

NADC Fall Workshop
OCTOBER 15 AND 16, 2007
THE HERMITAGE HOTEL, NASHVILLE

Join your colleagues in Nashville in October for in-depth presentations on critical issues affecting dealerships. The workshop is open to NADC members. The registration fee is \$375 and includes the reception, breakfast, breaks and lunch. CLE credit is available for the 5.5 hours of presentations.

Register now at www.dealercounsel.com, and check the website for program updates. Call the Hermitage Hotel at 888-888-9414 for room reservations.

AGENDA

OCTOBER 15

3:00 PM — BOARD MEETING

**6:30 TO 8:00 PM — RECEPTION, SPONSORED
by Compli**

OCTOBER 16

**7:45 TO 8:45 AM — BREAKFAST, CO-SPONSORED
BY CAMERON WORLEY FORDHAM PC &
TENNESSEE AUTOMOTIVE ASSOCIATION**

8:45 TO 9:00 AM — OPENING REMARKS

**9:00 TO 11:00 AM — F&I UPDATE - UPDATE
ON F&I COMPLIANCE ISSUES**

- **MIKE CHARAPP** - Charapp & Weiss, LLP, McLean, VA
- **ROB COHEN** - Auto Advisory Services, Inc., Tustin, CA
- **ANNE FORTNEY** - Hudson Cook, LLP, Washington, DC
- **RICK KAHDEMAN** - Kahdeman, Nickel & Frost, Westlake Village, CA

Participants will discuss the latest developments on issues involved in compliance in the F&I department. Some of the matters to be discussed include:

- Adverse action notices under ECOA and FCRA - advising dealers in light of recent developments.
- FCRA - advising and litigating in light of the United States Supreme Court decision in *Safeco Insurance v. Burr*.
- ECOA - update on credit discrimination cases, and advising dealers on avoiding discrimination

claims.

- **TILA** -What should be included within vehicle price and what should be included in the itemization of amounts financed.
- **Car buyers' bill of rights** - compliance challenges posed by the sprawling and spreading requirements
- **Standards of conduct** - how written standards of conduct for the F&I department can aid in compliance and strengthen a dealer's position in litigation
- **Training** - how dealers can arm their employees to resist finance company pressure for questionable activities such as backdating the contract and failing to disclose negative equity.
- **Cash reporting and prevention of money laundering** - update on the latest issues.
- **Preventing Indictments** - helping dealers avoid the danger of criminal prosecution for F&I abuse, identity theft, and money laundering activities.
- And much more

11:00 TO 11:15 AM — BREAK

**11:15 AM TO 12:15 PM — PRIVACY -
TRAVERSING THE INFORMATION SECURITY
MINEFIELD: BEST PRACTICES IN DANGEROUS
TERRITORY**

- **MICHAEL BENOIT** - Hudson Cook, LLP, Washington, DC
- **MIKE SHANAHAN** - Stewart & Irwin, P.C., Indianapolis, IN

This Session will take a look at the major privacy

and information safeguarding rules affecting dealers, in particular, the Gramm-Leach-Bliley privacy and information safeguarding rules, the Fair Credit Reporting Act, and the Fair and Accurate Credit Transactions Act. Learn the requirements imposed on dealers by these important laws and regulations, as well as best practices for implementing compliance programs in the dealership. Discussion topics will include the following, with ample time for Q&A:

1. GLB Privacy Policies: When must they be delivered? Who's entitled to a privacy policy? When does the dealer need to provide an opt out notice? What do you do when a customer exercises his/her opt out right?
2. GLB Safeguarding Rule: Discussion of best practices for designating a program coordinator, completing and documenting a risk assessment, crafting and maintaining an Information Security Program, overseeing service providers, and updating and monitoring information security practices.
3. FCRA and FACTA: What are the permissible purposes to obtain a consumer report? What are the restrictions on sharing customer information with affiliates? How do you dispose of consumer reports? What should you expect from the new red flag guidelines?

