
Moving the Metal: The Auto Finance Podcast**Hosts: Brooke Conkle and Chris Capurso****Aired: 4/28/26****Price Tags and Pitfalls: Inside the FTC–Maryland Dealer Smackdown****Brooke Conkle (00:09):**

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 (00:19):

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 FTC and Maryland AG settlement, 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](https://www.troutmanfinancialservices.com) and [ConsumerFinancialServicesLawMonitor.com](https://www.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. [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](https://www.troutman.com). If you enjoy reading our blogs or listening to our podcasts, please also check out our financial services mobile app.

Brooke Conkle (01:35):

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. For today, as I mentioned, we'll be discussing a dealer settlement with the FTC and the Maryland Attorney General's Office. And Chris, a quick snapshot of the case. So the parties here were the FTC and the Maryland Attorney General's Office, and it was against multiple Lindsay-branded dealerships and three individual executives. And before we continue, we will emphasize that the defendants did not admit or deny the allegations. But the order is

detailed and prescriptive, and for us, that's what matters. So the alleged conduct here at a high level: one, vehicle prices allegedly above the advertised price at the time of sale or lease, two, add-on products and services allegedly sold when consumers didn't agree to them or thought they were required, and three, overall deceptive and unfair practices under Section 5 of the FTC Act and the Maryland Consumer Protection Act.

Brooke Conkle (02:46):

The outcomes in a nutshell here, Chris: one, a consumer redress program for affected buyers and lessees, two, a \$3.1 million judgment payable to the Maryland Attorney General's Office, and three, very detailed advertising, sales practice, and recordkeeping obligations. And when we say very detailed, we mean very detailed. So, Chris, that's the high-level sort of litigation picture. Can you unpack for us what regulators actually said that dealers can and cannot do moving forward?

Chris Capurso (03:18):

Sure. We've been talking a lot about price advertising with the FTC's letters that went out, and we're gonna continue talking about this because it's obviously a focus area for the FTC right now, and obviously with AGs, with the Maryland AG being in this. But the price advertising part of this goes along exactly with those FTC letters and what the FTC has said about those letters afterwards. And it's this idea that the FTC is looking at price advertising where the advertised price is not the price that "everybody" could get. There's some kind of qualifiers, there's some rebates, incentives, what have you, that not everybody could qualify for, and yet that's the price that's advertised. So they come into the dealership in a sort of bait and switch, and they look at the car, they go through the time to decide that's the car for me, and then they get in the back office. It's like, "Oh, well, you don't qualify for this incentive or that incentive." In fact, in the original complaint, I believe one person said you had to be Superman to qualify based on the different incentives that were there, whether it be active duty or first responder or any of those types of things.

Chris Capurso (04:30):

That was a direct quote. So it all feeds into this idea that the FTC has emphasized with the letters and with the follow-ups to the letters. It's that they are looking at dealers that are advertising a price not available to everybody to bring folks into the dealership and then charge folks more for the car than what was advertised. It feeds into this idea of the total price disclosure. Now, the FTC has said after the letters, and they've said the total price should be what the consumer would pay absent what the government requires, so government-imposed fees. And yet in this instance, the dealership was advertising, again, prices that included incentives or rebates or other kinds of discounts that not everybody could get. And then they find out later, and then you have to make the choice, well, is it sunk cost on time or am I gonna pay more to get the car? And those are options that the FTC is not okay with when the person was brought in on that price disclosure. The second thing that you mentioned, Brooke, was add-on products. And this is always in the greatest hits, the idea of add-on products that were not consented for, they're being added into the sales contract when somebody didn't want them or being told that they are required when they are not.

Chris Capurso (05:48):

So that's one of those greatest hits we see a lot in these types of actions. And third, and this is somewhat different from the greatest hits, but it's still something we have seen, is this idea of the dealership claiming that the consumer must pay additional fees to purchase the vehicle if they're not gonna finance through the dealership. In this instance, the dealership was compensated when there was a financial referral. And obviously, if the consumer goes out and gets it on their own, that financing, then the dealership's kind of cut out of that relationship. So here there'd be representations that you've gotta pay more if you don't finance with us, or you can't get the car if you don't finance with us, things like that. So it's a separate kind of misrepresentation. It's that to get a price-related misrepresentation, but it's also related to the financing. So those are kind of the three big things that the FTC honed in on. And again, I kind of go back to this greatest hits idea. But these are also ideas that are in the now dead and gone FTC CARS rule. The idea of price transparency, the idea of consent for add-on products, the idea of just misrepresentations related to the sale and/or financing.

