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Contact Us:

NADC
1800 M Street, NW
Suite 400 South
Washington, DC 20036
Phone: 202-293-1454
Fax: 202-530-0659
info@dealercounsel.com
www.dealercounsel.com

Cognitive Bias and Conventional Wisdom

*Is It Time to Rethink How Lawyers Think?**

By Oren Tasini, *Killgore, Pearlman, Semanie, Denius & Squires, P.A.*

Last month's article, *Cognitive Bias and the Law,* covered the effects of cognitive bias on legal decision making under risk.[1] In legal decision making, lawyers regularly rely on conventional wisdom. They use instinct and intuition to make decisions, but conventional wisdoms are based on an extremely small set of experiences. The most seasoned lawyers may have what seems like a large body of experience, but in reality it is too small a sample upon which to rely.[2] This type of thinking is what behaviorists label as cognitive bias. Reliance on answers that feel right are based on heuristics, or System 1 thinking, which is an innate and instinctive response to inputs of information that require a decision. This instinctive response is made quickly and without thought. This method may be appropriate for simple decisions, but decisions involving more complex information require a more systematic thought process.

The existence of the cognitive biases, as described in the Prospect Theory, means that reliance on conventional wisdom is not the optimal way for lawyers to make decisions under risk. The Prospect Theory[3] provides that in making decisions under risk, parties weigh the relative merits of each specific decision on a case by case basis. This method contrasts with the rational actor, or expected utility theory, that all individual decisions are made based on the improvement of the actor's total state of wealth.[4] Under the Prospect Theory, decisions are made in relation to a reference point. When presented with decisions under risk, if the decision involves preserving a gain, the actor is risk adverse.[5] Conversely, if the decision will result in a loss, the actor is risk-taking.[6]

Legal decision-making is constantly subjected to these opposite states of thoughts and the difficulties they cause. In a transaction or a legal dispute, one side is seeking a gain. One side is seeking to avoid a loss. Given these states, each party sets the "frame" differently and becomes anchored on the outcome choice that satisfies their frame.[7] In addition, parties have an inflated value of things they possess, as opposed to those they wish to acquire.[8] This "endowment effect" makes rational transactions difficult to complete.

Adding to the impasse, as a legal matter

* This is the second of three articles on cognitive bias and the law. The third article will cover the use of technology for better decision making under risk.

continues, the parties' reference points change. A seller, or a plaintiff, may begin to view the outcome as avoiding a loss, and the buyer or a defendant may begin to view the outcome as a gain. Even more difficult, is the litigation or transaction in which both parties' frame is a loss. The contentious and bitter nature of divorce litigation is an example. Rather than seeing the equitable distribution of property as a gain, if both parties perceive it as a loss, the case becomes intractable. Understanding each party's reference points and how they may change is critical to a successful outcome.

A look at some common conventional wisdoms illustrates the strong influence of cognitive bias on legal decision making.

Conventional Wisdom: ***"Don't Negotiate Aggressively; Don't Blow the Deal"***

Every lawyer has heard the admonition from a client during a contract negotiation not to "blow the deal" through hard bargaining. Clients view lawyers as a necessary evil, but they do not trust them to get the deal done. Implicit in this concern is the client's belief that lawyers increase fees through lengthy and over complicated documents, which extends the time period for negotiation and jeopardizes reaching agreement. The client often insists that that the lawyer draft a short and simple agreement or, to reduce legal fees, the client insists that the other party's lawyer prepare the first draft of the agreement.