**12:15 TO 1:15 PM – LUNCH, SPONSORED BY
CNA NATIONAL WARRANTY CORP.**

**1:15 TO 2:45 PM – SERVICE &
ENVIRONMENTAL**

- **DONN WRAY** - Stewart & Irwin, P.C., Indianapolis, IN
- **DOUG GREENHAUS** - NADA, McLean, VA

Dealership environmental and regulatory compliance in the service department and body shop can only be ignored until disaster happens. The form of disaster could be employee injury or death, serious violation of environmental or employee safety regulations resulting in administrative (or even criminal) citation, or environmental contamination that diminishes or destroys the value of dealership real estate.

The number and complexity of statutes, regulations, ordinances and case law pertinent to these

concerns could be the subject of hours of discussion. What this presentation is designed to do is to give an overview of the most likely risks and measures necessary to respond to such risks. In an issue-identification framework, the speakers will address employee safety (OSHA) programs as applicable to dealership operations, sources of risk to the dealership's real estate and areas of compliance and prevention inquiry in that regard, technician certification requirements, and hazardous material handling and manifesting protocols. The goal is to arm the attendee with a comprehensive list of questions to ask upon return to the store. In short, if we can't make you an expert in an hour and a half, we can at least sharply reduce the realm of the "unknown unknown" by showing you what inquiries need to be made, and will provide to you citation and materials that should at least begin to reveal the right path to compliance and good practices.

2:45 TO 3:00 PM – BREAK

**3:00 TO 4:00 PM - COOKIE CUTTER FRAUD
CLAIMS: HOW DO WE STOP THEM?**

- **GENE KELLEY** - Arnstein & Lehr, Chicago, IL
- **JOHN ROPEIQUET** - Arnstein & Lehr, Chicago, IL
- **SHARILEE SMENTEK** - Arnstein & Lehr, Chicago, IL

This session will explore state Deceptive Trade Practices Acts, Consumer Fraud Acts and Retail Installment Sales Acts (collectively "state UDAP") that provide consumers legal remedies for "unfair," "deceptive," "fraudulent," and "unconscionable" dealer conduct. State UDAP statutes are broad, expansive and continually developing. Thus, the plaintiffs' bar is using state UDAP laws to provide an all purpose remedy for almost every dealer business practice. However, the dealer is not left without a defense. This presentation will provide suggested solutions, approaches and strategies in defending against these state UDAP claims and finding a way to stop these cookie-cutter fraud claims from reappearing against dealers over and over again.

BIOGRAPHIES



MICHAEL A. BENOIT - Partner in the Washington, D.C. office of Hudson Cook, LLP. He advises banks, sales finance companies, auto leasing companies, mortgage lenders, auto dealers and other creditors and technology providers on a wide range of consumer financial services law, including the Truth In Lending Act and Regulation Z, the Consumer Leasing Act and Regulation M, the Equal Credit Opportunity Act and Regulation B, the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, the Electronic Signatures in Global and National Commerce Act, the Uniform Electronic Transactions Act and the USA Patriot Act. In addition, his practice covers matters involving federal and state laws relating to electronic commerce and online lending, privacy, fair lending, telemarketing, personal and real property financing, and leasing and collection practices.

Past Experience: Mavent Inc., Irvine, California, 2005 - 2006. Executive Vice President, Chief Legal Officer, Corporate Secretary; Benesch, Friedlander, Coplan & Aronoff, LLP, Cleveland, Ohio, 1993-1997; Professional Musician, 1978 - 1990.

Education: Case Western Reserve University School of Law, J.D., Cum Laude,

1993; The University of Michigan, Master of Music, 1987; University of Miami, Bachelor of Music, Magna Cum Laude, 1984.

Professional Memberships: Ohio State Bar (admitted 1993); District of Columbia Bar (admitted 2004).



MICHAEL CHARAPP - Partner in the firm of Charapp & Weiss, LLP, has spent his life in and around the automobile business. He is a graduate of the University of Pittsburgh (B.A. 1971), and of the Georgetown University Law Center (J.D. Degree 1974). Mr. Charapp is a member of the Bars of the Commonwealth of Virginia and the District of Columbia.

