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***Moving the Metal: The Auto Finance Podcast — Warning Letters and Warren Letters: What the Auto Finance Industry Needs to Know***

**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 (00:24):**

Today, we'll be discussing two letters sent to industry stakeholders, one from the FTC and another from Senator Elizabeth Warren. 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. We have [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. [FCRA Focus](#), a podcast dedicated to all things credit reporting. And finally, [Payments Pros](#), a great podcast focused exclusively on the payments industry. All of these insightful shows are available on your favorite podcast platform, so check them out. And speaking of those platforms, if you like what you hear, please leave us a review and let us know how we're doing. We'd love to hear from you. Alternatively, please feel free to reach out to us directly. Our contact information can easily be found on the firm's website, [troutman.com](#). If you enjoy reading our blogs or listening to our podcasts, please also check out our financial services mobile app. To download, simply go to your [iOS](#) or [Android](#) app store and search for Troutman Pepper Locke. Not only does our app have all of our blog content and podcast episodes in one handy place, it also has a listing of all of the firm's financially-focused attorneys. So check it out and see what you think.

**Brooke Conkle (01:55):**

For today, as I mentioned, we'll be discussing two letters sent to industry stakeholders, one from the FTC and another from Senator Elizabeth Warren. Chris, tell us a little bit about the letter from the FTC. Who's writing it, and who's it going to?

**Chris Capurso (02:10):**

Sure. And it's funny, we talked, what's 2026 going to be about? We talk about AI, we talk about all these technological things, and what do we devote a significant portion of our first couple months to? Letters. It's like the old days. We've got two in very quick succession. I'm going to talk about the FTC letter first, which was somewhat of a shock, it coming out. And I guess I'll get to the basics before I talk about how we were right about the FTC and do a little bit of a victory lap. So this letter was written to 97 different dealers, and it is from Chris Mufarrige, who is the Director of the Bureau of Consumer Protection at the FTC. And now to kind of get to the victory lap that I teased. We had talked back when administration change happened, what's going to happen with the FTC, and we noted the very interesting bit that Chairperson Andrew Ferguson was on the commission when the summer 2024 FTC actions against auto dealers came out. And looking back at those dissents, we were like, well, he dissented to those actions, but only in part. And he specifically went after the discrimination bin, discrimination is a UDAP, that type of thing. He did not talk about the other parts of those actions, which were related in part to false advertising and price advertising issues. And we were like, mm? He was on the commission, he was part of the commission that decided those actions, and he did not have anything negative to say about those specific findings. So it was like, there could be something here. And kind of quiet on the auto front for the FTC, so to speak. And then all of a sudden, we get this letter from Director Mufarrige, and it's like, we were right. This is something that they were looking for. So it's a nice pat on the back to us. But Brooke, I've talked about all the things we did right. What in the letter is specifically highlighted as being a potentially problematic practice in advertising?

**Brooke Conkle (04:09):**

Well, Chris, we've given ourselves kind of a pat on the back and a high five. When we closed out 2024 and we said we'll never have to talk about the CARS Rule again. Well, here we are in 2026 and we're talking about the CARS Rule again. And it's because it's the same sort of themes that we saw in the CARS Rule we're going to hear about in this letter. And specifically, the practices that the FTC is flagging are advertised prices that, one, exclude required dealer fees; two, reflect rebates or discounts that are not available to all consumers; three, omit an additional required down payment; four, are conditioned on using dealer-arranged financing; five, require purchase of add-on products not included in the advertised price; and six, involve unavailable or non-existent vehicles. We talked a lot about sort of the stated price rule in the CARS Rule. And Chris, it looks, frankly, a lot like that is what the FTC is geared towards here, that the FTC really does want the price in the advertisement to match the real out-the-door price aside from government charges and taxes. So things that are not always included in the advertised price, doc fees, required add-ons, those things that were the target of the CARS Rule the FTC is still saying these are still problematic. Even without the CARS Rule, this is still a UDAP violation. And Chris, tell us a little bit how the letter ties directly into Section 5 of the FTC Act.

