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D.C. District Court upholds FTC on Risk-Based Pricing Rule

The U.S. District Court for the District of Columbia ruled this week (May 20) that the Federal Trade Commission has the authority to require that new automobile dealers comply with its Risk-Based Pricing rule on credit report disclosure. The National Automobile Dealers Association had challenged the legality of the requirement on the grounds that the rule was flawed, unnecessary, and burdensome to many dealers by requiring them to purchase credit reports for no purpose other than to comply with the Risk Based Pricing Rule.

The Federal Trade Commission issued the rule in July 2011 requiring dealers engaged in three-party vehicle financing transactions to comply with the Risk-Based Pricing Rule's credit report notice requirement even though NADA argued that many dealerships do not themselves obtain, receive, or review a credit report.

In its ruling the court found that while the statute is capable of supporting NADA's interpretation, the FTC possessed authority to issue its interpretation of the law requiring credit report disclosure and that its interpretation was reasonable.

NADA says it will appeal the decision to the Court of Appeals, D.C. Circuit.

Reps. at AIADA Summit in DC bullish on the industry while concerned about continuing political gridlock

Dealer and OEM representatives from around the U.S. attending the Sixth Annual Industry Summit of the American International Automobile Dealers Association (AIADA) this week were conflicted with an robust auto industry on the one hand and a dysfunctional federal government on the other.

AIADA dealer members in town from all parts of the country, joined by



senior executives from the major import automakers meeting in business sessions with Washington insiders and Congressional luminaries frequently referred to auto sales as something to be “bullish” about. Indeed, 14 million new units sold was the universally accepted prediction for 2012, while OEMs, one after another, touted their expanded sales and profits. The Washington insiders, however, weren’t optimistic about the state of U.S. politics and the even less optimistic about unstable politics abroad.

Charlie Cook, of Cook Political Report fame, looked to the upcoming presidential election as one shaping up to be too close to call with seriously different political courses charted by President Obama, if re-elected versus the likely Republican challenger, Gov. Mitt Romney. “The election is only the tip of the iceberg,” said Cook, who noted that “looming issues,” like federal tax rates, aren’t likely to be squared away by a Congress that is paralyzed by partisan politics and headed for a Lame Duck Session in November and December. “How are businesses supposed to plan when tax rates aren’t resolved?” he asked.

Republican Senator Roy Blunt (MO) took it a step further, contending that U.S. business could well *retract* when confronted with tax rates set to spike up to pre-Bush era levels in 2013, thereby having a chilling effect on investment.

An OEM executive panel moderated by Jason Stein, editor of Automotive News, consisted of Jeff Conrad, vice president of Acura; Tom Loveless, vice president of sales, Kia; Tim Morrison, vice president of sales, Lexus; and Frank Trivieri, vice president of sales, VWoA.

Besides Mr. Cook, an AIADA business session included Brad Fitch, CEO of the Congressional Management Foundation. In addition to Sen. Blunt was the ever humorous, always insightful Haley Barbour, former governor of Mississippi.

Government relations issues AIADA dealers carried up Capitol Hill to their members of Congress included AIADA’s ongoing advocacy for free and even trade in world markets; concern about overreaching by the National Labor Relations Board; the need for certainty in federal taxes, most especially the estate tax; one national fuel standard; and the problem with “right to repair” legislation.

Appeals Court rules against Ford dealers in retail warranty parts **Ruling reverses decades of favorable case law and statutory protection for dealers, consumers**

The U.S. Court of Appeals for the Third Circuit last month ruled against dozens of New Jersey Ford retailers, holding that Ford Motor Company was free under state law to impose a so-called “New Jersey Cost Surcharge” to recover what Ford claimed was an additional cost of doing business in New Jersey.

The decision is a radical departure from past rulings. It is premised upon a second generation warranty reimbursement law under the New Jersey’s Franchise Practices Act, which, among other things, prohibited franchisor surcharges and other cost shifting to dealers for simply asserting their rights.

The New Jersey Automobile Dealers Association (NJ CAR), the National Automobile Dealers Association (NADA) and the Maine Auto Dealers Association have joined with New Jersey Ford dealers in petitioning the Court for reconsideration.

Some 30 states across the nation, including Maryland and Virginia, have laws requiring manufacturers to pay dealers retail for warranty parts. But dealers in only a few states (such as New Jersey and Maine) have taken steps to broaden the law to ensure the proper measure of franchise protection. NADA joined in petitioning the Court for rehearing because they fear Ford and other manufacturers will move to impose similar punitive surcharges in other states. In previous federal court decisions dating back to the mid-1980s, the courts have consistently recognized that the New Jersey legislature intended to protect dealers and new car consumers by requiring manufacturers to treat warranty work on a car or truck at parity with customer paid work.