Mr. Charapp worked in his family's Dodge dealership in the Pittsburgh, PA area until he graduated from College. After his graduation from law school, he was an associate and later a partner in the firm of Stein, Mitchell & Mezines, Washington, DC, from 1974 to 1984 where he specialized in litigation and commercial transactions, including representation of car dealers and car dealer trade associations. From 1984 to 1996 he was Executive Vice President and General Counsel of the Rosenthal Automobile Organization headquartered in Arlington, VA, at the time one of the 10 largest auto dealer organizations in the country. In 1996 he formed the firm of Charapp & Weiss.

Today, Mr. Charapp represents and advises numerous business clients, including well over 200 automobile dealers and several automobile dealer trade associations, including the Maryland Automobile Dealers Association, the Virginia Automobile Dealers Association, and the Washington Area New Automobile Dealers Association.



Rob COHEN, Esq. - President, Auto Advisory Services, Inc. He started with Auto Advisory Services in 1994, was made Managing Partner in 2001, and he became President in 2006. Prior to becoming partner, Rob represented dealers in litigation for four years. Rob specialized in the defense of consumer claims and represented licensees before DMV administrative hearings. He developed a strong background inside dealerships by working as a car salesman and doing F&I during law school. Rob has also served as General Counsel for a large automotive group in Los Angeles. Rob received his B.A. and M.B.A. from the University of California, Irvine and then went on to earn his J.D. from Whittier College, School of Law.

Rob currently serves as Vice President of the National Association of Dealer Counsel (NADC), is editor of Transmission (Auto Advisory Services' monthly newsletter) and The Defender (the NADC newsletter), and has been published in Ward's Dealer Business, Orange County Business Journal and F&I Management and Technology. He is a frequent speaker and trainer on a wide range of subjects pertaining to dealership sales and finance compliance. Rob co-authored the top-selling Automotive Dealership Information Safeguards Manual, the Automotive Dealership Identity Theft Guide, as well as the recently published Vehicle Finance and Compliance Documents Guide.

Recent Seminars: Common But Potentially Dangerous F&I Practices, NADC F&I Workshop, Baltimore, MD, November, 2006; Changes for 2007, Reynolds & Reynolds University Online, November, 2006; F&I Matters, NADC Member Conference, Chicago, IL, April, 2006; Car Buyer's Bill of Rights Training, California (multiple sessions), May-June, 2005; Negative Equity Disclosure, NADC Member Conference, Atlanta, GA, April, 2005

Auto Advisory Services is a leading compliance consulting company. With a client base of nearly 600 dealerships, Auto Advisory Services offers comprehensive sales, finance, advertising, and DMV compliance services. Auto Advisory Services performs over 140 on-site compliance audits each month and the compliance hotline receives approximately 200 calls per week. Auto Advisory Services conducts industry workshops, publishes informative compliance publications and is a contracted second line partner in conjunction with the California DMV's Business Partner Automation program.



ANNE P. FORNEY - Partner in Hudson Cook's Washington D.C. office, where she specializes in regulatory compliance, legislative developments and litigation affecting the consumer financial services industry. Ms. Fortney served as Associate Director (for Credit Practices) in the Bureau of Consumer Protection at the Federal Trade Commission. In that capacity, she directed the nationwide enforcement of the federal consumer credit laws, including the Equal Credit Opportunity Act, the Fair Credit Reporting Act and the Truth in Lending Act.

Ms. Fortney is a frequent speaker and author on consumer financial services law. She co-authored National Automobile Dealers Association Dealer Guide to Adverse Action Notices (© NADA 2007). She also wrote the credit reporting trade association's manual on How to Comply with the Fair Credit Reporting Act. Her articles on consumer financial services law have appeared in the Consumer Finance Law Quarterly Report, the American Bar Association Business Lawyer, Credit World and other publications. Ms. Fortney has testified as an invited expert before

Congress regarding the operation of various consumer protection laws, including testimony before the US House Financial Services Committee in June 2007. Ms. Fortney frequently serves as an expert witness in litigation with respect to consumer financial services laws.