The conventional wisdom that lawyers who aggressively negotiate a deal risk a failed negotiation is wrong. It is the first draft of the agreement and the economic terms offered in that draft, which set the final price and terms of the deal.[9] An aggressive offer sets the frame, and a more aggressive offer presents a more advantageous frame for the offeror. Once the terms and a purchase price are presented, the offeree anchors on the terms from the receiving party and will not deviate significantly from them.[10] Moreover, once the anchor is set, confirmation bias causes the party to seek out information to support the anchor.[11] In addition to anchoring, the status quo effect and risk aversion cause the parties to be reluctant to change the existing state of affairs–the proposed contract is treated as the baseline and is negotiated rather than discarded and a new contract prepared.[12]

At the same time, opposing counsel is receiving the same instruction from the client–"Don't blow the deal." Desiring to meet the client's expectations, the lawyer is unlikely to negotiate aggressively. Indeed, the lawyer is prohibited from doing so under ethics rules, as the lawyer must follow the client's instructions, even if the lawyer thinks the course of action will be harmful to the client.[13] In addition to aggressive terms, presenting a lengthy and complex agreement makes it difficult for opposing counsel to process the information and make an aggressive counter offer–cognitive bias causes the lawyer to default to System 1 thinking.[14, 15] Finally, by including extensive and complicated terms in an agreement, the drafting party can then concede terms that are unimportant. This is because the cognitive bias of reciprocation makes people desire to return a favor given–opposing counsel will be inclined to reciprocate and concede terms that are materially important.[16]

In contract negotiations the best strategy is to make the most extreme opening offer and take advantage of the opposing party's cognitive biases to obtain a favorable deal.[17] Failure to follow this strategy is very costly. Each one dollar increase in an opening offer results in close to a fifty-cent increase in the final price.[18]

Conventional Wisdom: *"All Cases Settle. This Case Will Never Go To Trial."*

Lawyers often advise clients that 99 percent of cases settle. Implicit in this statement is the idea that pursuing litigation is a sound strategy to force resolution of a dispute–the bludgeon of litigation will bring the parties to the negotiating table and the case will never reach a judge or jury. This is a faulty assumption. As with contract negotiations, even the most experienced lawyer has not handled enough to cases to assess the probability of settlement based on her own experiences– once again the Rule of Small Numbers rears its ugly head.

A review of the actual data shows the 99 percent settlement figure is wrong.[19] Although it is true that only about only 1 precent of cases go to trial, this does not mean that the remainder settle or that they settle on favorable terms. Statistics from the United States federal court system show that in the federal district courts, 20 percent of cases are terminated by one of the parties, while 79 percent are terminated by court action.[20] This analysis does not equate to a 99 percent settlement rate, because the coding for these dispositions are not indicative of a successful settlement. A disposition by a judge, or the parties, ranges from a default judgment to a final order approving a settlement by the parties.[21]

The real settlement rate is 65-70 percent.[22] This statistic means that 30-35 percent of filed cases result in an unfavorable outcome. Additionally, using a broad percentage does not consider that the settlement rate varies widely by case type. Employment discrimination cases have a settlement rate of 55 percent while contract cases have a settlement rate of 70-75 percent.

As in contract negotiations, settlement negotiations are subject to cognitive biases. The cognitive biases of plaintiffs, defendants, and their lawyers are easily established and harden quickly, even with test subjects who have little stake in the outcome.[23] As one study noted:

> A study of law students who were randomly assigned to act as either plaintiff or defendant counsel quickly adapted the position of the party they were assigned to advise, given the same set of facts to each side. The law students did not engage in any nuanced analysis of the facts presented to the. Rather, they immediately found a way to justify the position that best suited their fictional client.[24]

The lawyer representing the client in settlement negotiations is also subject to cognitive bias. Lawyers are overconfident in their assessment of cases, and this overconfidence is not warranted.[25] While being overconfident, lawyers are also risk averse like anyone else.[26]

These opposite mindsets cause irrational risk aversion and risk-taking, as well as failure to reach settlement, even when it is the optimal outcome. Studies of actual cases where settlements were attempted but failed, and were subsequently adjudicated show that both plaintiffs and defendants have a high error rate.[27] That is, the settlement which was rejected would have been a better result than the litigated outcome. The plaintiff's error rate was 61 percent, at an average loss of $44,000.[28] The defendant's error rate, while only 24 percent, resulted in an average loss of $1,140,000, showing the risk-taking nature of a party facing a perceived loss.[29] An error rate of 61 percent on an overall settlement rate of 70 percent means that 40 percent of cases that should be settled are not, resulting in a worse outcome. This is almost no better than the 50/50 odds of a coin toss.

