>> Robin: Hello, everyone. My name is Robin Thurston, and this is our final panel of the day. On vehicle title problems and dealer bankruptcies. We're going to introduce our panelists. Can you hear me okay? Oh. Sorry. Thank you, Katie. Like I was saying, this is our last panel of the day. Vehicle title problems and dealer bankruptcies. My name's Robin Thurston. And to introduce our panelists, some of who you've seen before, first we have Keith Kaiser, the vehicle programs director for the American Association of Motor Vehicle Administrators. To his right, Peter Kitzmiller, president of the Maryland Automobile Administration. Then we have Greg Grzeskiewicz, the assistant Attorney General and the Consumer Fraud Bureau from the state of Illinois AG's office, and finally at the end, we have Keith Whann the outside general council for the National Independent Automobile Dealer Association, and also co-owner and CEO of Columbus Fair Auto Auction and founder and CEO of auto.com and Whann tech. So to get started I thought I would have the panelists describe situations in a which a consumer would purchase a motor vehicle. But for one reason or another wouldn't end up with good title to the car that he or she had purchased. If anyone would like to get started. If you could just describe some of those situations.

>> Sure, I'll give it a shot. A situation where they wouldn't get title would be, let's say that a dealership took a vehicle on trade-in, for whatever reason, didn't pay off that trade, and then sold that vehicle to another consumer, then that consumer -- consumer say B, would be driving around on a temporary tag plate, and wouldn't have title. Or their lien holder wouldn't get title if it was financed.

>> Robin: Okay. And what are some of the other situations in which someone would wind up without good title?

>> I think up with of the circumstances that happens often is that the dealer just didn't get the title to the vehicle, consumer didn't have it, they need to apply for a duplicate, or get it. And sometimes at least in some states, the turn around time for that can be an extended period of time. Many states I think have laws that prohibit the sale of that vehicle until title is in hand, but that's not necessarily true in all states.

>> Robin: Are there other common situations?

>> Well, one thing we might just add is the difference between good title and a good title. Because I think good title would be where it's going to be merchantable and you're actually the legal owner. And then there is a good title that doesn't have a salvage brand, it's not been rebuilt, or odometer discrepancy. So you can have -- you can have marketable title and not get what you would think good title, because the title you're getting isn't what you thought you were getting.

>> Robin: Okay.

>> And there may be one more situation. There's probably others, but could be a floor plan or could be holding on a used car, maybe. And the lender may -- the dealership may be on a trust, not current on their payments, and the planner or bank that lend credit to the dealership may be holding that title. Again, if it was sold -- if that vehicle is sold to a consumer.

>> Robin: Okay.

>> Maybe to throw one last one in. This could be anybody. Dealer, consumer, lender, you have somebody who owned a vehicle and transferred it and somehow was able to get a duplicate title. And now you have two titles to the same vehicle, arguably, floating around.

>> Robin: Okay, thank you. To start with one of the first examples, where I believe the dealer failed to pay off the trade-in, or a prior lien, can you all describe the process in which that would happen and its effect on the consumer?

>> I'll start. The effect on the consumer, it seems to me, is that at some point they realize that they're not getting what they wanted, or what they need. License plates to operate the vehicle on, title for the vehicle, and often their first point of contact, and it's back to the department of motor vehicles in that state that may or may not regulate the dealer, but they're going there with consumer complaint or an inquiry has to why they're not getting that. And many times that is the first clue that they have some sort of problem they weren't aware of before.

>> Robin: And they wind up at the DMV.

>> They will end up at the DMV in many cases with that. And from there, there is generally a cooperative effort between the DMV, and maybe between the attorney general's consumer fraud office, and our other entities to find out what the problem was, either to help the consumer work through the dealership or take additional action against the dealership, if it's an ongoing problem.

>> Okay. And to take a step back then, what are the problems that would lead to a consumer to be in that situation?

>> Again, as we talked about in the previous question, there area whole set of circumstances that can lead to a dealer not having a title. It doesn't necessarily prevent the dealer from selling the vehicle. In hopes they will resolve it, or what their title problem is in the immediate future and that lack of a title will be transparent to the consumer. It's only when that problem is not resolved, I think then the consumer then becomes aware in one shape or another, generally because they can't get someone to actually drive the vehicle down the road.

