

DEFENDER

THE NADC NEWSLETTER

What's in the Numbers?

Oren Tasini



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Sidebar

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NADA recently published its annual data regarding the Economic Impact of America's New-Car and Truck Dealers. (The report is available at www.nada.org.) It is worthwhile reading for any lawyer who represents automobile dealers, as it provides valuable insight into the economic forces that are moving the industry and thus shaping the legal landscape.

Consider the call you receive from Dan the Dealer. He is incensed by the customer who bought a car two weeks ago and has come back for the free pin-striping the salesman promised. There is no documentation of any kind in the deal jacket and your salesman swears on his next two commission checks that he never promised the customer anything. "That's \$250 out of my gross!" yells Dan the Dealer. "She can't get away with that, can she?" At this point, you can launch into a discourse on the law as it relates to oral agreements, alleged unfair and deceptive trade practice and the high cost of litigation, or you could remind Dan of something he already knows. New vehicle department's percentage of net operating profit is 14.5%. Service and parts' percentage of operating profits is 58.5%. So ask Dan the Dealer: Are you better off giving the customer the pin-striping and keeping her service business, or standing by principle and at best losing a service customer, or at worst, inviting a lawsuit costing time and money? It should hopefully be a short conversation.

A few days later, a friend of Dan the Dealer calls you. He says that Dan the Dealer highly recommended you based on your sage advice on his consumer issue. Dan's friend has a real problem. The facto-

ry is complaining about his market penetration and CSI scores. The zone representative even made some not too subtle comments about canceling his franchise. "Can they do that?" he asks. You could educate him on the state franchise law and the law of contracts as it relates to his dealer agreement, but you recall something about the economic theory of supply and demand. You ask him what state he is from and what brand he sells. When he tells you he owns a small Ford dealership in California that sells 100 new AND used cars a month, you try not to gasp in horror. A quick look at the NADA data tells you there are 1659 dealers in California and Ford's share of the new car market nationwide has dropped from 25.81% in 1995 to 18.34% in 2005. That's a decline of 29%! In contrast, Toyota's share has almost doubled. Even worse, the total number of Ford units sold has declined in the same time period by 18% while the total number of dealers nationwide has declined less than 1%. You don't want to pile it on, but the dealership attrition that has occurred is in low volume stores and the huge domestic incentives have artificially boosted domestic volume (i.e., it could be much worse). A fair assumption is that California mirrors the national averages and the Ford dealership in question is likely to be a historical footnote. You pause, making sure you choose your words carefully. "How much is your real estate worth?"

Several months pass when the owner of Bernadette's BMW calls you up. Bernadette tells you that her friendly IRS agent called her and wanted to audit her Form 8300s. She is not sure why they are picking on her. "Audit?!" she screams. "I've paid my

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Book Review: CARLAW

Rob Cohen



I've never written a book review. I think this is largely because I never thought anyone would care much about what I had to say. Or, perhaps it's because no one ever writes books on subject matter upon which I feel qualified to comment. Perhaps it's a combination of the two. Either way, it appears at least one of these possible explanations is no longer true (and no, I am not assuming anyone cares about what I have to say).

The venerable auto finance attorney, Tom Hudson, has recently published CARLAW (the book). My only problem with this book is the subtitle that reads "A Southern attorney delivers humorous practical legal advice on car sales and financing!" I know for a fact that Hudson lives and works in Maryland and Maryland is in the South like California is in the Mid-west. To be fair, though, he does sound like he is from the South, so I will cut him some slack.

This 700-some-odd page compilation of legal articles and anecdotes is as easy to read as it is enjoyable. I can say from experience that writing about auto law is not that difficult, but making it interesting and amusing, now that's a trick; and Hudson makes it look simple. His easygoing style and unpredictable wit breathes life into otherwise boring legal concepts.

For us dealer lawyers, it is rare to come across a book that not only educates us on dealer issues but also easily qualifies as leisure reading. This is a book you could actually take with you on vacation; sure it's work-related, but it just doesn't feel like it. Heck, you may even stumble across a billable hour or two.

It's official now, the auto finance world has a celebrity. Rumor has it, Hudson will even

sign your copy of CARLAW if you see him. But don't be surprised if he is being mobbed by throngs of inspired auto law authors. You may just have to be patient.