Chris Capurso (07:06):

These are all things that were in the FTC CARS rule. And we've been banging on the table the fact that the FTC had always taken the position that these were already items covered under Section 5 of the FTC Act as unfair deceptive acts or practices. That is playing out in this order. This idea that, okay, the CARS rule isn't here, and yet these tenets of the CARS rule are part of this Section 5 enforcement action. So it's again kind of getting to the greatest hits. But these are things that the current FTC is looking at. And before I pass it over to you, Brooke, I just want to emphasize that this isn't one of those actions that we saw the complaint two months ago and the consent order is out now. This complaint happened in December 2024. Now, if you recall, different president, different FTC. Same chairperson of the FTC was on the commission at the time, but it is a totally different political administration. And yet here we have the FTC taking that action to the finish line, so to speak, even though it's now stretched nearly a year and a half from complaint to consent order.

Chris Capurso (08:14):

I find that to be very interesting. And it also re-emphasizes something we've been saying over and over again that with the FTC in particular, Chairperson Ferguson was on the commission when a bunch of dealer consent orders and this complaint went into motion. It's not this idea that some have where, okay, Trump 2.0, there's no regulation, it's fine. The FTC is not that way, and it's really borne out that way.

Brooke Conkle (08:41):

That's right. And Chris, let's talk a little bit about kind of the legal hooks for the order, specifically deception and express informed consent. So the legal theories, in plain English, really, we're talking about two laws here. One, Section 5 of the FTC Act banning unfair or deceptive acts or practices. And then second, Maryland's Consumer Protection Act, very similar prohibitions at the state level. So what counted as deceptive here in this case? First, misstating or hiding price, fees, and total cost. Again, as Chris said, we're beating the drum here, but total cost really is the name of the game. Second, suggesting that products or financing are required when they are

not. And third, charging for products or services without authorization. So this total price concept. And Chris, when we were talking about the CARS rule, it was the total cash price. Here we're just going with the total price, the maximum total price a consumer will pay, including all mandatory dealer charges, excluding government fees. And whenever a dealer talks about any amount a consumer may pay, the total price must be the most prominent visual number in the ad. And this is what the FTC wants to be really the anchor for consumer expectations.

Brooke Conkle (09:59):

So it reduces room for disputes over, "I thought the price was X, but they charged me Y." And Chris, just as you mentioned, we thought we were in a different regime here. We thought that things were going to be different, but the FTC is letting us know that enforcement may look different, but the idea of what is required hasn't really changed that much, has it?

Chris Capurso (10:28):

That's right. And two of the big terms that are defined in this order that people are going to key in on are clear and conspicuous disclosure and express informed consent. The definitions of those two things are not all that different from what the FTC CARS rule originally laid out, and they're not any different from what the FTC has consistently laid out. Obviously, we are an auto finance podcast, but elsewhere in the world, the FTC has been very active on the idea of products that consumers may not have consented for, such as automatic renewals and subscriptions. And they have also been very focused on junk fees and fees, again, going to this kind of price transparency without clear and conspicuous disclosure about what it's for and things like that. The order gets into that and has very similar definitions to what the FTC CARS rule had for clear and conspicuous: difficult to miss, i.e., easily noticeable and easily understandable by ordinary consumers. And then it gives several examples of kind of the medium and what you would have to do in certain mediums, such as purely visual disclosures, audible disclosures, interactive electronic disclosures, the same types of things you have typically seen when somebody has a UDAP action related to unfair or deceptive acts or practices, misleading representations, things like that.

Chris Capurso (11:48):

For express informed consent, again, very similar to what the CARS rule had. It's an affirmative act communicating unambiguous assent to be charged, made after receiving and in close proximity to a clear and conspicuous disclosure in writing and also orally for in-person transactions of all of the following: what the charge is for, so again, there's a charge, you gotta say what it's for, the amount of the charge, including if the charge is for something optional, the fact that it is or is not optional. So we've got these two definitional terms that kind of are the basis for pretty much everything in the order as far as it goes to misleading advertising, misleading representations in the sales process or in the sales contract, and also down to the consent that the consumer must give for add-ons so that they're not just put in there without any kind of consumer knowledge or consent. But we'd be remiss, we're talking about what the order says, and the thing that gets the headline for the FTC and the Attorney General isn't necessarily the substantive material of the order, although we care about that. It's the money. So Brooke, what are the money implications in this order?