>> Robin: Okay. And typically, how long does it take the consumer to become aware in that sort of situation? What's the gap between the transfer to the car itself, and the discovery the title didn't follow?

>> Well, usually, the gap is going to be when they have to go and be able to get plates for the vehicle or they're having to register. And I think once again, there's probably two sets of circumstances here. One is where the dealer, for whatever reason, may have financial difficulty, and will be unable to deliver title, just physically unable, because of their financial condition. And the other may be, let's take the example -- and Keith, I think you were speaking of this. A dealer may buy a car at wholesale, and depending upon the state they're in, be allowed to merchandise and be able to sell that car. And they have the financial ability to deliver title, but they have no ability to get their hands on the title, because it's stuck elsewhere. So one is a willingness to be able to deliver title, but the factual situation doesn't permit them to. And the other one is they're financially unable. If they're financially unable, then we have to look to what state that's happening in.

Because in some states, you've got what I'll call a title defect revision fund or something where they may be able to go to the consumer, be able to make a claim and usually then the attorney general or DMV is going to go after that particular dealer or a fund. Or in some situations the consumer may be going to a -- to the AG or private lawyer on their own to be able to pursue some remedy, because they have a vehicle they can't get title to.

>> Robin: Okay. Would you mind spelling out in a little more deal what would lead to a situation in which the dealer is financially unable to deliver title?

>> Often, bad business decisions. Could be the economics of it. You know, you get dealers in situations where the best-laid plans, they've got vehicles that are on the lot. They probably have them floor planned, which means they finance the inventory, which is typical for most dealers, independents, and franchise dealers. So you have a situation where the dealers have financed the inventory, the car has been sold, and now you have a situation where they can't go pay off the existing lien with the floor plan lender. There's a whole lot of other questions that begin to be raised at that point in time. And that's, you know, what happens to the trade-in, was there a down payment? So there's dominos that begin to fall when this happens. And it's usually not just one vehicle. There's a number of vehicles. But that typically is a situation. Could be the market, could be some other thing that's happened, and they didn't get paid. Could be bad business decisions for whatever reason, they can't pay off the vehicle.

>> Robin: Can anyone speak to how often that sort of situation occurs? Both with respect to how many dealers engage in a delay in transfer of title, and then how often it actually ends up having major harm on the consumer?

>> I think that's sort of the pertinent question is -- why we're up here. It seems to me that because of a number of dealers are going into bankruptcy this problem goes through the roof. I don't think the numbers back that up at all. I looked in my particular state, I obviously represent new car dealers. We had 22 new car dealers go out of business in '08 and '09. This has always been the worst vehicle market in history. Out of those 22%dealers that went out of business, 14 of them went out of business because they were forced out of business by Chrysler or General Motors

bankruptcy, not because they were having financial difficulties. Certainly things weren't going well, but they didn't go out of business because of financial difficulties. We have a bond in our state. Depending on how many cars you sell, if you're a new car dealer, 50 or $75,000. In '08 and '09 there has not been one claim on a new car dealer bond that went out of business for a failure to pay off a title. I was looking in some of the materials that -- there's an article from California where somebody from the attorney general's office is quoted as saying it dramatically increasing problem, and they had 319 complaints, I believe it was in '08. Maybe it was '09. California vehicle market, new and used is over 3 million vehicles. So, again, I don't think that the numbers back up the concerns raised. There's always been a dealer going bankrupt at some point in time, new or used car dealer over time. And sometimes it creates a problem for consumers. But I don't believe what's happened in the last two years has increased that to any great extent.

>> Robin: Greg, you wanted to comment?

