

# THE WANADA BULLETIN

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

WANADA Bulletin # 26-15

Happy 4<sup>th</sup> of July!

June 30, 2015

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## Supreme Court decision leaves Healthcare Reform Law intact



After the Supreme Court decision upholding the healthcare law, business groups will likely urge Congress to make other changes to it.

As reported here, and widely elsewhere last week, the 6-3 Supreme Court ruling in *King v. Burwell* on The Affordable Care Act (ACA), allowing federal subsidies for healthcare insurance in all states, means that nothing will change in the way the law is implemented. Maryland and DC have state/jurisdictional health care exchanges, and their insurance was not in question. But a decision the other way would have had a big impact in Virginia, and 34 other states that used federal exchanges in lieu of establishing state constructed and operated healthcare exchanges, [www.healthcare.gov](http://www.healthcare.gov).

The requirement that all companies with 50 or more employees must offer affordable health

insurance, as defined by the law, remains the same.

A few days before the ruling, the Congressional Budget Office estimated that rolling back the Affordable Care Act by ending insurance subsidies would increase the budget deficit by as much as \$353 billion.

The Supreme Court decision dashes hope of opponents of the Affordable Care Act that it will be dealt a body blow harsh enough to kill it. Business groups will likely now urge Congress to make other changes to the health care law, such as changing the definition of “employee” from an individual working 30 hours a week to 40; ending the “Cadillac” tax on high-premium health

care plans; repealing taxes on medical devices and insurance companies, and eliminating the employee mandate.

Republicans in Congress have said they plan to kill the ACA by defunding it through budget reconciliation in the fall. Such a measure would certainly be vetoed by the president. The Republicans are also working to push through some of the measures mentioned above. A bill to repeal the medical device tax passed the House the week before the Supreme Court ruling, by a margin just one vote shy of a veto-proof majority. President Obama has said he would veto it.

The House bill would cost less than previous versions because repeal would not be retroactive and so would not require tax refunds. But it would still add more than \$24 billion to the deficit in the next 10 years, reports the *Indianapolis Star*.

In the Senate, Senate Finance Committee Chairman Orrin Hatch (R-Utah) has introduced a similar bill, but with so many other issues in the Senate, this one hasn't even come up for debate. Some Senate Democrats have said they support repeal of the tax, but only if the cost is offset elsewhere – which Sen. Hatch's bill does not do.

## Md. Ct. of Appeals upholds dispute arbitration clauses in financed vehicle sale contracts

In an important court case favoring dealers and vehicle buyers who agree up front to arbitrate disputes that may arise in financed transactions, the Maryland Court of Appeals this week determined that arbitration clauses written into key parts of the contract paperwork are enforceable in the state. While this decision helps dealers and consumers, it sets back plaintiffs lawyers, who for years have opposed dispute resolution by arbitration because of how it curtails, if not eliminates, their ability to launch class action suits against dealers and others.

Rejecting plaintiff lawyers' arguments in the Baltimore case, *W.M. Ford v. Antwerpen Motorcars* (440 Md 114; 99 A. 3d 778, 2014), the Court of Appeals affirmed the lower court, holding that the so-called "single document rule" the term plaintiffs lawyers coined from section 11.12.01.15A of the Code of Maryland Regulations (COMAR) did not mean what they said it meant, namely, that all terms of a financed vehicle sale agreement were required to be contained in one document, the Retail Installment Sales Contract (RISC). Instead, the Court found that that the arbitration clause contained in the Buyers Order in the case would stand because the Buyers Order was, indeed, as much a part the vehicle sales agreement as the RISC, which, when read together, formed the entire agreement.

Helpful to the success of this useful outcome for the utilization of arbitration clauses in this precedential decision in Maryland was the statement in the RISC that said "...this contract along with all other documents signed by you in connection with the purchase of this vehicle, comprise the entire agreement." The Court of Appeals judges said they relied upon the Common Law of contracts in the context of case law in evaluating the pertinent COMAR provisions presented by the plaintiffs lawyers in this case.



High court decision settles question in Maryland, that a number of documents taken together can constitute an enforceable vehicle sale contract. Photo by Dan Moyle.

