

# NON-PRIME TIMES

NATIONAL AUTOMOTIVE FINANCE ASSOCIATION • 7250 Parkway Drive, Suite 510 • Hanover, MD 21076  
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SUMMER, 2007

## 11TH ANNUAL CONFERENCE

National radio show host, AutoScoop's Adam Goldfein, opened the NAF Association's 11th Annual Non-Prime Auto Financing Conference in St. Louis. The Internet, he says, presents finance companies with a new option, that of being able to address consumers directly. He mentioned the possibilities of self-branding and co-branding with dealers on-line where consumers begin their car shopping.

A panel of experts on independent dealers discussed the challenges faced by the dealers and those interested in underwriting them. Computer savvy, education, length of time in the business and membership in dealer organizations are indicators of successful dealers. NAIDA certified master dealers are good credit risks. Steve Hall, driversselect, advised independent dealers to form relationships with lenders, something he has been able to do through contacts made at NAF Association conferences. Independent dealers, he says, are feeling increasing competition from dealer expansion of used car sales.



Neil Abbott

Neil Abbot of Gowlings and Gary Thompson, Travelers Auto Finance, talked about the young — less than 10 years old — and growing non-prime auto financing industry in Canada. There are similarities to U.S., for example, percentage of population in the non-prime category, and differences, for example, average terms are



six months longer. It is important, too, if doing business in Canada to recognize that social and legal issues are not the same as in the the U.S.

Juan Faura returned for a second year to discuss the Hispanic market, 41 million people representing 14 percent of the U.S. He pointed out that, although Mexico is the country of origin for 65 percent of this market in the U.S., in some areas of the country the Hispanic population is mainly Cuban or Central American. Household income is rising faster among the Hispanics than among the rest of the population.



John Anglim

John Anglim and Mark Risi presented this year's rating report from Standard & Poor's. A measure of the industry's health may be their report that Standard & Poor's broke a record in upgrades in 2006 — 91 — and there have been no downgrades since 2003.

A panel provided updates on the new Bankruptcy Law and its effects on the industry, including noting the deadlines are shorter, bankruptcies are rising again, and the auto finance industry is doing better under the new act

than before but not as good as hoped.

Can a panel of lawyers cover 50 issues in 50 minutes? It seems so. The John Warner National Defense Act, the FACT Act, Fair Credit Reporting Act, along with arbitration, spot delivery, starter interrupter devices, e-contracting, among other topics all received concise updating.

The annual meeting of members included board elections reported on page 6 and a brief summary of some of the preliminary findings of the Association's 2007 Non-Prime Auto Financing Survey. A record number 27 companies responded to this year's questionnaire. Among the preliminary findings are that the trend toward longer term contracts continues as does the trend toward shorter decision time --- 25 percent of decisions are made in less than 10 minutes. The survey is distributed to members and available for purchase by non-members.

Peter Anderson, Anderson Terpening PLLC, reports that the threat of criminal prosecution is real now that federal regulators rely on the criminal not civil code. Even first time violations can result in jail time so auto dealers need to be proactive to improve behaviors and increase compliance in areas that otherwise could lead to prosecution.



Peter Anderson

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## EXECUTIVE DIRECTOR'S MESSAGE



The nearly 300 people who attended the 11th annual conference were treated to excellent programs on topics that affect their business. A review of the conference can be found on page 1. The hotel overlooked the St. Louis Gateway Arch and was only a couple of blocks from Busch Stadium. The Cardinals were at home while we were there, and many attendees enjoyed the game.

New members of the board of directors were elected at the annual member meeting, and they and the new officers are reported on page 6. A preview of the annual survey was presented at this

meeting too. Publication is expected this summer. The survey is distributed to members and is available for purchase by non-members. We were also able to report the health of the Association: between the 2006 and 2007 conferences, we added 22 new members — listed on page 3.

