

Dealer

Issue: August 2019

Solutions

Oregon Legislators Finally Hit The ...



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Legislature Finally Ends / Sine Die Report

Oregon's New Corporate Activity Tax and a Little Good News for Dealers

Governor Appoints New Chair of Transportation Commission

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The CARLAWYER Legal Update



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Legislative Session (finally) ends!

What Happened? A Sine Die Report

By: Darrell W. Fuller
OVDA Lobbyist

Oregon's Constitution required the Legislature to end by midnight, June 30th. That Sunday the Capitol was filled with politicians, lobbyists, staff, media, and **a large contingent of State Troopers**.

On the last day of Session, the mood is ordinarily akin to a last day of school. Not this year. The air was thick with tension. Troopers watched over legislators from the galleries above the Senate and House chambers. Troopers guarded from inside the chambers where legislators were voting. Troopers were posted outside the chambers where lobbyists and the public congregated. Troopers were stationed at public entrances. And troopers roamed the halls of legislative offices.

Setting the Stage

But hang on. A good story starts at the beginning. So, let's rewind the clock:

In December I was at a fundraiser. Oregon's Speaker of the House, Tina Kotek (D-Portland), was the headliner. Kotek and other Democratic legislators attending were jubilant and emboldened. Governor Kate Brown easily won re-election. And voters gave Kotek a "supermajority." (38 of Oregon's 60 House members were now Democrats. Only 31 votes are needed to change a law, and 36 votes to increase taxes or create new ones -- the Constitution requires a 3/5s supermajority to increase taxes.)



House Speaker Tina Kotek
(D-Portland)

During her remarks, Kotek predicted that, "**2019 will be a transformational Session for Oregon**" adding that everything Democrats had worked toward would come to fruition in the 2019 Session.

Senate Democrats were equally successful at the ballot box. They now held 18 of the 30 Senate seats, giving them a supermajority as well. (Only 16 votes are needed to change a law, and 18 votes for taxes.)

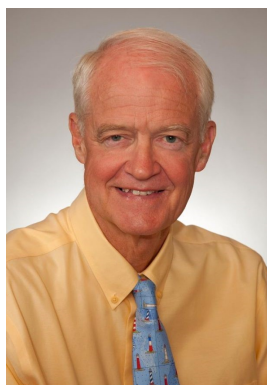


OVDA Lobbyist Darrell Fuller is flanked by some of the large contingent of uniformed Oregon State Troopers assigned to the State Capitol during the final tense days of the Legislative Session.

So what did this mean? Democrats could now change any law, increase taxes, and create new taxes without a single Republican vote in the Senate or House.

The Tale of Two Majorities

Although both chambers had Democratic supermajorities, the two couldn't be more different. The House, led by Kotek, was bold and aggressive. House candidates promised big changes during their campaigns. They are generally younger than their Senate colleagues, and they acted with a sense of urgency -- from climate change to tax increases -- they wanted it all. And they wanted it now.



Senate President Peter Courtney (D-Keizer)

On the other hand, the Senate is led by President Peter Courtney (D-Keizer), a 76-year-old curmudgeon of a politician. He was first elected to the House in 1980. He's been around a while. His style is marked by gradualism and cooperation between both parties, despite the large Democratic majority. He is a fierce guardian of the Legislative body as an institution.

But things were not well in the Senate. It was rocked last year by
(Continued on Page 9.)

New Commercial Activity Tax

How lawmakers made referral of the hidden sales tax virtually impossible

Earlier this year the Oregon Legislature passed a new tax called a “Corporate Activity Tax.” The tax goes into effect on January 1, 2020. OVDA previously sent out referendum petitions to give voters a chance to decide whether Oregon needs this new “CAT” which is essentially a hidden sales tax. Shortly after distributing the petitions, OVDA learned the primary backers of the effort — the Oregon Manufacturers and Commerce Association — were abandoning their campaign. It was very disappointing. Below is the statement distributed to their supporters:

Earlier this year, Oregon lawmakers approved HB 3427, which established a \$2.8 billion hidden sales tax in our state. Our association vigorously opposed this legislation, as gross receipts taxes have a disproportionately negative impact on the manufacturing industry. We also believe that the Legislature’s decision to pass a gross receipts tax after Oregon voters overwhelmingly rejected such a tax at the ballot in 2016 represented a disservice to the people they were sworn to represent.

