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## Supreme Court to again consider case of OT for service advisers

The U.S. Supreme Court for the second time will review whether service advisers at dealerships are exempt from federal overtime pay requirements.

The Court had previously heard the case in 2016, but a subsequent split between circuit courts made a Supreme Court rehearing almost inevitable.

The case, *Encino Motors v. Navarro*, may have ramifications on how courts interpret statutory exemptions under laws such as the Fair Labor Standards Act.

Generally, FLSA exemptions have been narrowly construed in favor of employees.

The Court likely will hear oral arguments this fall, with a decision announced in 2018.

“The rejection or reinforcement of that ‘exemptions are narrowly construed’ canon will have ripple effects across FLSA jurisprudence,” said Collin O’Connor Udell, an attorney with a Connecticut law firm. Udell isn’t involved in the case, but her practice focuses on Supreme Court litigation.

A broader reading of the

FLSA’s exemptions potentially could reduce the number of workers allowed to bring minimum wage and overtime claims against their employers.

“But only to the extent those workers would not be covered under traditional methods of statutory interpretation, such as examination of the text, the structure of the statute, and, if necessary, legislative history,” Udell said.

### **Salesmen, Mechanics, or Partsmen?**

The present controversy,

which centers on whether service advisers at a California dealership are entitled to overtime wages, went before the high court last year when only eight justices sat on the bench. The court sent the case back to the U.S. Court of Appeals for the Ninth Circuit without resolving the issue.

They found that the appeals court shouldn’t have relied on a 2011 Labor Department rule that said service advisers don’t fall within the FLSA’s exemption cover-

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## NADA has new Driven guide on leasing

The vehicle leasing business reached an all-time high in 2016, with 4.3 million vehicles leased, and consumers are still leasing new cars at near-record levels.

Leasing appeals to many consumers who are able to acquire a more expensive vehicle, often with lower monthly payments, than they could have afforded as a purchase — and they can get into a new car every few years, with no depreciation risk.

Still, many consumers don’t understand the leasing concept or vocabu-

lary. A new National Automobile Dealers Association publication, “A Dealer Guide to Leasing Fundamentals,” aims to help dealers and their sales staffs explain leasing, including how it compares to purchasing, so that customers can make the right decision for their individual needs.

Also discussed: closed-end consumer leases, how leasing benefits both customers and the dealership, and who are the best and worst candidates for leasing. NADA members can access the publication online.

## Senate move to ground recalled vehicles stalls

A U.S. Senate panel on Oct. 4 unanimously gave the green light to a bill aimed at speeding the use of self-driving cars without human controls, a measure that also bars states from imposing regulatory road blocks.

The Senate Commerce, Science and Transportation Committee approved the bill, and the U.S. House of Representatives unanimously passed a similar measure last month.

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## National Automobile Dealers Association elects its 2018 officers

Michigan dealer Wes Lutz was elected on Oct. 3 to lead the National Automobile Dealers Association in 2018. Charlie Gilchrist, from Texas, was named the next vice chairman.

"I am honored to serve as NADA chairman as we begin the next century following the association's 100 years of existence," said Lutz. Balloting was done by the 63-member board of directors of the NADA.

Lutz, president of Ex-

treme Dodge-Chrysler-Jeep-Ram in Jackson, Michigan, said he will continue to advocate new-car dealer concerns in the industry, legislative and regulatory affairs arenas as well as encourage dealers to adapt to the retailing challenges ahead.

"From start to finish, the nation's franchised new-car dealership network has to benefit consumers in newer ways than ever before," said Lutz, who has been a dealer since 1976. He currently is

NADA vice chairman, and previously served on the NADA's board from 2001 to 2004.

Gilchrist, who represents Northern Texas' new-car dealers on the NADA board, is president of Southwest Ford in Weatherford, Texas, as well as Buick-GMC, Nissan and Mitsubishi franchises.

Delaware dealer Bill Willis was re-elected as secretary, and the new treasurer is Bob Shuman, another Michigan



Wes Lutz

dealer.

The new officers assume their posts next March at the NADA Show Expo.

### NADA Chairman Scarpelli to discuss unintended consequences of stair step incentive programs

In remarks to the Automotive Press Association in Detroit on Oct. 10, Mark Scarpelli, the 2017 chairman of the National Automobile Dealers Association, will discuss the

unintended consequences of certain manufacturer incentive programs — including, in particular, the adverse effects that those programs often have on the value of brands to consumers.