Ms. Fortney has held a number of leadership positions with the American Bar Association Consumer Financial Services Committee, including chair and vice-chair of the Privacy Subcommittee and of the Federal and State Trade Practices Subcommittee. Ms. Fortney is President of the Governing Committee of the Conference on Consumer Finance Law and is a founding member of the American College of Consumer Financial Services Lawyers.

A graduate of the Georgetown University Law Center, Ms. Fortney received her undergraduate degree with Final Honors from Mary Washington College. She is licensed to practice law in the District of Columbia and Hawaii.



DOUGLAS I. GREENHAUS - Director of Environment, Health & Safety in NADA's Legal and Regulatory Affairs Group. Representing dealer interests, Greenhaus actively practices before such federal agencies as the Environmental Protection Agency, the Department of Transportation and the Department of Labor. In addition, he advises and counsels association members and staff on federal regulatory matters, has authored numerous trade publication articles and association educational guides, and speaks frequently at industry engagements. Before joining NADA, Greenhaus worked as an associate counsel for the Massachusetts Energy Facilities Siting Counsel and later as a staff attorney for the EPA in Washington, D.C.

He holds a B.A. in political science and environmental studies from the University of Vermont and a J.D. from the National Law Center, George Washington University and is a member of the Massachusetts, District of Columbia and Virginia Bars



RICHARD J. KAHDEMAN - Founder, Nickel & Frost. Mr. Kahdeman earned his undergraduate degree in Political Science at the University of Missouri - St. Louis. He received his Juris Doctor from Washington University in St. Louis, in 1972, where he was Editor-in-Chief of the Urban Law Review.

Before founding Kahdeman, Nickel & Frost, Mr. Kahdeman was a founding partner of the firm of Davis & Kahdeman. Mr. Kahdeman was also a founding partner with the firm of Laskin & Graham, and previously served as senior legal counsel (including General Counsel) for the mortgage lending, consumer credit and motor vehicle finance subsidiaries of Citicorp (Citicorp Mortgage), ITT (ITT Consumer Finance), Wells Fargo & Co. (Wells Fargo Credit Corporation) and Security Pacific National Bank (Security Pacific Auto Finance) where he developed and applied his expertise in the federal and state laws regulating Mortgage Loans and consumer credit transactions, provided legal advice and counsel to all levels of Senior Management (including the Board of Directors), supervised a nationwide litigation caseload, and coordinated federal and state legal compliance for all real property and motor vehicle-secured consumer credit products.

Mr. Kahdeman has extensive experience in financial institution regulation and consumer and commercial secured credit transactions. He has assisted a host of financial institutions in the development of secured and unsecured consumer and commercial lending and leasing products

and compliance programs in California and nationwide. Mr. Kahdeman regularly represents financial institution and motor vehicle dealership clients in connection with defensive litigation and advises them in a broad spectrum of litigation, regulatory, compliance, product development, consumer protection, secondary market, loan origination, asset acquisitions/due diligence, corporate matters, and documentation of complex, secured commercial credits, as well as workout negotiations and loan restructuring.

Mr. Kahdeman has spoken at the California Banker's Association Regulatory Compliance Conference, American Bar Association Business Section meetings, and is a frequent lecturer for various private seminar enterprises and industry trade groups. He was formerly counsel for the California Association of Mortgage Brokers and a member of the Financial Lawyers Conference, the Consumer Financial Services Committee of The Business Section of the State Bar of California, the Los Angeles County Bar Association, the United States District Court, California, (Southern, Central and Northern Districts) and the Missouri Bar Association.



GENE KELLEY - the conference facilitator, is partner and co-chair of the litigation group of Arnstein & Lehr LLP. His areas of practice generally include litigation, and counseling. He has appeared in state and federal courts throughout the US. He is NADC Chairman of Meetings and Conferences.

