NADC
NATIONAL ASSOCIATION OF DEALER COUNSEL

DEFENDER

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In this Issue:

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2012's Top Twenty Legal Trends For Automobile Dealers

By Eric L. Chase, Bressler, Amery & Ross, P.C.

1. (Tie) Franchisors on the March: Dealer Rights vs. Franchisors' Initiatives into Major Aspects of Dealership Operations and Facilities: Imaging; Renovation; De-dualing; Pre-Signed Termination Agreements; "Average-or-Above Minimums"; Relocation; Site Control; Sales; CSI. Can They Do That? (4)

   • Responding to Automakers' Assaults on Dealer Rights and Autonomy: Dealers and Their State Associations Need to Strengthen State Laws; Federal Meddling.

1. (Tie) Economic and Regulatory Trends and Domestic Political Uncertainty That Impact the Legal Rights, Strategies and Decision-Making of Auto Dealers in America. What a Dealer Needs to Consider in Strategic Planning During a Time of Uncertainty. (1)

3. Consumerism/Government Action; The Regulatory Nightmare; New Life for Arbitration Agreements with Consumers; Avoiding the Pitfalls – Advertising; Spot Delivery (2)

4. Involuntary Franchise Terminations, Termination "Threats," Brand "Withdrawals," "Pressured" Buyouts, Financially-Driven Resignations, Consolidations, and Rights of First Refusal (5)

5. Coping with the Daily Challenges of the Law: The Legal Audit Checklist (9)

6. Taxes (8)

7. Privacy Concerns and Identity Theft (10)

8. Internet Marketing, the Technology Revolution, and the Remarkable Changes to "Business As Usual", Out of Area Sales (19)

9. Buying and Selling Dealerships: Factory "Stealth" Conditions; Mercedes' Misuse of Right of First Refusal: The Threat (7)

10. Living with the Threat of Terror, Unrest, and Natural Disasters: Doing Business in an Era of Constant Vigilance (14)

11. Credit Chaos: Floorplans and Other Credit Stress Points for Dealers: GM, Chrysler; SBA Floorplanning. Where Are the Non-Captive Lenders? (3)

12. Alternate Dispute Resolution (ADR) (13)

13. Workforce Issues: Employee Rights and Benefits, an Activist NLRB, the Prospect of Unionization (Card Check and Mandatory Arbitration), and Health Care Legislation (6)

14. Audits of Incentive or Warranty Claims: Dealer Beware (11)
15. Customer Satisfaction: CSI vs. Reality (12)
16. Retail Reimbursement for Warranty Work and Parts (15)
17. Encroachment (Protest Laws) (16)
18. Minority and Female Representation (17)
19. Environmental Pressures: Is "Green" Really Green? (18)
20. The "New Franchise" Phenomenon: Mahindra and Others (NR)

NOTE: 2011 rankings are in parentheses; NR (Not Rated in 2011).

Welcome New Members

Full Members

Enessa M. Carbone
Carbone Auto Group
Utica , NY

Michael Maledon
Phoenix , AZ

Fellow Members

Juliet Faulkner
Faulkner Organization
Trevose, PA

David G. Oyler
Faulkner Organization
Trevose, PA

Executive Director's Message

Erin H. Murphy
NADC Executive Director

2012 is a new year and we are very excited about some of the upcoming programs that NADC has to offer!

We are beginning the year with a Webinar on the benefits and challenges of multi-dealership operations. Speakers Michael Charapp, *Charapp & Weiss, LLP* and Kenneth Rosenfield, *Rosenfield & Company, PLLC,* will discuss the legal, accounting, and operational challenges involved in multi-dealership operations. The Webinar will be held on February 16, 2012 from 1:30 PM EST to 3:00 PM EST. The cost is $95 and CLE credit will be available. Please find the registration link in the "Events" section of the NADC website, www.dealercounsel.com.

We are also very excited about the 8th Annual NADC Member Conference being held April 29 – May 1, 2012 at the Hyatt Regency Scottsdale Resort and Spa at Gainey Ranch. The conference will be a two day program designed to provide you with updates, best practices, lessons learned and other beneficial information. The planning committee has lined up a great agenda and you will be sure to take home valuable tools that will benefit you and your clients.

The conference also offers the opportunity for NADC members to receive 801 minutes of CLE credit. This translates to 13.5 CLE hours based on a 60 minute scale and 16.2 CLE hours based on a 50 minute scale. We are planning on holding a golf tournament on Sunday morning, April 29th. Please watch your email for more information. You can find a detailed agenda and registration information on the NADC website.

