

***Moving the Metal: The Auto Finance Podcast* — Auto Finance Under the Microscope: Unpacking Landmark FTC and AG Settlements**

Hosts: Brooke Conkle and Chris Capurso

Guest: Chris Carlson

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Brooke Conkle:

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:

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

Brooke Conkle:

Today, we're joined by Chris Carlson, a partner in Troutman Pepper Locke's Regulatory Investigations Strategy and Enforcement Practice Group. We will be discussing recent enforcement actions affecting the world of auto finance.

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For today, as I previously mentioned, we're joined by our beloved colleague from the RISE practice group, Chris Carlson. Chris, welcome back to *Moving the Metal*.

Chris Carlson:

It's my second time here. I'm glad you brought me back.

Brooke Conkle:

Chris, we should say, number one, Happy New Year and congratulations.

Chris Carlson:

Well, thank you so much. I joined a lineage of two other partners, including Brooke Conkle, this celebrated partner that has paved the way for me to join. We all clerked with the same judge and now I'm at the top with them.

Brooke Conkle:

There we go. Three amigos. Chris, today let's talk a little bit about a new FTC and Illinois AG settlement with Leader Automotive.

Chris Capurso:

Yeah. I'm feeling pretty good too, because we've already finished the hard part, which is we have a new firm name and there are outtakes to this podcast. They're probably going to be floating around somewhere of me messing this up. Now we're through the parts where we have to mention Troutman Pepper Locke, which is the new name. Go look for it everywhere where you can find our name. This is the easier part where I get to describe the action that happened. This, as Brooke mentioned, is a joint effort of the FTC and the Illinois Attorney General. It is a 20-million-dollar settlement with Leader Automotive Group, which operates 10 dealerships in Illinois and its Canadian parent company, Auto Canada, over allegations of widespread consumer fraud.

This settlement actually represents the largest monetary judgment the FTC has ever secured against an auto dealer. So, big stuff coming out of the FTC right before the winds of change hit, which I'm sure we're going to talk about later. The complaint detailed several alleged violations of state and federal laws. It's a laundry list. Deceptive advertising, unauthorized add-on charges, fake online reviews and sale of gray market vehicles, those latter two, two that we don't typically get into when we have these nice little AG episodes. Specifically, the FTC and Illinois Attorney General charged Leader Automotive with violating Section 5A of the FTC Act, the typical UDAP statute, the FTC's Used Car Rule, the Illinois Consumer Fraud and Deceptive Business Practices Act, the Illinois Uniform Deceptive Trade Practices Act, the Illinois Prizes and Gifts Act, and finally, the Illinois Motor Vehicle Advertising Regulations. There's quite a few there.

Diving into the allegations specifically, the first one is deceptive advertising and bait and switch tactics. Now, first, Leader Automotive allegedly advertised vehicles at enticingly low prices to

lure consumers into their dealerships. However, once the consumers arrived, they were allegedly informed that the vehicles had pre-installed add-ons such as protective coatings and theft protection, which were not included in the advertised prices that they saw and were falsely claimed to be mandatory add-ons. Leader also allegedly advertised cars as being certified pre-owned and available at a specific price, but would then charge consumers hundreds or even thousands of dollars in additional “certification fees.”

Despite the additional fees, Leader still allegedly failed to actually do the certification work required by the manufacturer of the car, leaving the consumers without the extended warranty that the manufacturer would have. There's a double whammy there of alleged wrongdoing, first, charging for a certified pre-owned car and adding those fees on after there was an advertised price. Second, not even certifying the cars that you're now forcing your consumers to pay for. It's a double whammy there. The second one, and this is one of our greatest hits, we talk about it with the cars rule, we talk about it with nearly every action we talk about, it is unauthorized add-on charges.

The complaint alleged that nearly 80% of Leader's customers were charged for at least one add-on without their authorization, or because they were falsely told the add-on was required, echoing the required aspect of the add-on products for the deceptive advertising product. These add-ons included items like GAP, service contracts, which were often added during the financing process without consumer consent. Supposedly, the add-ons were wildly profitable for Leader, with dealerships reporting more than 99% profit on them at one time.

Also, Leader salespeople were allegedly paid a commission for the add-on products in many cases, making more from the sale of the add-ons than they did from the car. That's always going to be one of those things. When we're highlighting compliance reviews, the sales incentives are a big thing, trying to identify if there's an incentive that's out of whack and that could cause issues like this, where you're having unauthorized add-on charges, maybe dealership personnel steering customers toward add-ons, where they're going to make a wildly nice commission.

The third part of the allegations, and we're now getting into this uncharted territory, we typically don't cover these types of things, are fake online reviews. Leader Automotive allegedly required employees to post fake positive reviews on platforms like Google to booster their reputation. Those employees were threatened with withheld bonuses if they did not comply, and were sometimes paid bonuses for posting the fake reviews. Consumers were also purportedly pressured to leave positive reviews under duress. Not entirely sure what duress that is, but that was what the complaint alleged. There was actually one example in which a dealership refused to give a consumer the keys to the car, until they posted a positive review. That does sound like duress.

