

March/April 2019



THE SOURCE

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Chief Editor Phyllis Sartin

The Tennessee Dealer News has been a vehicle for the delivery of valuable information to the auto dealers of this great state for many years. We have been receiving an awesome response from the dealers in regards to the informative content.

I want to personally thank the auctions, advertisers, our authors and the dealers for their support. I would also like to give a big shout-out to the great team here at Tennessee Dealer News.

Please visit our website for more information and special announcements and as always, please feel free to contact me with any feedback. - Phyllis

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You can Post, but you can't Hide!

We teach the concept of the Business Development Dealership as a method of helping our Dealership Clients achieve broad scale business growth leveraging the relationships of every employee. An office manager at our dealership when I was managing the store shared an insight with me that I carry with me every day ...she said she told her team members that included the team that handled the reception role, vehicle titling, payroll, payables and receivable that "if you are not selling a vehicle, be sure to help someone who is." This epiphany moment for me brought to light that every employee is responsible for selling vehicles in a dealership.

Following this logic, we teach the concept of Social Selling as a subset of the Business Development Dealership (BDD) strategy. Social Selling is a simple way of explaining the complex leveraging of each team members Circles of Influence to help build relationships and become a magnet for friends, neighbors, and acquaintances to ask you about buying a vehicle when they are ready. Think of how often you've seen your technicians wearing their work uniform during lunch at a restaurant and someone approaches them to talk about the noise or other ailments their vehicle is having. This is a natural element of the work they do and most are very willing to share their expertise. This attracts people to want to visit them when they opt to pay for the repair.

The same thing happens on the sales staff when they wear logo shirts outside of the dealership. In fact, if you are a progressive salesperson that is open to strangers approaching and asking about vehicle purchases, it makes sense to be engaging in a kind manner that draws them to want to

buy from you when they are ready. Dealerships that invest in logo wear are smart because it will provide a living billboard and attracts buyers.

Once we understand that the best salespeople are "always on" it is important to consider what this means in a Social Selling environment. [Social Selling works hand in hand with online social communities such as Facebook, Instagram, LinkedIn, Twitter and YouTube.](#) When you engage as a representative of your business, you are either an attractor or you repel. If you choose to govern your personal posts and remain neutral to politics, religion, etc. you run less risk of alienating an audience. However, if you choose to post what anyone could consider as risky content, you run the risk of scaring off possible buyers. Some would argue that you have to be true to yourself and I am comfortable with that position as long as you understand that some viewing your content will exercise the same right.

In my humble opinion, it is smart if you sell products and services to people of all walks of life with a myriad of views on any topic, it is best to be neutral. Think cute animal posts or posts on vehicles or helping humanity. Best to stay away from the emotionally heated topics that could cause alarm when people see it.

That leads me to my guidance with this article...[You can Post, but you can't Hide!](#) I was communicating with a young salesperson recently that had posted a selfie with him going to work saying "Time to make some \$\$\$\$." Now, his family may say, that's good, he needs to earn a good living but that same family may