Rob Cohen is President of Auto Advisory Services, Tustin, CA, First Vice President of the NADC and Editor of Defender, The NADC Newsletter

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New Members

NADC welcomes the following new members:

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Donald St.Denis

St. Denis and Davey
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Fellow

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Des Moines, IA

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United States Warranty Corp.
Pompano Beach, FL

Executive Director's Message



Are there attorneys in your organization who would benefit from membership in NADC?

Encourage them to join now before a dues increase takes effect August 1, 2006.

Applications for fellow memberships received through the end of July will be accepted at the current dues of \$100; fellow member dues after July 31 will be \$200. Renewal dues for current fellow members will increase to \$200 on September 1. Fellow members are subsequent members from organizations that already have a full member or a trade association executive member.

The NADC board of directors voted in the dues increase at the meeting held during the Annual Member Conference in April. The increase will assure that the same high quality service continues as the membership continues to grow.

With this dues increase, fellow members

will receive an additional benefit: Spot Delivery® – the concise monthly newsletter that updates readers about legal issues that affect automobile dealership operations and keeps readers informed about new legal developments. The newsletter presents familiar factual scenarios, identifies the legal issues involved, presents real court resolutions and suggests strategies to avoid similar legal pitfalls.

Membership categories are:

Full Member - open to practicing attorneys who serve the needs of dealers.

Trade Association Executive Member - open to those executives who are not lawyers.

Fellow Member - Subsequent member of same organization as a full member or trade association executive.

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

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

The membership application is on-line at www.dealer counsel.com. Apply today.

Contact Jack Tracey at 410-712-4037 or: jtracey@dealer counsel.com

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NADC Leadership

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• Federal and State Regulatory Compliance – Tom Hudson

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• Litigation – Len Bellavia, Bellavia Gentile & Associates LLP, Mineola, NY

• Manufacturer Relations and Franchise Issues – Ronald Coleman

• Sales and Advertising – Gary Adams

• Warranty and Fixed Operations – Wayne Peters, Gearhiser, Peters, Lockaby, Cavett & Elliott, PLL, Chattanooga, TN

California Workshop Great Success

The National Association of Dealer Counsel continues to produce timely and relevant meetings for its members. Thirty-three attorneys attended the NADC workshop in San Diego on June 23. The California Car Buyer's Bill of Rights (AB 68) was the topic addressed by the workshop. This legislation became effective on July 1, so this meeting was very timely. The workshop was open to all California attorneys regardless of their membership in NADC. It was felt that the issues addressed in the workshop were important for all attorneys who practice dealership law in California. Several non-members who attended the

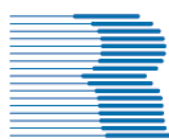
event have become members.

NADC board member, Rob Cohen, Auto Advisory Services, Tustin, moderated the panel and panelists included Peter Welsh, executive director, California Motor Car Dealer's Association, Sacramento, Bert Rasmussen, Manning, Leaver, Bender and Berberich, Los Angeles and Rene Ramirez, Hudson Cook, LLP, El Segundo.

The workshop included an overview of AB 68. A concentrated discussion on the contract cancellation option, interest rate reserve caps, credit score disclosure, F&I products and services disclosure and certi-

fied used vehicles provided ample content for the lively and informative discussion between panelists and attendees during the four-hour workshop.

NADC is unique in its ability to provide this type of focused workshop. With the wealth of knowledge among our members and their willingness to share information, we should be able to offer sessions like this as the need arises. Please let Jack Tracey, executive director, or any of the NADC board members know of topics that you would like to have covered in a focused workshop setting.

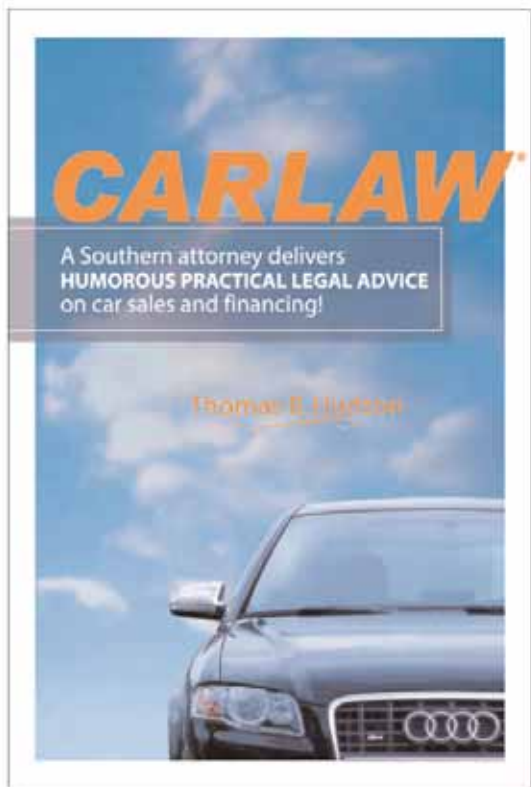


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What's in the Numbers?... from page 1

