



## Hudson Cook February 2018 Update

March 6th, 2018

### ***In the News***

[Tom Hudson](#) and [Nikki Munro](#)'s "CARLAWYER " article appeared in the February issue of *MidAtlantic Dealer News*.

The February issue of the *The Review of Banking & Financial Services* features an article by [Cathy Brennan](#) and [Eric Johnson](#), Hudson Cook partners. The article, "The U.S. Regulatory Environment for Online Small-Business Lending," is co-authored by Jennifer Ballard, Corporate Counsel at MarketCounsel, and Conor French who leads US legal, regulatory, and government affairs for Funding Circle.

Eric also had an article, "FTC Bags and Tags Auto Dealership Group Again," appear in the [January/February issue](#) of the *BHPH Report*. He also scored an article in the most-recent issue of the *Consumer Finance Law Quarterly Review*: "Consumer Financial Protection Bureau (and Other Federal Regulators) Updates: A 2016 Chronological Review." "The TCPA Can Make Good Things Bad" by [Michael Goodman](#), a partner in the Washington, D.C office of Hudson Cook, appeared in the [January/February issue](#) of *SubPrime Auto Finance News*. [Lucy Morris](#), a partner with Hudson Cook and a founding member of the Consumer Financial Protection Bureau (CFPB) Implementation Team that organized the CFPB after passage of the Dodd-Frank Act, is quoted in several articles in February regarding the CFPB.

In a *Subprime Auto Finance News* article on February 1, Lucy is quoted on a federal court action deeming the CFPB constitutional. According to Lucy, "It affirms the CFPB's independence as a consumer watchdog and shows that the CFPB is here to stay. At the same time, the opinion represents a setback for the bureau because it reinstates the earlier circuit opinion on the merits, including the ruling against the CFPB that it is subject to the statute of limitations in its administrative forum."

Lucy is also quoted in two articles in *American Banker* magazine. The first, entitled " [CFPB's Mulvaney strips his fair-lending office of enforcement powers](#)," was published on February 1. According to Lucy, "Obviously, fair lending is part of the bureau's mission, but where you put that office and how they carry out the mission is left to the discretion of whoever is in charge."

In the second article, published on February 12, "CFPB embraces free-market approach in new strategic plan," quotes Lucy as saying, "Some would say the prior CFPB strategy was paternalistic in protecting consumers from making bad decisions" and that the CFPB's new strategy seems to say "they will not substitute the government for consumers. Consumers can make their own fully informed decisions." The article also was published online in *National Mortgage News*, *Credit*

*Union Journal* and *Asset Securitization*. Subscribers to *American Banker* can click [here](#) to read the article.

An article by [Erik Kosa](#), “Who’s Properly in Charge of the CFPB?,” appears in the [January/February issue](#) of *Non-Prime Times*, the publication of the National Automotive Finance Association. The same issue features Eric Johnson’s article, “‘Look at Me, I’m the Captain Now’ – Turning the CFPB Ship Around.”

On February 14, *PowerSports Finance* published an article by [Patty Covington](#), discussing whether powersports finance transactions are now covered under the Military Lending Act.

Cathy Brennan is quoted in an article in *Auto Remarketing* on February 19, discussing the Protecting Consumers’ Access to Credit Act of 2017, a new bill introduced by Congress to clarify current law to ensure innovative marketplace lending remains intact while providing safe consumer protections. Cathy said, “H.R. 3299 will ease uncertainty in the market, as it affirms the longstanding rule that a loan is valid at the time it is made if it is made pursuant to the lawful interest authority of a lender. The idea that a loan made by a bank should become retroactively invalid is absurd.”

Also in February, **Michael Benoit** is quoted in two articles featured in *Auto Finance News*. The first, published on February 19, discusses how BB&T Bank’s move to abandon flat-rate dealer compensation for a more-traditional model could signal a greater shift in fair lending compliance. The second, on February 26 is entitled “Lingering CFPB Consent Order Restricts Three Lenders to Lower Dealer Markups.”

## ***On the Road***

[Ron Gorsline](#) and [Erica Kramer](#), attorneys in the Tennessee office of Hudson Cook, attended the [Manufactured Homes Institute 2018 Winter Meeting](#) held February 4-6 in New Orleans.

[Jed Mayk](#) conducted a webinar with Ben Olson of Buckley Sandler on February 7 for the American Bankers Association. Jed and Ben addressed the CFPB’s 2017 amendments to the TILA/RESPA Integrated Disclosures rule, and discussed Acting Director Mulvaney’s impact on the bureau.

Eric Johnson attended and moderated the National Automotive Finance Association’s Quarterly Compliance Roundtable in Dallas on February 8.

Lucy Morris, [Jim Chareq](#), [Jean Noonan](#) and [Allen Denson](#) presented a webinar on “State of (Regulatory) Play: How New Leadership at the CFPB is Changing Financial Regulation.” More than 400 professionals attended the webinar and the attorneys received positive feedback that the session was useful and informative. Tom Hartman, Brian Hudson and Althea Frye with CounselorLibrary® assisted in the development and implementation of the webinar.

On February 16, [Becki Kuehn](#) testified before the Maryland House Committee on Economic Matters on behalf of the Consumer Data Industry Association (CDIA). Eric Ellman, senior vice president for Public Policy and Legal Affairs for the CDIA, joined Becki. The committee is considering various bills to amend the Maryland Consumer Credit Reporting Agencies. The duo spoke about the national consumer reporting system set out by the Fair Credit Reporting Act – including discussing how some of the bills’ provisions pose preemption and conflict problems –

and the ways the consumer reporting industry serves consumers, including facilitating access to affordable credit and fighting identity theft.

On February 22, Erik Kosa and [Ed D'Alessio](#) joined Lisa McGreevy, president and CEO of the Online Lenders Alliance, on a panel at the [Infinite Possibilities Conference](#) presented by the Infinity Lending Systems. The panel, entitled, "State of the Industry at a National Level: How Trump & Legislatures are Affecting Our Industry," discussed CFPB enforcement issues.

Cathy Brennan attended the [SFIG Vegas 2018 Conference](#), the largest capital markets conference in the world, which was held in Las Vegas from February 24-26. Presented by the Structured Finance Industry Group, the three-and-a-half day program is developed by leaders within the structured finance industry representing the full spectrum of industry participants including investors, issuers, financial intermediaries, regulators, law firms, accounting firms, technology firms, rating agencies, servicers and trustees.

Patty Covington and [Kavitha Subramanian](#) presented a live webcast on "Conducting Due Diligence on Ancillary Product Sales" to members of the [National Association of Federally-Insured Credit Unions](#) (NAFCU) on February 26. During the 90-minute webcast, Patty and Kavitha explained how to adopt policies and procedures to manage an indirect lending program effectively, with a focus on understanding ancillary product sales.

The Consumer Bankers Association (CBA) has asked Michael Benoit and Jean Noonan to each present at [CBA LIVE](#) in March. Jean's presentation will be for the CFPB and Fair Lending tracks at the conference, while Michael will discuss how regulatory scrutiny has increased in servicing in the auto finance market.

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