Scarpelli represents Metro Chicago's new-car and -truck dealers to the NADA, which in turn acts on behalf of nearly 16,500 new-car and -truck dealerships.

## Hyundai gives 3 millionth Elantra in America to Harvey hero

Hyundai Motor America in September crossed a significant milestone in its history. Since the company's Elantra compact sedan was introduced to the U.S. market in 1991, the company has now sold 3 million Elantra units.

However, the record sedan wasn't actually sold, but instead donated to a paramedic field supervisor in Baytown, Texas, whose house was lost to Hurricane Harvey flooding while he was helping neighbors for two days straight.

Neighbors rescued Henry Rogers' wife, three adopted kids, and three dogs. Everyone came out all right, but his house and its contents were destroyed. So for Rogers' contribution to the town, and for everything his family lost, Hyundai sought to get them started on the right foot with a fresh car, and a fairly historic one no less.

Meanwhile, the National Automobile Dealers Association welcomes donations to its Emergency Relief Fund, which is dedicated exclusively to providing financial assistance to dealership employees who sustained property damage from hurricanes Irma and Harvey and other natural disasters.

Donations can be made online, or by personal or cor-

porate checks payable to Emergency Relief Fund. Mail to NADA Foundation, 8400 Westpark Dr., Tysons, VA 22102. For more information, call (703) 821-7102. (Donations to the NADA Foundation generally are tax-deductible; contributors should consult their tax advisors for details.)

The Chicago Automobile Trade Association, too, can help area employees who were affected by flooding in July 2017. The CATA will match any grants that the NADA Emergency Relief Fund awards. Call the CATA for details at (630) 495-2282.

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## Study: Customers happier to arrange service appointments online

Among dealership service customers who scheduled their appointment online, more than three-fourths (76 percent) said they were apt to go that route again, according to research from Cox Automotive.

What's more, setting up the service visit online creates a path toward a happier customer, said Jim Roche, vice president of marketing and managed services at Xtime, a company that strives to increase retention for OEMs and dealerships by delivering a premium customer experience.

Problem is, many customers don't know that online appointment-setting is an option.

According to that same research from Cox Automotive (Xtime's parent company), 45 percent of customers who didn't use online scheduling were not aware it was offered.

"That is a surprising and disappointing fact," Roche said. "It's on us in the industry that we have that lack of awareness."

Fortunately, he said, it's a "low-hanging fruit" that dealers can do something about. For instance, he urges dealers to send an email blast to customers at least twice a year to let them know that online service appointment scheduling is

available — and beneficial.

"Setting the appointment online really lays the foundation downstream for a great experience," Roche said. "Because you get the day and the time that you want, the dealer can be prepared for you. The system can make sure that the reservation is managed so that they can spend as much time with you (as needed). It can look up open recalls on your vehicle."

It also can help ensure the experience is a high quality one, which leads to the uptick in dollars spent. In fact, scheduled visits tend to pull in \$54 more per visit than the walk-in visit.

"They spend more because it's a better experience," Roche said.

And it's one that has been planned for, whereas the walk-in service appointments might not always be planned.

If the consumer has scheduled the appointment, it likely means time and money has been budgeted, too, Roche said.

Plus, he said, the dealer has information on the specific issue with the car along with the day and time of the appointment.

"You've laid the foundation for the dealer to handle your needs in a much smoother and prepared way," Roche

said.

Beyond the periodic email blasts, Roche also advises dealers to explain the online appointment-setting process during the delivery of the vehicle. He urges dealers to walk their new customer into the service department and introduce him or her to the service advisors.

It is important to raise that awareness and "repeatedly" tell customers about online service scheduling as an option, Roche said.

People are often creatures of habit; meaning they'll continue scheduling their service appointments the way they always have. So if that's to be changed, the benefits of online scheduling has to be communicated.

Roche advocates a multi-channel approach to getting the word out.

"It's impossible to know in advance what someone's preference is going to be," he said. "The strategy has to be to meet them where they want to be. So, the only way to do that is to provide full coverage.

"It's mobile. It's on the Web. It's available through the phone. So anybody who needs to interact with the dealership or the dealership systems to schedule online can do so any time, 24/7."

## Overtime

CONTINUED FROM PAGE 1

ing car salesmen, mechanics, and partsmen because they don't sell or service automobiles. The majority in the 6-2 decision said no judicial deference was warranted because the DOL didn't give adequate reasons for the regulation, which changed the agency's long-running stance that service advisers weren't entitled to overtime pay.