**Chris Capurso (05:39):**

It's kind of an interesting thing, and for anybody who has not read this letter, it is generously two pages. It is the type of two pages that when you were writing a report in school and you're like, "Yeah, this is five pages," and it's four and a half, you threw in some footnotes to try to extend the length a little bit. It's that style. But in those footnotes, the FTC and Director Mufarrige

specifically reference some non-auto actions to act as a basis for kind of what they're saying in here. And of course, the footnotes do reference the auto actions that I referred to earlier, the kind of summer 2024 actions as I've been calling them. But they reference actions for ticketing and actions for hotel fees, the things that were the only things left over for the FTC's junk fee rule. You'll remember a year ago now we gave the requiem for the rules. We discussed the junk fee rule and how it didn't die so much as it just became something completely different. It wasn't kind of a broad, covering-all-industries rule. It was specifically covering hotels, ticketing, things like that. It had a very specific focus. Those types of actions by the FTC are cited in this as kind of the basis for what the FTC is looking for as far as price transparency and things like that. So that's an interesting note that a trade rule, the junk fee rule that was gutted to only cover ticketing and hotels, that did cover everything else, is now being referenced in a letter to auto dealers as kind of examples of what they're looking for in UDAPs. So it's, even though the rule no longer technically applies, the FTC is looking at it for auto enforcement. So it's a very interesting thing, especially in this administration. But Brooke, I discussed this isn't a very long letter, and it has the heading "WARNING LETTER" in all caps, by the way. So that seems a little bit ominous. But what is the tone of this letter in its page and a half?

**Brooke Conkle (07:45):**

Yeah, I think you're correct to highlight that "WARNING". And it's a serious letter, but you don't necessarily get the impression that it is a particularly targeted letter. It's casting a wide net. It's going to a number of different dealerships. It's encouraging dealers to take a look at their practices, but not necessarily calling anyone in particular out. It's really giving kind of a warning shot to the industry that the CARS Rule may be dead, but Section 5 is not. And these are still advertising practices that are covered by Section 5. So with that in mind, Chris, what are kind of the practical takeaways for the industry?

**Chris Capurso (08:27):**

Yeah, so for dealers, I think the takeaway is obvious. Make sure your advertising is compliant and you've scrubbed it for UDAP considerations because we always talk about advertising and how it is more of a bipartisan issue and then it's also a state issue because the FTC is calling these unfair or deceptive acts or practices. We've discussed many times state AGs have that same authority. So we always tell folks, you gotta make sure your advertisements are scrubbed for that kind of compliance. Now this is just another example, and a federal example at that, of the fact that even in this administration where there seems to be this general idea that all regulation is waning at the federal level, the FTC has now sent out almost 100 letters saying that's not the case and we are looking for this in the auto industry. So dealers, the very obvious takeaway, make sure your ads are compliant, look for UDAPs, and this is in addition to any kind of very specific state law about what needs to be in there. But you gotta make sure your pricing disclosures are, like they said, there aren't any hidden fees. And the letter notes that government fees are exempt. But obviously in a vehicle transaction, there are a lot of fees. So you've gotta make sure that your advertising is cognizant of that and that everything is disclosed in such a way that you're not gonna kind of run afoul of the warnings of this letter.

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**Chris Capurso (09:49):**

And obviously for finance companies, Holder Rule is a thing, and advertising leading to the sale is something that you could potentially be brought in on. So and another issue too is if there's kind of a co-marketing or anything like that, you just want to have oversight of that. Any dealers that you work with, just make sure there's some oversight that you're not kind of tying yourself to a dealer that may be flaunting these rules and maybe not disclosing prices the way they should be. So it's a warning to everybody, not just the dealers, that the FTC is taking this very seriously, seriously enough to send almost 100 letters, and industry participants should be aware of it.

**Brooke Conkle (10:28):**

So Chris, if the FTC is focused on making sure that the posted price is honest, Senator Warren is focused on who ends up paying more and why, especially servicemembers. So tell us a little bit about Senator Warren's letter to five of the largest auto finance companies and captives in the nation.