Following passage of HB 3427, OMC took the lead in organizing a prospective refer-



ral of the new tax. From the moment we filed this paperwork, we were overwhelmed by the response we received from everyday Oregonians and employers who do business in this state. People are extremely concerned about what this new tax increase will mean for their family budgets and for the financial viability of their businesses.

Unfortunately, lawmakers supportive of the new tax took several steps in the final days of the legislative session that rigged the referral process in their favor and forced us to reevaluate the viability of efforts.

Senate Bill 761

Lawmakers made it significantly more difficult to gather the required number of signatures necessary to put a referral on the ballot by prohibiting the distribution of electronic petition signature sheets or “e-sheets.” E-sheets have been used by

countless initiative campaigns and, according to the Secretary of State, have a higher signature validity rate than traditional signature sheets. Despite their effectiveness (or perhaps because of), lawmakers chose to severely undercut our ability to gather signatures via e-sheets, making the referendum process significantly more time consuming and expensive.

Senate Bill 116

Lawmakers took additional steps to compromise the integrity of the citizens’ referral process by passing SB 116. This legislation moved the date of the referral election to January of 2020 instead of November of 2020, leaving us significantly less time to raise the money needed to run an effective campaign. SB 116 also put lawmakers in charge of drafting the ballot title language and explanatory statements for our referral.

(Continued on Page 4.)

New Commercial Activity Tax

Auto dealers get two last minute loop holes in the new CAT

As a result of last minute efforts by the Oregon Auto Dealers Association and Oregon Business and Industry during the Legislative Session, auto dealers in Oregon received two important breaks from the new Corporate Activity Tax.

First, dealers will not be required to include the cost of the tax in their advertised price. The new tax (starting January 1, 2020) can be listed outside the offering price of the vehicle, similar to the title and registration processing fee.

Section 52 (4) of the new tax includes the following language: *“Notwithstanding subsection (1) of this section, a vehicle dealer may collect from the purchaser of a motor vehicle the estimated portion of the tax imposed under this section that is attributable to commercial activity from the sale of the vehicle.”*

Requiring dealers to include the tax in the offering price would have placed Oregon dealers at a competitive disadvantage to

neighboring states that do not include their sales tax in their offering price. The details on how the tax will be estimated and disclosed is still under discussion. Details will follow.

Additionally, the following language is included in Section 50: *“(1)(b) ‘Commercial activity’ does not include: (W) Receipts realized by a vehicle dealer certified under ORS 822.020 or a person described in ORS 320.400(9)(a)(B) from the sale or other transfer of a motor vehicle, as defined in ORS 801.360, to another vehicle dealer for the purpose of resale by the transferee vehicle dealer, but only if the sale or other transfer was based upon the transferee’s need to meet a specific customer’s preference for a motor vehicle;”*

This section relieves dealers from collecting the new tax on certain dealer to dealer transactions, potentially including certain auction sales. However, the *“need to meet a specific customer’s preference”* language will need additional clarification before we know the extent of the exemptions. Again, details will follow as soon as they are available.

How lawmakers made referral of the hidden sales tax virtually impossible

(Continued from Page 3.)

The legislation specifically states that the committee in charge of drafting these statements will be made up of a deciding-majority of Democratic lawmakers. In other words, the lawmakers who supported HB 3427 would be put in charge of drafting the language voters would read before casting their votes. That’s the legislative equivalent of a football coach re-writing the rules of the game in a way that gives his team the biggest advantage possible.

HB 2164

Because HB 3427, the original gross receipts tax bill, contained several serious flaws, lawmakers were forced to pass a “fix it” bill later in the session. HB 2164 was the vehicle for these fixes and included changes to a portion of HB 3427 that we included in our referral effort. We’ve had our attorneys analyze what HB 2164 means for our referral effort and they concluded we would likely need to refer HB 2164 in addition to HB 3427 in

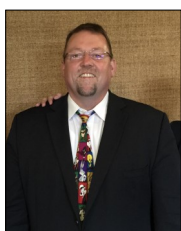
order to achieve our desired outcome, meaning we would need to gather signatures for two referrals at the same time. But here’s the kicker: the referral of HB 2164 would appear on the November 2020 ballot while the referral of HB 3427 would appear on the January 2020 ballot, meaning we would have to run two successful campaigns in the same year to overturn the gross receipts tax.