The influence of cognitive bias in litigation and settlement negotiations makes it extremely difficult to reach a settlement. Without understanding the impact of cognitive bias, a lawyer cannot make a meaningful assessment of whether to settle or litigate a case.

Conventional Wisdom: "*We Have a Favorable Judge, Arbitrator, or Jury.*"

Lawyers are trained in the case method. In law school and beyond, lawyers are taught that judges decide cases by applying the facts to prior legal precedent.[30] The reality is that judges decide cases based on their own personal views and the influence of cognitive bias. Political ideology and other personal preferences are predictive of Supreme Court case outcomes.[31] The same is true of United States Circuit judges. [32]

Judges are also subject to cognitive biases, which leads to faulty decision making, and decisions which are inconsistent. The cognitive bias of anchoring is reflected in damage amounts.[33] Judges will award higher damage amounts based solely on the amounts mentioned, suggested, or offered by one of the parties in various parts of the proceeding. The amount of damages that anchor the judgment amount can range to those raised at motion to dismiss hearings, in settlement conferences, and in pretrial conferences.[34] In studies conducted to assess anchoring in judges, judges in the control group where damages were not discussed or were discussed generally with no specific damage amount, awarded much lower damages.[35]

Judges also make significant errors by relying on intuition instead of relying on empirical data and basic science. For example, although the likelihood of liability based on the mathematical probabilities of an event being caused by one of the parties is small, a judge will rely on the higher number framed within the problem, ignoring basic math. When a 90 percent probability is mentioned, but other events that occurred reduce the 90 percent probability, the judge ignores the mitigating factor. In one study, the actual probability was slightly more than 8 percent, but 75 percent of the judges found liability because one of the facts mentioned a 90 percent chance of an event occurring and ignored the other facts which reduced this probability to less than 8 percent.[36]

Knowing who a judge is, and the history of her decision-making in specific cases, is just as important as understanding the effect of cognitive biases. Consider that judges who are graduates of Louisiana State University impose harsher sentences on defendants in the week following an unexpected loss by the LSU football team.[37] These sentences also fall disproportionately on minority defendants, regardless of the race of the judge.[38] Another finding is judges will avoid making hard decisions before a meal, and defer those make decisions until after a meal.[39] Additionally, a judge will consider prior judgments in assessing the next judgment–if three consecutive defendants are found guilty, the judge is prone to the Gambler's Fallacy and finds the next defendant innocent.[40] Judges subject to re-election are more likely to rule for plaintiffs.[41]

Surprisingly, given the large number of disputes which are resolved through arbitration, there has been little research on the effect of cognitive bias on arbitrators. The available research shows that arbitrators are no better than judges at resisting cognitive bias in decision making.[42] One simple test of the influence of cognitive bias is the Cognitive Reflection Test ("CRT"). It asks three simple questions, each with an intuitive incorrect answer:

1. A bat and a ball cost $1.10 in total. The bat costs $1.00 more than the ball. How much does the ball cost?

2. If it takes five machines five minutes to make five widgets, how long would it take 100 machines to make 100 widgets?

3. In a lake, there is a patch of lily pads. Every day, the patch doubles in size. If it takes forty-eight days for the patch to cover the entire lake, how long would it take for the patch to cover half of the lake?

The intuitive answers are: ten cents, one hundred minutes, and twenty-four days. These answers are wrong.[43]

Arbitrators taking the CRT score similarly to judges, with a mean score of 1.47 correct answers–no better than half.[44] And the decision making of arbitrators reflects this. Arbitrators are subject to framing, anchoring, and other cognitive biases.[45]

Juries are no better than arbitrators and judges. Asking for a higher damage award, even where not justified, increases a jury's award.[46] Statutory damage caps intended to limit damages, particularly punitive damages, have the effect of increasing damage awards. The higher the cap, the higher the punitive damage award.[47]

These examples and others cognitive biases mean that taking a case to trial is a risky proposition, regardless of the forum and the decision maker.