New this year, we will be sending out the 2012 NADC membership directory to all members in February! This directory will be a handy tool to easily access your NADC colleagues' contact information, searchable by state. Please also remember that you can search for NADC members on the web-site by using the "search" field in the members-only section. You can search by name, city or state and make sure to filter the results by "profile".

Wishing you all a happy, healthy and successful 2012! ■

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2012's Top Twenty Legal Trends For Automobile Dealers

Feature Article

By Eric L. Chase, Bressler, Amery & Ross, P.C.

Introduction

For the first time in almost two decades of this annual survey, there's a tie in the Top Twenty rankings – and it's a tie for #1.

As 2011 drew to a close, a strong consensus was emerging that auto franchisors were greatly increasing their dealership facility (and other) initiatives. Franchisor pressures on dealers are now historically intense – on facilities, on operational performance, on CSI, and on various other subjects. And the automakers are flexing their muscles in ways that are often perceived as coercive or threatening. These efforts are so vast and widespread that there is hardly a dealer in America that won't be affected. These factory pressures on dealers delineate the first of the two top trends.

At the same time, the ongoing volatility and uncertainty of mega-economic/political issues affect every American dealer. As a result, this "other" Number One trend is equally sobering, even though it emanates principally from sources outside the industry itself. Federal, state and local elections in November 2012 will likely influence in a big way both near-term and long-term prospects for the financial health of car dealers in America. Many perceive that a "real" recession still plagues the economy – with no meaningful cure in sight – and that elected representatives are making it worse. To be sure, there's plenty of optimism as of the start of 2012. The prediction of 14 million more retail units for 2012 is all the rage, and an upswing in sales results has delivered some good news. NADA economist Paul Taylor believes that 2012 will be a banner sales year. "NADA: Top 3 Factors Why New Car Sales Will Increase in 2012," www.nadafrontpage.com (January 5, 2012). But caution should remain the year's theme.

In this election year, there is no sign that the political parties will work together sufficiently to resolve the key issues that divide them. Thus, politics as well as economic and regulatory issues combine to make the year challenging for American businesses. This is particularly so for franchised new car dealers whose profitability is intimately linked to the overall economy and the financial well-being of potential customers. Long-term dealership planning should not be based upon a periodic economics upswing in a given month or quarter.

The accumulation of new regulations and the specter of more to come are now having an unprecedented impact on the ability of small businesses to become or remain profitable and/or to make conscientious and informed decisions on hiring, stocking and investment. Many dealers have said to me in words or effect: "I can't make important investment decisions until I know what the rules are." Perversely, auto franchisors are now more aggressive than ever in pushing dealers to invest.

In addition to the burdens imposed by burgeoning regulations and economic uncertainty, a majority of Americans perceive that the current administration believes that taxpayer funded government solutions are preferable to private enterprise cures. Inevitably, this "second" of two #1 trends, includes a major political element, along with economic and regulatory factors. Furthermore, this political factor extends to many of 2012's other top trends.

To be sure, in past election cycles, political developments have always tended to have some legal and regulatory impact upon how dealers operate, on how profitable they may be, on whether to hire more people, and on their decisions to invest in their businesses and grow – or not. It's a given that laws, regulations, policies, and government enforcement priorities affect businesses.

As I see it this year, however, the old saw that "things will be about the same, regardless of who is in office" just isn't true for 2012, if it ever was. This election year is like no other in memory. For example, in areas of overall economics, finance, uncertainties and costs of regulatory compliance, health care, consumerism, tax policy, federal entitlements, energy, environmental regulations, labor and employment (including workplace rules), and financing/credit, the choices Americans make at the polls will affect small businesses like never before. For car dealers, in particular, that electoral choice will be especially profound.

In past annual rankings, assessments and forecasts, I have tried to place the role of political and electoral forces within its background context of what is primarily a legal, business, and economic analysis for car dealers. To superficially minimize the subject this year, however, would be to ignore the elephant in the room. Like it or not, political outcomes in 2012 will be a large factor in the economic realities for dealers and other businesses.

