

# NON-PRIME TIMES

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SUMMER, 2008

## 12TH ANNUAL CONFERENCE



*Dr. Weinstein*

The focus of the 12th Annual Non-Prime Automotive Finance Conference was on operational issues with less emphasis on marketing this year.

Keynote speaker, Dr. Bernard Weinstein, opened the program with a look at current economic forces and believes that recession is a reality. He sees a crisis in credit markets that, when finally fixed, will leave behind more consumers with damaged credit. He believes, however, that "We will survive this."



*Collections Panel*

Collections panelists seemed to be moving toward more centralized collections and reported on strategies and their effectiveness. Hiring the right staff is key, and, according to AmeriCredit's Robert Beatty, "A good customer services person makes a good collector." Sekurus OnTime's Ashley Herndon, finds that the energy part-time callers have works well for them.

Amy Martin, Standard & Poor's, sees some hopeful signs in the auto ABS market, and Dennis Morris, Fireside Bank, agrees there is reason for optimism.



*Pictured left toright: Martin Steen and Mark Brown of Grand Corporate Sponsor, DealerTrack.*

Attendees learned that more than 12 million households with \$13 billion income and an additional 70 million about whom credit bureaus have little information fall into the under-banked category. One must use alternative sources of information to evaluate risk in this category, such things as rental history and payday loan activity. Steve Darsie, Scoring Solutions, is guardedly optimistic but urges caution in using alternative data.

According to JD Power's Richard Howse, the future of full spectrum lending depends on dealer satisfaction. Right now, prime dealers seem to be moving back to prime, to what they know best.

Four innovation roundtable groups formed: portfolio purchasing; staff compensation and incentives; independent dealerships; and NAF Association operations survey. Summaries of their discussions can be found at:

[www.nafassociation.com](http://www.nafassociation.com).

With the current economic challenges, it seemed a good idea to create a panel to discuss the state of the non-prime industry. In the days leading up to the conference,

Triad pulled out of the market, and attendees were able to learn from Triad's Dan Leonard what happened. Because of the sudden crisis situation, "We're kind of a case study of the current environment," said Leonard.

According to Mark Floyd, AmeriCredit, we are in a part of the economic cycle last encountered in the 1980s, and no one knows how long it will last.

Panel members see the consumer struggling with underemployment and the resulting loss of income as a major concern. All panelists agree that a focus on fundamentals is essential and expressed the willingness to work with customers who are willing to pay. Building relationships, working consultatively, looking for efficient dealers are strategies mentioned.

Panel members ranged from somewhat optimistic to not very optimistic about cur-



*NAF Association is grateful for the support of conference sponsors and exhibitors.*

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## EXECUTIVE DIRECTOR'S MESSAGE



When the NAF Association formed 12 years ago, our mission was to elevate non-prime auto financing above problems of inappropriate marketing, accounting irregularities and the public's negative perception. A code of responsibility and standards of financial reporting were among the first projects undertaken by the new association. By these and educational efforts, we helped legitimize the industry. When we started out, membership was made up mostly of small companies, but now we are more likely to see large, national companies engaged in the non-prime industry.

The problems we addressed at our beginnings were mainly industry-imposed; the challenges we face now are market-imposed. We continue to struggle to stay separate from the non-prime mortgage crisis, a crisis very much like the one we faced and conquered 12 years ago. Unfortunately, the public including investors and Wall Street are not convinced.

The best defense is to keep on doing business well. Stay abreast of market changes and innovations; match cars to borrowers' ability to handle the debt; and keep terms short.

I made these observations in my remarks at the 12th Annual Non-Prime Auto Finance Conference. Those of you who attended the conference know that we focused on operations issues more than on marketing this year. Well run businesses survive.

The association was established to support its members, something we continue to do by educational programs, such as the conference and by understanding the industry as we do through the annual survey, the only survey in our industry. E-mail alerts about state and federal legislation and legislative advocacy efforts will continue. The operational survey about NSF check processing and the "webinar"

discussion of it were well received, and we anticipate doing another operational survey this year.

Let me know if there is a project you think we should undertake or a topic you would like to see at a workshop or conference. After all, this is your association.