In conclusion, cognitive biases are deeply imbedded in human nature. Convincing a client of the influence of cognitive bias and the need to re-examine her decision-making is extremely difficult. Even when people are advised of the true facts, their behavior is unchanged.

This occurs because people are overconfident. Consider three simple examples. When presented with evidence that people are generally poor drivers and have a high rate of accidents, respondents will insist they are different–they are superior drivers.[48] When couples are separately asked what percentage of the household duties they perform, the total percentage is well over a 100 percent–each partner has an overinflated view of his contributions.[49] And, finally, when advised that 50 percent of all marriages end in divorce, almost all respondents who are asked about the likelihood of their marriage ending in divorce insist they are sure they will not get divorced.[50]

Overcoming cognitive bias would require it to be rectified in numerous actors–the clients, the lawyers, and in the instances where a client is a corporate entity, the employees advocating for the corporation. This is a tall order and unlikely to be achieved. Moreover, there is no consensus on successful ways to combat cognitive bias. The most prominent techniques are considering the opposite, group decision-making, and allowing time and reflection before making decisions under risk. Some studies suggest that these overcome the biases, while others find the techniques ineffective.[51]

One way to combat these biases is to seek out and rely upon empirical data when making decisions under risk. The availability of new technologies provides this data and the means to analyze it in way that the human brain cannot. Next month's article will focus on

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these technologies and the promise they hold for better legal decision making under risk. ■

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2. This is the Rule of Small Numbers (which is a fallacy, not a rule, and should not be followed), which states that a small sampling of events does not accurately predict the outcome of future similar events. Amos Tversky & Daniel Kahneman, *Belief In The Law Of Small Numbers,* Psychological Bulletin Vol 76, (February 1971), at 105-10.
3. The Prospect Theory was described more fully in the first article and is described briefly herein.
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6. *Id.*
7. Anchoring is the reason cars are advertised at $29,995 rather than $30,000. The car buyer anchors on the first number of the series, the "2", and thinks of the price is in the lower $20,000 range, and not in the $30,000 range. Marco Bertini & Luc Wathieu, *The Framing Effect of Price Format*, Working Paper 06-055 (May 16, 2006).
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9. Dan Orr & Chris Guthrie, *Anchoring, Information, Expertise and Negotiation; New Insights From Meta-Analysis*, 21 Ohio St. J. on Disp. Resol., 597, 609 (2006); Fritz Strack & Thomas Mussweiler, *Heuristic Strategies for Estimation Under Uncertainty: The Enigmatic Case of Anchoring*, Foundations of Social Cognition 79 ("[T]he number that starts the generation of a judgment exerts a stronger impact than do subsequent pieces of numeric information.").
10. Scott Plous, *The Psychology of Judgment of Judgment and Decision Making* at 151 (1993). ("People adjust insufficiently from anchor values, regardless of whether the judgment concerns the chances of nuclear ware, the value of a house, or any number of other topics"); Dan Orr & Chris Guthrie, *Anchoring, Information and Expertise and Negotiation, New Insights From a Meta-Analysis*, 21 Ohio St. J. on Disp. Resol. 597, 625 (2006) (Negotiators can benefit from anchoring by proposing more self-serving positions that cannot be reasonably justified, particularly with less experienced negotiators and where offeree has little information to evaluate value of offer.).
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Verdicts in a System Geared To Settlement, 44 UCLA L. Rev. 51 (1996); Jeffrey Rachlinski, *Gains, Losses and the Psychology of Litigation*, 70 S. Cal. L. Rev. 113 (1996). These studies are particularly revealing as the actual results were compared to the proposed settlements by collecting actual case outcomes and interviewing the attorneys involved in the litigation. Studies based on statistical probabilities show nothing about cause and effect. Probability does not address whether inclement weather causes the barometer to fall or the fall in the barometer causes inclement weather. Probability is merely the likelihood that the result, based on an event (*e.g.*, a lawyer's decision) will fall close to the expected outcome, and will not deviate significantly from the expected outcome. An excellent and accessible explanation of probability is *Against All Odds, The Remarkable Story of Risk,* Peter L. Bernstein (1996).