Those same courts have also consistently found that various “creative” manufacturer policies designed to deprive dealers of the right to full retail compensation on parts used in warranty repairs violated the law.

The U.S. Court of Appeals for the Third Circuit took the position that Ford’s cost recovery charge, even though it resulted in every retailer receiving less than what the statute mandates, was in compliance with the statute simply because a wholesale price increase was used and what Ford took back was not on a dollar-for-dollar basis from each retailer.

NJ CAR, NADA and the Maine auto dealers have argued that these were serious errors and would result in the deprivation of the rights accorded retailers under state statute. By dismissing the argument that the result of Ford’s approach is to make actual retail reimbursement illusory, the Court of Appeals ignored precedent established in prior cases making clear that the Court must distinguish between cost recovery methods that are permissible and those that are not. In previous rulings, the federal courts have found that a warranty reimbursement policy that takes away what it gives is no payment at retail at all, and that a “statute permitting illusory transactions with no economic effect, will serve no legitimate purpose.”

New product schedule will lead to market gains for Ford, GM, and Toyota through 2015, study says

New product is the key to market share gains in the U.S. and a key analyst in the auto industry predicts that reality will lead to market share gains for Ford, GM and Toyota in the U.S. through 2015.

John Murphy, analyst for Bank of America Merrill Lynch, in the annual analysis he calls *Car Wars*, says Ford will pick up 0.8 percent of the market, General Motors will gain 0.5 percent and Toyota picks up 0.3 percent. He says Nissan, Honda and Chrysler and the European brands will retain the market shares they currently have, but Korean brands risk losing 0.5 percent.

Murphy says share gains and losses will continue to be driven by how thoroughly and quickly each automaker is refreshing its product lineup. “Replacement rate drives showroom age, which drives market share, which in turn drives profits and stock prices,” Murphy says, adding that all of those factors should be strong over the next three years.

As a group, Murphy says, the Detroit Three will be the only gainers in the U.S. market, driven in large part by their “increased focus on product and improvement in relative competitiveness.”

Japanese brands because of a relative paucity of new products will stall their market-share gains at whatever they have accomplished so far this year, Murphy says.

Murphy predicts that, despite their stated intentions to boost market share, Volkswagen, Mercedes-Benz and BMW will net no market share gain above the 9 percent market share they have this year. "If anything, there is a risk that Mercedes-Benz and BMW will outperform" his expectations over the next few years and "VW underperforms."

Murphy's analysis of Hyundai and Kia's prospects are less sanguine despite their recent performance which has seen them take 8.9 percent of the U.S. market. Murphy sees the two brands sacrificing a combined 0.5 percentage point of share over the next three years largely because their collective "product cadence appears to remain volatile, indicating market-share gains should slow."

International Highway Safety Group honors Mike Harrington, NADA legislative and Mike Stanton, Global Automakers

Two industry leaders who work closely with WANADA on The Washington Auto Show and a myriad of other things were recognized this week by the Association for Safe International Road Travel (ASIRT) for their extraordinary advocacy of highway safety. Michael Harrington, NADA's director of legislative affairs, and Michael Stanton, president of Global Automakers each received Leadership Awards from ASIRT for contributions spanning their respective careers toward the production of safe vehicles and their safe use.

Besides his work advocating NADA's extensive government relations agenda over the past several years where auto safety matters are a recurring focus, Mike Harrington directed external affairs at the National Highway Traffic Safety Administration. Correspondingly, Mike Stanton's leadership of the Global Automakers, preceded by his extensive and well regarded government relations work at the Alliance of Automobile Manufacturers put him at the center of most major auto safety initiatives over the past 30 years he has represented the automobile industry in Washington.

Last year's ASIRT honoree was WANADA past chairman, Jack Fitzgerald of Fitzgerald AutoMalls for his longstanding role as a champion for the cause of child passenger safety.

In Memoriam (reprinted from the *Special Bulletin* from May 23)

Ray MacAnanny, Sr.

WANADA is saddened to notify members of the recent passing of longtime Washington Area dealer Raymond E. MacAnanny, Sr., formerly of Safford Autos in Silver Spring and Northern Virginia. He had been ill for some time, ultimately succumbing to renal failure. He was 83.

A career Navy man, Ray MacAnanny went to work for L.P. Safford, the founder of Safford Autos, in the early 1970s after a short stint in the automobile business in Virginia Beach. Taking over the business by the mid-1970s, Safford Lincoln Mercury operated very successfully in downtown Silver Spring with the slogan "the littlest showroom in town." Ray's son, Rick, came on board in the 1990s, subsequently taking over the business around the time Ray opened Safford in Fredericksburg, VA before selling it to the current operator, Jim Gramm.