We will return to St. Louis for our next educational program, a workshop on September 23, 2007 held in conjunction with the World of Special Finance Magazine 3rd Annual Special Finance Convention. A dealer/creditor panel and a legal panel are planned. Check the events page of the website [www.nafassociation.com](http://www.nafassociation.com) for updates.

Everything mentioned above is due

to members. Conference topics and speakers are a direct result of your requests and recommendations. Education programs present relevant information because they are planned by members who work in the industry. The survey relies on reports from finance company members among others. Because some members sponsor programs and/or exhibit at the conference, we are able to keep down registration costs.

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).

## MEMBER PROFILE: driversselect

### driversselect USES CREDIT EXPERTS TO OFFER CONSUMERS AN EDUCATIONAL BUYING EXPERIENCE

driversselect has carved out a niche in the retail automotive industry by leveraging highly skilled credit consultants who have special expertise in matching available finance solutions for specific credit situations. By giving consumers who may have difficulty obtaining financing on their own the ability to work with professional and knowledgeable credit experts driversselect is able to take what has been a historically frustrating, painful and even deceptive buying experience and turn it into an exciting, educational and trusting relationship with the consumer.

Today most dealers compete on low prices, high quality, large selection or special guarantees that are hard to deliver. "We have conducted over 25,000 surveys with consumers, and they have stated their frustration with the lack of integrity, respect, trust and education they receive from dealers,"



stated LaTanya Moore, Director of Customer Care.

At driversselect we have developed our entire brand around the quality, expertise and professionalism of our employees and their strong desire to educate consumers about their credit situation, their current and future financing options and the importance of establishing relationships with national lenders.

Many dealers advertise a "110 point quality check" on their retail vehicles. At driversselect we not only put our vehicles through a "110 point check" but our employees go through an even

tougher certification. Getting the right people is certainly the biggest challenge for a company with this strategy.

"You cannot imagine the extreme pain and difficulty you have to encounter to fill every position with the best people," stated Steve Hall, President of driversselect. "Major investments are being dedicated to employee recruiting, training, and development programs which have become the core focus of our senior management team. But once you get a core group of quality people it becomes easier to attract better talent. The best people often have a strong desire to work with other talented people. Every employee is hired based on the four core values of the company and each is measured and compensated on their continuous knowledge they acquire and their ability to deliver extraordinary experiences to all guests and employees."

CONTINUED ON PAGE 6

## NEW MEMBERS

The NAF Association has welcomed 22 new members since the 2006 conference:

### *Ascension Capital Group*

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

### *AutolifeRx*

602-288-5480

### *BridgeFunds*

[www.bridge-funds.com](http://www.bridge-funds.com)

### *Century Credit*

910-577-3284

### *CheckVelocity, Inc.*

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

### *Compli*

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

### *Connections Insights LLC*

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

### *Dealers' Financial Services LLC*

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

### *DeHart Crockett PC*

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

### *Equifax, Inc.*

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

### *Expresslink, Inc.*

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

### *Inspire Auto Finance Company LLC*

469-235-1647

### *MarkOne Financial*

[www.mark-one.com](http://www.mark-one.com)

### *Mongoose Capital, Inc.*

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

### *National Bankruptcy Services*

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

### *Phoenix Capital Management*

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

### *Rafael Financial Group*

410-864-8281

### *Singer, Tarpley & Jones PA*

[www.singer-tarpley.com](http://www.singer-tarpley.com)