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Oren Tasini is a Partner with Killgore Pearlman. He was one of the Founding Members of the National Association of Dealer Counsel.

Program Manager's Message

Jennifer Polo-Sherk
NADC Program Manager

Updated Member Contact Information

Please make sure to notify NADC Staff (info@dealercounsel.com) if your contact information has changed so that your records can be updated accordingly. We list updated contact information in *The Defender* so all members can be aware of the change.

The NADC Fall Conference, held October 27-29 in Chicago, was a great success! Attendees of the Fall Conference enjoyed a change in agenda format. Our "two-track" format consisted of two additional sessions on Monday afternoon to allow members to choose the sessions that were most relevant and important to them. As a result, Monday's schedule offered a total of ten timely and educational sessions as well as one in-house counsel breakout session. Additionally, this was the fourth year the NADC conference piggybacked the ATAE Conference to accommodate folks attending both meetings; it continues to be of great value to our members involved with both organizations. There were an outstanding 238 members in attendance!

All NADC members can benefit from the conference materials that have been uploaded to our website at www.dealercounsel.com. Please look under the "Discussions and Publications" section of the website under "Documents and Discussions" and please search "Conference Presentations". If you have questions, please contact Jennifer Polo-Sherk at jpolo-sherk@dealercounsel.com.

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The support from our long-standing and new sponsors ensures that we can elevate the quality of the conference while keeping the cost low for members.

I would also like to thank the Program Planning Committee for putting together an excellent line up of sessions. Thank you to:

- Eric Baker, Boardman & Clark LLP
- Johnnie E. Brown, Pullin, Fowler, Flanagan, Brown & Poe PLLC
- Rob Cohen, Arent Fox, LLP
- Donald W. Gould, II, Johnson DeLuca Kurisky & Gould, P.C.
- Kevin Hochman, Keyes Motors, Inc.
- Alisa Reinhardt, California New Car Dealers Association
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- Scott Silverman, Prime Automotive Group
- Kyle Sipples, Autosaver Group
- Ronald Smith, Stoll Keenon Ogden PLLC
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We hope to see you at the 2020 NADC 16th Annual Member Conference, which will be held April 26-28, 2020 at The Ritz-Carlton, Amelia Island, Florida. Please join us for our highly regarded spring program designed to provide you with updates, best practices, lessons learned and other useful information. If you are interested in submitting a session proposal for the conference, please send the following information to Erin Murphy at: emurphy@dealercounsel.com:

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2020 NADC Attorney Directory

NADC
National Association of Dealer Counsel

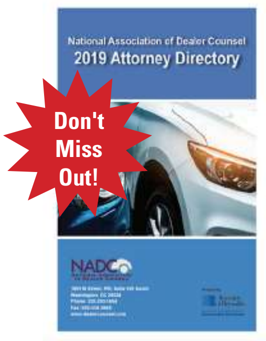
Time to Review and Update!

All members receive one basic listing in their firm's state unless otherwise indicated.

All Materials and Profile Updates Due:

Wednesday, December 4, 2019

The **2020 NADC Attorney Directory** will be handed out at the NADC booth during the 2020 NADA Show Expo in Las Vegas, NV, February 15-17, and mailed to all NADC members after the event. **Visit us at Booth #3545C near the NADA Pavilion!**



HERE'S HOW IT WORKS:

☐ **1 Login & Update Profile.** Your contact and practice area information is listed in the directory as it appears on the NADC website.

