

Podcast: *Moving the Metal: The Auto Finance Podcast*

Episode: That Wasn't the Price Online: New York and Alaska AGs Act on Dealer Advertising Claims

Hosts: Brooke Conkle and Chris Capurso

Guest: Chris Carlson

Aired: October 27, 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 (00:19):

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

Brooke Conkle (00:24):

Today we'll be joined by our good buddy Chris Carlson to discuss two recent attorneys general enforcement actions related to that old chestnut, price transparency. But before we jump in, let me remind you to please visit and subscribe to our financial services hub, troutmanfinancialservices.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 would 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 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're joined by friend of the pod, Chris Carlson, to discuss two attorney general enforcement actions in the auto dealer space. Chris, I'll just say Team Chris, or in this instance, Compliance Chris, give us some background on the New York Attorney General and what's going on up there.

Chris Capurso (02:10):

Sure. And I feel like I should say that, Chris Carlson, you're entering kind of rocky territory. I think this is number four, right?

Brooke Conkle (02:13):

It's true.

Chris Capurso (02:16):

You're the record holder for sure.

Chris Carlson (02:18):

I'll take what I get, Chris. I'll take what I get around here.

Chris Capurso (02:21):

And I mean, Rocky 4, a classic. Carlson 4 likewise will be a classic, I am confident. We're going to talk about the New York AG and a recent enforcement action against a dealer. And it generally aligns with some of the other actions we've been seeing in Connecticut, in Maryland, in places where they joined with the FTC. But in that we're talking price transparency, we're talking some add-ons. But there are some interesting facts in here that I think are very unique and things that we should cover. The first being, and I think this is incredibly noteworthy, in the order they say February 28, 2022, the Office of the Attorney General received a consumer complaint. It doesn't say we received several complaints about this dealership. And who knows, maybe they did. But the fact that they noted we received one complaint and we have this action, it echoes what we always say, that it takes one, right? And you never know what's going to come from that one. So I personally find that very interesting. But we have all of this coming out of that complaint, and we've got basically two sides of the coin. We've got first, price transparency, and this is related to a "sales commission" in extreme quotations because one of the questions in the action is, is it really a sales quotation? And then the second part is the add-on product and determining what that's about. So I'll start with the sales commission. And in this case, there was a pre-printed line in the contracts for this sales commission. It appeared in both the purchase order and either retail installment agreement or lease. It appeared in both. And it was labeled "not required by law." But not required by law, according to the Office of the Attorney General, was not the same as saying it is voluntary, which a documentary fee is technically not required by law, but it's not going to be voluntary. So similar types of concerns there.

So we've got kind of this fee being disclosed that you don't say that it's optional, you don't say anything like that. Separately, there's the question about whether it's actually a sales commission because... And the AG discusses it being a misrepresentation because the dealership defined it as partially offsetting employee compensation but didn't disclose that. And separately, you think of a sales commission as going to the employee, not coming to the dealer to offset the costs of the employee. So sales commission, a little bit of a misnomer there on top of the fact that there is no consent for

it. So that's the first issue with the fees. And then we get to the add-on products. We've got this bundled suite of products that was included in a majority of the transactions. And the investigation by the Attorney General determined that the advertised benefits were largely illusory. For example, that collision credit that I mentioned, which was marketed as \$2,500 in reimbursement, that was only payable if the consumer purchased or leased another vehicle from the same dealership within 60 days. Rather than being an actual reimbursement, it's more of a loyalty incentive to come back to the dealership in the event that there is some kind of collision. So it's kind of along the same lines as the commission. It says one thing, in practice it's a completely different thing, that aligns with a misrepresentation. But really, the largest compliance issue was disclosure because the Office of the Attorney General found that it was often advertised on the vehicles themselves and on websites without any indication of cost or optionality, and that the transaction documents did not consistently make clear that consumers could decline it, which is obviously a no-no. Under the old CARS Rule, we talk about consent, letting people know whether a product is optional or not. And it's still kind of those concepts, albeit under New York's consumer protection laws, but it's still those same kinds of concepts coming to the forefront, which echoes everything we've ever been saying, kind of the ghosts of the CARS Rule that we continually talk about, that these concepts didn't die in the Fifth Circuit. And they permeate not only through what the FTC is doing right now in its actions, but also through the states, through their consumer protection acts and through their trade practices acts. So, Chris, I guess we'll start off. Is this type of action consistent with what more aggressive states are doing in terms of dealer behavior and also price advertising in general?