Friends may call on the family this Saturday, May 26, between 4 and 6 at Spotswood Baptist Church, 4009 Lafayette Blvd, Fredericksburg. Funeral services at Spotswood are set for Sunday, May 27, at 4pm.

In lieu of flowers, the family requests that donations be made to:

The MacAnanny Foundation
P.O. Box 218
Spotsylvania, VA 2253

To Rick, the rest of Ray's family and many friends over the years, WANADA extends its sincerest sympathies.

Success all around for the 2012 WANADA Open!

Return to Lansdowne Resort highlighted by new skills competition
Virginia dealers retain the coveted MDVA WANADA Cup trophy

The 2012 WANADA Open returned to Lansdowne Resort May 16 and, as has been the event's tradition (and good luck with the weather), association members and guests enjoyed a *spectacular* day.

Blue skies and temperatures in the low 80s, awaited the 136 golfers registered for the WANADA Open as well as the additional members and guests attending the evening reception and dinner. Mixed into the day of on-course competition were new golf skill challenges sponsored by ADESA, which included the Lob Wall, Glass Break and the \$2,500 Money Putt, the latter of which was within a "hairs breath" of being collected by Al Wideman, Lexus of Rockville.



The WANADA Cup match, pitting Maryland and Virginia dealers against one another, returned in a different format this year, but with a similar result, as Virginia dealers once again took the title.

"The skills challenges really added a new, fun element to the day's



activities," said Tony Santy of Chesapeake Petroleum, chairman of the WANADA Special Events Committee, which organized the Open. "That Lob Wall was a real test and I am sure the eight golfers who shattered the Glass Panel had fun doing it," Santy said, expressing his appreciation of skills sponsor ADESA and all the corporate sponsors, numbering 34 this year, whom he credited for "making the event the grand success that it was."

The WANADA Cup

In the premier event of the Open, the WANADA Cup, Virginia dealers again came out on top with the winning foursome score and runner up score of the General Tournament for the overall team title victory. For the WANADA Cup this year, the total score of Virginia and Maryland dealers were added together and then divided by the number of teams to determine the average score of Virginia and Maryland players. The individual foursome on the winning side with the lowest score of 61 was from Malloy Hyundai. The team included Rusty Rossell, Scott Lee, Roland Shaha and Steve Tabled. The winners will have their names inscribed on the WANADA Cup plaque that is displayed at association headquarters. Each player was presented an individual trophy to recognize their accomplishment.



WANADA Open winners and WANADA Cup champions from Malloy Hyundai, from the left; Rusty Rossell, Scott Lee and Roland Shaha. (Missing is Steve Tabled)

General Tournament Winners

Winning Team from Malloy Hyundai Stores, shot 61

The winning foursome, as noted, is Rusty Rossell, Scott Lee, Roland Shaha and Steve Tabled.

Second Place Team from Rosenthal Companies, shot 61

The runner-up foursome is Don Bavely, Steve Ferouz, John Rhodes and Jon Aust.

Third Place Team from BG Products, shot 62

The third-place foursome is Tom Layden, Kirk Lombardi, Joe Watson and Smokey Laymond.

Specialty Golf Event Winners

The Longest Drive – *White Tees*

Dave Ambrose, Mercedes-Benz of Alexandria and Bruce Kelleher of NADA

Longest Drive – *Blue Tees*

Mike McNicholas of Leesburg Toyota and Brad Miller of NADA

Closest to the Pin – *Red Tees*

Susan Perry, Perry Group

Closest to the Pin – *White Tees*

Tom East, Safford Motors and Barry Cuzzo, Zurich

Closest to the Pin – *Blue Tees*

Kevin Foley, Wells Fargo and Doug Olcott of Enterprise

The B&R Challenge – yields \$1,000

It wasn't easy to beat Bortie Twiford on the Par 3 13th hole at Lansdowne's Greg Norman course, but for those golfers who did, their names went into the hopper for a special \$1,000 dinner prize drawing. The last man standing of the five first names drawn was Chip Doetsch of Apple Ford, the B&R Challenge winner.

Dinner Prize Winners

Fine Wine Collection

Dave Kelley, Passport Nissan

\$45 gift card from Cheesecake Factory

Scott Lee, Malloy Hyundai

Lansdowne \$75 gift card & coffee travel mug

John Rhodes, Rosenthal Companies

Lansdowne golf shirt & Callaway hat

Bruce Polansky, Ourisman Automotive of VA

Lansdowne windshirt

Pat Hall, Brown Automotive Group

Lansdowne sweatshirt/blanket & \$25 gift certificate to Bonefish Grill

Sam Weaver, Chevy Chase Nissan

Lansdowne golf shirt & vest

Jim Bergin, Mercedes-Benz of Arlington; Chuck Jackowski, Ourisman of VA

Callaway Razr Fit Drive

Mark Zetlin, Mercedes-Benz of Arlington

Callaway Razr Fit 3 Wood

Tom East, Safford Motors

Lansdowne overnight package for two including a round of golf

Jeremiah Hill, Honda of Dulles

Special prizes for kindred-line members

Lansdowne overnight package for two including a round of golf

James Batiste, JM&A

Titleist Vokey 56 degree wedge

Jon Titman, Prestige Auto Accessories

50/50 Drawing yields \$1,025

Patrick Hall, Brown Automotive Group (*pictured right with John O'Donnell of WANADA holding the money*)

