

THE WANADA BULLETIN

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

WANADA Celebrating 100 Years of Service (1917-2017)

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July 14, 2017

Headlines...

CFPB rulemaking permits dealers to offer consumers class action waivers, but lenders are prohibited

Save the date! WANADA Annual Lunch is Nov. 17, with Bret Baier, Ritz-Tyson

Geoff Pohanka re-elected as NADA director for Metro Washington

Maryland Excise Tax Credit for Plug-in Electric Vehicles now in effect

Maryland Energy Administration flags Constellation's EV rebate program

NADA stays involved with tax reform discussions

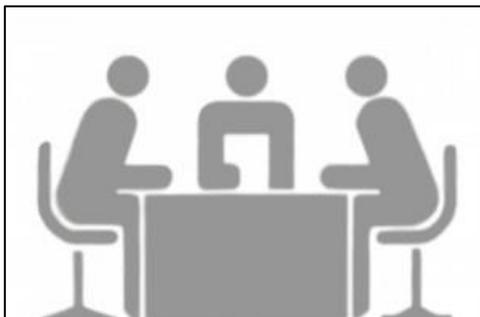
Save the date: *NADA Show 2018* in Las Vegas, March 22-25

SUV/CUV loyalty at record high as sedan loyalty drops, study finds

One-third of dealerships have no succession plan, survey shows

Staying Ahead...

CFPB rulemaking permits dealers to offer consumers class action waivers, but lenders are prohibited



Arbitration is often less costly and time-consuming than litigation.

When the Consumer Financial Protection Bureau (CFPB) issued the final version of its rule banning class action waivers in arbitration agreements, it had some good news for dealers with a catch.

The good news: The final rule provides that dealers *are* permitted to ask consumers, as part of pre-dispute arbitration agreements, to waive their right to participate in a class action lawsuit. That is a change from the proposed rule issued in May 2016.

In fact, dealers are specifically mentioned in the language that lenders must use. Finance and lease sources under CFPB jurisdiction (as most are) must use a disclosure telling consumers who are subject to pre-dispute arbitration provisions that they have a right to participate in class action lawsuits. But the disclosure must also include language saying that this right *does not apply* to motor vehicle dealers exempt from CFPB jurisdiction (i.e. franchised new-car dealers).

So what's the catch? The final rule does not solve another problem for dealers, namely, the indirect liability they face as a result of the master agreements they sign with finance and lease sources. Based on those agreements, dealers can still be held liable to indemnify finance and lease companies for alleged dealer wrongdoing leading to the class actions that consumers bring against financial institutions. So the rule leaves dealers open to indirect liability and indemnification of the financial institutions for consumer class action suits.

Even though the rulemaking is CFPB's *final version*, more needs to happen. It won't become final for 60 days after it is published in the *Federal Register*, and it won't apply to contracts for another 180 days after that. The Republicans who control Congress are not supportive of the CFPB and may override by majority vote any final rule within 60 legislative days after it receives notice of the rule. If Congress nullifies the rule, the CFPB would be precluded from issuing a similar rule in the future.

NADA, in conjunction with a U.S. dealer association task force through Automotive Trade Associations (ATAE), is continuing to monitor the CFPB, including the rulemaking, with the same diligence that their concerted efforts utilized in getting dealers exempted from the Dodd-Frank Act that created CFPB under Finance Reform. [Click here](#) for a synopsis of the CFPB rulemaking from ATAЕ that WANADA published earlier in the week with a *Special Bulletin* on the matter.

WANADA is grateful to its government relations advisor, Mike Charapp, Esq., Charapp & Weiss, for his analysis of the CFPB rulemaking, along with Tom Dart of the Automobile Dealers Association of Alabama, who chairs the ATAЕ CFPB Taskforce

WANADA will keep members informed of further developments in the current CFPB rulemaking.

Save the date!

WANADA Annual Lunch is Nov. 17, with Bret Baier, Ritz-Tysons



WANADA members and friends are urged to mark the calendar for Friday, Nov. 17, for WANADA's Annual Meeting and Luncheon. The luncheon speaker this year will be Fox News' chief political anchor Bret Baier, who will give his insights on the Washington scene and American politics.