### *Southern Auto Finance Company*

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

### *Universal Special Auto Finance*

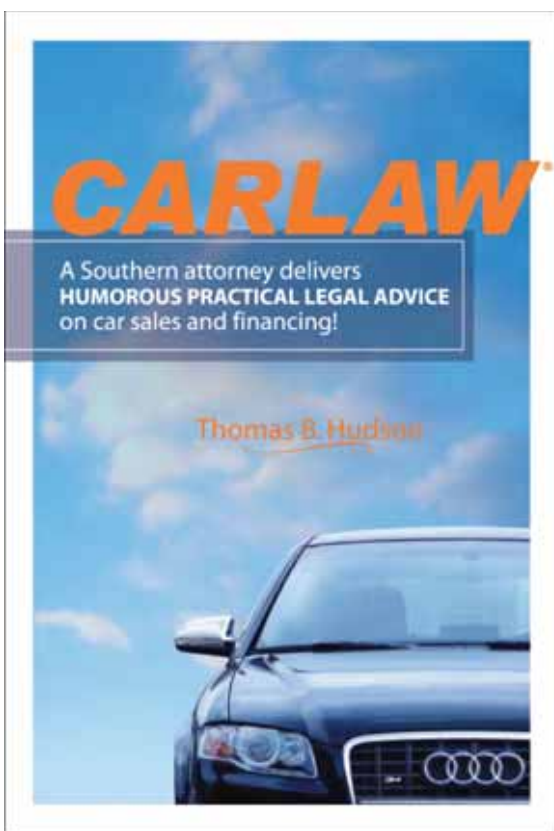
[www.universalsaf.com](http://www.universalsaf.com)

### *University Federal Credit Union*

[www.ufcu.org](http://www.ufcu.org)

### *Vehicle Acceptance Corp*

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



## Advance Praise for **CARLAW®**

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**Adam Goldfein**  
Host of Syndicated Talk Show  
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## NAF ALERT: AIDING AND ABETTING FRAUD

Can an automobile finance creditor “look the other way” when a dealer deceives consumers about the terms of a deal? A recent case by the U. S. Court of Appeals for the Ninth Circuit provides some useful guidance on this question.

The case involved a subprime mortgage lender, First Alliance Mortgage Co.<sup>1</sup> First Alliance made home equity loans to consumers, especially seniors, who were sitting on a lot of equity in their homes. First Alliance was found to “obfuscate points, fees, interest rate, and the true principal amount of the loan.” Many borrowers did not realize they were paying points and fees that added, on average, 11% to the amount they thought they had agreed to pay. The Federal Trade Commission, the Department of Justice, and several state Attorneys General began investigations of First Alliance. AARP filed a lawsuit on behalf of its members. The national media, from *The New York Times* to ABC News program *20/20*, ran stories highly critical of First Alliance’s loan origination practices.

To fund these loans, First Alliance relied on a line of credit from investment bank Lehman Brothers. Lehman provided hundreds of millions of dollars through a warehouse line of credit secured by First Alliance’s loans. After First Alliance filed for bankruptcy, consumers brought a class action suit against Lehman claiming that Lehman was liable for First Alliance’s wrongdoing under an “aiding and abetting” theory. Under California law, Lehman was found liable because consumers established these facts:

- First Alliance committed fraud on a class-wide basis through a common course of conduct
- Lehman had “actual knowledge” of First Alliance’s fraud
- Lehman provided “substantial assistance” to First Alliance in carrying out the fraud

<sup>1</sup> In re: *First Alliance Mortgage Co.*, 471 F.3d 977 (9th Cir. December 8, 2006).

The Ninth Circuit held that Lehman must have actual knowledge of the “specific primary wrong.” This requires more than a “vague suspicion of wrongdoing,” according to the court. Lehman must have known more than “*something* fishy was going on.” The jury decided that Lehman knew more than something was fishy with First Alliance’s practices.

The jury concluded that Lehman knew of First Alliance’s fraudulent acts and knew that its line of credit would assist First Alliance in carrying out its fraud. Lehman did due diligence before financing First Alliance’s home equity portfolio. It knew of the accusations of fraud and the many lawsuits filed against First Alliance. It also received reports during the years it funded First Alliance. One report contained a Lehman officer’s note that if First Alliance “does not change its business practices, it will not survive scrutiny.” The Ninth Circuit found that the jury could rely on this and other evidence in reasonably concluding that Lehman had actual knowledge of First Alliance’s fraudulent lending practices.

What does this case mean for subprime auto creditors? The aiding and abetting theory of liability can be applied to indirect auto financing just as it was applied to Lehman’s financing of home equity loans. If the dealer is defrauding the consumer, and the indirect auto creditor has actual knowledge of the dealer’s wrongdoing, its funding of the retail installment contracts could invite liability for the dealer’s fraud.