On its second look, the Ninth Circuit in January again held that service advisers are not FLSA-exempt. The appeals court relied on

examining the law's text and legislative history.

The dealership filed its petition for Supreme Court review in May, and the service advisers filed their opposition brief in July.

"It's safe to assume that the justices will focus on statutory interpretation since the question of agency deference is no longer front and center in this case," Udell said.

The National Automobile Dealers Association filed a friend-of-the-court brief in the case in favor of all dealers who have for decades applied the OT exemption to service advisers.

## Recall

CONTINUED FROM PAGE 1

An amendment to the bill, to prohibit auto dealers from selling, leasing or wholesaling any used vehicles under open recall, failed to receive a vote in committee. A coalition of auto industry trade associations argued that such a move would raise used-car prices.

The coalition also noted that because of the shortage of auto parts, it can take months for recalled vehicles to be repaired. As a used vehicle depreciates on average 2 percent a month sitting idle on a dealer's lot, the action would force a dealership to pay consumers significantly less for trade-ins with open recalls, or to not accept them at all.

## In wake of driverless fatal crash, Feds want to force drivers to watch the road

Lawmakers should require car companies to use new technology that effectively forces drivers to pay attention to the road when using partially self-driving vehicles, Federal transportation safety officials recommended in September.

The National Transportation Safety Board's unanimous recommendation followed its ruling that Silicon Valley automaker Tesla shared the blame for what's believed to be the first deadly crash involving such a car.

The design of Tesla's so-called Autopilot technology contributed to a crash that killed an Ohio man in May 2016, the four-person panel said. But the NTSB also ruled that the driver had an "overreliance" on the technology and that there were no technical defects.

Robert Sumwalt, chairman of the NTSB, said Tesla's "operational limitations played a major role in this collision."

Joshua Brown was killed when his luxury electric car crashed at a high speed into a semi-truck while using Tesla's self-accelerating, steering and braking.

The NTSB concluded that both drivers had "at least 10 seconds" to spot each other but there was "no evidence of any evasive action" by either. The agency did not interview the truck driver, who refused to cooperate in the investigation.

The board said Tesla Autopilot "functioned as designed" but noted that no vehicles currently on the road are capable of monitoring and responding to cross-traffic like the truck that killed Brown.

The NTSB unanimously recommended that automakers limit the use of partially self-driving technology by ensuring that drivers are engaged at all times. The board concluded that Tesla's method of making sure the driver's hands are periodically on the wheel is not enough.

## FTC issues FAQ on revised Used-Car Rule

The Federal Trade Commission on Sept. 26 issued a document answering frequently asked questions about the revised Used Car Rule and the revised Buyers Guide that dealers must use.

The new version of the guide, which the CATA has for members, recommends that consumers get a vehicle history report before buying a used car and that they visit [safercar.gov](http://safercar.gov) to check for safety recalls.

The final FTC rule, issued in January, permits dealers to use their existing stock of Buyer's Guides for up to one year (until Jan. 27, 2018). However, if a manufacturer's warranty is still in effect for a used vehicle and that is disclosed,

the following language must follow the "Full/Limited Warranty" disclosure:

"(a) "Manufacturer's Warranty still applies. The manufacturer's original warranty has not expired on the vehicle;" (b) "Manufacturer's Used Vehicle Warranty Applies;" or (c) "Other Used Vehicle Warranty Applies," as applicable, followed by the statement, "Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations."

The Guide can be hung from the rear-view mirror inside the car or on a side-view mirror outside the car. It also can be placed under a windshield wiper and attached to a side window.

## Contest winner gets barbecue feast

Friends and family of U.S. Navy veteran Ricky Lopez enjoyed the "Ultimate Backyard BBQ" Sept. 16 at his Burbank home, thanks to Real Urban Barbecue, which served a mouthwatering BBQ menu, and to the Chicago Blackhawks, who sent ambassador Jamal Mayers to mingle with guests.

Lopez served in the U.S. Navy for 10½ years before he was sent home on medical disability after getting injured in Iraq.

Lopez's friend, Natalia Vinasco, nominated him to receive the feast.

Her winning social media submission: "I nominate Ricky Lopez because he is the most honorable, courageous, patriotic, noble, loyal, hero, father, son, husband and person."

The barbecue contest is held in conjunction with the CATA's Barbecue for the Troops campaign in July.



**ABOVE:** Chicago Blackhawks ambassador Jamal Mayers is flanked by Natalia Vinasco and Ricky Lopez. **BELOW:** Real Urban Barbecue prepared a feast for Lopez and 50 guests.

