, things can change, some things stay the same, and junk fees, it seems like, are here to stay. We've got the FTC using its existing Section 5 authority aggressively in auto retail, without needing to point to a specific rule on the books. State attorneys general, not just Connecticut, they're active partners. This case is a template for multi-state, or FTC and state attorneys general coordinated actions. We see it more often when there is a Democratic leadership at the federal regulators, but it still happens. It is not going away. And then when we connect back to the California CARS Act, we had the federal CARS rule being struck down. The states are filling the gap legislatively, and then enforcement agencies are filling it with litigation.

And hey, we're showing that there wasn't a gap here. The federal regulators were still active in this case, regardless of who was in the White House. The class action risk, it's always going to be there. The pattern of conduct that was alleged here, systemic across a number of transactions, that's the profile that plaintiffs' lawyers are looking for when they pursue class action certification. So Chris, tell us a little bit about our key takeaways. And if we've got any action items coming out of this settlement, what should they be?

Chris Capurso (10:47):
Honestly, not even from an actionable standpoint, one of the big takeaways that I think of with this, I think of with the action back in April, and it all goes back to our original discussions when the CARS rule was being challenged. And you always made the point, the FTC believed that this rule is covering things that we already think are UDAPs… Outside of the recordkeeping. These are things that are already actionable as Unfair or Deceptive Acts or Practices. That has been the case with all of these different actions, because obviously, FTC CARS rule does not exist. But it does. It does in UDAP authority. They are just pursuing it, even though there is not a formal rule anymore. So just enormous takeaway there is, CARS rule may have died a procedural death at the Fifth Circuit, but the spirit lives on. The ghost is still there, and the FTC is still enforcing it. And the states are picking up on it, too, and using their own UDAP authority, something we had mentioned constantly with what the FTC had said about this being just, "These are UDAPs." The states are doing the same exact thing. And now we've got the real specter that every state could just enforce the FTC CARS rule. In California's case, they actually have a legislative solution. But every state could actually enforce the FTC CARS rule under their own UDAP authority. And we're seeing that play out.

But from a more actionable standpoint, obviously, fees, price advertising, this needs to be in order. You've got to ensure that… I understand, advertising is through a bunch of different mediums. You could have it all over the place. But you've still got to have oversight of that. Because if one of those is off, and it brings a consumer in saying, "Hey, I saw this car for X," and you're like, "Well, it didn't have this fee, and that fee, and that fee, and it's actually Y," that's not going to fly. That's not in keeping with what the FTC, and now the… At least the Connecticut AG, the Maryland AG, any of these AGs who might be active in the space… That's not in keeping with what they think price advertising is; the total price advertising. So you've got to make sure all of that lines up, that your fees, outside of the government ones, are actually considered in the price.

For add-on products, the idea of the express informed consent, is still very much alive. You've got to make sure there is that express informed consent when you're selling ancillary products. For finance companies, make sure that that's there when you're buying deals, when you're looking at the paper. So that's another idea that has continued to permeate from the FTC CARS rule.

More specific to this one, individual accountability. As you mentioned, it's not just the dealership, it's managers, it's owners. There's not just an attitude, especially for owners, of, "Set it and forget it," "I own this thin. They'll run themselves. It's great." That is not the case. Again, this action came out in this administration. We always discuss this as, like, if there's a federal action in this administration, that should be considered the new baseline. It could be worse, but this is kind of the baseline. So if this is happening right now, just imagine if there's a change in administration. You got to be on top of these types of things.

So always, whether it's compliance monitoring, compliance auditing, make sure that your practice is aligned with your policies and procedures, with what is expected of you from this regulatory standpoint, from statutory standpoint, all these different types of things. Everything just needs to align. There can't be one that's dragging, or one that just does not mirror the other. Everything has to coordinate together, to show that compliance mindset that actually complies with everything that's coming down. It's just a lot to think about.

And one final point with these UDAPs: obviously with the FTC, that's regulatory UDAP authority; it is what it is. But at the state level, some of these Unfair, Deceptive Acts or Practices, trade practices, whatever you want to call it, laws, do have private rights of action… Connecticut being one. And if the Connecticut AG has laid out perfectly in this action, what it thinks are Unfair, Deceptive Acts or Practices, what is to stop the enterprising plaintiffs' attorney? What is to stop the enterprising individual plaintiff? What is to stop folks from seeing this and saying, "Hey, I've had a bad experience," or, "Buds, have you had a bad experience?" Just getting that class together, there's actual liability there. And then on top of that, Holder Rule, the one that always comes back when we have these kinds of individual private rights of action. The finance companies can be brought in for what happened in an advertisement at the very beginning that the finance company, almost assuredly, has no idea exactly what went on at that stage of the game.

So it's just yet another reminder: everybody is affected by these types of actions, the FTC's action, the state's action, California CARS. All this push for price transparency, this push for express informed consent, this push for the auto industry having more transparency in the sales and financing process. Everybody is affected, and everybody needs to be aware of these types of actions, and how to incorporate what is being said by the regulators into their practices so they don't run afoul of this, and potentially, run into something down the road.

On that happy note, we'll wrap it up for today's podcast. Thank you 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, and the troutmanfinancialservices.com blogs. And while you're at it, why don't you head on over to 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'll be generally on the second and fourth Tuesdays of each month. And as always, if you have any questions, or if we can help out in any way, please reach out to us. Until next time.

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