>> Greg: In Illinois, unfortunately, we have had the other scenario where we have seen more dealerships close in the past three or four years. When I first started working there, we would have a dealership close, and just maybe I should step back. When we have a dealership close, very likely we're going to have constrains that aren't paid off. And often those will be sold. So I have two consumers now harmed. One who's trade hasn't been paid off, and now the credit damage that goes with that. And then the second consumer, which we have spoken briefly about already, the consumer who can't get title now for that vehicle. So -- but getting to the scope of the problem, I know in Illinois, we have seen a lot -- when I first started doing, it was what I would generally frame as a fraudulent dealership that maybe was just, you know, having some -- had some bad apples working for him, whatever the case. But, you know, we would see the scenario when they would go out of business, and there would be 15 trade-ins from one month, 20 from another month. 15 from another. Just kind of paying -- you know, which ever one squeaked the loudest I guess. What we're seeing now in, Illinois, at least, we're seeing generally what I would consider better dealerships that are going out of business, because of the financial crisis. And lending has changed for all of us, but it's also changed for our -- at least in Illinois, for our dealers, and what we're being told in Illinois is the lender is a little bit quicker to pull -- pull the floor plan out on a dealership. And generally what I'm seeing now is when a dealership goes out of business and isn't paying off --

or not transferring title, I'm seeing a very finite window, ten days of trade-ins not paid off. 15 days of trade-ins not paid off. I'm not seeing, you know, like I saw in the past, where I would have 100, $2 million of trade-ins not paid off, scoping over seven or eight months. Again, there is exceptions, but the general trend now is a very finite period. In Illinois, we have a law that allows a dealership to pay off a car within 21 days when you take it on trade. So they're generally within that 21-day period. But the harm to the consumers is still -- you know -- it still exists. And unfortunately for our office, and private attorneys, and the consumers, spend an enormous amount of time talking to credit bureaus, lenders, trying to get them from putting derogatory credit, trying to work with them, trying to deal with the lenders, trying to take a certain amount of money on the dollar, anything to try to resolve these complaints. And, again, I just -- you know, stepping back I used to look at this more as a consumer problem in Illinois. I see it more as -- again, I have to respect the other states seeing this. But in Illinois, I think it's problem for all players in the industry. It's a problem for the dealers. With every dealership that closes in Illinois that doesn't pay off the trade-ins, it hurts the industry, people are now asking, why aren't we informing consumers not to trade in cars if they have a lien on it? It's not a good thing for anyone. Most people have, I wouldn't say most but some people have 72 month car loans. So it hurts the reputation of the good dealers out there. It also hurts the lenders, cause the lenders are losing money. And I can talk about the consumers, but I think it's been well documented how it hurts the consumers. It hurts their credit, hurts their ability to obtain sometimes housing. I've had^-- I hate using anecdotes; I have consumers who have rented out their house to make their two car payments, because now they're responsible for two car loans. It hurts their credit card rates. If they're in default on their car loan that they traded into a dealership and they're responsible for it now, now their credit card rate went from14% to 25%.

>> Robin: Okay. Oh sorry.

>> Greg: I always have to stress I think it's not just the consumer problem, it's a problem at least in Illinois for everyone, and every dealership that closes. And we have this problem. It hurts all the players in the industry.

>> Robin: Okay. And I think Keith, you wanted to say something, as well.

>> Keith: Greg, I can appreciate your comments, and I think they're dead-on with it. It is a problem for the industry, and forgive me but Keith and I were walking down memory lane here earlier, talking about the problems we had back in the '80s, chasing those that engaged in title fraud and roll backs. And moving from Murray, Kentucky to Cleveland, Tennessee, to Paris, Tennessee and the whole globe leasing fiasco in Ypsilanti, Michigan, and their flying titles all over. And we had the truth in mileage act of ' 86 and we thought we had it nailed, and then we amended the federal law in 1988 and we still didn't get it right and then we amended it in '90 with an amendment on the pipeline Safety Reauthorization Act and we think we have it. And then there's the Anti Car Theft act in '92. And we try uniform titling and the one thing we need to remember here is, nobody wants to go bankrupt. And I agree with you, this just kind of happened. This is not like some of the other things we have talked about where you might get a bad apple trying to do this. Nobody really wants to go bankrupt. But what happens is, whether you're a consumer, dealer or lender, and you're caught in one of these things, with the inability to get your hand on a title or be able to satisfy a consumer, the worst probably being a consumer with two car loans out there, because nobody bargains for that. But then you start laying on here, Keith, the title states and the multiple assignment states and the reassignment states. And you're trying to take an antiquated paper process, and make it fit into today's electronic age. And it just doesn't work real well. Your point, the 21 days to pay off the title. We forget, if a dealer takes a trade-in, and the dealer now has the trade, and that customer has financed somewhere, that dealer has to now pay off that particular lender. And then is at that lender's mercy as to when that title document, Keith in whatever form that may be, paper or electronic, comes back. So you think in today's day and age, this is all being done like with electronic funds transfer, electronic document. It's not. We're still chasing pieces of paper that sometimes you're allowed to staple a piece of paper to that gets ripped off and substituted with a different piece of paper.