***The NAF Association is managed by its members. It is truly your Association. Is there something you would like to learn? contribute? Contact me at 800-463-8955 or [jtracey@nafassociation.com](mailto:jtracey@nafassociation.com).***

### NEW MEMBERS

The NAF Association has welcomed the following new members during the past year:

AFCD - [www.myafcd.com](http://www.myafcd.com)  
Access Capital Investment Group - 303-991-5885  
Auto Dealer Monthly, LLC - [www.autodealermonthly.com](http://www.autodealermonthly.com)  
Becker Law Firm, P A - 252-757-3203  
Burr & Forman, LLP - [www.burr.com](http://www.burr.com)  
Carolina Finance, LLC - [www.carolina-finance.com](http://www.carolina-finance.com)  
Costco Auto Program - [www.costcoauto.com](http://www.costcoauto.com)  
CreditMax LLC - [www.creditmaxteam.com](http://www.creditmaxteam.com)  
Cypress Software Systems - [www.gocypress.com](http://www.gocypress.com)  
Dealer Funding LLC - 678-990-5747  
Exeter Finance Corp. - [www.exeterfinance.com](http://www.exeterfinance.com)  
First Investors Financial Services - 713-273-5114  
Global Debt Exchange - [www.gdexauto.com](http://www.gdexauto.com)  
Guardian Warranty Corporation - [www.guardian-warranty.com](http://www.guardian-warranty.com)  
Insurance Auto Auctions - [www.iaai.com](http://www.iaai.com)  
LexisNexis Risk & Information Analytics Group - [www.risk.lexisnexis.com](http://www.risk.lexisnexis.com)  
Miles, Bauer, Bergstrom & Winters, LLP - [www.mileslegal.com](http://www.mileslegal.com)  
[myAutoloan.com](http://myAutoloan.com) - [www.myautoloan.com](http://www.myautoloan.com)  
Nomis Solutions - [www.nomissolutions.com](http://www.nomissolutions.com)  
Peak5 - [www.peak5.com](http://www.peak5.com)  
Santander Consumer USA/Drive® - [www.drivefinancial.com](http://www.drivefinancial.com)  
Southside Financial Group - [www.southsidefg.com](http://www.southsidefg.com)  
Surge Capital - [www.surgecapital.com](http://www.surgecapital.com)  
Teletrack, Inc. - [www.teletrack.com](http://www.teletrack.com)

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# BANKRUPTCY LAW UPDATE

## CHAPTER 13 BANKRUPTCY PLANS: WHEN SHOULD YOU OBJECT?

*Sheldon R. Singer, Esq.*

The receipt of a notice of consumer bankruptcy filing is unfortunately a common occurrence for the holders of non-prime auto loan portfolios. With the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the filing of Chapter 13 bankruptcies rather than Chapter 7 bankruptcies has increased dramatically. Creditors in a Chapter 13 case will be presented with the debtor's Chapter 13 Plan and must make the critical decision whether to object to the plan or agree to be bound by its terms. In most jurisdictions, creditors have just 45 days to object to the first plan filed and 30 days to object to any modified plan. Without consideration of the debtor's treatment of your collateral, the most common bases for objecting to a plan are:

- Failure of the debtor to provide all future disposable income to the plan
- Excessive expenses in the debtor's budget
- Lack of good faith in filing the case or the plan
- Failure to provide at least as much as would be provided in a Chapter 7 liquidation
- Lack of feasibility of the plan

**Secured creditors** have other special considerations in evaluating whether to object to a debtor's plan. The most common bases are:

- Failure to properly state the pre-bankruptcy delinquency and/or the correct amount of the indebtedness
- Improper valuation of collateral
- Improper attempt to "cramdown" secured debt
- Failure to provide adequate protection
- Failure to provide interest on the secured obligation, if applicable

Even though the Bankruptcy Code is the

same throughout the country, the courts' interpretation of the Code has been varied. For instance, an objection based on "cramdown" in one locale may not be proper in another. It is therefore important to seek counsel regarding the viability of certain objections in your particular jurisdiction. Some of the more prevalent issues presently subject to dispute are:

**Valuation:** For the majority of jurisdictions, the valuation standard used by the Courts is the replacement cost determined as of the petition date without deduction for costs of sale or marketing. Further, if the debtor acquired the car for personal, family or household purposes, the value at the time of the valuation/confirmation hearing with the age and condition of the car is considered in determining retail replacement value. In making a value determination, a judge may consider whatever evidence is submitted. In other words, the courts will not rely solely on market guides such as NADA and Kelly Blue Book. Just because market guides say they reflect "retail" value does not mean they reflect a realistic retail sales price.