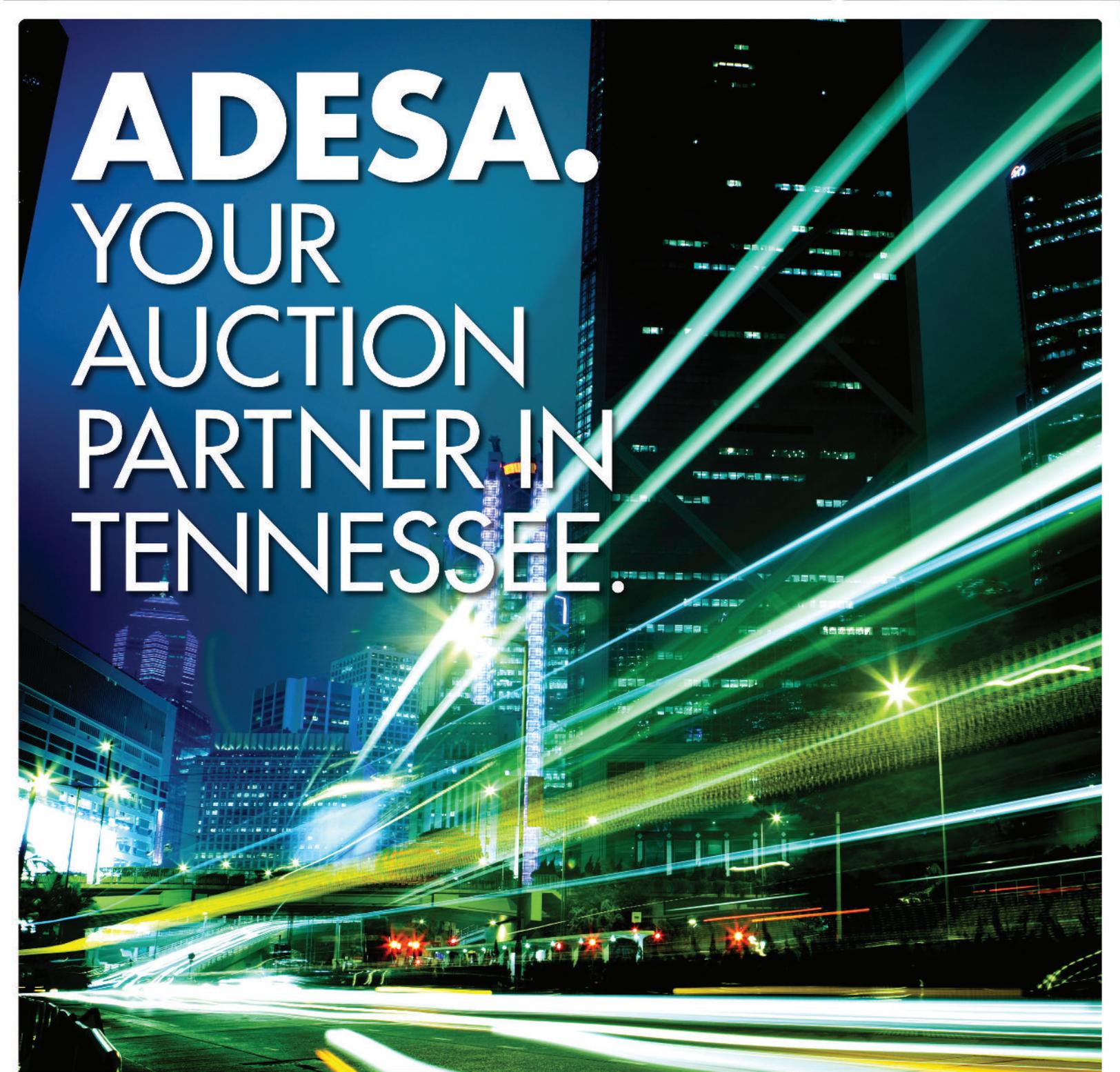
also say, I better buy from someone who doesn't need to earn so much money or someone who can give me a better deal. In counseling with him, I suggested perhaps a culture shift to "Time to help my customers vehicle dreams come true!" This small shift in words is a mega-shift in how it will be perceived. He said he appreciated that and since it was on his business page it would work well. He said he also had a "private" personal page where he posted things he wouldn't want clients to see. My suggestion was to remove any goofy stuff that could be screenshot and shared because nothing truly is private online. You can do whatever you wish to do but remember that screenshot you took and shared with others about....(fill in the blank). Keep it light, neutral, meaningful, humorous, beneficial, etc. but please stay away from posts that could scare potential buyers away.

In Social Selling as a part of your own Business Development strategy, remember the golden rule of being attractive. Give it a go and please share with me how you make it happen for you and your business.

Thanks for reading and if I can ever be of service as a thought partner, please reach out.



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Stop Making it So Difficult

Sometimes I get the feeling businesses make it as difficult as possible to conduct business with them. Often times I feel as though I'm a poodle performing in a circus act, jumping through one hoop after another. I can't tell you how many times I've tried to reach a real person on a phone call only to be asked by a recording to provide my first and last name then press #. I get that far and then I'm asked to enter my personal I.D. number and then press # when I'm finished. Just when I think I'm at the finish line there's one more hoop to jump through. I'm asked to "please provide your birthday, first the month, then the day and the four digit year." Got it. Then I'm connected to a real live person. Guess what the first thing is they ask for? May I have your personal I.D., please. I gave that information already. Where did it go? You get the idea.

Have you reviewed your sales process lately? How many hoops do your potential buyers have to jump through? Most dealers don't intentionally go out of their way to make things difficult for potential buyers but all too many do make it difficult or frustrating. If a dealer has not personally attempted to conduct business with themselves through their own website how will they ever know the obstacles potential buyers face. All too often dealers put blind trust in their web provider's and designer's abilities to design a website that is actually consumer friendly and effective. Dealers need to go through the entire online process for their dealership to determine what works and what doesn't.

