

## Insights

### Indiana Court Upholds Department of Financial Institutions Ruling on Auto Dealer Electronic Titling Fees

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On October 10, 2018 the Marion County Superior Court ruled in *Webb Ford, Inc. v. Indiana Dep't of Fin. Insts.*, Cause No. 49D03-1801-PL-002762 (Marion Cnty. Sup. Ct. Jan. 22, 2018), denying the auto dealer's petition for judicial review and affirming the Indiana Department of Financial Institutions (the "IDFI" or the "Department") decision that Webb Ford had charged an impermissible convenience fee.<sup>[1]</sup> For background on the Webb Ford case and subsequent related regulatory guidance issued by the Department, please see our previous **Client Alert** on this matter. In short, the case centered around the auto dealer's assessment of a \$25 "convenience fee" associated with electronic filings made with the Indiana Bureau of Motor Vehicles. The dealer required all customers financing their vehicles to use the service, but did not have a similar requirement in place for cash customers. In spite of this, the dealer failed to include the fee in the finance charge.

The Court's ruling comes as no surprise, and confirms the underlying premise that financial institutions doing business under the Indiana Uniform Consumer Credit Code (the "Code")<sup>[2]</sup> are prohibited from charging any fee that is not specifically provided for under the Code, unless they include it in the finance charge and appropriately disclose it at closing.

So what does this mean for your financial institution? If you are an indirect auto finance lender doing business in Indiana, and you haven't reviewed your portfolio to confirm compliance with the IDFI's guidance and the holding in *Webb Ford*, you should do so now. While we don't know how prevalent the practice employed by the dealer in this case was, anecdotal evidence suggests that this may be more than just an isolated incident.

Webb Ford has until November 9, 2018 to appeal the Superior Court's decision.

<sup>[1]</sup> We note that the term "convenience fee" in this context refers to a fee charged for electronic filing of required documents with the Indiana Bureau of Motor Vehicles, and not the more commonly known electronic loan payment fee, or SpeedPay fee, seen in other jurisdictions.

<sup>[2]</sup> See Ind. Code § 24-4.5-1-101, et seq.