Baier joined Fox in 1998 as a reporter in Atlanta and since then has reported from Iraq and Afghanistan and interviewed key figures ranging from George W. Bush and Barack Obama to the Dalai Lama.

The Annual Lunch is a great time to catch up with old friends and make some new ones! The Ritz-Carlton Tysons Corner will again be the setting for this popular WANADA member event.

The *Bulletin* will provide updates going forward on the Annual Lunch, to include registration information. Stay tuned!

Geoff Pohanka re-elected as Metro Washington NADA director

Geoffrey Pohanka has been re-elected to a three-year term as NADA director from Metropolitan Washington, DC. NADA members in Metro Washington chose Pohanka, of Pohanka Automotive Group in Capitol Heights, MD., as their sole nominee for the position.

NADA by-laws provide that if there is only one qualified nominee from any director district, that person will be declared *elected* to the office of NADA director without further balloting. That

means that Geoff, a former chairman of WANADA and longtime leader at NADA will embark on his second consecutive term on NADA's Board, representing Washington area dealers. He served two consecutive terms earlier, from 2002-2008.

WANADA wishes Geoff a hearty congratulation on his re-election!

Maryland Excise Tax Credit for Plug-in Electric Vehicles now in effect

Under the Maryland Clean Cars Act of 2017, the Motor Vehicle Administration has again started to administer the Excise Tax Credit for Plug-in Electric Vehicles (PEVs), as of July 1. A vehicle must meet these conditions to qualify for excise tax credit:

- Has not been modified from the original manufacturer specifications;
- Is acquired for use or lease by the taxpayer and not for resale;
- Has a total purchase price not exceeding \$60,000;
- Has a battery capacity of at least 5.0 kilowatt-hours;
- Is bought new and titled for the first time on or after July 1, 2017, but before July 1, 2020.

Other provisions of the law:

- The tax credit is not retroactive;
- Credit is limited to one PEV per individual or 10 per business entity;
- Credit may be claimed for a vehicle only if it is registered in Maryland;
- Hybrid vehicles do not qualify for the excise tax credit.

The excise tax credit is calculated as follows: \$100 times the kilowatt hours of the battery capacity of the vehicle, not to exceed \$3,000. Vehicles with 30 kilowatt hours and above will only qualify for the maximum credit allowed of \$3,000.

Dealers must complete form VR-334 and submit it to Maryland MVA, 6601 Ritchie Highway NE, Room 202, Glen Burnie, MD 21062.

Maryland Energy Administration flags Constellation's EV rebate program

The Maryland Energy Administration has told members of the Maryland Clean Cities Coalition about a rebate program by Constellation, the EZ-EV program. WANADA is a member of the Greater Washington Region Clean Cities Coalition, sister of the Maryland coalition.

The Constellation program offers all Maryland residents a rebate of \$7,500 *off* the MSRP of a new BMW i3. The deal expires October 7, 2017.

The EZ-EV program is also extending its \$10,000 deal *off* the Nissan Leaf for Constellation customers through September 30. To learn more about these offers, visit <http://www.ez-ev.com/>.

NADA stays involved with tax reform discussions

A delegation from NADA that included Chairman Mark Scarpelli and President Peter Welch met recently with Gary Cohn, director of the National Economic Council, and other senior staffers from the White House and the Treasury Department. NADA representatives also met briefly with Vice President Mike Pence.



Discussions on infrastructure spending may continue into next year.

The topic was an important one for all sides: *tax reform!* NADA’s priorities are to make sure tax reform: (1) will stimulate consumer demand in the market, and (2) will reduce the cost of dealer capital so dealers can continue to drive their local economies.

NADA continues to tell the government that no matter what reform is set forth, American consumers should not be subjected to additional costs. In discussions with federal officials, NADA has discussed issues of importance to dealers: repealing the estate tax; creating a lower rate for business income from pass-through entities; lowering overall tax rates; accelerating

cost recovery; eliminating the alternative minimum tax, and repealing the 12 percent federal excise tax on heavy duty trucks.

