

HEADLIGHTS

NATIONAL ASSOCIATION OF DEALER COUNSEL NEWSLETTER

PRESIDENT'S LETTER

*Jonathan P. Harvey
Harvey and Mumford LLP*



*Jonathan Harvey
Harvey and Mumford LLP*

The representation of automobile dealers in the 21st century is a challenge made complex, confusing and sometimes dangerous by the complexities of government regulation, evolving case law and the huge demands upon dealers in an increasingly competitive and litigation minded marketplace. It is those things which make our profession exciting, those things which make it fun, and those things which make it frustrating. I welcome each of you to membership in the NADC, an organization designed precisely and specifically to help each of us serve our clients well in the years ahead.

It has always been my view that our clients' problems are best solved by exposure to sunlight and preemptive action. I pledge to all the members of this association that we will do everything we can to make your job easier,

more fun and personally rewarding. But, and this is the killer, we need your comments, your ideas and your support. Together we can motivate great improvement in our profession and in our clients' industry.

Now to more mundane business: It is our intention to have a monthly newsletter which will contain, at a minimum, a letter from the President, a calendar of events of interest to members, a monthly column regarding the latest in common and statutory law and a question and answer section. We plan to have board meetings quarterly and are in the planning stages of the first annual meeting of the membership to be held in April of 2005. The Annual Meeting Committee is

working on an agenda, a site, a place and a time and will let us know shortly. As of the date of this newsletter, the lawyer membership of NADC has increased from the original 14 founders to over 80 members.

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*"...we need your
comments, your
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SIDEBAR

See inside to learn about

...NADC's membership
categories

...Member list serve and
on-line forum

PERSONNEL

A SERVICE ADVISOR IS EXEMPT FROM OVERTIME

On August 23, 2004, changes to the overtime regulations issued by the U.S. Department of Labor went into effect. As a result of these changes, many dealers have been reviewing their overtime policies. Some dealers have questioned whether service advisors, who are not strictly vehicle salespeople or mechanics, qualify as exempt from overtime pay under the FLSA.

A recent decision of the United States Court of Appeals for the Fourth Circuit involving a service advisor, however, answers this question. The decision, issued May 28, 2004, considered a claim by a service advisor at a Virginia dealership for nearly 900 hours of overtime. The employee claimed that he was not truly a salesperson because he didn't sell vehicles or a mechanic because he didn't work on cars. He claimed he was entitled to overtime pay because he had the title of "service advisor."

The Appeals Court considered the argument and dismissed it, affirming a

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*Michael Charapp
Charapp & Weiss, LLP*

COMMUNICATE, COMMUNICATE, COMMUNICATE

*Jack Tracey, CAE
Executive Director*



I am Jack Tracey, the Executive Director of the National Association of Dealer Counsel. I am pleased to be able to serve you and help make NADC the valuable organization that the founding members all envisioned. From my perspective, our success will be measured by the amount of communication occurring among members

This is the first issue of *Head Lights*, the newsletter of the National Association of Dealer Counsel. This publication is just one means of com-

municating among NADC members. For the past month, members have been able to post and respond to questions submitted to the members' only on-line forum. If you haven't taken the opportunity to check out the forum, go to the web page and click in.

We have also recently introduced a list serve for members to communicate directly with each other by e-mail. Try it out.

Through the web site, directly by e-mail, or through the monthly newsletter, NADC members have multiple opportunities to communicate with each other. Communication among members is a valuable benefit of NADC membership. Utilize the communication channels and help make the Association better for everyone. The

forum and list serve are secure, members only sites, accessed only by attorney members or trade association executives, no one else. So use these confidential channels for candid communication with your member peers.

We are planning our first membership meeting for NADC in April 2005, so that all members will have the opportunity to meet and know each other personally. The strength and value of the organization will build as the communication builds, so take advantage of the opportunity and communicate, communicate, communicate.

See page 4 for general information about the list serve and on-line forum.

Go to www.dealercounsel.com and learn more about the NADC and opportunities to communicate.

Spot Delivery®

NADC members receive a subscription to Spot Delivery®, a concise eight to 12 page monthly legal update for automobile dealer and finance company executives. The newsletter addresses complex legal issues from an industry perspective providing familiar factual scenarios, the legal issues involved, real court resolutions and suggests way to avoid similar pitfalls. Topics featured include:

- truth in lending/financing issues
- odometer law
- repossession/bankruptcy issues
- customer/manufacturer relations
- fraud and misrepresentation
- casualty liability
- consumer credit reports
- state lemon laws
- privacy
- fair lending and discrimination
- warranty issues
- leasing issues



NADC BOARD OF DIRECTORS

The NADC Board of Directors, left to right: Mike Charapp, Charapp & Weiss, LLP, McLean, VA; Gene Kelley, Arnstein & Lehr LLP, Chicago, IL; Larry Young, HughesWattersAskanase, Houston, TX; Jonathan Harvey, Harvey and Mumford LLP, Albany, NY; Jack Tracey, CAE, Pittsburgh, PA; Patty Covington, CarMax Auto Superstores, Inc., Glen Allen, VA; Rob Cohen, Auto Advisory Services, Tustin, CA; Ronald Coleman, Davies Pearson PC, Tacoma, WA; Lawrence Anito, DeGraff, Foy, Kunz & Devine

LLP, Albany, NY; Tom Hudson, Hudson Cook, LLP, Linthicum, MD; Gary Adams, Greater Cleveland Auto Dealers Assoc., Brecksville, OH; and J. Cary Tharrington, Sonic Automotive Inc., Charlotte, NC.