taxes to the penny!" After explaining to Bernadette that the Form 8300 has nothing to do with her taxes but rather her receipt of cash payments in excess of \$10,000, she asks "Why are they bothering me?" The NADA data provides a simple answer: odds. The automobile industry accounts for almost 23% of the gross annual retail sales in the United States. Dealership payroll is almost 14% of all retail payroll in the United States. Consequently, dealerships

are more likely to be audited on compliance issues relating to taxes, employment, the Privacy Act, and my personal favorite, OFAC/SDN list checking (pat yourself on the back if your law firm complies with OFAC requirements). Moreover, with such a large number of employees, dealers must be sensitive to labor related issues, such as discrimination, compliance with the Americans with Disabilities Act, ERISA and the Family Medical Leave Act.

As lawyers, we have an obligation to be a source of legal knowledge as well as advise

our clients. Knowing the business of your client is a good start. Go grab the NADA Data book. It's a quick and interesting read. It will help you dispense good practical advice along with your legal expertise. It might also be a good time to pull out your legal due diligence check list and send it to your dealer clients.

Oren Tasini, Haile, Shaw & Pfaffenberger, PA, North Palm Beach, FL, is Chair of the NADC Buy-Sell Agreements Section.

The NADC website is a source of information for members:

- ***Member Directory, searchable by name, firm, state, area of interest and dealership type***
- ***Forum, an online discussion of timely issues***
- ***List Archive, a collection of messages shared by those members who sign up for the List Serve***
- ***Events, conference information and downloadable materials from conferences and workshops***
- ***Banners that link to associate member websites for information on products and services***
- ***Those wishing to apply for membership will find an online application***

www.dealercounsel.com

Associate Member Spotlight: O'Connor & Drew, PC

O'Connor & Drew, P.C. of Quincy, Massachusetts is an automotive accounting firm with nine partners, a total staff of 80 professionals, and hundreds of dealer clients throughout the United States. In addition to conventional accounting and audit services, they have an experienced tax department specializing in automotive issues including family succession planning. They also have an internal audit and fraud investigation arm with audit procedures designed specifically for retail automotive dealerships.

Their consulting arm, OCD Consulting, LLC is active in dealership buy/sells, merger and acquisitions, business and strategic planning, management development, litigation support and dealership valuations. OCD is also a co-founder of HRAuto.org, a "Twenty-Group" for human resource professionals from large dealer groups.



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Annual Member Conference: CLE Update

We applied for continuing legal education credit to all states requested for the Member Conference in April. The table shows the status of the applications. We submitted rosters of attendees to the states that awarded credit hours. Some states require bar members to submit copies of certificates of attendance, such as the one received at the conference. In states for which "Use Reciprocal" is noted, bar members should use the credit hours granted by one of the reciprocal jurisdictions listed below.

State	CLE Hrs.	State	CLE Hrs.
Alabama	.9.30	New Jersey	.Submit Certificate
Arizona	.Submit Certificate	New Mexico	.10.20
California	.Use Reciprocal	New York	.Use Reciprocal
Colorado	.12.00	North Carolina	.12.50
Florida	.12.50	Ohio	.7.75
Georgia	.10.30	Oklahoma	.12.50
Illinois	.Use Reciprocal	Oregon	.10.25
Indiana	.10.30	Pennsylvania	.10.00
Iowa	.10.25	Tennessee	.10.25
Kansas	.12.00	Texas	.10.25
Maine	.10.25	Virginia	.9.50
Massachusetts	.Submit Certificate	Washington	.9.50
Michigan	.Submit Certificate	West Virginia	.12.30
Missouri	.12.50	Wisconsin	.11.00
New Hampshire	.10.00		

Pertinent Reciprocal States:

For California Members: Alabama, Colorado, Florida, Georgia, Iowa, Indiana, Kansas, Maine, Missouri, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin

For New York Members: Alabama, California, Colorado, Georgia, Indiana, Kansas, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Virginia, Wisconsin

For Illinois Members: Maintain records of CLE earned from January, 2006 (using credit from one of states above); apply retroactively when staff is in place and office opened.

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