>> Robin: So if this is a problem that nobody wants to have occur, what are the different good or bad practices that dealers can engage in to make it more or less likely that it will happen to them? Other than I suppose knowing no one wants to go bankrupt. But leading up to that.

>> Peter, you want to jump on that dealer question?

>> J. Peter: Go ahead.

>> Greg: Like anything else, you have good business practice. As a dealer you try and pick those you do business with, whether it's a vendor, whether it's the dealers you're buying and selling from, the auctions you deal with. You want to make sure you know who you're dealing with, because to the extent you're dealing with people that are unknown, somebody else can cause you a problem. And that is maybe the old simple thing, you don't buy things you can't pay for. Because at some point, you've got to write that check or transfer the funds. And typically speaking, if you're a dealer, you watch your growth. You always want to grow up and not out. You can expand your footprint, you can get more vehicles. Sometimes we see -- and there are a few states that allow some sort of consignment transactions. And you can get into trouble with the dealer if you take a car and you're allowed on consignment, you're selling someone else's car and you wind up with the money. And is that money doesn't go where it should, and that money goes into a different vehicle. So from a dealer standpoint, to the extent you can, it's pretty much good business practice. But sometimes you don't really know all the things that can go wrong, because, you know, some of the folks up here would probably be the best at access to bad information out there. But this is what could happen. And know who you're doing business with.

>> I think from a new car dealer's perspective, if you want to call it business practice, or what you want to call it, but trade-ins are cash flow for the dealer. Paying the trade-in off quickly and so -- they can resell the car is what they want to do. Again, there have been circumstances in this economy where that's been probably so -- but not to any great extent. If I'm a dealer I need to pay that trade-off so I can put it on a lot and resell it. That's the first thing I need to do. Dealers in every state are licensed. You know, and the motor vehicle -- we call it MVA. In Maryland, there are certain things if you're late here or late there they might fine you. If you don't pay your trade-in off, you're going lose your dealer license, you don't have your dealer license, you lose your franchise, you're out of business.

>> Robin: Do you know if that's true in every state? Is that true across the board?

>> That dealers are licensed?

>> That they would lose their license for not paying off their trade-in?

>> Yeah. The motor vehicle administration, that's the top of the list.

>> Robin: And is that widely enforced?

>> Yeah, I mean, it's not like getting a complaint because you run an advertisement someone didn't like. If you get multiple complaints that you weren't paying off trades -- that's considered fraud and you lose your license. And I don't think Maryland is unique in that circumstance.

>> I would concur with that. I think most states have laws that protect consumers to the extent that if there are complaints and generally not one complaint. But if there's a pattern of complaints or a pattern of behavior on a the part of the dealership, the states have some authority to suspend or revoke that license.

>> Robin: Greg, you want to comment?

>> Greg: I would add in the past that's generally how we would become aware of a problem -- a dealership that was having financial problems. We would have a consumer complaint that would be about a trade-in, it would be flagged. And then we would find out what was going on. The concern that I have now is that I am not getting that complaint. I'm getting a phone call from a dealership or a principle, or I'm getting all the complaints all at once. And it's usually 15, in a finite period. So I don't have the warning to go pull their license. It's already happened. By the time I find out about it, the bank has already gone and got a court order and taken everything. So again, you know, for those 15 consumers, that's a huge issue. Whether it's, you know, again, you've got to respect that there's different trends in the country. But for the one or two or three or five or 17 that I have in my state, that go out of business, if I had these consumers up here, as unsympathetic as you may want to be toward consumers, these are consumers that really did nothing wrong. They just trade a car in, had no clue. If they would have called anyone, we wouldn't have known. We have no clue. If we did, we would go in and try to find -- try to stop the dealership from selling.