Any tax reform must, of course, go through Congress, and this Republican Congress is clearly anxious to lower tax rates. But tax reform cannot be addressed until after a health care bill, which is still on shaky ground. The reason for the order is not just preset priorities. It is that much of the funding for tax cuts would come from cuts in spending on health care, such as cutbacks on Medicaid spending. If those are not included in the final health care bill, the money for tax cuts will have to be found elsewhere.

To make sure there’s time to pass a health care bill, Senate Majority Leader Mitch McConnell has taken the unusual step of cutting the August recess short by two weeks. What the House of Representative do in the August recess remains to be seen.

On a third priority, infrastructure, Congressional work on the president’s \$1 trillion plan could continue into next year, Sen. John Thune (R-SD), chairman of the Commerce, Science and Transportation Committee, told reporters, according to *The Hill*. It’s an issue that needs addressing, but it must come behind health care and tax reform. Thune said he is waiting for a more detailed plan from the White House.

Save the date
NADA Show 2018 in Las Vegas, March 22-25

NADA Show (formerly the *NADA Convention & Expo*) returns to Las Vegas for four days from Thursday, March 22, to Sunday, March 25.

“The *NADA Show* provides one of the best networking opportunities in the industry, from attending the dealer franchise meetings and workshop sessions, to shopping for the latest products and services in the exhibit hall,”



WANADA/MADA/VADA joint associations’ party at last year’s NADA Convention in New Orleans.

said Richard Stephens, NADA Show Committee Chairman.

The keynote speakers will be announced soon.

WANADA will again have a joint reception with MADA and VADA on either the Friday or Saturday night during the *NADA Show* in a location to be announced.

Online registration for dealers and their managers, which includes an early bird discount and hotel selection, opens October 2. Learn more at www.nadashow.org.

SUV/CUV loyalty at record high as sedan loyalty drops, study finds

More than two-thirds of SUV and CUV owners in the U.S. who returned to market in the first four months of 2017 acquired another new SUV or CUV, says a new study by IHS Markit.

SUV/CUV loyalty has grown from less than 53 percent in 2012 to more than 66 percent through April, and is 13 percentage points higher than the industry average of 52.6 percent. Pickup truck loyalty rates are also rising, with nearly 51 percent of pickup owners acquiring another one in the first four months of the year. Low gas prices have helped propel the growth.

At the same time, sedan loyalty rates have softened, with rates dropping 7.6 percentage points since 2012 to 48.6 percent. If this trend continues through the rest of the year, this will mark the first year in which less than half of sedan households acquired another one when they returned to market. In the first four months of 2017, two-thirds of sedan owners defected to an SUV/CUV, representing nearly 300,000 transactions, IHS Markit said.

The top three body styles with the highest loyalty account for more than 85 percent of all new light vehicle registrations in the U.S. in the first four months of 2017.

“The exceptionally high loyalty of SUV/CUV households is driven by continued proliferation of crossover models across a wide range of size, price and functionality, such as off-road vs. non-off-road,” said Tom Libby, manager, automotive loyalty and industry analysis at IHS Markit.

One-third of dealerships have no succession plan, survey shows

A new survey of more than 285 dealerships found that 35 percent have *no* succession plan in place. The survey was conducted by WANADA member Councilor, Buchanan & Mitchell, PC (CBM), an accounting and advisory services firm that works with dealerships in the Mid-Atlantic, in collaboration with the National Alliance of Auto Dealer Advisors. Dealers are pushing off succession by five years, the survey found. The biggest obstacles to succession planning are timing and the owner’s willingness to step back. Nearly half of dealerships know succession is important, but haven’t dealt with it yet. Almost 80 percent of those with a plan are seeking internal transition.

For future survey updates, WANADA members may subscribe at www.cbmcpa.com. For more information, email John R. Comunale, CPA (jcomunale@cbmcpacom) or Keith A. Laudenberg, CPA (klaudenberger@cbmcpa.com).

Staying Ahead...

Always do right. It will gratify some people and astonish the rest.

--Mark Twain