We’re extremely disappointed that lawmakers went to such great lengths to hamstring our referral efforts, but the reality is that they have rigged the system so far in their favor that our chances of success at this point are very remote. Though we will not be moving forward with the referral effort, we will continue to explore opportunities to minimize the negative impacts of this new tax on Oregonians by any means possible, including through legislative action or a potential initiative in a future election.

Dealer Industry Leadership

Your Oregon Vehicle Dealer Assn Board

The OVDA Board is comprised of active dealers. You likely see them at the auctions. They are volunteering some of their time to ensure the auto industry has a strong voice in Oregon. Would you like to be an industry leader? We are especially looking for dealers in southern, central and eastern Oregon, and for dealers who represent the large minority community of dealers. Are you passionate about the auto industry? Are you willing to donate a little of your time to improve the business in which you work? If you would consider joining our board, please email OVDA@ordealers.com or call 503-399-9199. **If you have already sent an email indicating your interest, we will be in touch. You only need to send one.** Thank you for your interest.



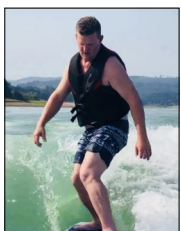
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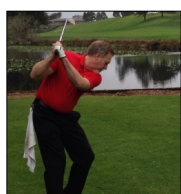
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The CARLAWYER Legal Update

**By: Nicole F. Munro and
Thomas B. Hudson**

Here's our monthly article on selected legal developments we think might interest the auto sales, finance, and leasing world. This month, the action involves the Federal Trade Commission and the Consumer Financial Protection Bureau. As usual, our article features the "Case of the Month" and our "Compliance Tip".

Note that this column does not offer legal advice. Always check with your lawyer to learn how what we report might apply to you, or if you have questions.

Federal Developments

CFPB and NY AG Settle Debt Collection Allegations. On July 25, the CFPB and the New York attorney general announced

settlements with a group of related debt collection companies and their individual owners, resolving allegations that the defendants misrepresented to consumers that they owed debts that they did not owe, that they were not obligated to pay, or that the companies did not have a legal right to collect; falsely threatened consumers with legal action that the debt collectors had no intention of taking; and impersonated law enforcement officials, government agencies, and court officers, in violation of the Fair Debt Collection Practices Act and the Consumer Financial Protection Act of 2010. Under the proposed settlements, the defendants are permanently barred from acting as debt collectors and must pay millions in consumer redress and civil money penalties.

CFPB, FTC, and States Settle with Equifax over Data Breach. On July 22, the CFPB,

the FTC, 48 states, the District of Columbia, and Puerto Rico announced a settlement with Equifax, Inc., that would provide up to \$700 million in monetary relief and penalties for the credit reporting company's alleged failure to take reasonable steps to secure its network, which led to a data breach in 2017 affecting approximately 147 million people. The proposed settlement establishes a fund that will provide affected consumers with free credit monitoring and identity theft services, provides all U.S. consumers with six free credit reports each year for seven years, in addition to the one free annual credit report that the nationwide credit reporting agencies currently provide, imposes civil penalties, and requires Equifax to implement a comprehensive information security program.

(Continued on Page 8.)

Tips for Staying Out of Trouble

www.IsueCarDealers.com – Revisited

By: Kyle S. Willard
OVDA Manager

As all of us know the idea of getting sued as a car dealer is both terrifying and frustrating. Generally, we are an industry that is seen to be a bunch of crooked salespeople. Those in the industry know that the opposite is true, more often than not we are honest, and we want to ensure a good transaction with every customer. Sadly, it has become a bit of a war zone when it comes to our industry here in Oregon with the commonality of lawsuits going up, while traffic has dropped a bit.