Just think about tax policy, regulations, and government spending. Will a decade of Bush era tax cuts lapse at the end of 2012 with an "automatic" reversion to higher marginal rates? Will there continue to be targeted government efforts to generate or promote "favored" businesses (with, for instance, tax credits and loan guarantees for the development of "green" vehicles)? Will there be serious efforts to tame spending, with or without tax reform? Will the administration's insistence on raising taxes on "the rich" sway the electorate? Will there be a continuation of the 2011 payroll tax cut? Will the health care mandate survive the looming legal challenge?

This year's top legal trends continue to include a number of standbys from recent years – e.g., consumerism (#3), buy-sells (#10), workforce issues (#13) and so on. Hopefully, these rankings and assessments will assist dealers in their operations and planning.

The ranking of the top twenty legal issues/trends is based on three factors: 1) the likely number of dealers affected; 2) the probability of change from the current situation; and 3) the seriousness of a trend/issue impact on the lives of dealers.

1. (Tie) Franchisors on the March: Dealer Rights vs. Franchisors' Initiatives into Major Aspects of Dealership Operations and Facilities: Imaging; Renovation; De-dualling; Pre-Signed Termination Agreements; "Average-or-Above Minimums"; Relocation; Site Control; Sales; CSI. Can They Do That? (4)

- **Responding to Automakers' Assaults on Dealer Rights and Autonomy: Dealers and Their State Associations Need to Strengthen State Laws; Federal Meddling.**

Look for a continuation – and growth – of the trend of auto franchisors pushing for dealer investments and performance commitments. See, *e.g.,* Amy Wilton, "Spend Big on Store – or Get Out." Automotive News, November 14, 2011. If the economy catches fire for a sustained period (unlikely for 2012, in my opinion), every brand will push even harder for its dealers to invest in ways that factories favor.

The list of franchisor initiatives is vast, and the pressure on dealers is intense. Factory reps are visiting dealers with "signature ready" agreements, not to negotiate, but to consummate. All these agreements and pressures are to benefit the franchisors, not necessarily dealers. Many of these forms contain provisions in which the dealer is urged to confess current serious deficiencies – for example, in sales, CSI and facilities.

We have already witnessed this trend to some extent. Most brands have been trying to coax (some say coerce) dealers into commitments, from brand-imaging, to renovating, to hiring. The NADA was sufficiently concerned to commission a study of the anticipated return on facility investments promoted by franchisors. The results of that study are expected in early 2012.

The good news continues to be that state laws provide powerful protections for dealers against coercive factory initiatives. Within the past year alone, about 30 states have amended their existing dealer-related franchise laws, mainly to help dealers cope with factory pressures.

For example, many state laws address some or all of the following issues, and there is a continuing effort to update or clarify these provisions:

- Facility upgrades or renovations
- Factory site controls
- Inventory orders
- Chargebacks for "brokered" cars and cars for "export"
- Advertising
- Affirmative right to available product
- Anti-coercion
- Anti-discrimination (e.g., in incentives)
- Termination and nonrenewal rights: notice required, and standard of good cause or due cause (All 50 states have this kind of protection)
- Automatic Stay in many states of termination and continuing right to transfer while dispute is pending
- Dealer succession and transfer rights
- Non-waiver provisions that disallow waiving protected statutory rights under most circumstances
- CSI methodologies, and factory use of CSI to assess dealers
- Dealer right to transfer business. (*See, especially,* recent effort by Mercedes to use Right of First Refusal to limit dealer's ability to transfer multiple franchise rights.)
- Reasonableness standard applied to factory initiatives

Thus, dealers' legal arsenal in most states remains formidable. Each year, there is new legislation in various states to protect dealers from creative new factory initiatives that would otherwise burden them further. Although it may be tempting for a dealer to yield to relentless pressure to sign agreements that commit to new or enhanced facilities, or acknowledge current "deficiencies," they are wise not to give in to this kind of franchisor nagging . . . or threatening. We have already learned of a few cases in which auto franchisors have taken termination actions, based solely or primarily upon pressured agreements that dealers should not have signed in the first place.

As always, dealers should stay current in their knowledge of applicable state laws. State associations generally do a yeomanly job of seeking to protect factory overreaching by backing or proposing amendments to existing laws. Dealers need to support such efforts.

OUTLOOK:

Even a turbulent and unpredictable economy will not deter auto franchisors from pushing dealers to make commitments to invest. In most instances on big items, dealers are wise to say no. An anticipated NADA study is likely (in my opinion) to confirm that the dealer's return on factory-urged facility investments is usually not commensurate with the size of the investments. The good news is that – as long as you don't sign *onto new obligations – you are probably safe from adverse action (like termination).*

Further, state associations have become more vigilant – and active – than ever. There will be additional protections legislated by many states in 2012.