Not pictured: Gregory Gach, Gregory H. Gach, Charlotte, NC; John Oyler, McNees Wallace & Nurick LLC, Harrisburg, PA; and Oren Tasini, Haile, Shaw & Pfaffenberger, PA, North Palm Beach, FL.

**PRESIDENT'S LETTER,
FROM PAGE 1**

In addition to lawyer members, we have categories of non-lawyer membership, including Associate Membership for dealerships and other companies interested in networking with our membership and supportive of our mission, which is simply and plainly, to help lawyers represent the dealers in this country. We also have a category of Trade Association Executives consisting of individuals who are not lawyers but are professionally involved in automotive trade associations and similar associations. We are looking forward to adding some of the lawyers and executives at the National Automotive Dealers Association and the state ADAs and IADAs to our ranks, and are anticipating a membership of at least 125 by the end of the year.

We have committees on membership, finance, annual meetings, government regulation, franchise issues and an executive committee. I encourage each of you to let our Executive Director, Jack Tracey, know if you are interested in serving on any of these committees. I also encourage you to take a good look at your issue of Spot Delivery when it arrives. It contains a wealth of helpful and timely information and is

written with a good dose of humor, something we all need and deserve. I recommend that you "bookmark" www.dealer counsel.com, the NADC website, and refer to the member forum each day to post and respond to questions from NADC lawyer members.

To those of you I have not met, I look forward to talking with you in person, on our web site and through the Internet. For those I have met and who have worked so hard during this initial phase, to Tom Hudson for his guidance, help, enthusiasm and time, to Mike Charapp for jumping in and making members "happen," to Patty Covington, the keeper of the checks, Rob Cohen, our energetic vice president, to Gary Adams whose input has been invaluable, to Jack Tracey who did not know how impossibly difficult 14 lawyers in one room could be, to Larry Young our secretary who records the board's progress and decisions, to Gene Kelley whose even hand is always evident, to Larry Anito, Ron Coleman, Greg Gach, John Oyler, Cary Tharrington and Oren Tasini (who survived at least four hurricanes in Florida), I thank you on behalf of the membership for having stepped up on day one.

"Attorneys from around the country have contacted us to express interest in joining the NADC," says Harvey. "Everyone feels the need for a forum, an information exchange that will help us create the tools we need to provide the best possible service to our dealer clients."

--- Jonathan Harvey in news release announcing the election of the NADC board of directors

Call Mike Shad

• Former Ford Dealer (28 Years) • Former Senior Exec., AutoNation, Inc. • Former NADA Director • Former Chair, Ford National Dealer Council • MBA • CPA • CVA

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Mike Shad, P.L. — For more information:
www.mikeshadcpa.com or mike@mikeshadcpa.com or call at 904-388-0645, Jacksonville, FL

**NADC MEMBERSHIP
CATEGORIES**

Full Member - practicing attorneys who serve the needs of auto, truck, motorcycle, boat, motor home, all terrain vehicle dealers.

Annual dues: \$585

- Member only meetings
- Members only e-mail list serve
- Members only on-line forum
- Subscription to Spot Delivery®
- NADC Headlights, association's monthly newsletter

Trade Association Executive

Member - Those Executives of the trade associations that represent the industry who are not lawyers.

Annual dues: \$585

- Member only meetings
- Member only meetings
- Members only e-mail list serve
- Members only on-line forum
- Subscription to Spot Delivery®
- NADC Headlights, association's monthly newsletter

Fellow Member - subsequent member of same organization as full member or trade association executive. Annual dues: \$100

- Member only meetings
- Members only e-mail list serve
- Members only on-line forum
- NADC Headlights, association's monthly newsletter

Associate Member - Companies and organizations interested in furthering NADC goals.

Annual dues: \$1,500

- Member only meetings
- The right to advertise in NADC publications and exhibit at NADC events
- Subscription to Spot Delivery®
- NADC Headlights, association's monthly newsletter

Dealer Member - vehicle dealers who are interested in attending NADC meetings.

Annual dues: \$585

- Member only meetings
- Subscription to Spot Delivery®
- NADC Headlights, association's monthly newsletter

DEALERCOUNSEL.COM

The NADC website is under development. Features are being refined, and new features will be added in the coming months. Nearly a third of NADC's members applied using the online application form. Other features of the website include:

- At log in, members can review and update, when appropriate, their information in the NADC database. At about the middle of the form, there is a place to sign up for the members-only email list serve. The e-mail list serve is an opportunity to make inquiries and exchange information in a timely manner. Instructions are sent to new participants and are posted on the website in the member benefits area of the membership page. Log in is required to read



the instructions.

- After log in, members can use the membership directory to locate a colleague by organization name, state, area of interest and/or dealership type.

- Members can log in to participate in the online forum. "About This Forum" at the top of the forum discussion page gives simple use instructions. A link from the member benefits section of the membership page gives non-members a glimpse of the topics under discussion.

- All members can use the membership directory. The forum and email list serve are open to full members, trade association executive members and fellows.

PERSONNEL, FROM PAGE 1

decision of the lower court against the service advisor. The Court stated that the duties of the service advisor must be considered, not just the title.

In considering the service advisor's claim, the Court specifically rejected a U.S. Department of Labor interpretation which limited the definition of "salesman" to those "primarily engaged in making sales or obtaining orders or contracts for sales of the vehicles." The Court found that the service advisor's job required meeting predetermined service sales objectives as well as interaction with customers to understand the customer's problems, provide accurate estimates, and sell the proper repairs. As such, the Court found that the service advisor was a salesperson who was an integral part of the dealership's servicing of automobiles and thus was exempt from the overtime pay requirements under the Fair Labor Standards Act.

Since September, 2004, when the 14 founding members became the start-up board of directors, NADC has grown into a national professional organization with a membership of 80 and growing daily.

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NADC

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