One of the busiest firms that we are currently monitoring is the Isuecardealers.com firm. They have gone after a large number of dealers, and some of the stories sound a bit off.

We here at the association would like to do two things to ensure that we minimize our member's risk, however, both will require you, the members, assistance.

We need information, be it the firm we already talked about, or any other. If you get into a legal bind, we need to get an email about it, along with a phone call. If you have already had this issue, and settled, or fought it, we want to hear about it. We want, and we need documentation, and we need the cold hard facts to ensure that we are monitoring and tracking potential bad customers, and attorneys.

This is a critical concern for all of our dealers, and is something that as an association we need to work together to address, first is information gathering, then planning, and then we will be working on taking action to ensure the safety of our dealers whenever possible.

The second thing to address is ensuring that you do your due diligence. This is the single best way to ensure that you are keeping out of trouble. It may not be 100% but here are some things that we know that dealers do to try and minimize problems with customers.

Arbitration Forms – These forms can be fairly easily located, and generally require the customer to return to you (and an arbitrator) and work through things if possible before launching a court case.

Disclose Everything – this one seems a little much for some,

but if they are required to sign disclosures about every aspect of the vehicle can they truly complain down the line? The answer of course is yes, they can still come after you and your bond, but at least if you end up in a courtroom you disclosed everything under the sun.

Retain Paperwork – this is another best practice, just as you are required to retain some documents for the DMV retain your Carfax, Autocheck, and any inspection documentation for that vehicle. By doing this, and by giving them a copy of these, again you have given them information, and exceeded state requirements.

In closing, while we like to inform our dealers as much as we can, we are not attorneys, so take this as it is intended, these are ideas that may help. Thank you for your membership!

I would encourage all dealers to watch their videos on their website. [Wwww.isuecardealers.com](http://www.isuecardealers.com)

MCTD Emergency Text Message Notifications

Today, you can sign up to get emergency text alerts for traffic emergencies in Oregon. Effective August 5, 2019, ODOT will be offering SMS/Text Message notifications for traffic emergency alerts. This type of alert will include incidents such as fires, severe weather, and other types of emergencies that can affect vehicles coming and going from your dealership. This alert service will **not** be used for planned road closures, detours or maintenance/construction activities, or other unplanned events. To enroll in the emergency updates, follow the instructions below.

1. Go to the [ODOT message sign-up page](#). Click the drop-down to select SMS/Text Message.
2. Enter your full mobile phone number and click submit.
3. Click on the plus box next to the Motor Carrier Transportation Division (MCTD) subscription topic.
4. Select MCTD Emergency Notifications by checking the box and click submit.

It's The Law

The CARLAWYER Legal Update

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CFPB Updates Advisory on Preventing and Responding to Elder Financial Exploitation. On July 17, the CFPB updated its March 2016 advisory, and accompanying recommendations and report, for financial institutions on preventing and responding to elder financial exploitation. The Bureau's 2016 recommendations included voluntary best practices to help financial institutions prevent elder financial abuse and to intervene when it occurs. The update urges financial institutions to report all cases of suspected elder financial exploitation to relevant federal, state, and local authorities, regardless of whether state or federal law require reporting. The update urges financial institutions to file federal Suspicious Activity Reports when they suspect elder financial exploitation, and provides new information on reporting, based on federal and state legislative changes.

CFPB Settles with Debt Settlement Services Provider over Marketing and Sales Practices. The CFPB announced a settlement with Freedom Debt Relief, LLC, a debt settlement services provider, for violating the Telemarketing Sales Rule

and the Consumer Financial Protection Act of 2010 in connection with the marketing and sale of its services. The Bureau's lawsuit alleged that Freedom Debt Relief:

- deceived consumers regarding creditors' willingness to negotiate with Freedom;

- deceived consumers regarding charges for its services; failed to disclose to consumers that they might have to negotiate settlements with creditors on their own;

- directed consumers to mislead their creditors during settlement negotiations;

- failed to clearly and conspicuously disclose consumers' rights to funds deposited into a dedicated bank account opened by consumers when they enrolled in the debt settlement program; and charged fees in the absence of a debt settlement. Freedom Debt

Relief must pay \$20 million in restitution to affected consumers and a \$5 million penalty.

