

# THE WANADA BULLETIN

NEWS AND INFORMATION FOR AND ABOUT FRANCHISED NEW CAR DEALERS IN THE WASHINGTON AREA

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## Supreme Court Hears Auto Dealer TILA Case *Important Decision Could Affect Entire Consumer Credit Industry*

Attorneys representing an area franchised new auto dealer and a disgruntled customer squared off last Tuesday in a case before the U.S. Supreme Court that could affect how the federal government regulates the \$2 trillion consumer credit industry.

At issue in the case, *Koons Buick Pontiac GMC Inc. v. Nigh*, No. 03-377, is how much money consumers are entitled to recover when a jury finds that a dealer has violated the federal Truth in Lending Act (TILA). TILA provides a cause of action in favor of borrowers against consumer lenders for recovery of statutory damages, without any showing of actual harm or culpable intent, as well as any actual damages which may have been suffered.

Bradley C. Nigh, who was awarded more than \$24,000 in statutory damages from the dealer for a violation of TILA (and over \$26,000 in attorney's fees) connected to the purchase of a used truck, maintains that TILA authorizes damages up to double the finance charges. The dealer maintains the statutory damage

award should be capped at \$1,000.

The controversy began last year when a three-judge panel of the U.S. Court of Appeals for the 4th Circuit in Richmond, VA ruled 2 to 1 that TILA's section setting out civil penalties applied a statutory damages provision for the return of two times the finance charges, instead of a cap of \$1,000, which has been relied upon by the courts since TILA was enacted in 1968 and

has been the measure of TILA damages by the courts even after Congress amended TILA in 1995 to add a higher minimum/maximum provision for real estate finance transactions. But the court said a clause in TILA that capped damages under "this subparagraph" at \$1,000 referred only to disputes over consumer leases, not to auto purchases.

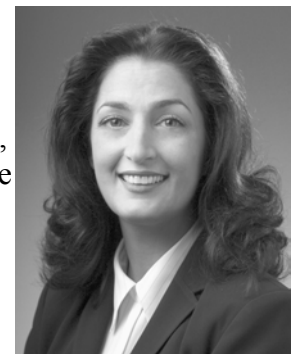
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### DEALERS IN THE SPOTLIGHT

## WANADA Nominates Tammy Darvish for TMQDA

For her leadership role in WANADA and outstanding contributions to her industry and community, Tamara C. Darvish, vice president of DARCARS Toyota, Silver Spring, MD, has been nominated by WANADA for the 2005 TIME Magazine Quality Dealer of the Year Award (TMQDA). The award will be given at the 2005 NADA Convention in New Orleans.

As a member of the WANADA Board of Directors since 1995, Darvish has served on most of the association's committees as well as two-term chairman of The Washington Auto Show, chairman of The Snow Ball for the



Tammy Darvish

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### DEALER ALERT!

**WANADA In-Dealership Flu Shot Program on Hold**  
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## Bill Curbs SUV Tax Write-Off, Payments to Olds Dealers

The massive corporate tax bill approved by Congress and sent to President Bush included an amendment to scale back the tax deduction on SUVs, and excluded the NADA sponsored tax provisions for Oldsmobile dealers and tax credits for hybrid vehicles.

The House approved the bill last Thursday by a 280-141 vote. The Senate, following a conten-

tious weekend session, voted 69-17 to approve the bill on Monday.

The legislation will roll back the amount small business owners can write off to purchase a new SUV, from \$100,000 to \$25,000. The bill would extend the business equipment deduction through 2007, but SUVs would be lim-

ited to \$25,000, plus accelerated depreciation. Other business equipment – including pickup trucks – would still qualify for the full \$100,000. Rules and limitations on passenger cars will not change under this provision.

If, as expected, the president signs the bill, the provisions will

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### Supreme Court

*(Continued from page 1)*

“A Chicago-based federal appeals court reached the opposite conclusion in 1997, so the 4th Circuit ruling created a legal contradiction that the Supreme Court must sort out,” according to *The Washington Post*. “The case may now hinge on how the Supreme Court chooses to interpret a single word -- the meaning of ‘subparagraph’ in the Truth in Lending Act,” said *The Post*.

