Moving the Metal: The Auto Finance Podcast — 2024 Year in Review: Key Developments in Auto Finance
Hosts: Brooke Conkle and Chris Capurso
Recorded: January 16, 2025
Aired: January 28, 2025

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 are discussing 2024, the year that was in auto-finance. 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.

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. *Unauthorized Access*, a deep dive into the personalities and issues in the privacy, data, and cybersecurity industry. 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.

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Brooke Conkle:

Today, as I previously mentioned, we're discussing 2024. And to kick off 2024, we're starting with really a holdover from 2023, the CARS Rule. And 2024 saw federal regulators continue to pursue major initiatives, including fair lending and so-called junk fees. As we know from 2023, one of the biggest developments there was the CARS Rule. The FTC unanimously approved the rule and it purportedly targets bait-and-switch tactics and junk fees by requiring point-of-sale disclosures and prohibiting certain representations in the marketing of vehicles.

Chris and I have a host of other episodes about the CARS Rule, so please feel free to go back into that history and hear us talk about the rule, the reasoning behind it, and some potential fail points in the rule.

Now, the rule itself was slated to go into effect on July 30th, 2024, but a legal challenge was brought by the National Automobile Dealers Association and the Texas Automobile Dealers Association. That delayed its rollout. And we saw kind of that litigation playing out in the Fifth Circuit with oral argument heard in October. As of the date that we're recording today, the Fifth Circuit has not issued a decision.

Chris Capurso:

So, we're going to be going chronologically through the year that was 2024, as Brooke mentioned. We're going to start off, interestingly enough, with Connecticut, which we just discussed on the podcast with our esteemed colleague, Chris Carlson, only that was recent, this one is January 2024 and this was a joint action between the FTC and Connecticut with Manchester City Nissan, a Nissan dealer close to Brooke's heart as a devoted Manchester City fan. This action pretty much has what, as Brooke mentioned, are the greatest hits that we talk about consistently with the FTC, the types of things that they look for, charging fees that weren't advertised or consented to, including add-on charges for GAP and including them in a majority of the sales to make it look like they weren't actually chosen, but instead required in the purchase.

Just kind of started off the year emphasizing what the FTC was looking for in the CARS Rule and getting Connecticut to join in. Obviously, since Connecticut just had an action recently, this is a state that is obviously looking at the auto finance industry.

Brooke Conkle:

That's right, Chris. Tough times for Manchester City on both sides of the pond, unfortunately. The FTC was not the only federal regulator in action with the CFPB hot on its heels. In 2024, the Bureau sought comments on its proposal to collect data from the auto finance industry, and specifically from businesses that originate or require as few as 500 financing transactions annually. The proposed project aimed to gather annual data from lenders with over 20,000 auto loans, which mirrored the pilot from last year, 2023, that involved major lenders. The data collection focused on lending channels, repossessions, and loan modifications, three specific areas that the Bureau was really focused on.

This appeared to extend Bureau's supervision from the big guys who are used to it, but also into smaller auto finance businesses. This data could be used to inform future enforcement actions. It was an initiative that wasn't necessarily headline-grabbing, but is one that we may see the repercussions from for years to come.

Chris Capurso:

If you recall, that's one of the first things we covered on this podcast was the auto finance data pilot. I remember being incredibly concerned that sports cars were excluded from the survey. Because as you all know, any kind of trends we can get from people buying McLarens and Lamborghinis.

So, the next issue chronologically is in March. March madness at the CFPB, and it's the consumer response annual report. This is always interesting for us in the consumer finance space, just to see what's big. I think it's also big for finance. It's also big for statistical turns because I think it's very interesting just the amount of data they get and put out in the graphs and everything else. I always found this fascinating from the moment I started practicing.

In March, they released the annual report summarizing over a million consumer complaints from 2023. And the annual top complaint getter was still at the top that's consumer reporting. But they do categorize auto finance complaints. In 2023, the CFPB noted that it received over 17,000 vehicle loan and lease complaints in 2023.

Now, if you heard me talk about numbers, you're immediately thinking, million complaints, 17,000 were auto financed, that's a pretty good proportion for the auto finance industry, good proportion as in being a lower proportion. Of those 17,000 complaints, the CFPB sent 73% of those to companies for review and response, referred 21% to other regulatory agencies, and found 6% of those complaints to be non-actionable. Most of those 17,000 complaints, 88% of them to be specific, centered on vehicle loans and financing rather than leases. Of the complaints that closed with explanation or relief, the top complaint categories included managing the loan release, which was 35%, obtaining a loan release, which was18%, repossession, which was17%, problems at the end of a loan or lease, which was 15%, problems with a credit report or credit score, which was 11%, and struggling to pay, which was 5%.

The complaints highlighted by the CFPB also included delays in receiving refunds on GAP products, delays in lien releases, and wrongful credit denial. And those first two, if you've been listening to our podcast, as we go through the year, we're going to be talking about those again when we get to the fall.