FTC to Hold Workshop on Truth-in-Advertising Basics and Data Security Compliance. The FTC and its regional partners will hold a workshop in Atlanta on August 15, on truth-in-advertising basics and data security compliance. The workshop is designed for attorneys, business owners, and advertising and marketing executives. The program, sponsored by the FTC, the Office of the Georgia Attorney General, the State Bar of Georgia Antitrust Law Section, and the Better Business Bureau Serving Metro Atlanta is the first of a series of workshops the FTC and its regional partners will host across the country. Panel topics for the first workshop include:

- "The Truth About False Advertising" - an introduction to federal and state laws prohibiting deceptive and unfair practices;

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THE GOLDEN RULE:

HE WHO HAS THE GOLD MAKES THE RULES.

The Oregon Vehicle Dealer's Association has a campaign fund. We use donations from dealers to support candidates who: support a free market, lower taxes, fewer rules, and government getting out of the way of small businesses trying to grow. Will you help OVDA by making a donation today? Call 503-399-9199 or email OVDA@ordealers.com for details or to

Legislative Session (finally) ends!

What Happened? A Sine Die Report

(Continued from Page 2.)

accusations that a Republican Senator had sexually harassed a number of women, including at least two Senators. And, equally as explosive, Courtney was accused of covering it up. These events weakened his influence.

Death Rocks the Capitol – Twice

It is rare for elected officials to die in office. In fact, I don't recall it ever happening since I started in 1987. In 2019 it happened twice. Legislators, like a family, can fight like cats and dogs. But they are still a family, and a death in the family hits everyone hard.

Secretary of State Dennis Richardson died in office on February 26th, after a long battle with a brain tumor. The Legislature had just started its work when his death



brought everything to a respectful halt. The Capitol was nearly paralyzed for days.

His body lay in state in the rotunda of the Capitol prior to his funeral. He was a former member of the House of Representatives. And, he was a decorated Vietnam helicopter pilot. His funeral reflected his life of service.

The second death hit harder. Senator Jackie Winters (R-Salem) died on May

29th as the Session was winding down. She was the “mother of the Legislature” and the “conscience of the Senate.” A moderate Republican and longtime ally of President Courtney, Winters was often the bridge between conservative Republicans and liberal Democrats. She was the first black Republican elected to the Oregon House, and then to the Oregon Senate. She was a trailblazer.

Her absence for much of the Session while battling lung cancer made everything harder because her voice was both calming and influential. She was an essential element and she was missing. When the news of her passing was announced, the Legislature came to an immediate halt as legislators hugged and cried.

Getting Down to Business

Every Session is different. But this Session was just ... different. Ask anyone who has spent any length of time at the Capitol and they will tell you this Session just felt different. Practically the only thing everyone

agrees on is that something has changed. The sharp partisanship which has infected Washington, DC for years had finally reached us. The days of Republicans and Democrats developing friendships that transcended labels was now the exception rather than rule.

On important issues, Democrats had significant victories. They also had a few losses.



Wins

Democrats passed the first state-wide rent control bill in the United States (Senate Bill 608); Democrats passed a Corporate Activity Tax, which is essentially a gross receipts tax (House Bill 3427); Democrats passed a Paid Family and Medical Leave law (House Bill 2005); Democrats passed a “dirty diesel” law to phase out the

use of older, diesel powered vehicles in the Portland area (House Bill 2007); and Democrats passed a pregnancy accommodations bill (House Bills 2341 and HB 2593).

Losses

The biggest loss was Democrat's failure to pass a Cap and Trade bill (HB2020) ... more on that below; Democrats failed to pass a bill to remove limits on jury awards (HB2014); Democrats failed to pass a bill protecting recreational marijuana users from employment sanctions (SB379); and Democrats failed to pass a bill significantly curtailing the ability of people to work as independent contractors (HB2498).

Dealers Escape Mostly Unscathed

As the OVDA lobbyist, I watch for legislation impacting your work. There are a lot of bills which impact dealers because dealers are businesses. But the only significant “dealer specific” bill this session is one which provides attorneys fees to a prevailing plaintiff if the dealer does not provide clear title and registrations in a timely manner.