In his argument to the Supreme Court, defense lawyer Donald B. Ayer, representing Koons Buick Pontiac GMC Inc., told the court that it is “utterly clear” from the context and history of the law that Congress intended to set a \$1,000 cap on how much consumers could win as statutory damages in addition to any actual damages by suing for alleged violations of TILA by car dealers and that it used the term “subparagraph” to lump such cases together with others subject to the cap.

This argument was supported by *amicus curiae* briefs filed by NADA, WANADA, MNCTDA,

and VADA, as well as banking and credit card associations, that maintain that the TILA damages awarded by the lower court and affirmed on appeal are wrong and should be reversed.

Plaintiff’s lawyer Hugo Blankingship, representing Nigh, contended that the damage cap applies only to a much narrower range of cases, and that lenders should be subject to statutory damages equal to twice the finance charges.

Attorney George Masson of Hamilton and Hamilton, LLP, representing WANADA, attended the Supreme Court hearing last Tuesday and reported the court appeared to split along philosophical lines. “Ironically, conservative Justice Antonin Scalia with his strict constructionist or textual view of the law would appear to interpret TILA in a manner which probably will favor the plaintiff in this case,” he said. “On balance, however, I thought the dealer’s legal team made a convincing presentation which hopefully will result in the correct decision,

namely, that the \$1000 cap continues to apply in TILA cases.”

Those seeking a reversal of the lower courts’ decisions, including WANADA, argue that the ruling, if allowed to stand, will significantly reduce the availability of consumer credit, and larger awards will result in more lawsuits that will increase costs to dealers for liability insurance and legal fees that will be passed on to consumers in the form of higher interest rates and tougher loan terms.

NADA argued in its brief that a win for Nigh would result in “huge windfalls to a few consumers involved in credit transactions where unintentional, technical violations of TILA occur.”

If the Supreme Court upholds the Fourth Circuit decision, the only way to correct the potentially ruinous interpretation of TILA damages would be for Congress to go back and amend the law yet again.

A decision is expected by July.

## DEALERS IN THE SPOTLIGHT

## Darvish (Continued from page 1)

past four years, and chairman of the Bobby Mitchell Hall of Fame Golf Classic since 2000. Under her leadership, WANADA led the way on raising millions of dollars for the Leukemia and Lymphoma Society and the Boys & Girls Clubs. Taken together all of this has had a positive residual effect on improving the image of *all* dealers in the region.

Darvish, who now serves on the WANADA Executive Committee, has been a high-energy catalyst to bring dealers together and rally them in support of their industry and community. "I used my position at WANADA to try and convince dealers that we could have a much greater impact collectively in both our industry and our communities than we would individually. We could get a bigger bang for the buck if we combined our talents and our strengths in support of major civic and charitable events like The Snow Ball and Bobby Mitchell Classic."

The daughter of John R. Darvish, president and founder of DARCARS Automotive Group, Tammy literally grew up in a dealership, working part time and summers during school breaks. After graduating from Northwood University and NADA's Dealer Candidate Academy, she expected to be placed in a general manager position at one of her father's dealerships. But John Darvish had other ideas. She would work her way through all areas of the dealership – sales, service, parts, body shop, even working on cars as a technician and body painter.

"Although I resented it at the time, I am now a far better dealer-operator because of the thorough hands-on training," says Tammy.

"Her opportunity to become a dealer-operator came in August 1986, taking ownership of a business that needed a boost in the national Toyota network. "There was a lot of pressure on me as a dealer's *daughter* to prove we could do better, and we went to work building a team that believed we could succeed," said Tammy.