1. (Tie) Economic and Regulatory Trends and Domestic Political Uncertainty That Impact the Legal Rights, Strategies and Decision-making of Auto Dealers in America. What a Dealer Needs to Consider in Strategic Planning During a Time of Uncertainty. (1)

Especially since 2007, I have consistently counseled dealers to proceed with a heightened level of caution when it comes to decisions about large capital investments or commitments. During an unusually lengthy period of economic turbulence and retrenchment (2008-2011), along with persistently high unemployment, we have witnessed the historical bankruptcies of General Motors and Chrysler. Now, the full faith and credit standard of the United States has been challenged by a downgraded rating from Standard & Poors – a status that could linger for years, or even worsen. Congressional Republicans and Democrats failed (with the so-called "Super Committee") in late 2011 to come to terms on any basics of possible reform. Fitch Ratings then gave a "negative outlook" to U.S. debt, even though – for now – it maintained its AAA rating from Fitch. And, for 2012, there is the further uncertainty of who will govern, beginning in 2013.

Why does all this mega-economic, regulatory, and political turbulence matter to a car dealer's business? And, how may a dealer translate such big picture news into business decisions at a local, brand-specific dealership in a particular town and state?

For one concern, unemployment has trended mostly at or above 9% for over two years, a problem not seen at that level since the Great Depression. And that percentage actually understates the depth of the problem, because it does not account for people who stop looking for work and full-time workers making less than they did previously. This reality was evident when unemployment dipped to 8.6% in November 2011, but part of that "good" news was triggered by the "bad" news of 315,000 people who stopped looking for work. The "participation" level – i.e., the percentage of adults working dropped to a dismal 64.0%.

The unemployed, underemployed and those who fear layoffs buy fewer new cars. Consumer confidence plunged and remained at a low level until an upward spike in November 2011. In retail sales, the competition is for fewer and more discerning customers, who want to spend less. These facts drive the pocketbook decisions of American consumers. The combinations of unprecedented challenges for small businesses are vital topics for dealers making plans for 2012 and the years beyond. So, what should dealers do – and not do – right now?

Stating that "[t]he risk of a double dip recession has increased to nearly 40 percent," J.D. Power lowered its 2012 sales expectation by 200,000 down to 300,000 units. It now predicts that light unit sales will be 14 million units in 2012, up from the 2011 estimate of 12.6 million. Automotive News (Oct. 21, 2011). Better still, late revisions for 2011 may reach 13 million, and estimates for 2012 are optimistic "sales could hit 14 million in '12," Automotive News (December 26, 2011). Note that Edmunds.com has projected a seasonally adjusted annual rate ("SAAR") of 13.4 million units for the end of 2011. In my opinion, the J.D. Power estimate, despite the reduction, and the Edmunds.com uptick, are overly optimistic for 2012.

The regulatory environment is simply out of control. The NADA publishes an excellent summary, "The Regulatory Maze," which identifies federal laws and regulations that affect dealers. *See also* "NADA & ATD Federal Regulatory Chart" (Second Edition). The "alphabet soup" of requirements is daunting – as well as complex and growing. Although some point out that the upward spiral of regulations is not a new phenomenon, the current emphasis (in my opinion) is unprecedented. As one colleague puts it, "Regulatory growth is on steroids." Most dealerships now have the equivalent of at least one full-time employee to monitor regulatory requirements and assure compliance. Even worse, according to many dealers, there is no way to make solid plans when future regulatory initiatives are in flux.

To be sure, the many challenges for 2012 are not entirely homegrown. China, Europe and Japan have their own problems, and numerous other "what-ifs" are lurking. Here is a list of oxymoronic "foreseeable surprises" that may impact the auto industry in the coming months:

- The Weight of National Debt/Deficit
  - The China Factor
- Erosion of Consumer Confidence ("Misery Index")
- Continuing High Unemployment
- Deeper Credit Crunch
  - Direct effects on dealers
  - Consumer credit
- "Double Dip" Recession
- Inflation
- Government "Greening" of the Industry
- Adding to the Overall Regulatory Maze
- Continuing Foreclosures
- An "Official" New Recession
- Another war, or threat of war, with another oil price spike (consider, for example, Iran's threat to hinder the flow of oil through the Strait of Hormuz)
- Middle East Political Explosions: and Impact on Oil Price/Gasoline
- Another major Katrina/earthquake/tsunami event