I monitored more than 100 bills which
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Legislative Session (finally) ends!

What Happened? A Sine Die Report

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could have impacted dealers. Many of them, like the Corporate Activity Tax, were not industry-specific, but nevertheless impacts dealers. Others, like the dirty diesel bill, were more narrowly written to impact your profession. In a future edition of **Dealer Solutions** I will provide a detailed analysis of new laws and how they will impact OVDA members. Laws passed during Session generally don't take effect until January 1st of the following year, so you will have plenty of time to understand any changes coming.

Cap and Trade and Threats of Violence

I started this story by mentioning the large contingent of Troopers at the Capitol in the final days. If you heard any local news in June, you may remember that Republican Senators left the Capitol -- and the state -- specifically to prevent a vote on House Bill 2020, the Cap and Trade bill. (In order to do business, at least 20 Senators need to be in the Capitol. So, when all GOP Senators left the building, no votes could be taken.) Republicans were successful in killing the bill.

But it came at a high price: President Courtney had asked Governor Brown to order Troopers to search for and bring GOP Senators back to the Capitol so they could vote. The Governor complied and

Troopers began looking for Republican Senators, which is why they left the state.

The authority of Troopers to detain and compel Senators to return to Salem was the subject of great controversy. The dispute boiled over when Republican Senator Brian Boquist (R-Dallas) stated, on the Senate floor, that if President Courtney sent Troopers to get him, "hell is coming to visit you personally."

Boquist also said if Troopers were sent to get him, they should "send bachelors and come heavily armed." Senator Sarah Gelsler (D-Corvallis) felt threatened by Boquist's remarks. So she refused to be on the Senate floor if he was there. This created an interesting dance where she left whenever he arrived. And, when he left, she returned. As I wrote at the beginning, tensions were palpably high. And, Troopers were deployed on every floor of the Capitol in the waning days "just in case..."

The level of rancor between Senators was at an unprecedented level at the end of the Session.

The Capitol is quiet now except for special hearings to determine what, if anything, will happen to Boquist as a result of his statements. He has been ordered

to provide Capitol staff with 12 hour's notice before entering the building so additional Troopers can be stationed there. Boquist has refused to participate in the hearings, and he has filed a Federal lawsuit against Courtney and other Legislative officials.

I fear there is no going back. The work of creating public policy is now a full contact sport in Oregon.

Darrell Fuller can be reached at 971-388-1786 or fuller_darrell@yahoo.com .

**ADESA NW
(Eugene,
OR) Manager
Mark
Melton,
who has
served on
the OVDA
Board of
Directors,**



**and on the
Oregon Dealer Advisory Com-
mittee, has been tasked with
managing the ADESA auction in
Las Vegas, Nevada. He will be
missed in Oregon.**

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Department of Transportation

Governor Brown Appoints Robert Van Brocklin as New Chair of the Oregon Transportation Commission

SALEM -- Governor Kate Brown has appointed Robert Van Brocklin as the new Chair of the Oregon Transportation Commission effective September 1, 2019. Van Brocklin takes the gavel from Tammy Baney, whose term as Commissioner ends August 31, 2019.

"Chair Baney brought forward-thinking strategy and tireless efforts together to improve every Oregonian's experience in moving around and experiencing our state. I thank her for her two terms on the Oregon Transportation Commission during the key period of the successful implementation of the historic transportation package," said Governor Kate Brown.

"Commissioner Van Brocklin is a natural successor to Chair Baney. In his short time on the commission, he has shown passion and expertise on transportation that will benefit both the commission and the people and communities of Oregon."

Baney served on the Commission from July, 2011 and as Chair since January, 2015.

"I'm confident in Commissioner Van Brocklin's abilities to lead the Commission and am so grateful for the time I spent as Chair," said Commissioner Baney. "I leave the Commission knowing it is in excellent hands."

Van Brocklin is the immediate past Firm Managing Partner of Stoel Rives LLP, Oregon's largest law firm, which he joined in 1986. Prior to joining Stoel Rives, Van Brocklin worked for the U.S. Senate Committee on Commerce, Science and Transporta-

tion and the City of Portland. He joined the Commission in November 2017.