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☐ **3 Purchase Upgrades and Ads.** The NADC Attorney Directory lists all members alphabetically by their firm's state. To purchase an upgrade or ad visit: http://tiny.cc/2019NADCAD or fill out and mail in the submission form on the next page .

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Charapp, Michael, *Charapp & Weiss, LLP,* 8300 Greensboro Drive, Suite 200, McLean, VA 22102, Voice: 877-7-CARLAW, FAX: 703-564-0221, mike.charapp@cwattorneys.com, www.cwattorneys.com. Practice Areas: Advertising, after market issues, buy/sell agreements, employment issues, finance and regulatory complexities, franchise issues, government regulation, insurance laws, manufacturer franchise issues, rights of first refusal.

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Charapp, Michael, *Charapp & Weiss, LLP,* 8300 Greensboro Drive, Suite 200, McLean, VA 22102, Voice: 877-7-CARLAW or 703-564-0220, FAX: 703-564-0221, mike.charapp@cwattorneys.com, www.cwattorneys.com. Practice Areas: Advertising, after market issues, buy/sell agreements, employment issues, employment law, financing documentation, finance and regulatory complexities, franchise issues, government regulation, insurance laws, manufacturer franchise issues, rights of first refusal. Michael G. Charapp is a graduate of the University of Pittsburgh (B.A. 1971) and of the Georgetown University Law Center (J.D. Degree 1974). After ten years with a Washington, DC law firm, Mr. Charapp spent twelve years as Executive Vice President and General Counsel at a large dealer group before forming his law firm in 1996.

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Charapp, Michael, *Charapp & Weiss, LLP,* 8300 Greensboro Drive, Suite 200, McLean, VA 22102, Voice: 877-7-CARLAW or 703-564-0220, FAX: 703-564-0221, mike.charapp@cwattorneys.com, www.cwattorneys.com. Practice Areas: Advertising, after market issues, buy/sell agreements, employment issues, employment law, financing documentation, finance and regulatory complexities, franchise issues, government regulation, insurance laws, manufacturer franchise issues, rights of first refusal. Michael G. Charapp is a graduate of the University of Pittsburgh (B.A. 1971) and of the Georgetown University Law Center (J.D. Degree 1974). After ten years with a Washington, DC law firm, Mr. Charapp spent twelve years as Executive Vice President and General Counsel at a large dealer group before forming his law firm in 1996. Today, he specializes in representing automobile dealers and automobile dealer trade associations. Mike is a founding director of the NADC and served as its president from 2007 to 2009.

*Please do not go over the approximate word count.

2020 NADC Attorney Directory

SUBMISSION FORM

NADC NATIONAL ASSOCIATION OF DEALER COUNSEL

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All Materials and Profile Updates Due:

Friday, December 4, 2019

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Are You Ready for the Silver Tsunami?

By Brady Schmidt
National Business Brokers

A monster wave can crush you or give you the ride of your life. Surfers will tell you that the difference often comes down to timing.

There is a monster wave coming for the auto industry, and the media is calling it the "Silver Tsunami." It is a wave of Baby Boomers hitting retirement age at a rate of 10,000 a day. Baby Boomers own almost half of all privately-held businesses in America, so that retirement wave will trigger the biggest sell-off of family-owned businesses this country has ever seen.

A dealership owner can effectively give a dealership a facelift with factory imaging, but there is no way to turn back the clock on an owner's age. The average car dealership owner in America is seventy-two years old–the front edge of the Baby Boomer generation–which means we are rising on an inevitable wave of dealership sales.

With proper planning, you can help your clients to be ready to ride the front edge of that wave. If they wait too long, they risk being caught in a flood of sellers. We have been helping dealers buy and sell stores for decades. Based on that experience, these are our top three tips for dealers who want the highest possible value for the store when it comes time to sell.