**Chris Capurso (10:49):**

Yeah, Senator Warren is really on the letter train this last month and a half. Obviously, we've discussed previously her letters to some of the big industry participants regarding repossession statistics. Now, we're dialing in a little bit more, both in terms of breadth of industry participants and in terms of the topic, like you said, asking five of the biggest auto finance companies about servicemembers and some of the repossession statistics with that, but also some other things. And in this letter, Senator Warren cites the CFPB report from last January about servicemembers. And it's a point that I find particularly interesting that she discusses the fact that the CFPB has gone dormant and it's not going to be enforcing these types of things, and yet citing a report from the CFPB in the Trump administration, which is just an interesting... It's not a conundrum, but I don't know what it is. It's just an interesting point. But really goes into detail on this report, noting the different statistics about how servicemembers are more at risk, and that they might face higher APRs, things like that, that they have to make their choices maybe a little bit more quickly. They might be younger. Another interesting stat that Brooke and I discussed is that Senator Warren specifically notes that approximately one in five servicemembers have 20,000 t maybe she thinks it is. I don't know. Also 1 in 5, 20%, but that's neither here nor there. We have the letter. She discusses... It's very similar in form to the last letters where she kind of goes through a little bit of an explanation, several pages of explanation about different practices and why she's looking at this and why she's asking the questions. And on the topic of questions, we discussed the last letter and she was asking a lot. Brooke, she's asking a lot this time around, isn't she?

**Brooke Conkle (12:49):**

It's a lot. Chris, just as you mentioned, we thought that Senator Warren was asking for a ton of data on repossessions in a really short timeline. I think had we known what was coming, we would have potentially refined that analysis given that in this letter to sort of the Big Five, she's asking for... I'm not sure if we can verify this term, but I'll call it a "boatload of data". But specifically, Senator Warren is looking for very granular data for servicemembers versus civilians and really wanting to compare sort of the financial picture for servicemembers versus

the financial picture for civilians when it comes to auto loans, including vehicle price, down payment, and amount financed, all fees and add-on products. Hey, add-on products, here we go again, with the average prices and frequency that add-on products are included in particular contracts, APRs by credit score buckets, dealer markups versus buy rates, front-end and back-end loan-to-value ratios, and payment-to-income ratios, borrower income, and military or veteran status. Additionally... That's right, we're not done. Additionally, the letter requests any special products or benefits aimed at servicemembers, the proximity of branches and dealers to military bases. And I think, Chris, the term that Senator Warren uses is military operations. So what all is included in a military operation? I guess we'll find out. And lastly, a description of initiatives and educational efforts geared towards servicemembers. So what's interesting here is that the letter gives a very short timeline. It's about two weeks for the Big Five to produce all of this information. And frankly, kind of assumes that auto finance companies and captives are gonna be able to quickly kind of separate deals that relate specifically to servicemembers as opposed to deals that relate to kind of the general public. That assumption may be well-founded, it may not be. Chris, tell us a little bit about what this data request signals.

**Chris Capurso (15:04):**

Well, I think first, 14 days. I believe the prior one was 11 days, so we've got a full 72 hours in addition. So maybe it signals that she learned from the first one that 11 days isn't enough time, I'll give them three more days to produce this boatload of data. That'll do it. But I think overall it signals... And what's interesting about this one compared to the other one, not that repossessions aren't something that people are focused on, but servicemembers, we sound the horn all the time that this is a bipartisan issue. The CFPB even said in the memo trying to justify the reduction in force at the CFPB that servicemembers were going to be a major focus. So I think this one signals, obviously Senator Warren is looking at these practices, but this is a very public way to say, "Hey, this is the type of data that you should be looking at when it comes to servicemembers." And unlike maybe some other areas, this is one that is very bipartisan and that even if you subscribe to the idea that one party is going to be less enforcement-happy than another, this is an area that both parties have said is very important to them. So now we've got this list of all these data subjects, and it's, as Brooke said, an enormous list of data subjects out there in letter form that regulators can pick up and say, "Oh, this is interesting that she's looking into this. I wonder if we should be looking into this with certain folks." Obviously, she can't do much with this right now, being in the minority, but just even putting it out there for the publicity and for the news cycle. And it certainly seems like she's currently on a one-a-month pace, so I guess we'll see if we get any "April showers bring Warren letters" type things. But at the very least, it seems like this is trying to drum up some notice for these types of issues. And especially with this one, with it being such a bipartisan issue, I think it's something for folks to look out for.

**Chris Capurso (16:59):**

And with that, we'll wrap it up for today's podcast. For all of you tuning in who are wondering, "Where on earth is part two of the Year in Review? I can't believe there's another podcast." And obviously, this was a breaking news sort of thing with letters, as we noted, but this is breaking news, so we interrupted our Year in Review. Don't you worry, part two is coming. The sequel is coming. It will be released after this one. But thank you to everybody for tuning in and for your anticipation of Year in Review part two. We know how important it is to everybody. Don't forget to check out our blogs where you can subscribe to the entire blog or just the specific content

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