"I am grateful for the opportunity to chair the Commission," said Van Brocklin. "Working with the Governor, the Legislature,

and our federal, state, regional, and local partners, I believe Oregon has the opportunity to develop the best transportation system in the country. Oregonians deserve an integrated system that allows for the efficient, safe and affordable movement of people, goods and services around our communities and throughout our state. I look forward to pursuing that goal. My congratulations to Tammy for her thoughtful service to our state. She is an exceptional public servant."

In addition to his leadership of Stoel Rives, Van Brocklin has served in many leadership roles during his career, including chairing United Way and Portland School District funding campaigns, and

serving as a director of various business and non-profit boards that have included the Oregon Shakespeare Festival, the Portland Schools Foundation, the Oregon Symphony, Portland Center Stage, and the Portland Business Alliance. Robert and his wife, Sue Van Brocklin, live in Portland and have three grown daughters.



It's The Law

The CARLAWYER Legal Update

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"Avoiding a Promotion Commotion" - using e-commerce marketing platforms (including social media and influencers), making "free" offers online, and complying with the Consumer Review Fairness Act;

"The Secure Entrepreneur" - insights into safeguarding customers' personal information and honoring privacy promises;

"Competition Counts: the Basics of Antitrust Law" - a dos and don'ts primer for businesses and attorneys; and

"When Your Competitor Crosses the Line" - self-regulation and litigation options for challenging a competitor's deceptive advertising.

Case of the Month

When a buyer bought a car, one of the stickers on the car listed a "dealer price" of \$29,500, individual costs for three add-on products ("3M," "Pro Pak," and "New Car Detail & Dealer Prep"), and a price, including add-ons, of \$30,600. The buyer negotiated the price down to \$27,400.

The buyer signed a purchase order showing the negotiated price and listing "sold w/prep" and "pro pkg (muds, tray, locks)" under the heading "ACCESSORIES." He also signed a sales contract that stated the negotiated price and listed nothing under the heading "Dealer Added or Deleted Options." The retail installment contract listed no add-ons. Finally, he indicated on a "Mandatory Disclosure

Statement" that he declined "Rock Guard Chip Protect" and other products and services.

The buyer sued the dealership and the assignee of his retail installment contract. He claimed that the dealership breached its contract with him by failing to provide him with the add-on products that it promised him and that the assignee either participated in or knew of the dealership's misconduct.

The federal trial court granted summary judgment to the defendants, and the federal appellate court affirmed, finding that the dealership delivered everything it promised the buyer under the sales contract. The appellate court found that the "3M" add-on was either door edge guards, which the buyer never claimed that he did not receive, or a spray film to protect the finish of the car's hood, which he expressly declined. The "Pro Pak" add-on consisted of mud flaps, a trunk tray, and wheel locks, which the buyer admitted he received.

The buyer cited an advertised list of "protection packages" for the car to argue that he should have also received "All-Season Floor Mats," but no package advertised on the list included mud flaps, trunk tray, wheel locks, and mats.

Finally, the "New Car Detail & Dealer Prep" add-on referred to the dealership's cleaning of the car before delivery. Internal documents indicated that the dealership cleaned the car before the buyer took possession of it.

Because the buyer's claims against the assignee depended on the success of his claims against the dealership and his claims against the dealership failed, the appellate court found that his claims

against the assignee failed as well.

See *Singh v. American Honda Finance Corporation*, 2019 U.S. App. LEXIS 16062 (9th Cir. (W.D. Wash.) May 30, 2019).

This Month's CARLAWYER® Compliance Tip

The Case of the Month involves a car buyer's attack on a dealership's sales practices related to "ancillary products," or, as industry likes to call them, "voluntary protection products." We've seen several attempts by consumer advocates and regulators to curb what they claim are unfair and deceptive practices in the sale of these products. If you don't have written practices and procedures in this area, created and periodically reviewed with the assistance of knowledgeable counsel, you may find yourself behind the compliance eight ball.

So, there's this month's roundup! Stay legal, and we'll see you next month.

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