Brooke Conkle:

That's right, Chris. And the Bureau, always active, still in June. They released a report on the state of negative equity in auto lending. Negative equity occurs when the trade-in value of a consumer's vehicle is less than the outstanding loan balance. Then that unpaid balance is rolled into a new loan. The Bureau indicated that in the fourth quarter of 2023, 20% of vehicles traded in were in a negative equity position, and that created a heightened risk for consumers. According to the Bureau, that heightened risk for consumers is going to translate to higher risk for auto finance companies. While it's unclear how the Trump administration will proceed, Biden regulators indicated plans specifically to scrutinize negative equity.

Chris Capurso:

Yes. That's an interesting point, because when this came out, we were like, “Huh.” This isn't what would have guessed would be the first report out of the data collection pilot, and now, the winds have changed. We've got a new administration coming in. Will this just be kind of one of those on-the-bookshelf reports, or will it be something the Trump administration will continue to roll with? Who knows?

Next, we go to July, and this was a present in advance of July 4th, because it was released on July 2nd. The CFPB released the summer edition of its supervisory highlights, focusing on regulatory exams of auto-finance servicing companies completed between April and December 2023. This highlighted some different issues from what was highlighted in the complaint data and also what will be covered in the next section that Brooke's going to talk about.

But this supervisory highlights specifically discussed alleged unfair deceptive or abusive acts or practices where certain auto loan servicers failed to provide adequate notification to borrowers enrolled in auto pay that they must make their final payments manually resulting in late fees when the final payments were not made on time, which purportedly violated the unfair prong of the UDAAP standard. Like I said, this is more of a bite-sized teaser in July. We didn't know it was coming in the fall, which Brooke is going to talk about now.

Brooke Conkle:

That's right. The Bureau followed up that supervisory highlights with their fall edition in October, and the agency focused on examinations of the auto finance market that were completed essentially between the prior 12 months, so between November 2023 and August 2024. Specifically, the Bureau highlighted a pattern of some servicers purportedly erroneously repossessing vehicles, even though consumers had made timely payments or, alternatively, obtaining approved deferments.

But then there were also other instances of repossessed vehicles that the Bureau highlighted where there was not a recorded lien. Specifically, examiners also found that some servicers engaged in deceptive and unfair practices by applying payments to post-maturity loans in a different order than the auto finance company had disclosed. Those differences resulted in late fees and failing to timely deliver vehicle titles after loan payoffs.

Chris Capurso:

In any discussion of the past year, the greatest hits can't be complete without discussing New Hampshire. Even while I'm saying this, I feel like I'm in like one of those infomercials you see at 1am, where it's like the greatest hit CD and you see the song scrolling down and they're playing in the background.

New Hampshire. So, in August, New Hampshire entered into law HB1243, which significantly revised the state's Motor Vehicle Retail Installment Sales Act. Notably, if you remember on our podcast, we commented on this several times, the law was retroactive. So, even though it was signed in August, it actually became effective in July, which is not how laws should work. But here we are. This law did a lot. It wasn't just an administrative edit, or it wasn't changing lowercase A to a capitalized A in section titles. This did a lot. It expanded the definition of sales finance company to include folks acting as lenders. It expanded licensing obligations. It added all sorts of default notice requirements, including literally a notice of default, but also requirements related to the notice of intent to sell a repossessed vehicle. It expanded the definition of cash sale price to effectively knock out certain fees. They required a notice of assignment within 15 days and that's a notice of assignment to the consumer that your credit obligation has been assigned.

It did a lot of things. At the time, the banking department who was pushing for a delay to the bill because they understood like, it's kind of hard to retroactively comply with something, weren't able to get it across the line. The banking department allowed companies to send in no-action letters to try to explain why some of these provisions would be difficult to comply with and try to put in expected dates where you could comply with it.

Now, like most of those that the no-action period was supposed to be until January 1st, which were now passed. But we are still seeing clients ask questions about this law because of just how enormous the scope of the changes were, and you don't think of New Hampshire as being one of those states that's going to drop major legislation or that's going to affect an entire industry with a change, but they proved us wrong because this bill is still a topic of discussion among clients even today in January.

Brooke Conkle:

That's right, Chris. Our year-in-review will close out with a pitch for you to download Troutman Pepper Locke's Consumer Financial Services' year-in-review in which we discuss what we forecast for 2025. Will 2025 be 2017 all over again? Check out the report to find out.

Chris Capurso:

Yeah, we can't tease too much. You've got to be able to read the article itself because that'd be just giving away everything before we even get there.

Brooke Conkle:

That's right, Chris. Check out that report to find out our predictions for the CARS Rule, what we predict for the industry in general, and what we predict as far as regulatory and litigation trends for 2025.

Chris Capurso:

With that, we'll wrap up today's podcast. 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]() and the [TroutmanFinancialServices.com]() blogs. 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 also, get a copy of this 2024 year-in-review report soon to be released.

Of course, please mark your calendars for this podcast, *Moving the Metal*, which we will be releasing every two weeks in 2025. 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.