Dealer's need to experience what really happens when a consumer clicks on a tab to get a "Free

Appraised Value". All too often the consumer merely gets an automated response to call the dealership to discuss their trade and to set an appointment. Even less effective is the fact appraised values have up to a \$3,500 range. This wide range is of little value to any potential buyer as many are quite aware of the strategy being employed by the dealership. How much more effective would it be if the dealership asked the consumer to send in a video of their trade (not photos) in order to get a more accurate appraisal. Video would permit the appraiser to hear the sound and entertainment systems, see windows go up and down, hear the engine and so on. I would venture to say, any potential buyer willing to send a video is a very serious buyer. In other words, get buyers engaged in the entire process and establish trust.

It's no longer acceptable to have 2019 technology only to treat the selling process as though it were still 1970. It's time for dealers to be truly honest with themselves and ask this, "is there any step in my selling process that I myself would be either confused or aggravated by? What can I do to make it as easy as possible for consumers to not only find me but to do business with me?" Don't make it difficult for car buyers to do business with you.



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Capital Solutions for Today's Dealership Challenges

Automotive Dealers are confronted with many opportunities for business growth but also many challenges. Intense competition, expensive inventory, capital constraints, and ever-rising business costs are just some of the challenges dealerships currently face. By leveraging your portfolio of receivables, you can raise capital and compete in an evolving marketplace. Whether you want to restock your inventory, expand your operations, make upgrades to your dealership, or strengthen your financial foundation, a Line of Credit or Bulk Purchase Program can be a smart approach to overcoming your dealership's challenges.

It can be difficult to acquire the cars needed to maintain profitability, especially if you don't have enough capital. A Line of Credit is a way to quickly improve your cash on hand. This added capital that can be used to purchase additional inventory, refinance constraining debt or improve operations. This program ensures your cash is never tied up in inventory, gets you out of the cost of car immediately, and allows you to keep your customers.

Bulk Purchase Programs are designed to instantly inject capital into your dealership while reducing your level of financial risk. When you sell a portion of your receivables, you free up cash to pay down debt, build inventory or have capital for growth.

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For more information, visit their website at Spartan-Partners.com.

DEALER MATH: TRAINING = SUCCESS

In my introductory article, I set out several issues to consider when doing a compliance “self-assessment”. Now, I’ll dig a bit deeper into one of the most important steps a dealership can take on its compliance journey: Making a Commitment to Training.

In my humble opinion, the best run dealerships make a commitment to invest in training their personnel. From the top down, leadership communicates the importance of a robust training program and set the expectations for every department or business function. This delivers the message that complacency and the status quo aren’t acceptable and that the plan is for people to learn more and grow. A strong program will stress training in all areas, not just for the strongest departments because that ensures that the “problem areas” will be addressed and soon be brought up to speed.

It’s important to critically examine whether the in-house “subject matter experts” have the skills and ability to communicate their knowledge to others, and to bring in outside experts, when needed, to provide personnel with the best information available. Finally, the dealership should commit to a training schedule. It doesn’t have to be set in stone because we all know that things will come up, but over the course of a year, the dealership should have a plan in place for training everyone.

Some of the training, such as information security or a Red Flags Policy, can be delivered to the entire company, while other topics such as collections or Fair Credit Reporting, would be targeted towards personnel performing those functions. The goal, though, is to be able to look back at the end of the year and be able to demonstrate that each area of the business received training, learned new things,

and improved. Keep records of all training, even informal coaching sessions, and add documentation to personnel files to be able to demonstrate that training was provided. Don’t put off a training program any longer, jumpstart your business by investing in your team!

Ignite Consulting Partners is hosting COMPLIANCE UNLEASHED, a 1.5-day compliance event for independent car dealers and finance companies in DFW on May 13-14. At it, we’ll provide training on how to be a successful compliance leader and look at how to reduce the biggest risks dealers face. Contact sales@IgniteCP to learn more and register.

Ignite Consulting Partner offers compliance, technology, operational guidance to car dealers and finance companies. Please contact sales@IgniteCP.com to learn more. You can follow Steve on Twitter @LawyerLevine for compliance and industry related content.



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Is Your Website ADA Accessible?

Many of you probably watched the Patriots take on the Rams in Super Bowl LIII. Maybe you watched for the football. Or maybe you were really watching for the commercials. Though there were plenty of funny ones in the bunch, you can always count on the Super Bowl for some heartwarming ads too. One of the best this year was from Microsoft and touted the Xbox Adaptive Controller, which is made for those with limited mobility. As Microsoft artfully put it—“when everyone plays, we all win.”