In view of this favorable high court decision in Maryland for dispute resolution by arbitration, WANADA members are advised to review their Buyers Order forms in comparison with RISC forms used by lender partners to act as the basis for review by legal counsel, and, if necessary, a conversation with lender representatives.

Thanks to Mike Charapp, Esq., Charapp and Weiss, for inspiring this article.

## Supreme Court refuses to hear Fiat/Chrysler's appeal on dealer closings

The Supreme Court refused to hear Fiat/Chrysler's appeal of a federal appeals court decision that allows four Chrysler dealerships shuttered during the recession to apply to reopen, reports the *Detroit News*.

The appeals court ruled in January that Fiat/Chrysler's requirements for reopening couldn't be "unreasonably onerous." The automaker sets out minimum requirements of two acres with 16,000 square feet of structures meeting certain building requirements. The dealers must also have working capital of \$986,000 to \$1.38 million.

In 2009, Chrysler closed 789 stores, about 25 percent of its dealer network. Four hundred of those filed for arbitration. The four dealerships covered by the Supreme Court ruling are in Michigan and Las Vegas.

## Ford to pilot car-sharing model in DC, 5 other U.S. cities

Ford will pilot a car-sharing model similar to Uber in Washington, DC, five other U.S. cities and London. Customers who finance their car through Ford will have the option of renting out their car on a short-term basis to pre-screened drivers. People who want to rent the cars will download an app created by Getaround, a San Francisco startup.

"As most vehicles are parked and out of use much of the time, this can help us gauge our customers' desires to pick up extra cash and keep their vehicles in use," said David McClelland, Ford Credit vice president of marketing.



A Ford Focus owner in our area could rent out their car to other drivers.

A total of 14,000 U.S. Ford customers will be invited to join the program. It will also be offered in Chicago; Portland, Ore., and, in California - Berkeley, Oakland and San Francisco.

## Smartphone users serious about online car shopping

Car shoppers using smartphones are just as likely to do serious shopping as those using desktop computers, laptops and tablets, says Edmunds.com. The conclusion about shoppers searching Edmunds.com aligns with the widespread prediction that computing will increasingly be done on smaller mobile devices.

Even though smartphone users spend less time on Edmunds than wired users, they view as many or more pages, and they're more likely to focus their research on specific vehicles. More than three-quarters of Edmunds users research at least one specific model, compared with 65 percent for wired users.

Of particular interest to dealers, smartphone users view local inventory listings at rates more than 30 percent higher than their wired counterparts.

Other findings from the analysis of Edmunds.com visitors:

- Smartphone users are more likely to research used vehicles (53 percent) than wired users are (38 percent).
- Smartphone shoppers engage more with advertising. They are at least 2.5 times more likely to click on ads than wired site visitors.

## Senators slam NHTSA after inspector general report



The problems with recalled Takata airbags led to a DOT audit of NHTSA's practices. Photo by Adam Bartlett.

An investigation of the National Highway Traffic Safety Administration by the DOT inspector general found much that was wrong with the agency, and senators in a Senate committee hearing harshly criticized NHTSA.

The inspector's report said that NHTSA does not give "detailed guidance on what information manufacturers and consumers should report – resulting in inconsistent data" that is not useful.

Another serious problem: NHTSA's "process for determining when to investigate potential safety defects is insufficient to prompt needed recalls."

The criticism was bipartisan. "This audit report is one of the worst I've ever seen in terms of a government agency," Sen. Claire McCaskill (D-Mo.) said to NHTSA Administrator Mark Rosekind and DOT Inspector Calvin Scovell III. "This is about blatant, incompetent mismanagement."

Sen. John Thune (R-S.D.) said the report showed that the problem at NHTSA is not money, but mismanagement of resources. The Obama administration has asked Congress to triple NHTSA's defects budget and double its staff.

The report makes 17 recommendations to help NHTSA improve its auto safety investigations. Rosekind told senators the agency has taken 44 actions to address problems at the agency, including 10 that directly deal with the report's criticisms.