Brooke Conkle (13:10):

That's right, Chris. Let's talk dollars. The consumer redress really includes a period of approximately April 2020 through the end of last year for certain stores. And who is eligible? Consumers. So this is not fleets, not other dealers, consumers who saw an advertised price for the vehicle before purchase or lease, then paid more than the advertised price, or at one store, paid for add-ons that fit the defined criteria. So what do they get? For markups, consumers get a refund of the difference between the advertised price and the actual price, less any prior refunds. For add-ons specifically, a refund of the amount of the add-on, less prior refunds. The FTC and the Maryland Attorney General required claims administrators for this. So the dealer has to hire a claims administrator at its own expense. Consumers will receive claim forms via mail and they will have 180 days to respond. The payments go directly to consumers or sometimes to lienholders as balance reductions, and uncashed checks and returned payments go back to the Maryland Attorney General's office for additional restitution. So that's the consumer redress, Chris, about 75 million that they anticipate in that bucket. But that's not all. There's also a judgment against the dealership. Tell us a little bit about that.

Chris Capurso (14:36):

Yeah, that 75 million is the headline grabber. The penalty is much less and it's specific to Maryland. It's a 3.1 million dollar judgment payable to the Maryland Attorney General for future enforcement or consumer education. Now, there's a couple points I want to make about this. First off, this does fit in with, I'm gonna use the CFPB as the example, but the CFPB in its priorities memo had discussed, "We are concentrating on consumer redress and not on exorbitant penalties. We are trying to make consumers whole. We're not looking for the big penalty amount to be used by the agency," as I believe the comment made by commentators was, "as a slush fund." But here we have the switch. We have 75 million in a redress fund, and then we have 3.1 million to the agency. And by the agency, I'm talking about the Maryland Attorney General, because my second point is the FTC's penalty authority has been severely limited over the years. And in a very interesting concurrence, which Brooke and I were talking about how interesting it is that there is a concurrence in this case from Chairperson Ferguson and Commissioner Muir, when they are the only two people on the commission currently.

Chris Capurso (14:50):

So it's a very interesting thing where they voted 2-0 for it and then filed a concurrence, but maybe that's an administrative procedure that they had to follow.

Chris Capurso (15:58):

But in the concurrence, Chairperson Ferguson discusses the action and what the FTC is looking for, all the things we've said. But then at the end, he specifically notes, this is a quote, "I would be remiss not to address the fact that this order contains restitution administered by and a civil penalty paid to our state co-plaintiff." And then goes on to discuss how for years the FTC relied on certain authority to obtain "equitable monetary relief for consumers," and that that mechanism had accounted for the overwhelming majority of consumer redress that the FTC had obtained from the 1980s until 2021. And in 2021, the Supreme Court in a unanimous decision in AMG Capital Management, LLC versus FTC found that that was not the proper procedure and

that the mechanism, Section 13(b), does not authorize the FTC to obtain money for consumers for violations of Section 5, which is the UDAP authority. Now, Chairperson Ferguson specifically says that's correct, that the commission was wrong for those four decades and that the Supreme Court is correct that Section 13(b) does not give them the power to obtain this equitable monetary relief under Section 5. What he does do is make a specific plea to Congress that they can fix the problem and that Congress can enact legislation authorizing the FTC to obtain that equitable monetary redress for consumers along the same lines that the FTC did before AMG Capital Management. And that by doing so, this is a quote from Chairperson Ferguson, "Congress would give the commission one of the most powerful anti-fraud tools available, restoring to injured consumers what was taken from them by deceit, omission, or unfair conduct, as well as requiring wrongdoers to return the profits they obtained by breaking the law."

Chris Capurso (17:56):

That is a direct quote from Chairperson Ferguson's concurrence. And to me, that sounds like an FTC of a different administration, to be honest. It's a very consumer-friendly and agency-friendly plea to try to get more power to get more economic redress from wrongdoers. It's a very interesting concurrence, and who knows if it goes anywhere, but we'll see. Brooke and I were talking before this. I remember back in the first Trump 1.0, I guess we'll call it, then-Commissioner Rohit Chopra wrote in a concurrence on the Bronx Honda case about UDAP should cover discrimination. And then obviously, when he was in charge of the CFPB, we saw that come to fruition. Where does this little paragraph that he left in this one order come to fruition later, if it does? But it's a very interesting point, and it just really hammers home again this idea that the FTC is not closed for business by any stretch of the imagination, especially when it comes to these types of issues and especially when it comes to the auto industry.

Chris Capurso (19:06):

So again, folks just have to be aware of that and can't have this idea that federal regulatory enforcement is just not gonna happen for the next several years or until there's an administration change. So with that, the question might be, what can we do? One thing that the FTC has been very good at with this idea of price transparency and its supervision of the auto industry is that it is trying to make some pretty clear rules of the road, all puns intended, I apologize. It's trying to actually let industry know how to comply with these types of things. And that's evident from the outreach that it's had after it sent the letters, working with industry and being on industry webinars and things like that. But these are fairly, I think, straightforward things that dealers have to be looking at. First, have to ensure that the total price aligns with what the FTC has been looking for. We've now got several examples of what the FTC is looking for. They want the total price disclosed clearly and conspicuously, it's got to be prominent, and it's got to contain all the items that... It's got to be the price that anybody could pay minus what the government's gonna impose, which again, anybody's probably gonna have to pay.