Top 3 Tips to Get the Highest Value from a Dealership:

1. Clean up the books.

This will benefit the business now, *and* when it is time to sell. When you can see everything clearly, you know where to focus your efforts. You can easily outsource this project to a professional bookkeeper as a one-off project, then get the team on board to maintain the system. This gives owners a clear look at revenue, expenses, inventory–everything they need to raise their game and increase their profits.

Nothing gives a buyer more confidence in a potential purchase than seeing clean and clear books. Your client's store can stand out in a crowded buyer's market by doing this one thing.

2. Invest in the team.

Building a strong team is another way to increase profits now and later. When owners give their key people professional training (through conferences or certification courses, for instance), the employees know they are valued for their contribution to the business. They put forth more effort and feel more ownership over the store's success.

As more and more big groups shop for stores to add to their portfolios, they need strong teams in place to continue the success of the store after the current owner leaves. (They are also more likely to keep the current team in place if the owner can show he has invested in their development over time. Protecting employee jobs is often a sticking point in buy/sell negotiations.)

3. Create an exit plan.

Many people would think that with so many dealerships being family-owned, these businesses will just pass down to the next generation. You, no doubt, know better because of the work you do with these clients on a regular basis. The rate of family-owned businesses that made it to the second generation dropped by half–from thirty percent to fifteen percent–in the twenty years from 1984-2004. The number continues to drop, leaving many dealership owners without an exit plan.

In fact, according to Price Waterhouse Cooper's 2019 US Family Business Survey, only twenty-three percent of family businesses have a formal succession plan in place. This trend is consistent with what we have seen serving family-businesses for the past forty years at National Business Brokers.

Does your client think his children might want the store? If that is his exit plan, do not let him assume–*be sure he asks the children.* If the owner finds out the children are not interested or, in your honest assessment, the children are not capable of running the store, you will still have time to make a new plan. If the children are interested, you can help your client make a transition plan that includes the training and experience the children will need for a successful handover.

If family succession is not part of your client's plan, help her think through her priorities for the future. Does she need a certain dollar amount from a sale in order to reach her retirement goals? Would she rather transition out slowly and keep part ownership as an advisor to the new owner for a few years, or just sell outright and retire?

Timing Is Everything

There are plenty of eager buyers for auto dealerships–we have a database of hundreds of qualified buyers, ready to jump on the right opportunity. A glut in the market, however, always means the same thing for sellers: higher competition and lower prices. It is a simple question of supply and demand. When the number of sellers is low, they can ride the wave while the buyers compete for the available stores. This situation is when sellers get the highest value for their stores. When the number of sellers is high, the wave crashes and they flood the market. Buyers have lots of stores to choose from. Often the most desperate owner "wins" the deal, because they are willing to sacrifice significant value to snag a buyer.

As an attorney representing a dealership owner, it is not hard to see where you want to be on that wave. That means it is time to start paddling out into the ocean now, even if you think your client is several years away from surfing the retirement wave.

Catch the Wave

It is not uncommon for an owner to avoid thinking about retiring and selling the dealership she built. It is understandable. It can feel like an overwhelming number of questions to answer and decisions to make. It can be frightening not knowing what will happen.

As a trusted legal advisor to dealers, you are in a unique position to help guide your clients toward their best interest. They might not want to talk about retirement, but maybe they would be open to a hypothetical conversation about "surfing lessons." When the "Silver Tsunami" hits, they will be grateful they listened to you. ■

Brady Schmidt is the President and CEO of National Business Brokers, the largest new car dealership brokerage in the country. Schmidt has personally handled more than 400 sales, mergers and acquisitions of new franchised dealerships in his 25+ years in the industry. NBB has transacted more than $10B in value for dealership sales and more than 750 deals.

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Jami Farris, Editor
jamifarris@parkerpoe.com

Michael Charapp, Assistant Editor
mike.charapp@cwattorneys.com

Defender, The NADC Newsletter is published by the National Association of Dealer Counsel
1800 M Street, NW, Suite 400 South, Washington, DC 20036
Phone: 202-293-1454 • Fax: 202-530-0659 • www.dealercounsel.com

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