Chris Carlson (06:42):

I would say that it's consistent not just with aggressive states are doing, but all states are doing. The 2026 National Association of Attorneys General, the initiative was driving down costs for American families. That was a theme that was identified by states on the right and the left of the aisle. And when you're thinking of that from the point of pricing and what is the cost of goods, they're looking at it from two perspectives at a more macro level. One, is the fee that is being charged, is that a junk fee or is there real value there? And two, even if it has value, is it being disclosed? Those are the two matrices by which they are evaluating fees, pricing, cost of goods. And to your point of one complaint leads to a larger investigation, this is what American families are looking at. They're looking at the cost of goods. They're looking at whether something was upcharged at the counter and in terms of what's been referred to as surveillance pricing or whether someone knew and had knowledge of the price of the goods that they were providing. New York is a perfect example. We're going to talk about Alaska as well, but there are a litany of them. And as we can also talk about, the Federal Trade Commission has started to partner with specific states. That dates back for years, but the head of the Federal Trade Commission went back on this point and emphasized the goal of partnering with single states, especially in the auto industry.

Chris Capurso (08:26):

And that goes all the way back to Carlson 1 and 2, back when you fought Apollo Creed.

Chris Carlson (08:30):

What's old is new.

Brooke Conkle (08:31):

Yes, Chris, we'll call you Enforcement Chris. And the perfect lead-in to our discussion of the Alaska Attorney General and the enforcement action against a used car dealer. This one, frankly, a little bit more narrow, but on grounds that we see every time, price disclosures and doc fees. So the allegations here were generally that the dealer did not include the doc fee, which was about \$500, did not include that doc fee in the advertised website price, which is contrary to Alaska law. And the acting Attorney General released a press release and specifically said, "Alaska's law on dealer fees is clear. It is unacceptable for a business to offer one price online and then a higher price at the dealership as a result of tacking on previously undisclosed dealer fees." Now, Chris and Chris, what strikes me here when I look at this enforcement action is the settlement terms here. \$100 payments to over 5,000 consumers, an estimated \$500,000 or more in restitution, and a restitution period reaching back to November 2018. And it's tough to believe, but November 2018 was a long time ago. That's an eight-to-nine-year time span, and the statute of limitations was tolled during a subpoena challenge. But again, what's interesting here is the state is accepting less than full restitution, but specifically to avoid putting the dealer out of business. So as we talked about, the doc fee was \$500, the Alaska Attorney General accepting \$100 payments to the affected consumers. And we're seeing that push and pull here of we're identifying damages, but maybe not making consumers completely whole in order to preserve a business. So, Enforcement Chris, the state didn't want to put the dealer out of business. Is that unusual?

Chris Carlson (10:27):

Before I answer that, you emphasized 2018. I was thinking about what my life looked like in 2018.

Brooke Conkle (10:31):

Oh, so different. Oh, so different.

Chris Carlson (10:36):

Oh, so bright-eyed and bushy-tailed federal law clerk with a really amazing judge that Brooke may love just as much as I do.

Brooke Conkle (10:40):

It's true.

Chris Carlson (10:44):

The question is a good one. And the answer, like all things in enforcement, is it depends. What I read when I read the enforcement action is a prioritization of how do we ensure that we maximize restitution while not putting this business out of business. In a perfect world, especially in closely held corporations with a few owners, typically what the goal would be would be to enjoin the owners from doing this type of activity over the long term, but not to take people that had no impact and really were performing their sales job out of a job. And you see this with Alaska. Right? Alaska's saying, "We saw what their ability to pay was. We wanted to get restitution back, but we didn't want to close a business down." We close businesses down for bad actors, and we close businesses down if individuals can't be stopped from specific bad actions. It happened just yesterday where a specific individual can't stop being involved in bad activity in the pharma space. 22 states and the Federal Trade Commission filed a lawsuit to seek penalties and to sanction him for doing so. But here, this was clearly there's a problem, there is a violation of the law. The law is clear. Frankly, as an aside, it'd be great if every state had clear, bright lines like Alaska has here for our clients. But when there are clear, bright lines, there needs to be a balancing, and here, that's what Alaska did.

Brooke Conkle (12:11):

Yeah. And so if we're looking at the common threads between both of these settlements, we're certainly looking at price transparency, what the consumer sees compared with what the consumer pays. Compliance Chris, when you look at these two enforcement actions, what are you seeing?

Chris Capurso (12:28):

Well, I'm seeing continued focus on price advertising because, exactly like Chris said, this is a bipartisan issue. I mean, we're talking New York and Alaska here, states literally on the opposite sides of the country. But also, this is an issue for the FTC in every industry that it has any kind of authority over. And it just continues everything we've been talking about, really, since the letters, the notorious 97, as we call them, came out in March. That is just price advertising in auto sales is going to be closely scrutinized, and it just continues that. And as far as doc fees go, I mean, there's always been some scrutiny on doc fees, especially in states where there is no cap, and it's kind of up to the dealer as to what they're going to charge and how consumers feel about it. It's just a continued reminder that these kinds of things are always going to be under the microscope, either from the regulators or... Not so much in this case, because we're talking regulators, but also from private plaintiffs who are looking to see really any way to try to allege that a fee is somehow not permitted or unfair, deceptive, or anything like that. So it's common issues.