This echoes the FTC has had rulemaking on online reviews, fake online reviews. This is something they've been targeting, and we all know it. We get on Google, and sometimes we'll look up a company we know nothing about, and we see reviews that are like, this doesn't seem right. Even if they're a great company, maybe this doesn't seem right. The FTC is really trying to combat these things, and now we have it in the guise of a auto dealership.

Finally, sale of gray market vehicles. Leader Automotive allegedly sold vehicles manufactured for the Canadian market without disclosing that importing those vehicles into the US typically voids and manufacturer's original warranty. Those vehicles were deceptively advertised as being covered by warranties. When you heard at the beginning that this had a Canadian parent, you hear gray market, probably suspected that's where this was going, but still a very interesting allegation, one that we typically don't see.

The settlement terms, as I mentioned, this was the biggest settlement the FTC has had against an auto dealer, 20 million, which will be used to refund harmed consumers. Additionally, the dealership and its parent company must clearly disclose the offering price of vehicles and all advertisements and communications, excluding only required government charges. They're also required to obtain expressed informed consent from consumers before charging them for any add-ons or fees. Shades of the cards rule, as we always say, it seems like, on every one of these podcasts, there's going to be some allegation that sounds like the car's rule, which we're going into 2025, we don't exactly know where the car's rule is going to go.

At the same time, one of Brooke's greatest hits throughout this entire podcast has been the FTC's view is that the car's rule is they're basically just enforcing the things that they already have the power to enforce. It's just being made more clear in a rule. This is going to that point. Chris, number one, I'll call you Chris, number one, because you're our honored guest. What should auto finance companies take away from this settlement?

Chris Carlson:

First of all, Chris, number one is one of the best things I've ever referred to this year. I appreciate that. At a high level, you mentioned greatest hits. I think this is greatest hits, plus some. This really speaks to how regulators evaluate the auto finance industry. It's really a consumer complaint-driven issue. If you look at the complaint that was filed contemporaneously with the settlement, it is a laundry list of consumer complaints. It's driven there, but then you see the FTC and the Illinois AG dig in and look at specific statutory violations, specific issues that a consumer that had a bad transaction wouldn't truly understand what a statutory violation looks like related to gray market sales, but they would know, my experience was something that demonstrates that a complaint should be provided. You see that over and over again.

Someone isn't handed the keys. Someone has that bad experience. Someone is forced to make a Yelp review. That leaves a lasting case. You go home to your significant other and they say, "You know what? I'll send a Yelp review and you send it right to the FTC," right? It's how your customer service truly matters when you have a customer facing business like this. Unlike digital subscriptions or other things, where you don't have that interaction. When you have an interaction involving auto, that interaction leaves an impression, and often, it's consumer complaint driven what regulatory action is taken thereafter.

Chris Capurso:

Yeah, that's such a good point, because I just think back to some of these other FTC complaints I've read, where is the most detail? It's on the sales experience. They can get right down, like you feel you're in the room. The amount of detail that some of these consumers describe their

experiences with, that's exactly your point. It leaves a bad taste and that imprints more than if you were just in a digital environment.

Chris Carlson:

There's about a two-page example of a consumer who came in saying, "I want to pay \$400 a month." Then the add-ons result in her paying \$500 a month. You can see that just breathe life on a consumer complaint. I came in there. I wanted to pay this. I thought I was paying this. I didn't know there are add-ons added. Now I'm paying \$100 more a month. That leaves the impression, not just with the experience, but it led to that consumer complaint.

Additional takeaways, I just wanted to flag. I think it's interesting. You mentioned the 20 million dollars. We always talk about this in our last talk together was the Arizona Attorney General and the FTC having a settlement, where all of the settlement proceeds went to the Attorney General. Here, you have the Illinois Attorney General receiving \$200,000, 1% of the settlement, for what is referred to as a voluntary contribution. It clearly explains who is running this case. On the other hand, as you have greatest hits, I keep banging my drum, the FTC has a limitation with their AMG capital decision. That's why you continue to see attorneys general and FTC partnered together, because AMG capital limits the monetary relief that the FTC can get. That's why you continue to see the Illinois Attorney General, the Connecticut Attorney General, wherever your home state is, FTC partnering with those states.

Brooke Conkle:

Well, Chris, one other consent order we wanted to discuss with you that came in right before the clock struck midnight on 2024, but the Connecticut Attorney's General Office entered into a stipulated judgment with a nationwide auto retailer that really order itself centered on two specific buckets of conduct, we'll call them. The first was inaccurately advertising the features, specifications, and condition of used vehicles, and also, really failing to provide titles after sale.

Then combined along with that, there were some other ancillary allegations too, including failing to accurately describe the terms, conditions, coverage, or applicability of warranties, and finally, failing to ensure that vehicles were lean free before advertising and selling the vehicles. Along with this stipulated judgment, the dealer had agreed to pay a \$1.5 million penalty, which included a \$1 million restitution fund to address eligible claims, and also a \$500,000 penalty specifically to go to the state.