**Cramdown:** Prior to the passage of the recent Bankruptcy Code amendments, Chapter 13 debtors who owned cars that were "underwater" (the debt on the vehicle exceeded its value) and wished to keep their car were able to "strip down" or "cramdown" the lender's claim, reducing the secured portion of the claim to the value of the vehicle and pay that amount with interest during the term of the Chapter 13 Plan, while treating the balance as an unsecured debt. The amendments to the Code attempted to make a significant change to this law for newer vehicles. Inartfully drafted, the amendments attempt to provide that cramdown is no longer available to be used by Chapter 13 debtors with respect to cars bought for personal use within 910 days of the bank-

ruptcy filing. While this proposition can be used as a general guide, lenders would be wise to seek counsel with respect to the various permutations that the courts throughout the country have crafted:

- Both narrow and broad interpretations of what is considered "acquired for the personal use of the debtor"
- Wildly differing interpretations of what is considered a "purchase money obligation" – including whether the rolling over of negative equity from a trade in to the new car loan takes the loan outside of the ambit of the amendment and whether refinancing of a vehicle disqualifies the loan from the amended Code's special treatment.
- A split of decisions on whether purchase money vehicle creditors get no claim for a deficiency upon the surrender of a "910 car."

**Interest:** Once again the bankruptcy courts are in disagreement with one another on whether a Chapter 13 debtor may modify the interest rate and term of a 910 car loan. As with many of these issues, your bankruptcy counsel should be able to quickly advise you as to the current rule applicable to the jurisdiction in question.

For the most part, auto lenders will still have significant protections under the amended Bankruptcy Code. It is important, however, that the proposed plan be reviewed. A proposed plan that takes away important protections may be confirmed and bind the lender for the term of the plan, as in most cases, a failure to object is treated as an implied acceptance of the plan.

*Sheldon R. Singer, Esq., managing member of Singer Tarpley & Jones, P.C., a member of the NAF Association. Mr. Singer provides creditor representation to the automobile finance industry. SSinger@stlaw.net and www.stjpa.com*

## MEMBER NEWS

**AmeriCredit** has selected **van Wagenen** to provide insurance tracking for their auto finance portfolio.

AmeriCredit Corp. provides financing solutions indirectly through auto dealers in the United States and Canada. AmeriCredit has over one million customers and more than \$15 billion in managed auto receivables.

van Wagenen Financial Services, Inc. is an industry leader in providing insurance tracking services and related insurance products for financial lending institutions across the United States and Canada.

**AppOne** is now the exclusive portal solutions provider of the **myEZCarCare** maintenance program to the independent auto dealer market. Dealers will have the opportunity to offer their customers myEZCarCare preventive maintenance services at their own service departments and at more than 1,000 national service chains throughout the United States.

AppOne, a part of **Wolters Kluwer Financial Services**, provides Internet-based risk mitigation and financial technology to finance companies and independent auto dealers, and myEZCarCare is an Internet-based car care maintenance program that creates dealer and auto finance company loyalty and ongoing customer communications.

**VantageILM Inc.**, a provider of integrated lender/leasing management solutions for finance firms, banks, leasing companies and credit unions, has formed a joint partnership with **Global Debt Network, Inc.**, which offers GDNAuto, an Internet-based marketplace where dealers and financial institutions can sell and buy portfolios of seasoned auto loans.

In addition to offering an innovative new service with its transaction management solution, the VantageILM/GDNAuto partnership will facilitate faster, more effective communication between lenders and consumers whose auto loans have been transferred through a sale of a loan portfolio. GDNAuto also will co-market VantageILM software to its customer base of financial institutions and investors.

### CONFERENCE ... FROM PAGE 1

rent conditions and feel the credit markets are in recession. They do not see conditions resulting in shorter terms but probably preventing a greater move to 84 month terms. Moving forward, they suggest looking for efficiency, profitability and portfolio quality.

Tom Webb, Manheim, continued the evaluation of the current economy. Auctions are selling more repossessed vehicles this year and prices are down from the peak in September. Late model, low mileage used cars, however, continue to do well. He also pointed out that any reduction in consumer confidence leads to a reduction in consumer spending. "'To my mind,' he said, 'we are in a recession.'"

The legal panel brought attendees up-to-date on federal rules and regulations. Preventing identity theft continues to be a hot topic. A written ID theft prevention ("Red Flags") program is required of all creditors, must be approved by the company's board of directors and overseen by a



*Attendees find ample networking opportunities.*

senior manager.

Gil Van Over, gvo3 & Associates, showed compliance as a quantitative challenge. In the 1940s, a sales contract was a single page, now placing today's required documents end-to-end, he produced a contract that stretched from the stage up the center aisle of the meeting room. With training and direction, dealers can learn to manage the sales process and avoid pit falls.

Those who had to leave before Session 12 missed Robert Guerrero's description of a journey that followed a wrecked truck bought at auction to Lithuania where it was fixed, sold to a dealer and on to

Moscow where it was purchased. Guerrero's Insurance Auto Auctions deals with about 100 countries that bid on line and currently see growth in markets in Mexico and Central and South America.