- Another 9/11 Level Terror Attack
- European Economic Meltdown

For most dealers, 2012 will, and should be, a "wait-and-see" year in which a dealer's guiding principle should be to invest/expand/hire in a major way, only if the dealer develops his/her own independent business justification. Until there is some long-term stability and predictability in government regulations and enforcement, as well as clear signs of economic growth, prudence must govern dealers' planning. To some, this may be an obvious point, yet the reality is that many dealers succumb to factory pressures that support factory strategies that are indifferent to the individual dealer's success or profitability. It is the dealers, after all, who mostly absorb the risks and costs of the major investments encouraged by their franchisors. Those pressures are intense and increasing, and the insistence on dealer compliance will be even more emphatic in 2012.

The hard-nosed reality for 2012 is that there is such uncertainty and unpredictability in the economy and the regulatory environment that car dealers will be hard-pressed to make reliable forecasts. Today, when a dealer ponders an investment into expanded or renovated facilities, the variables should include what may happen in 2013 with tax policy, environmental rules, workplace requirements, and a host of other political initiatives.

OUTLOOK:
The Obama $447 billion Jobs Bill was never calculated to be approved by the Congress, and it wasn't. In that proposal and in other respects, the President veered back to his most loyal constituency, and his professed policies on taxes help make 2012 a murky and difficult year. There will be legislative gridlock, again. Hard core unemployment will not go away in the next year, and may even worsen. For dealers, 2012 will, at best, be a year to be prudent and watchful – not, in most instances, a year of growth or capital investment. Regulatory compliance issues are a continuing and growing challenge to every dealer.

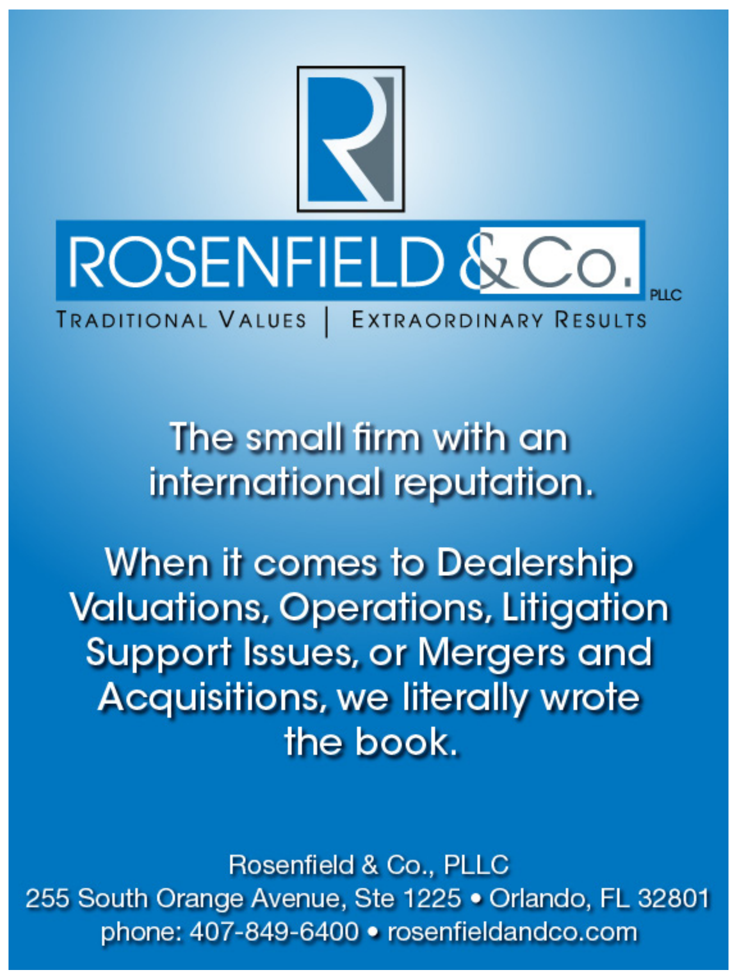
3. Consumerism/Government Action; The Regulatory Nightmare; New Life for Arbitration Agreements with Consumers; Avoiding the Pitfalls – Advertising; Spot Delivery (2)

"Consumerism" is a broad term denoting a general paternalistic protection of consumers. It manifests itself in government laws and regulations that purport to help consumers against unfair merchant practices. Consumerism is also seen in private legal actions against businesses on behalf of consumers.