Gene has tried and successfully concluded dealer litigation involving lemon law claims, TILA, RICO, warranties, breach of contract, alleged fraud, and a host of other dealer-related issues. He has also litigated matters concerning anti trust and unfair competition claims, land use disputes, environmental claims, landlord-tenant disputes, employment claims, computer software, wrongful discharge, and related personnel matters. These matters have been litigated both in the courtroom and in arbitration.

Gene's firm has been involved in buy/sell agreements, mergers, acquisitions, sales, divestitures, shareholder disputes, federal and state income tax matters, estate tax matters, and a host of other issues arising concerning closely held companies, including dealerships.



JOHN ROPIEQUET - is a Partner in the Litigation Group of Arnstein & Lehr LLP's Chicago office. He has successfully concluded dealer litigation involving numerous federal claims under TILA, RICO and other statutes and state law claims asserting consumer fraud and other issues. He also has extensive litigation experience in antitrust, environmental, unfair competition, landlord-tenant and other disputes. He speaks and writes frequently on consumer finance, trial evidence and other topics.



MICHAEL P. SHANAHAN - A member of the Automotive Retail, Business Entity/Transactional Law, Litigation, Mergers and Acquisitions, and Probate/Estate Planning/Taxation Practice Teams at Stewart & Irwin, P.C. He has extensive experience in the retail automotive business.

Formerly, Michael was an accountant at K.B. Parrish & Company where he did consulting and tax work for individuals, small businesses, and automobile dealerships. His consulting work spanned the country. It primarily involved assisting automobile

dealerships with compliance issues. Michael's knowledge of the automotive industry is first hand. Prior to becoming an accountant, he worked as a Finance Director for a large Honda dealership. Further, he is an expert in the FTC Safeguards Rule. He has published an article on the Rule; he has been quoted in various sources about the subject; and he has lectured on the matter over a hundred times in various settings across the country.

Michael is a veteran. Prior to attending college, he served our country for six years in the United States Air Force. He received numerous accolades during that time, including a National Defense Medal, and he was honorably discharged.

Michael holds a Bachelor's of Science degree, with Highest Distinction, from the Kelley School of Business at Indiana University-Indianapolis. He was designated as the Chancellor's Scholar graduating number one in his class with a 3.99 GPA (4.0 scale).

Michael also holds a Doctorate of Juris Prudence degree from the Indiana University School of Law-Indianapolis. While in law school he represented Indiana University as a member of the Trial Team. Currently, he is a member of the Indiana and American Bar Associations, the Indiana CPA Society, the Indiana Venture Club and numerous other organizations.



SHARILEE KEMPA SMENTEK - is a senior associate in Arnstein & Lehr LLP's litigation group. She handles a broad range of commercial litigation matters, including the defense of consumer finance litigation for automobile dealerships and financing companies involving alleged violations of Motor Vehicle Retail Installment Sales Acts, Consumer Fraud Acts, and other state and federal consumer finance statutes. She has experience in all aspects of litigation.



DONN H. WRAY - Shareholder of Stewart & Irwin, P.C., Indianapolis and a member of the Automotive Retail Practice Section and Chair of the Environment Section. He has been representing dealers in environmental, OSHA, consumer defense and regulatory compliance issues since 1985.

Donn's automotive practice concentrates in counseling dealerships in environmental regulatory matters and the environmental loss control aspects of real estate transactions. His environmental practice emphasizes obtaining insurance coverage for remediation of underground storage tank spills and releases from industrial and dry cleaning facilities, and working with environmental consulting firms in advising regarding such cleanups. Donn has experience in dealing with the Indiana Department of Environment Management and Region V, USEPA. He has also represented PRP groups in Superfund litigation. Donn also provides to dealers and other businesses compliance counseling in the areas of OSHA and RCRA compliance.

Donn also serves dealers as defense counsel in many different types of consumer matters and in representing dealers in administrative proceedings before the Indiana Bureau of Motor Vehicles and the Indiana Attorney General's office.

He holds a B.A. in broadcast mass communications from Valparaiso University and a J.D. from the Valparaiso University School of Law, where he was Managing Editor of Law Review and is a member of the Indiana and Illinois bars.