Albatross Money Putt - \$50 Home Depot gift certificate

Al Wideman, Lexus of Rockville

Albatross Money Putt - \$50 PF Chang gift card

Derek Humelsine, Mercedes-Benz of Arlington



Grand Prizes

Platinum level – Nemaclin Woods Resort \$2,000 Gift Certificate, \$25 Gas Card

Chip Doetsch, Apple Ford (*pictured right*)

Gold level – Kindle Fire

Mike Pratti, Mercedes-Benz of Alexandria

Silver level - Apple iPod Touch

Kevin Yi, Herb Gordon Nissan

Bronze level – Samsung Camera & case

Sina Mohabat, Sheehy Honda of Alexandria



Scenes from the 2012 WANADA Open
May 16, Lansdowne Resort





The 2012 WANADA Open
May 16, Lansdowne Resort



To view video of the Albatross Golf Skills events click [HERE](#)

See more photos of the 2012 WANADA Open click [HERE](#)

“Thank You” to our WANADA Open Partners & Sponsors!

Things like the WANADA Open come together and go off as successfully as they do because of a carefully formulated and executed plan organized each year by the Special Events Committee. In addition to Chairman Tony Santy of Chesapeake Petroleum, committee members included Bob Hydorn of Fitzgerald Auto Malls; Dave Kelly, Passport Nissan; Jennifer Parsons, DARCARS, Peter Reilly, CBM; Bob Reeser of Chase Automotive Finance; and Sam Weaver, Chevy Chase Nissan. The Open goes from good to great with the generous support of sponsor organizations, many of which are part of WANADA’s Kindred Line, all of which successfully service the Washington area new automobile dealer community. In all, there were 34 sponsors this year whose support greatly enhanced the enjoyment quotient of the participants on many levels.

Activities and Evening Sponsors

Dinner – Automobile Dealer Education Institute (ADEI)
 Cocktail Reception – Crumback & Associates and Kaiser Permanente
 Music during cocktails and dinner – SunDun Refreshment
 Registration – Penney Design Group
 Bag Drop – Zurich Direct
 Lunch – M&T Bank and SunTrust Bank
 Albatross Golf Skills Challenge – ADESA
 Golf Carts –JM&A Group and Chesapeake Petroleum
 Golf Towels – CARFAX
 Pin Location Flags – AutoTrader.com
 Hole-in-One Sponsorship – \$10,000 Prize –
 Morgan Stanley Smith Barney (John & Paul Keats)
 Hole-in-one Sponsorship – 50” Plasma TV prize –
 The Washington Post
 Hole-in-one Sponsorship – Ping Woods and Bag Prize –
 B&R Associates
 Hole-in-one Sponsorship – iPod Touch Prize –
 The Washington Auto Show
 Driving Range – Councilor, Buchanan & Mitchell, PC
 Putting Green – CARFAX
 Beverage Carts – BG Products, Charapp & Weiss, LLP
 Sign Sponsor – Hargrove Decorators.



2012 WANADA Open

Thank You!

Grand prizes

Platinum – Nemaocolin Getaway - Workforce Tactix
 Gold – Kindle Fire - WANADA Automobile Dealer Education Institute (ADEI)
 Silver – iPod Touch - WANADA Insurance Brokerage & Trust
 Bronze – Samsung Camera - The Washington Auto Show

Hole Sponsors

Assurant Employee Benefits, BB&T, Cars.com, Group Benefit Services, Hamilton and Hamilton, LLP, LoJack Corporation, PNC Dealer Finance Corp., PDP Group, Inc., Planning solutions Group, Prestige Automotive Accessories, The Guardian Life insurance Co., Washington Examiner, Hargrove, Inc., Pomerance & Associates and Yoffe Exposition Services.

And, of course, WANADA Staff Organizers

The success of the WANADA Open is in no small measure due to the effort of the skilled and dedicated association staff “who keep the trains running on time,” according to WANADA president Gerard Murphy. This year, the WANADA Open staff organizers included Ralph Frisbee (golf consultant), Kristina Henry (event management), John O’Donnell, Trish Frisbee, Immanuel Garcia, Martha Kowalski, Katy Orme and Ana Campos.

Memorial Day reflection...

Without heroes, we are all plain people and don't know how far we can go.

--Bernard Malamud