Under the Obama administration, the consumerism trend has reached an all-time high. Dodd-Frank, the Consumer Financial Protection Bureau, and a host of other initiatives have created or accelerated a bevy of consumer rights and procedures that multiply the potential administrative burdens and out-of-pocket costs for dealers. In unprecedented ways, the National Labor Relations Board has pushed hard to help unions and to foster unionization.

Dealers face a plethora of federal, state, and local laws and regulations that, on their face, are intended to help consumers. In theory, pro-consumer policies seem uncontroversial, or even virtuous. But the reality check is that auto dealers must now cope with literally hundreds of time-consuming and costly administrative and compliance burdens. And the consequences of non-compliance can be unforgiving.

One bright spot for dealers is a 2011 Supreme Court case, *AT&T Mobility v. Concepcion,* which reversed the trend in lower federal courts and state courts that had made it difficult for dealers to use arbitration provisions with consumers that barred class actions. See Trend #12. Now, dealers should consider the use of fair, even-handed arbitration provisions for their retail contracts that contain express prohibitions against class actions. While everyone expects that there will be many efforts to streamline or narrow the effect of *Concepcion*, for now, the path to arbitration provisions with waivers of class actions seems favorable.



Most dealers carefully weigh their practices to avoid consumer clashes. Spot delivery practices are under a microscope, as are dealer advertising representations.

OUTLOOK:
A stalled economy, ironically, may lessen government enforcement actions in 2012. But the general trend of government actions, almost always siding with what is perceived as consumer protection, will continue. Despite considerable and growing opposition, the regulatory growth and consequent expense and risk will continue during the current administration.

Watch out for the continuing threat of a class action lawsuit. While few in number, some dealers have paid exorbitant prices, even for "technical" regulatory violations.

4. Involuntary Franchise Terminations, Termination "Threats," Brand "Withdrawals," "Pressured" Buyouts, Financially Driven Resignations, Consolidations, and Rights of First Refusal (5)

Although it appears that actual involuntary termination and nonrenewal efforts have dwindled since the GM and Chrysler bankruptcies, threats of termination seem to be growing. Nearly all those threats seem directed at sales performance or facility standards. Any dealer who receives such threats – whether implied or direct – needs to respond, in writing, in a responsible way. Never leave a termination threat unanswered!

OUTLOOK:
There will likely be an uptick in involuntary termination actions in 2012.

5. Coping with the Daily Challenges of the Law: The Legal Audit Checklist (9)

One of the major sore spots for American businesses is that there are simply too many legal and regulatory obstacles. Every automotive dealer copes with daily legal/regulatory compliance issues. Worse, such requirements are moving targets because of constant regulatory changes.

OUTLOOK:
Use the Chase checklist! It's available free of charge, and dealers have reported that it's a useful management tool.

6. Taxes (8)

For 2012, taxation is a hot, even volatile, political topic. Remember: The "Bush Tax Cuts" were extended to the end of 2012. Without congressional action (and the President's signature), they will end – effective January 1, 2013. President Obama continues to campaign for "fair share" tax reform to raise the tax rates of the highest earners. But others, including some prominent Democrats like former President Bill Clinton, argue that raising taxes in a stalled economy will hurt business.

The opportunity for comprehensive tax reform was seemingly lost when the Obama administration ignored the proposals of his Bowles-Simpson commission which, in essence, would have eliminated most "loopholes" and established simplified and lower tax rates across the board. Then another opportunity was wasted when the "Super Committee" failed to reach any agreement in November 2011.

Republicans steadfastly resist any effort to raise marginal tax rates, but seem receptive to comprehensive tax reform that would eliminate most deductions and simplify and lower tax brackets. This change would be consistent with the recommendations of the Bowler-Simpson Commission. By year-end 2011, even a continuation of the 2011 payroll tax cut was in jeopardy for 2012, as the Congress could not agree on legislation. But serious economists doubt the wisdom of any temporary economic stimulus via tax policy, because such initiatives are temporary, and, therefore, do not spur meaningful economic activity or growth, and do not create jobs. According to Stanford economist John Taylor, "this type of temporary tax change is making the entire tax system unpredictable." John B. Taylor, "Want Growth? Try Stable Tax Policy," Wall Street Journal, December 21, 2011.