## Six-year highway bill passes Senate committee; no funding

A Senate transportation committee approved a six-year highway bill in an effort to fund transportation for the long term, even though Congress has used a series of stopgap measures to fund roads since 2005. The only catch with this measure: No one has come up a way to fund it.

The gas tax has not been raised in more than 20 years, and the Highway Trust Fund funded by that tax has been inadequate for funding infrastructure for many years. The short-term transportation measures have relied on a combination of gas tax revenues (usually about \$34 billion) and money transferred from other parts of the budget (about \$16 billion).

The current stopgap measure expires July 31, and soon after that the Highway Trust Fund will go broke. The Congressional Budget Office has estimated that an extra \$100 billion would be needed in addition to gas tax revenue to fund a six-year measure.

Several transportation advocacy groups have pushed for a gas tax increase, and several states have raised their state gas tax. The American Automobile Association advocates an increase in the federal gas tax and supports the Senate bill.

## U.S. driving hits record in first quarter 2015

Americans drove nearly 1 trillion miles in the first four months of this year, breaking an eight-year record, says the Federal Highway Administration (FHWA). Americans drove the most ever for the month of April, a 3.7 percent increase from April 2014.

Driving has increased steadily for 14 consecutive months. Every state showed an increase in vehicle miles traveled (VMT). Washington, DC, the sole exception, saw 1 million unadjusted VMT fewer in April than a year ago, a drop of 0.3 percent.

The FHWA report examines the trends and choices facing America's transportation infrastructure in the next three decades: A rapidly growing population, increasing freight volume, demographic shifts in rural and urban areas, and a transportation system that is facing more frequent extreme weather events. Increased gridlock nationwide can be expected, unless changes are made in the near term, says FHWA.



The Federal Highway Administration warns of more gridlock if infrastructure improvements are not made soon.

## Virginia is 12th best state for doing business; Maryland is 36<sup>th</sup>

In CNBC's annual ranking of the top states for business, Virginia dropped from No. 8 to No. 12 this year. Maryland, always closer to the bottom, edged down slightly, from 35<sup>th</sup> to 36<sup>th</sup>.

Virginia's top score was in business friendliness, third among the 50 states. Its lowest scores were for cost of doing business (37<sup>th</sup>) and economy (36<sup>th</sup>), mainly because "job creation has slowed in recent years," says CNBC. Maryland scored 2<sup>nd</sup> in workforce and 6<sup>th</sup> for education, but near the bottom for cost of doing business, infrastructure, cost of living and business friendliness.

The top states this year are Minnesota, Texas and Utah. Maine came in last. CNBC looked at 60 factors to measure business competitiveness.

## How driver-assist technology can allay young drivers' fears

Young Americans are more afraid of other motorists driving dangerously (chosen by 88 percent) than of public speaking (75 percent), death (74 percent) or spiders, according to a new survey commissioned by Ford Motor Co.

"Younger drivers are worried about distracted drivers, but they think technology isn't just the problem. It's also the solution, as we are seeing growing demand for driver assistance technologies," said Kevin Shkolnik, vice president, Penn Schoen Berland, the research firm that did the survey of consumers ages 16 to 34.

The most worrisome driving situations mentioned by those surveyed: snowy or icy roads, maneuvering into a tight parking spot, backing out onto a busy street, monitoring blind spots, and

not knowing where I'm going. The research shows 65 percent of respondents are more likely to buy a vehicle if it has technology to help with parallel parking. And 62 percent of those polled want technology to detect objects in blind spots.

The release of the survey results coincided with Ford's announcement that it would migrate driver-assist technologies across its product lineup in the next five years.

### Thought for the week...

America is much more than a geographical fact. It is a political and moral fact – the first community in which men set out in principle to institutionalize freedom, responsible government and human equality.

--Adlai Stevenson

Happy 4<sup>th</sup> of July from all of us at WANADA!

***Along with government and many business offices, WANADA will be closed Friday, July 3<sup>rd</sup> in conjunction with the upcoming holiday weekend.***

WASHINGTON AREA NEW AUTOMOBILE DEALERS ASSOCIATION