Brooke Conkle (13:35):

Enforcement Chris, we always caution people against trying to bucket attorneys general into red state, blue state, safe here, not safe here. As far as broader enforcement trends for the auto finance industry and for auto dealers, we've talked a little bit about how this

is consistent with what is going on on a national scale. What else is going on on a national scale that folks should be aware of?

Chris Carlson (13:59):

I think for your listeners, one area that is very important to assess is how prices are determined. There's been substantial focus on whether using algorithms or personalized information or what is behind the scenes that can be perceived as discrimination or individualized pricing, especially when you're... That's been done forever in terms of a credit rating for in terms of your interest rate, but there is substantial scrutiny of not only are you making those decisions, but states looking behind your pricing decisions and asking for all the details of how did you develop your algorithm? What vendors are you using in that side? The flip side is every piece of data that you have, there is a focus on data security. Not only are you protecting your data, but what are you doing with it? Are you providing it to a vendor? Is your vendor then using it to someone else? Have you buttoned up your contract such that if you're giving access to a vendor, there is permitted and unpermitted usage of such data? But data and how pricing decisions are made are continually not only being focused at the top level of, "Let's look at a spreadsheet, look at individuals' races, and are you discriminating?" But going two steps deeper and looking into algorithmic decisions.

Chris Capurso (15:23):

Final question for you, Chris. What should dealers and finance companies be watching for from a regulatory perspective over the next 6 to 12 months? Obviously, we've talked about the importance of price transparency, but is there anything else that you think dealers should be on the lookout for, and finance companies?

Chris Carlson (15:37):

I don't think you should see a change in pace or focus from states in terms of scrutinizing pricing and transparency. But we have 30 state attorneys general elections that are about to happen in November. When those offices switch, you typically have state attorneys general that come in and want to show their aggressiveness and meet their campaign promises. And we have at least 11 open seats for state attorneys general. Those states, you should expect them to be looking into their toolkit and saying, "Okay, this is a clear bright-line violation. This is clearly deceptive. Let's be aggressive." But you're going to start seeing new states. Just like Alaska over the last five years has had six settlements as it relates to dealer fees. That's clearly an area of focus. A small state, a big state, you're going to find their priorities, and once they have a playbook, they will continue to run it. So you're going to have 11 new office holders at minimum, likely a few more. And with them, you should be paying attention on what their priorities are in terms of enforcement.

Brooke Conkle (16:39):

One last question, Enforcement Chris. You talked a little bit about the coordination between the FTC and individual state attorneys general. Is that something we can

expect? Is that happening in the shadows? Will that be happening in the light? What's going on there?

Chris Carlson (16:51):

I think it's happening in the light. In terms of the FTC, Commissioner Andrew Ferguson has taken note of the fact that he can make substantial progress when partnering with states. I think this was episode one of Chris, when we talked about how the FTC is remiss and is limited in its ability to pursue penalties under the AMG decision. That still stands. And because Congress hasn't fixed that issue, they must, if they are focusing on getting penalties, they must partner with states. So I think you will continue to see the FTC, who typically has more not only authority but resources, partnering with state AGs. So the Alaska Attorney General's office may have at maximum four or five consumer protection lawyers. I may be overcounting. West Virginia had six. The FTC has more and can commit resources to these type of enforcement actions.

Chris Capurso (17:52):

I actually have one final question. Chris doesn't know about this, but we've been discussing it. This is the episode prior to Halloween. So rapid fire, best candy, worst candy. We're going to go around.

Brooke Conkle (18:04):

I'll start us off. Best candy, hands down, Reese's Pumpkin cups. Worst candy, there is no debate, candy corn.

Chris Carlson (18:12):

I'm all with you in terms of the Reese's Pumpkin cups. Anything that has more peanut butter to chocolate consistency in a Reese's form, sign me up. In terms of worst, any of the flavored Tootsie Roll-like candies, get those out of here.

Brooke Conkle (18:32):

Bold calls here.

Chris Capurso (18:33):

See, I am... Obviously we're not a video podcast, I just slammed my arms up in the air in joy because my personal favorite is KitKats, the smaller KitKats. Love them. I also love anything Reese's. And my least favorite is Jolly Ranchers. The reason being, they make everything taste like what it is. So like, I bite into a Hershey's bar, it has an aftertaste of a Jolly Rancher if that was in the same bag. It's the same concept as pickles on a burger. I just don't want to taste it in perpetuity.

Brooke Conkle (19:02):

Wow, coming in hard on pickles on a burger.

Chris Capurso (19:04):

I know. I ended really on fire here. I mean, wait till Thanksgiving when we talk about sides. It's going to be intense. But with that fire, we're going to wrap it up for today's podcast. Thank you to our audience for tuning in. Don't forget to check out the new Financial Services Hub where you can subscribe to all of our financial services content, or you can still go to the Consumer Financial Services Law Monitor for any specific content on that blog you find most helpful. That's going to be troutmanfinancialservices.com for the hub and consumerfinancialserviceslawmonitor.com for the blog. 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. 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 in any way, please reach out to us. Until next time.

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