OUTLOOK:
Given the stalemate between Republicans and Democrats, major tax reform is unlikely before 2013. This means, according to John Taylor, that the economy will continue to suffer.

7. Privacy Concerns and Identity Theft (10)

On top of the regulatory maze, dealers must be especially vigilant about the protection of private customer and employee information. This trend is an ever-changing minefield for dealers.

OUTLOOK:
Plaintiffs' lawyers remain on the prowl for both hypo-technical and genuine breaches of privacy and incidents of identity theft. Dealerships maintain vital customer information that must be meticulously safeguarded. Those who fail to take the appropriate measures may face expensive legal action.

8. Internet Marketing, the Technology Revolution, and the Remarkable Changes to "Business As Usual;" Out of Area Sales (19)

The competition to invent, upgrade, and market computer-based products seems to know no bounds. Of course, such innovations create opportunities. We've seen the exponential expansion of internet marketing by dealers.

This phenomenon brings with it some special concerns for dealers, including the consequences of retailing to distant customers. "Out of area" marketing is also a concept that some franchisors are trying to resist, by literally "punishing" dealers who make sales to customers residing outside certain boundaries.

OUTLOOK:
Each year, the technological inroads and advancements in the ordinary course of business continue to change the retail world. Even big ticket items like new automobiles are increasingly shopped entirely online. 2012 will see this trend continue, notwithstanding some pushback from the factories.

9. Living with the Threat of Terror, Unrest, and Natural Disasters: Doing Business in an Era of Constant Vigilance (14)

Every American business should now have in place an emergency plan – one that includes appropriate steps when disaster strikes. Given the ever-growing interconnection of a world economy, we've seen a direct impact on American dealers of such far-off events as the tsunami in Japan and the nuclear melt-down that followed.

OUTLOOK:
The certainty for 2012 is that the "unexpected" will happen in one or more of these emergency categories.

10. Buying and Selling Dealerships: Factory "Stealth" Conditions; Mercedes' Misuse of Right of First Refusal: The Threat (7)

Automotive News has reported that there is heartening news in the dealership buy-sell arena. More buy-sells; higher prices.

OUTLOOK:
For 2012, the buy-sell market will continue to be unsettled, with wide disparities among regions and brands.

11. Credit Chaos: Floorplans and Other Credit Stress Points for Dealers: GM, Chrysler; SBA Floorplanning. Where Are the Non-Captive Lenders? (3)

At the macro- and micro-levels, credit availability has shriveled. The scandals, bank losses, bailouts, foreclosures, and business failures characterized by lack of credit standards will continue to reverberate in 2012 – and for years thereafter.

OUTLOOK:
For dealers, credit relationships in 2012 will be uneven and unpredictable. In most instances, there will be no sense in dealers' seeking to change

NADC Top Contributor Award

NADC's campaign for Top Contributor will last until March 31, 2012. The NADC Top Contributor will be announced at the 2012 April Conference. The winner will not only receive an award, but will also be given a free registration to the 2013 Annual Members Conference.

Here's how you win. You will be awarded:
3 points for submitting an article to be published in the *Defender*.

1 point for recruiting new members to join the organization

2 points for presenting a session at a Workshop or Conference

1 point for posting to the list-serve, eForum and eLibrary.

NADC staff will carefully track each member's involvement.

established lending relationships. Low consumer rates will be with us for at least another year and may help retail sales, although high unemployment rates will push in the other direction.

12. Alternate Dispute Resolution (ADR) (13)

Thanks to a U.S. Supreme Court decision in 2011 (*AT&T Mobility v. Concepcion*), dealers should revisit their forms of customer agreements, and include an arbitration provision that bars class or group legal actions. This landmark decision revives the wisdom of dealers' inclusion of arbitration provisions with class action waivers in customer agreements.

The general trend in America – resorting to alternate dispute resolution – continues. Thanks to a 2002 federal law, franchisors cannot require arbitration in disputes with their dealers, but they can and do make use of other methods, like mediation, to try to resolve disputes early. That approach is good for dealers, because it provides an opportunity to explore the avoidance of costly litigation.

OUTLOOK:
Some state courts (e.g., in California) seem to be prospecting for ways to avoid the Concepcion result. Dealers should consider putting an arbitration option in RO's, with a prohibition against class actions. Make sure your provision is fair and even-handed!

