

LOS ANGELES

# Daily Journal

www.dailyjournal.com

## JUDICIARY

9th Circuit have been that class action enforceable, but this may be Brian Kabateck and Evan Rick Brown Kellner. **PAGE 5**

Jonathan Shapiro of USC Gould School of Law says L.A. County Judge Terry B. Friedman would best carry on Chief Justice Ronald M. George's legacy. **PAGE 6**

## LITIGATION

While the Navy enjoys immunity under the Federal Tort Claims Act, but not for injuries caused by asbestos exposure, explains Michael L. Fox and Alison K. Beatum of Sedgwick. **PAGE 7**

TUESDAY, JULY 20, 2010

## Ruling Goes Against Auto Dealers

By **Ciaran McEvoy**  
Daily Journal Staff Writer

Some Ford owners could see their damages awards multiply after a state appellate court's decision that car sales contract backdating violates a state statute with stiff penalties.

The decision last week by Division 1 of the 4th District Court of Appeal found San Diego-based Pearson Ford was liable under California's Automobile Sales Finance Act, which promises damages of tens of thousands of dollars for each plaintiff. *Nelson v. Pearson Ford, D054369.*

The ruling reversed San Diego County Superior Court Judge John S. Meyer's decision holding Pearson Ford liable only under California's Unfair Competition Law, which would net each plaintiff about \$50 in damages, according to plaintiffs' lawyer Hawk Barry of Rosner, Berry & Babbitt in San Diego. Barry's law firm sued on

behalf of a class of more than 1,500 plaintiffs.

The appellate court, in a ruling written by Justice James A. McIntyre and joined by Justices Judith D. McConnell and Terry Byron O'Rourke, also ruled that Pearson Ford was liable under the state's Consumers Legal Remedies Act.

"We're very happy with the court's decision," said Barry, whose firm brought a bevy of lawsuits against dealerships.

Christopher S. Maile, of Tharpe & Howell, in Sherman Oaks, one of Pearson's attorneys, could not be reached for comment.

The issue of sales contract backdating comes up when the dealer can't get a lender to finance an auto loan. The dealer and customer sometimes enter into a new contract with new financing. But dealers will give the new contract the same date as the old one; plaintiffs say it is a means to gouge the customer, but dealers say they have

to match sales paperwork to get lender approval. Barry estimates that up to 40 percent of car dealerships backdate sales contracts.

In the San Diego case, name plaintiff Reginald Nelson claimed the backdating resulted in him paying interest for a time period in which no contract existed.

The appellate court decision wasn't a total loss for Pearson Ford. The court ruled that a subset of nine class members who were unwittingly charged for liability insurance in their car contracts had to return the cars if they wanted their premiums back.

Barry was optimistic that Riverside County Superior Court Judge Dallas Holmes, who recently presided over a class-action trial on the issue in another case, would find the backdating illegal. Holmes has yet to enter judgment in that case. *Raceway Ford Cases, RIC JCCP 4476.*

[ciaran\\_mcevoy@dailyjournal.com](mailto:ciaran_mcevoy@dailyjournal.com)

W  
Co  
fore  
com  
deta  
The  
NO