But we have dealerships -- generally that maybe bought at the wrong time. General Motors dealers in Illinois that bought in 2006 or '07. Probably paying for that point quite a bit. And then the bankruptcy happened, the economy tanked. They may have been doing bad things, but it may just be a bad -- it was a bad business deal. And anyone here could say, well, why would you buy a General Motors dealership? At a high -- you know, you always want to buy low and not buy high. But it includes the sales. That's hard to predict. If we all knew that, we would be millionaires. But for those consumers that the --the rarence it happened, I can't stress to you how -- on a daily basis I deal with this issue and the consumer complaints are really horrific.

>> Robin: I'm going let Keith get in here. I'm sorry Greg. Keith, do you have something you wanted to say?

>> Keith: I just wanted to add one thing. When we talk about this, again let's remember, we have consumers who can't pay and that's an awful situation, and sometimes we find some of the smaller mom and pop dealers who may have something pop up on them they don't think of. And that's that you've got a customer who moves in and trades in a car. And that customer has done nothing wrong, necessarily. And then you find out that on that vehicle, somewhere in the past, there's, for example, a deadbeat dad lien out there. And now you've got a situation where somebody is going to have to write a check back to -- that's not to say that that isn't a good way to do things. But that's to say now you wind up with a customer who traded a car in and a dealer who needs to go satisfy a lien that could be substantial to deliver title, and nobody bargained for that, and they didn't know until they actually went in and tried to send it and say we need a title for this car.

>> Robin: A couple of you have mentioned state funds that can help consumers in these situations. Can anyone comment on how widespread they are, how well they work. How they're funded?

>> I would like to check in with my colleagues before coming here. There are 32 states that have some kind of bond requirement that a dealer, new or used, has to put up in order to get their dealer license. 18, obviously, don't have anything. 25,000 seems to sort of be the low end, and $100,000 is the high end. I know in my state for new car dealers, it's $50,000 or $75,000 depending on if you sell under a thousand new cars it's 50,000 if you sell over it's 75,000. We don't have a fund. We

have a bond. And you can go get the bond, not just for failure to pay off a lien. Any dispute you might have with a dealer you in theory you can go against a bond. That goes back to my earlier comments -- 2008, 2009, the worst vehicle market in history, and certainly in our state, we lost a lot of dealers, and we didn't have one claim against the bond for failure to pay off a lien.

>> Robin: Greg.

>> Greg: I agree with Peter. I look at other states cause it's an issue in Illinois, and just -- I think there's four or five states that have funds. The bonds are somewhat -- I think they range, as Peter said, from 10,000 to maybe some states have a tiered based on equal number of sales. I think one of the states is $150,000. Again, the bonds are there. They're available in some states only for the state. For taxes and title. Other states, they're available to consumers. But again, if you have a dealership that goes out of business, if there's five trade-ins, the average trade-in payoff may be 10, 15,000, there's probably not enough money for all of the consumers. But they are out there. Like I said, I think there's four or five states that have funds.

>> Two quick points. I agree with Peter, there are a lot of states that have bonding provisions. The truth is, that the bonds don't cover very much when you get right down to it. If you have a dealership that has significant financial problems, a $50,000 car is not all that extraordinary at this point in time. I would say the other thing -- the question about funds, there are at least a few states that do -- California is one I happen be aware of that has a consumer recovery fund for those sorts of circumstances. I think South Carolina has something similar, and there may be a couple others. So it is something I think that states start to move towards. I know in California's case, I believe theirs is funded on a fee that's paid by the dealer each year into that fund until it reaches some sort of a capped level. So --

>> Robin: Keith, do you have something to say?