13. Workforce Issues: Employee Rights and Benefits, an Activist NLRB, the Prospect of Unionization (Card Check and Mandatory Arbitration), and Health Care Legislation (6)

Although 2012 is not likely to see the passage of new controversial workforce laws, those already on the books continue to trigger much litigation.

OUTLOOK:
Watch for targeted efforts to unionize dealerships.

14. Audits of Incentive or Warranty Claims: Dealer Beware (11)

Many dealers believe that auto franchisors deploy audit teams as a punitive measure.

OUTLOOK:
There will be more incentive audits in 2012. Generally, dealers must cooperate.

15. Customer Satisfaction: CSI vs. Reality (12)

In the years I have critiqued the legitimacy of CSI as anything beyond a management tool. Not much has changed to make CSI a more reliable indicator of "real" customer satisfaction. In 2005, I wrote an in-depth analysis of CSI flaws. That article is available on request at no charge.

OUTLOOK:
There is no end in sight to the auto franchisors' heavy emphasis and reliance on dealers' CSI scores.

16. Retail Reimbursement for Warranty Work and Parts (15)

The controversy over retail payment for parts used in warranty work seems to never end.

OUTLOOK:
We could see an important ruling in the U.S. Court of Appeals for the Third Circuit, in which Ford is challenging a dealer warranty retail parts rate win in New Jersey.

17. Encroachment (Protest Laws) (16)

During the economic downturn, it seemed that dealer protests (actions against franchisor attempts to establish or relocate same-line dealers in existing dealers' market areas) declined dramatically.

OUTLOOK:
There should be a nominal increase in protest actions during 2012.

18. Minority and Female Representation (17)

In the wake of the GM and Chrysler bankruptcies and the general downturn of the economy, minority representation among dealer owners took a hit.

OUTLOOK:
Franchisors are scrambling to add minority numbers to dealer ranks.

19. Environmental Pressures: Is "Green" Really Green? (18)

The Obama administration has actually eased some of its environmental policies, in response to the economic backlash. Nevertheless, the agenda to – arguably – improve the environment with smaller, more fuel efficient, or battery-run vehicles continues.

OUTLOOK:
This issue will be part of the political fight in 2012.

20. The "New Franchise" Phenomenon: Mahindra and Others (NR)

For many years, "new" brand opportunities for dealers have made the rounds, often with great fanfare and wide publicity. They range from existing brands with respectable histories in foreign countries (*e.g.,* Mahindra) to start-ups that could be highly speculative or even fraudulent.

OUTLOOK:

With the turbulence in the economy generally, and with continuing uncertainty in some automotive brands, look for more efforts to push "new" auto franchises. Dealers should remain skeptical of an auto franchise "opportunity" that requires an up-front payment. ■

ERIC L. CHASE is a partner in the law firm of Bressler, Amery & Ross, P.C. in its Florham Park, New Jersey office (973-514-1200). A large part of his practice is devoted to the representation of automobile dealers nationwide, and he writes and speaks frequently on matters of importance to them. He is the author of *Automobile Dealers & The Law: The Businessman's Desk Manual for Survival* (WD&S Publishing, 7th Ed., 2001). His biography appears in Who's Who in American Law, Who's Who in America and other similar publications. As in past years, Mr. Chase was selected by his peers as a New Jersey Super Lawyer for 2012.

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webinar

The Benefits and Challenges of Multi-dealership Operations

February 16, 2012
1:30 – 3:30 pm EST

Speakers:
Michael Charapp: *Charapp & Weiss, LLP*
Kenneth Rosenfield: *Rosenfield & Company, PLLC*

Michael Charapp and Kenneth Rosenfield will discuss the legal, accounting, and operational challenges involved in multi-dealership operations. They will discuss the following subjects:

- Group Structure. How should the group be structured and what are the issues?
- Management Company. When does a group need one and what are the benefits and detriments?
- Legal Compliance. Centralizing compliance and training.
- Accounting and Tax Issues. When does a company need a CFO and what accounting and tax benefits can the group enjoy?
- Operational Concerns. Branding, marketing, leverage with suppliers.
- Buy/Sell Issues. Expansion and issues in identifying and working with acquisition targets.
- Centralized Personnel Management. What are the benefits and detriments?
- Franchising Concerns. How to deal with franchisor concerns and developing opportunities.
- Lender Relations. Using the strength of the group, but limiting group and personal liability.

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