With a strong emphasis on customer satisfaction and employee training, DARCARS Toyota won its first President's Award in 1990, and was ranked in the *top ten* Toyota dealerships



Darvish assisted in collecting DNA samples for parents at St. Bartholomew's school in Bethesda, a program she also sponsored at DARCARS Toyota.

nationwide, where it has remained. "We have received the President's Award every year but one since," says Tammy. "But the year we missed was a valuable lesson: Never take your eye off the ball and, more important, never forget where you came from."

DARCARS Toyota has also been a recipient of Toyota's "Excellence Awards" for F&I, sales, service, parts and customer relations, and Darvish has served on the Toyota Board of Governors for the past 14 years, the Toyota Customer Service Advisory Board for 11 years as well as the Toyota Dealership Council since 1994.

Her hard work on behalf of her community and industry is a product of the family philosophy and dealership culture instilled in her by her father. "He always told us, 'You will have everything you want if you learn how to give,'" Tammy recalls. "Today, we always use this line in our fundraisers: 'There are two kinds of people: those who need help and those who can help.' The fact that we *can* help is very rewarding to me."

Beginning with her first assignment out of college to raise funds for a seriously ill little girl who needed a kidney transplant, Tammy Darvish and the DARCARS staff have put their heart and soul into fundraising projects to benefit a wide variety of causes, including the Parkinsons Research Foundation, the Children's Inn at NIH, "Fit for a Kid" child car safety checks, Project "Safe Kids," Parents of Downs Syndrome, and a host of other civic and charitable organizations.

"I'm very proud of the difference we have made," says Tammy.

**IMPORTANT NOTICE:****Vaccine Shortages May Disrupt WANADA Flu Shot Program**

After weeks of urging dealers to sign up for WANADA's in-dealership flu shot program, we regret to inform you that, like most area clinics and medical facilities, our flu shot provider, Norvar Health Services, is faced with a severe shortage of flu vaccine and may be forced to curtail scheduled flu shot operations until more vaccine is available.

The vaccine shortage is the result of contamination at Chiron Corp, a British company that supplies up to half of U.S. flu vaccines, for a loss of up to 48 million doses. The Centers for Disease Control and Prevention have asked healthy Americans, young and old, to refrain from seeking flu shots so the most vulnerable people could be given priority.

Norvar reports that it will continue to administer shots to WANADA dealers through this Wednesday, but the vaccine will be limited to the number each dealer has guaranteed at each location, with no add-ons. At this point, however, none of our dealers will receive further shots from NORVAR, which must await further word from the CDC. As of this writing, the CDC has suspended any activity by suppliers in the U.S.

WANADA also is attempting to secure "flu mist" as a substitute for the shots. Flu mist is more expensive than the shot, but we don't know what our cost will be yet. WANADA will stay on this project and update dealers as more information becomes available. For the most current updates, contact John O'Donnell at WANADA, (202) 237-7200.

**Corporate Tax Bill** *(Continued from page 2)*

be effective for SUVs placed in service after the date of enactment.

The huge bill also rejected a tax provision passed by the Senate earlier that would have allowed Olds dealers to defer taxes on settlement funds from General Motors used to invest in another dealership. The payments were to compensate dealers for terminating the brand. Supporters of the Oldsmobile plan, principally NADA, said they do not expect the provision to come up again, given GM will have fully closed down Oldsmobile by next year.

And in further bad news for automobile dealers, the bill also eliminated proposed tax credits of up to \$4,000 for hybrid vehicles and up to \$8,000 for a fuel cell vehicle. Despite being a top lobbying priority of automakers, Congressional negotiators apparently felt taxpayer-funded incentives were not needed, given the high demand and long waiting list for these vehicles.

The tax legislation represents the most sweeping rewrite of corporate tax law since the last major overhaul of the tax code in 1986. The 633-page bill contains 276 separate provisions calling for \$140 billion in new tax breaks over the next decade to a wide array of U.S. companies, according to The Washington Post. The legislation culminates more than two years of efforts to repeal a \$5 billion-a-year export subsidy that was ruled illegal by the World Trade Organization.

**Thought for the Week...**

*Life is just a bowl of pits.*

**Rodney Dangerfield (1921 - 2004)**