>> Keith: We took a look at the state of Ohio about 15 years ago and actually were able to get the new car dealers, independent dealers, auctions and the lenders together, and we did is kind of a hybrid, recognizing all of this. If you were a newer dealer, you had to get a bond in place. And if

you had been in business up to a three-year time period, then you were allowed to pay into a title defect recission fund we created. So essentially, we set a minimum level for the fund, X number, $100,000. And then the fund always maintained that. And it was I guess kind of a way of taking insurance principle and spreading the risk. And if you did have a deal that went down that was paid out of the fund. If the fund got to a certain point, then you just reassessed all the dealers $150 and restored the fund. And it was a way to prevent the disaster, Greg you're talking about, leaving consumers out there holding the bag in an unfortunate incident.

>> Robin: Greg.

>> Greg: I have quite a few dealers that are harmed -- not just consumers, dealers that are taking dealer trades, both new and used, surprisingly. I -- I guess I always thought they waited until they got payment. But I think it goes back to some of the lag time and titles being lost in the mail and stuff like that. So I've had quite a few dealers that have been harmed by these dealerships. I just keep forgetting to bring that up. That dealers actually are coming to us, too, and we're doing what we can to get them paid. Because now -- you know, the scenario where they take the car, sell it, and now they didn't get title either, because the dealer traded from a dealership that went out of business. Which just compounds the issue even more.

>> Robin: So if a consumer winds up in this situation, how do they learn how to access the bond or the fund? Is this something that's well-known? Something they're able to do with ease?

>> From my perspective, I think that consumers often end up at the DMV as a first stop. And through that, they find out that there are dealer bonds. There are other things that the dealer -- that the DMV can do to help them in the short term or longer term. But at least my experience, states work hard with consumers to try and provide them with some temporary operating authority, some alternative document procedures, or some way to help consumers in that situation to be able to operate their vehicles for some period of time until they can resolve these difficulties.

>> In our state, if someone files a complaint with MVA regarding a dealer, they inform them there is, in fact, a bond. Depending on if it's new or used car dealers. That's the way they're informed in our state.

>> Robin: We have just a minute or two left for questions, if anyone has any. So it is the end of the day. If there are no questions, does anyone have any closing comment they would like to make? We'll thank all of our panelists very much for their participation. And turn the mic over to Jonathan Steiger.

>> Jonathan: Thank you. I'm going to be closing things up. And just by moving the mic, I took it -- there we go, off the stand. My name is John Miller Steiger, I am the director of a regional office of the Federal Trade Commission. I was asked to give the closing remarks, because the office, although based in Cleveland, Ohio, covers a number of states, which includes Michigan. I was not involved in planning this conference. This round table. And so I can speak with a little bit of disinterest, and certainly as someone who is not an expert in the area. And let me just say how interesting I thought this was, how the great substance that our panelists and our audience brought to this. Really great back and forth that we had during the course of the day. Let me give you a couple of thanks, specifically to Dean Ackerman and the Wayne State University law school for hosting us. Thank you for the -- to the FTC staff who worked to put the round table together. Particularly over the last week, when we weren't even sure that there was going to be an FTC this week. They nonetheless kept things going. And thank you in particular to the panelists who are here, and to the audience. Sharing your expertise, sharing your passion and your knowledge. This is, as David said at the start, the first stop of our listening tour, and it is a listening tour, as I hope you saw today. We're looking for all perspectives over the course of this. And particularly data. We come in with month predeterminations as to what the road ahead should look like. But we look forward to getting more information. We're going to be taking it all in to decide whether, and if so, how, we should be going forward. What areas are appropriate for consumer education? What areas are appropriate for industry education? Is there a role for rule making? Is there a role for law enforcement? Where should we be doing nothing? All of these are questions that we are looking to answer as we go forward. And in order to get good useful answers, we need data. And I know you've heard that from us as a constant refrain, but we really do. When it comes time for us to

decide what we're going to be doing, we're going to be looking at the transcripts of this conversation, as well as any data that you all can provide us. Surveys, studies that were done, statistics that you can provide us, complaints. And complaints not just from consumer advocates, but from dealer advocates, who want to make sure that they're operating on a level playing field. Any hard information that you can give us is going to be particularly useful as we go forward. This round table was a very positive first step. We were glad to be able to take it. It is part of an ongoing conversation that we're going to be having about how we can make sure that consumers and businesses have any guidance that we need. So thank you very much. And let's keep the conversation going. [Applause]