



Hudson Cook November 2018 Update

November 30th, 2018

In the News

Hudson Cook Named Best Law Firm in 2019 Edition of U.S. News & World Report and Best Lawyers®

For the seventh consecutive year, Hudson Cook is pleased to be ranked as a Best Law Firm in Financial Services Regulation Law nationally and in the Baltimore, MD, Portland, ME and Oklahoma City, OK regions in the ninth edition of *U.S. News & World Report and Best Lawyers*. To be eligible for a ranking, a firm must have at least one lawyer recognized in the Best Lawyers in America, which recognizes the top five percent of practicing attorneys in the U.S. In 2019, [nine Hudson Cook attorneys were recognized for this prestigious award](#).

Best Law Firms Magazine also published, “Banking On It,” written by Catherine Brennan and Nora Udell. The article discusses developments at the state and federal level that are beginning to address legal questions coming out of the “fintech revolution.”

[View Best Law Firms 2019](#) here.

Michael Benoit

[Auto Finance News](#) reported that although the incoming Democrat-controlled House will likely subpoena auto lenders for information about their practices, control of the CFPB is slated to remain Republican, keeping the deregulatory environment in place. Partner [Michael Benoit](#) noted that with Rep. Maxine Waters (D-Calif.) as the new chair of the House Financial Services Committee, financial institutions can anticipate a lot of push for more regulation.

Catherine Brennan

On November 19, *Law360* reported that the U.S. Supreme Court declined to review a Ninth Circuit ruling that held a California state mortgage escrow interest law is not preempted by the National Bank Act, turning back Bank of America’s bid to overturn a decision that it said will create “significant uncertainty” about whether other state laws apply to national banks. Partner [Catherine Brennan](#) told *Law360* that many national banks have already begun the process of reviewing state laws and past preemption determinations.

Earlier in November, *Law360* published an article examining the chances of any major banking legislation passing during the next Congress with the now Democratic House. The article indicated that one possible area where legislation might find cross-aisle collaboration is financial technology

regulation (“fintech”). Commenting on the “Madden fix” and “true lender” bills, which stalled in the last session but may still garner bi-partisan support, Catherine explained that bills like these would help create efficiencies for both the industry and the consumer.

Catherine was interviewed earlier this year about new fintech legislation and the Madden and true lender bills by Business Law Today. [View the video here.](#)

Patty Covington and Erica Kramer

Corporate Compliance Insights published, “How the Military Lending Act Plagues the Finance Industry” by Partner [Patty Covington](#) and Associate [Erica Kramer](#). The Military Lending Act (MLA), enacted in 2006 by the Department of Defense (DOD), protects active duty military members, their spouses and their dependents from certain lending practices. Patty and Erica discuss how the DOD’s amended interpretive rule of December 2017 had intended to clarify whether personal property and auto finance purchase money credit transactions were eligible for a stated exclusion under the MLA, but rather caused further confusion. Additionally, they question whether servicemembers were actually helped by a measure that was supposed to protect them.

Michael Goodman

In a November 20 article addressing the recent Red Robin class-action lawsuit, [Hospitality Technology](#) asked Partner [Michael Goodman](#) to share several “best practices” for companies instituting a marketing program using text messages.

Michael has also written several articles on the Telephone Consumer Protection Act (TCPA) for recent Hudson Cook *Insights*: “[Ninth Circuit Adds Its Two cents to Piggy Bank of TCPA Autodialer Interpretations](#)” and “[‘Direct Drop’ Voicemail Service Subject to TCPA.](#)”

Tom Hudson

In his monthly article in *Auto Dealer Today*, [Tom Hudson](#) reminds dealers that although leasing is frequently touted as subject to less government regulation than dealer financing that employs retail installment sale contracts, a recent Florida case illustrates that leasing is also subject to federal and state regulation. Dealership finance departments should be familiar with the requirements of the federal Consumer Leasing Act (CLA) and Regulation M.

Eric Johnson

In the November/December issue of *Non-Prime Times*, Partner [Eric Johnson](#) presents a recent case filed by the FTC against operators of websites that sold fake financial and other documents which could be used to facilitate identity theft, tax fraud and other crimes. Eric cautions that buying fake documents and synthetic ID fraud is a huge issue for the auto finance industry, but the FTC is working to combat these issues.

Lucy Morris

Partner [Lucy Morris](#), a former CFPB deputy enforcement director, commented for *Bloomberg BNA* on the state of the CFPB one year after Mick Mulvaney took over as acting director. As the Senate prepares to vote on confirmation of his replacement, Lucy Morris commented on what changes may be coming for the agency, and how Democratic state attorneys general may be

picking up their enforcement efforts where the CFPB has pulled back.

Eric Mulligan

On November 19, [ACA International](#) published [Eric Mulligan's](#) article, "A New Wrinkle in Collection of Time-Barred Debts in California," written for Hudson Cook's monthly *Insights* newsletter. Effective January 1, 2019, a new law requires disclosures in any communication by a debt collector attempting to collect a time-barred debt. This includes first-party creditors – in addition to third-party creditors – so auto dealers and finance companies should pay attention.

On the Road

As the fall conference season came to a close, Hudson Cook attorneys traveled to Texas, Oklahoma, Arizona and Puerto Rico to present at industry conferences.

[Eric Johnson](#) and [Tom Buiteweg](#) presented, "Auto Finance and Dealer Developments" at The Conference on Consumer Financial Law – Annual Consumer Financial Services Conference in Ft. Worth, TX. Hudson Cook was pleased to be the Gold Sponsor of this conference.

Eric also presented, "CFPB Updates for the Banking/Commercial Lawyer" at the Oklahoma Bar Association's 2018 Banking & Commercial Law Update conference in Oklahoma City, OK.

[Catherine Brennan](#) and [Justin Hosie](#) traveled to San Juan, PR to present at the Short-Term Loan Bar Association Annual Conference. Catherine presented, "Developments in Bank Partnerships," and Justin presented, "Transitioning to Installment Loans."

Used Car Week in Scottsdale, AZ encompassed five major industry events: Pre-Owned Con, Auto Fin Con, Repo Con, the National Remarketing Conference and the NAAA Convention. [Eric Johnson](#) co-presented, "Proper Use of Electronic Devices in the Post Repossession Minefield" during Repo Con. [Patty Covington](#) was honored during Used Car Week in the inaugural list of Women in Auto Finance.

Registration is Open for the Hudson Cook/CounselorLibrary Financial Services Conference

Please join us for our 16th annual Financial Services Conference in Baltimore, MD on April 28-30, exclusively for clients and guests of the firms. The program content will be entirely legal. We will cover – in depth – matters of interest to the finance and privacy communities. There will be no reporters or consumer advocates present, and regulators will appear only as speakers. We offer housing, auto, merchant cash advance and small business lending, and privacy breakout sessions, along with more general sessions of interest to all areas of the consumer, commercial and alternative finance and privacy industries.

Bring your compliance officers, general counsel, CEO, president and any other employees you feel would benefit from the program.

Sponsoring the annual Financial Services Conference is a great way to get in front of your target audience. We offer exclusive benefits, including complimentary conference registrations, ads in Spot Delivery®, prime exhibit space, and digital marketing in emails and on our website conference pages. [Reserve your space today.](#)

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