Chris Capurso (20:20):

So that on the dealer side, if the dealer is the one advertising, obviously that's with you. But if you're using third-party advertisers, you've got to make sure that they're in line with that too, because you're ultimately responsible for those ads that a third party puts out there on your

behalf. So just ensuring that the total price disclosures are as the FTC wants them. In the sales and F&I prices, obviously in this case there was a lot of evidence of consumers coming in and not getting the price that was advertised and a lot of complaints about that and having to go through the F&I process and things like that. But also on the add-on front, there needs to be the consent for the add-on products, which is something that's again been hammered home over and over again. And just because there isn't a formal CARS Rule doesn't mean that the FTC isn't looking at these things, and it doesn't mean that AGs aren't looking at these types of things. So in the sales and F&I process, that is a key, and it's something that's not gonna go away.

Chris Capurso (21:19):

Regardless of whoever's in the White House, if there are complaints coming about these types of things, there are gonna be investigations and examinations and, in this case, consent orders about it. And finally, it's not necessarily a specific point that hammered home as a failing, but dealers, finance companies, anybody in the auto industry, and again, we're gonna hammer this home in perpetuity till the end of time, recordkeeping. You want to make sure that everything you're doing is documented while it's still relevant, right? You want to make sure that you've got the contracts, you've got the advertising, you've got the trail of why you did what you did and that you have eyes on these types of things, that you have policies and procedures in place for your advertising, for your add-on product sales, for things like that. Just so that if this does come up, it's not gonna be a systemic issue or hopefully won't be a systemic issue. And in our experience, when there is that kind of documentation, when there are those policies and procedures, when there's training about these types of things, the likelihood that that is a systemic issue becomes less because you've got a compliant process in place and you've got a compliant business.

Chris Capurso (22:26):

Those are things that I think of from the compliance standpoint.

Brooke Conkle (22:30):

From a litigation standpoint, the recordkeeping is a sword and a shield, right? The records can become the evidence file for or against a dealer in a future dispute. So having clean documentation and clear disclosures is the best defense against class actions and regulatory enforcement. And Chris, as you mentioned, the recordkeeping requirements are pretty onerous, but there is a five-year period for this, and that in many cases aligns with the statute of limitations for state UDAP claims. So what does this mean for the broader industry and kind of practical advice moving forward from this consent order? For litigators, expect plaintiffs' lawyers to cite this order as a playbook. The focus is on the advertised price versus the actual price and looking at add-ons and payment packing theories. And with this order in hand, we expect regulators to push for out-the-door pricing as the norm and documented consumer consent at every step. So Chris, what are our takeaways for compliance?

Chris Capurso (23:37):

Yeah, and I've touched on a couple of them, obviously to make sure that your advertising is in shape. One thing I would add to that is if you're getting complaints about your advertising,

especially if it's price advertising, what have you, if somebody's complaining that what they saw is not what they got or what they saw at the dealership, then really pay close, close attention to those. Obviously pay attention to every complaint. But we know for a fact that this is a targeted area of not only the FTC but of state attorneys general. Price is one of the biggest focus areas right now in regulatory compliance. So if you see those complaints, take care how we try to describe complaints to everybody as a learning experience. It's a way to understand your business from the outside without having a regulator do it. So you can see, okay, this consumer has an issue with this certain element of price advertising. Did we do anything wrong? Is something not aligning with the policies and procedures the way it should? Are there more complaints like this? Be on top of those complaints because it is certainly easier to deal with a complaint than it is to deal with a regulatory investigation or an enforcement action.

Brooke Conkle (24:46):

Additionally, Chris, an order like this gives everybody an opportunity to think about the dealer agreements. What are the requirements for dealers? If you're an auto finance company, how are you monitoring dealer behavior for UDAP risk? What are kind of the reps and warranties that you want to include in your dealer agreements, and then considering stronger oversight and termination rights if patterns of complaints or enforcements pop up? And Chris, just as you mentioned, those consumer complaints, they're always the canary in the coal mine. Ignore them at your own peril.

Chris Capurso (25:20):

Exactly. And with that, we'll wrap it up for today's podcast, which may be a record long. We'll have to see if somebody is out there keeping a hall of records for us. Let us know. 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 and sign up for our consumer financial services mailing list so that 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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