This case is also a reminder of how easily a jury can take sides against a company with deep pockets when consumers have been hurt. Some observers were surprised that the court found the evidence against Lehman was enough to support a conclusion it had actual knowledge of First Alliance’s fraud. After all, investigations of a company and lawsuits against it are only accusations, not proof, that it

has committed fraud. But the jury decided that Lehman had the required actual knowledge, and appeals courts are reluctant to second-guess juries on such points.

Of course, an indirect auto creditor can wind up with liability for a dealer’s fraud even if it doesn’t have actual knowledge of the dealer’s bad acts. Any auto financing contract covered by Truth in Lending is also covered by the FTC’s “Holder Rule.”<sup>2</sup> This rule requires contracts to contain the notice that says the holder of the contract is subject to all claims and defenses the consumer could assert against the seller. What makes the Holder Rule dangerous for indirect creditors is that the consumer doesn’t have to prove that the indirect creditor knew of the dealer’s fraud — the indirect creditor is equally liable for the dealer’s misdeeds, even if it had no idea what was going on. But damages are limited under the Holder Rule. The consumers can recover only what they have actually paid under the contract. In contrast, an aiding and abetting theory doesn’t constrain a plaintiff’s attorney to just what the consumers have paid. Under state consumer protection laws, consumers may be able to recover treble or punitive damages and attorney’s fees from an indirect creditor found to have aided and abetted a dealer’s fraud.

In short, there is no good news for an indirect auto creditor that does business with a bad dealer. Even if the indirect creditor doesn’t know about the dealer’s misconduct, under the Holder Rule it can lose everything a consumer has already paid on a contract and be prevented from collecting the balance. If the indirect creditor knows about the dealer’s fraud — or if a jury decides the creditor probably knew about the fraud — the indirect creditor can owe the plaintiffs a fortune, as Lehman found out.

*Jean Noonan, Hudson Cook, LLP*

<sup>2</sup> Preservation of Consumers’ Claims and Defenses, 16 C.F.R. Part 433.

## NEW MEMBER PROFILE: EXPRESSLINK



Expresslink of Encino, California, is the nation's recognized leader in point-of-sale auto insurance and has been providing its InsureExpress plan through dealers to their customers for over 20 years.

A six month personal auto policy is guaranteed for every licensed driver,

regardless of age or driving history. This takes point-of-sale insurance beyond the temporary binder coverage others may offer and assures that the long-term insurance policy can be established.

Expresslink has partnered with Reynolds & Reynolds, ADP and UCS to maximize efficiency and compliance thru sanctioned integration agreements. Each customer in need of insurance is electronically referred through a secure, encrypted process directly to Expresslink for immediate

processing.

"We have been refining and improving the InsureExpress plan for over 20 years and have come out with a real winner – proven value and protection for the customer, the lender, the dealer and the public at large" says Brian A. Murphy, President of Expresslink. "We provide a safe, easy and affordable alternative for customers who might otherwise be unable maintain the required insurance coverage."

### NEWS BRIEFS



Dan Leonard, NAF Association Board of Directors President, has been promoted to President and CEO of Triad Financial Corp.