As you mentioned earlier, when we look at these buckets of allegations, again, it becomes clear that this is the driving force here really is consumer complaints. For things like, failing to provide titles after sale, that isn't necessarily something that is going to hit a ton of headlines, but for the consumer experience, that's a tough fact to come back from, failing to provide the title. That is an administrative issue that really is going to cause some consumer friction. While we didn't see a federal regulator attached to this stipulated judgment, should we infer that there was no federal regulator involved here?

Chris Carlson:

I think that's right. I think Connecticut went on its own in this case. There has been state attorney general, regulatory scrutiny, the auto industry, independent from federal regulators. You see that in two ways. One, you're not seeing the FTC be involved here. If the FTC was involved, you'd have a release. Two, props to one of our competitors in the industry here, Connecticut didn't issue a press release about this. They reached the settlement without any press, which sends a message that this really was a limited in scope issue related to one company, as opposed to how do we send a message to the industry?

When you're thinking about different issues, when you're a company that receives a regulatory inquiry, how can I frame this as something that is just my company specific? We know with a little bit of a foot fault here, and we need to revise our practices, or we have revised our practices already in a way that frames our issue as unique. How do we frame it as an issue that is a past practice, as opposed to something that warrants substantial scrutiny and a press release related to a certain company, reaches the ears of other regulators and has that potential to have that multiplying effect, or contagion effect, as we refer to it. Here, the company did a good job, made their injunctive commitments, and is moving on.

Chris Capurso:

Chris number one, these settlements, both of them occurred after the election. Naturally, the question is, are these a signal of things to come post-January 20th, this type of, I don't even know if you call it expanded AG, but do we expect to see more of these types of AG investigations into the auto industry post-January 20?

Chris Carlson:

I expect the same number of investigations to occur. The question is how fervently and aggressive the federal government is in pursuing these investigations. I expect the states, and we've seen them even the last few days, announcements of lawsuits against auto dealers by state attorneys general, independent of the Federal Trade Commission. I'm not going to look into a crystal ball and assume that was because the FTC's lights went dark, because I don't think that's true. I expect a federal regulator that's going to continue to call balls and strikes and issues, like we initially referenced with the Illinois and FTC case where you have these greatest hits and a laundry list of consumer complaints. That's a bipartisan issue. That's one that you're going to see a Federal Trade Commission under Republican, or Democratic administration continue to pursue.

On the flip side, I do expect state attorneys general to focus more on the implications of more emerging tech and what's being referred to as the underbelly of transactions such as AI, the implications on how discrimination may be using technology to the perception of racial bias, or gender bias in sales. We saw that and we talked about it, I think, in our first episode months ago, Massachusetts really focusing on AI and racial discrimination in sales. We expect the same. We expect that if states are going to take the lead, it's not going to be the cars rule they're going to focus on. They're going to focus on their prep projects. Right now, that's AI.

Chris Capurso:

That actually feeds in nicely to what Kim Phan said in our episode right before the holiday was there was going to be a focus on the auto industry on privacy of data with connected cars and all the information, telematics, all these things that cars could collect now. You're actually seeing a lot more of that. I've seen it more even in recent days, talks about that. It fits into this idea that AI, tech, information, privacy, all these things are being focused on by regulators. That also extends to the auto industry, because cars manage to gather a lot of information.

Chris Carlson:

That's exactly right. The former Oregon Attorney General in her last action was to release guidance related to data privacy and AI. The question she answered for herself was, what do we do without an Oregon AI law? The answer is, we don't need one. We have a data privacy law. We have a UDAP law. We don't have to wait around. In the same way, you've talked about the FTC utilizing the cars rule by and through their UDAP is the same way AGs are calling balls and strikes. If they view it as unfair and deceptive, it doesn't matter if it's in the realm of AI. It doesn't matter if it's in the realm of algorithms. It still is unfair and deceptive.

Chris Capurso:

Well, that'll wrap it up for today's podcast. The first Troutman Pepper Locke, or TPL, version of the *Moving the Metal* podcast. We were discussing before how that sounds like TRL and immediately date ourselves. 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 content you find most helpful. That's the [ConsumerFinancialServicesLawMonitor.com](https://www.consumerfinancialserviceslawmonitor.com) and the [TroutmanFinancialServices.com](https://www.troutmanfinancialservices.com) blogs. 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 that you could 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, which we'll be releasing every two weeks in 2025. A sneak peek, our next episode is going to be a year in review of 2024, where we're going to discuss some of the big issues that we saw in 2024. Hence, there's probably going to be some of the things we talked about today in relation to the car's rule and typical FTC laundry list of allegations. That's a sneak peek of our next episode. Our episodes will generally be on the second and fourth Tuesdays of each month. As always, if you have any questions, or if we can help in any way with any issues you're seeing, please reach out to us. Brooke and I hope everyone is off to a great start in the new year. Until next time.

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