During the NAF Association's annual meeting, Rich Apicella, BenchMark Consulting International, reported on preliminary findings from the annual survey, but data is still being submitted. NAF Association members will receive a copy of the survey after publication this summer, and others can purchase the survey. Preliminary results show the effects of the economic downturn.

Conference attendance was up slightly from last year, due at least in part to the reduction of the registration fee.

Some of the conference presentations and handouts are available on the events page at [www.nafassociation.com](http://www.nafassociation.com).

## CHANGES TO THE BOARD OF DIRECTORS

During the NAF Association's annual meeting at the 12th annual Non-Prime Auto Financing Conference in June,, members voted on Board of Directors positions. The following actions were taken:

### Renewing Board Seats:

#### ACS

Nancy McDonald

#### AmeriCredit

Mark Floyd

#### Capital One Auto Finance

Steve Braskamp

#### CIQ/VOISYS

Paul Snider

#### CitiFinancial

John Fietz

#### Connections Insights

Marguerite Watanabe

#### Crescent Bank & Trust

Richard Boyce

#### Easterns Automotive

Nick Champeau

#### Sekurus/On Time

Ashley Herndon

#### Travelers Automotive Finance

Dave Martins

#### Williams & Stazzone Insurance

Joe Stazzone

### New representative on Board:

#### Fireside Bank

Jim Landy

(replaces Fred Reichelt)

#### Wells Fargo Auto Finance

Todd Gunderson

(replaces Lou Loquasto)

### New Board members:

#### Southside Financial Group

Gary Perdue

#### Wolters Klurer/AppOne Inc.

Lee Domingue

#### Santander/Drive

Representative to be named

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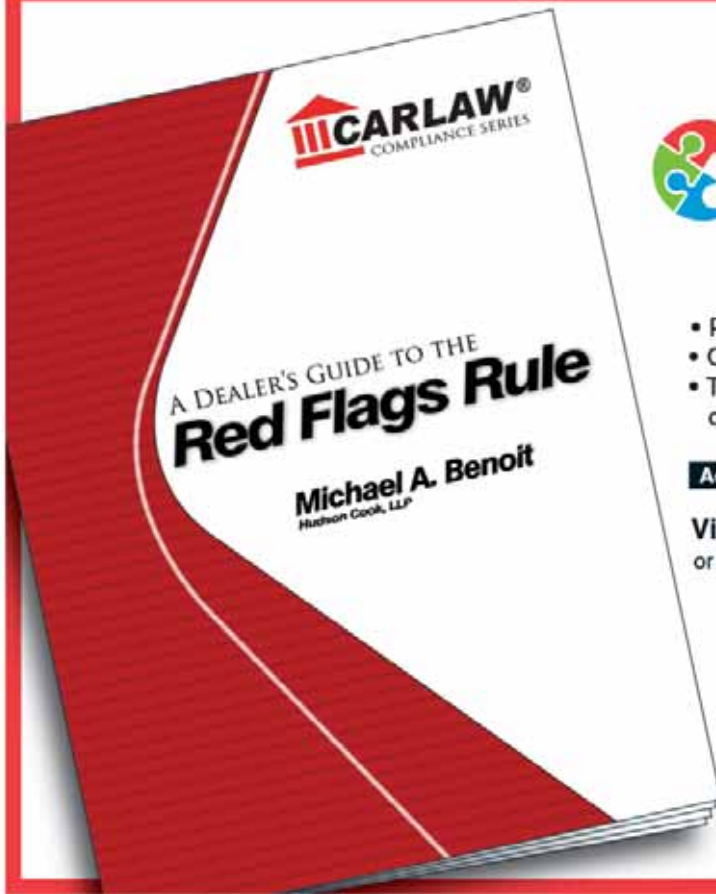
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## JOIN THE NAF ASSOCIATION

*The National Automotive Finance Association is the only trade association exclusively serving the non-prime auto financing industry. It supports its members and the industry with education, research and information. The Annual Non-Prime Auto Financing Conference is the industry's premier conference, bringing together creditors and dealers. The annual Non-Prime Auto Financing Survey gathers comprehensive information and reports industry trends and shifts.*

*Go to [www.nafassociation.com](http://www.nafassociation.com). for information and on-line registration form or call 800-463-8955.*

## Coming Soon!

### 2008 Non-Prime Automotive Financing Survey

The annual survey, conducted by outside consultant, BenchMark Consulting International, analyzes 2007 year end data and compares it to previous years' surveys to discover trends in the non-prime auto financing market.

The survey will be printed in the early summer and will be distributed at no cost to the companies that participated and to those NAF Association members not eligible to participate in the survey.

Information, including on-line ordering, will be posted as on the website.

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