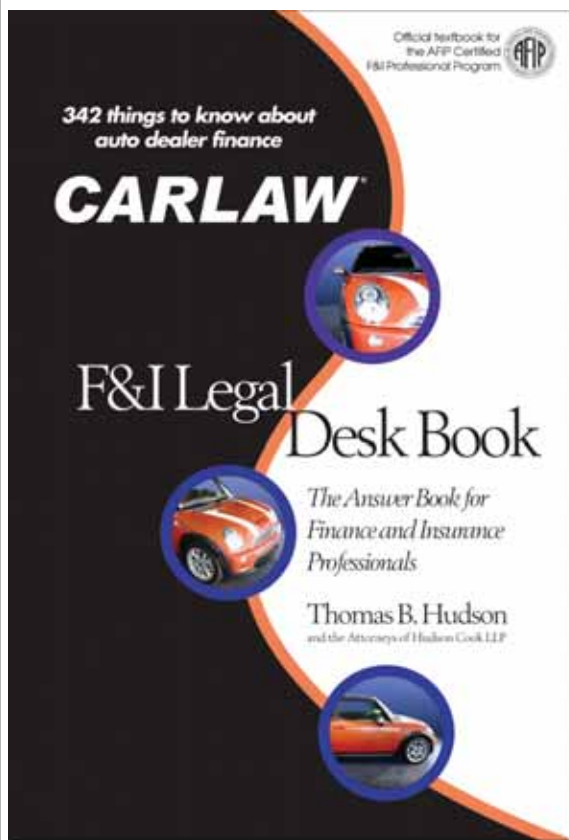
Leonard will oversee Triad's strategic direction and capitalize on the the company's strength in the non-prime auto finance market. He has over 30 years experience in the industry.



NAF Association will hold a workshop September 23, 2007 at the

Millennium Hotel in St. Louis. Sessions include a dealer/creditor panel and a legal panel. Information will be posted on the website as the program develops. Visit [www.nafassociation.com](http://www.nafassociation.com)

The workshop will be held in conjunction with the World of Special Finance Magazine 3rd Annual Special Finance Convention.



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## CONFERENCE...FROM PAGE 1

Tom Webb, Manheim, gave his annual report on the used car market. Prices remain strong, auction volume is up and the overall economy is growing, albeit slowly.

Finally, David Newman, CheckVelocity, talked of how "electronification" can help improve companies' efficiencies.

Conference attendance was about 300, and the schedule provided ample time for networking and visits to the



exhibits. DealerTrack was the Grand Corporate Sponsor. Corporate Sponsors were ACS, AppOne, PassTime and Regional Acceptance Corporation.

You can find several of the conference presentations at the events page at [www.nafassociation.com](http://www.nafassociation.com).

**COMING SOON!**

**NAF ASSOCIATION**

**Workshop**

**SEPTEMBER 23, 2007**

**St. Louis**

**INFORMATION, PAGE 3**

**&**

**VISIT THE WEBSITE**

**[WWW.NAFASSOCIATION.COM](http://WWW.NAFASSOCIATION.COM)**

**FOR UPDATES.**

## DRIVERSSELCT...FROM PAGE 2

driversselect competes against other dealers by offering consumers the ability to deal with a knowledgeable and caring professional, large variety of just about every make and model, access to top lending programs and a relaxing showroom environment. Vehicles are one to six years old with under 60,000 miles with the average amount financed just over \$19,000.

The company opened its first location in May 2004 and now has six

locations in Dallas and Houston, 250 employees and over \$100 million in revenue for 2007. driversselect is looking to open four to five stores a year and expand into 15 to 20 markets over the next 10 years. driversselect has been a member of the NAF association from the day it opened. Steve Hall and Jim Bass both senior managers of driversselect have been active members on the board and held officer positions for the association. For more information check out the company at [www.driversselect.com](http://www.driversselect.com)

### BOARD OF DIRECTORS ELECTIONS

Officers and new members were elected to the NAF Association Board of Directors at the annual membership meeting, June 6:

#### 2007 Officers:

Paul Snider, CIQ Inc./VOISYS

*Chairman*

Dan Leonard, Triad Financial Corp.

*President*

Bill Jones, Regional Acceptance

*President Elect*

Marguerite Watanabe, Connections Insights LLC

*Secretary*

Jim Bass, driversselect

*Treasurer*

#### New Board Members:

##### Full Members:

Annette Girmus/Orford, Phoenix Capital Management

Todd Gunderson, Wells Fargo Auto

Bill Jones, Regional Acceptance

##### Associate Member:

Stan Schwartz, PassTime

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*If you would like to contribute a newsletter article, contact us for details.*