Commercials like that one are welcome reminders of something we should already know—providing accessibility is vital, it’s important to consumers, and the companies that make accessibility a priority win consumers’ hearts—and their business.

Over the years, you’ve likely addressed accessibility issues under the Americans with Disabilities Act related to your brick and mortar locations. But did you know that the ADA also requires that disabled users be provided with equal access to the products, services, and information offered through your website and mobile applications?

Though accessibility is required, there are no statutes or regulations telling businesses how to make their websites accessible. Instead, businesses have “flexibility” in determining how to ensure accessibility. This “flexibility” has created uncertainty, which has led to a surge in the number of cases filed in court in which disabled plaintiffs allege that they were not able to access businesses’ websites.

So, what should dealers do? Courts and regulators have typically required businesses to measure and improve the accessibility of their websites by following the Web

Content Accessibility Guidelines 2.0, which are designed to make web content more accessible to people with various disabilities, including visual, auditory, physical, speech, cognitive, language, learning, and neurological disabilities. As a result, these guidelines appear to provide the best means of fixing existing accessibility barriers, and ensuring that future web content does not contain such barriers.

The path to accessibility begins with giving your website a check-up using a third party tool or auditor to review your website and mobile applications. Next, you should develop a plan to implement any recommended updates or improvements. You should also develop web content accessibility policies and procedures that provide for employee training, in addition to regular audits and corrective measures to ensure on-going accessibility, as technology changes and new content is added or deleted.

The Internet has become an indispensable source of information, goods, and services for most individuals these days. So make sure consumers know you’re committed to accessibility—not just at your dealership, but also on your website. Failure to do so opens the door to private plaintiffs and federal regulators, that may pursue claims against your company for compliance, including in some situations claims for damages and reimbursement of attorney fees.



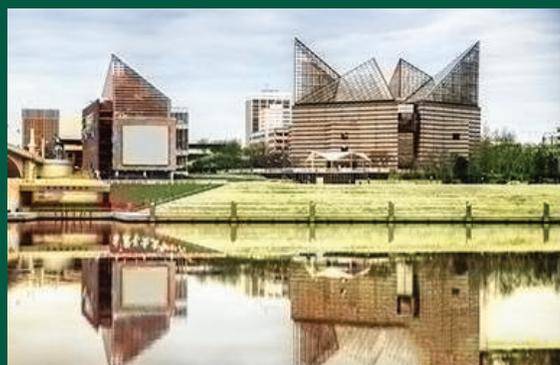
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WHAT ACCESS PROBLEMS?

I'll confess that I hadn't given a whole lot of thought to the Americans with Disabilities Act since its enactment nearly 30 years ago. Recently, my son's Golden Retriever clipped my wife's legs out from under her, resulting in a broken ankle and several weeks in a wheelchair for her and behind a wheelchair for me. I quickly learned to appreciate the ramps and curb cuts that nearly all businesses have installed for wheelchair accessibility. Our favorite restaurant, housed in a building that predates Noah and the flood, hasn't gotten the word, but compliance with the physical accessibility requirements of the law seems to be widespread.

When the ADA was enacted in 1990, I expected a flurry of litigation against businesses that were slow to meet the law's requirements. We tried to gin up interest in the new law by scheduling presentations at conferences, writing articles, and generally getting the word out to our dealership and finance company clients.

But nothing happened. Or nearly nothing.

For the first 20 years that the law was in effect, I fielded exactly two calls from clients saying that they had ADA complaints. One was from a finance company client that had declined the credit application of a buyer who wanted to buy a car. The decline was based on the company's policy requiring all credit applicants to have a driver's license in order to be approved for credit. The buyer, however, was blind and, therefore, did not have a driver's license.

Miffed that her credit request had been declined, the buyer complained to the Missouri attorney

general. The AG called the finance company, suggesting that the company's policy violated the ADA. The credit manager called me and asked what the company should do.

I suggested that the company approve this particular applicant's credit request and change its requirement for a driver's license to a requirement for a photo ID. That seemed to satisfy all concerned, and I heard no more of the blind buyer.

Then a year or so later, I got a call from a client in the car leasing business. The company had leased a 5-Series BMW to a lawyer (why is it always a lawyer?), and the lawyer had lodged an ADA claim, saying that the high lease payments were causing him mental distress and that the leasing company was required to make a "reasonable accommodation," as required by the ADA, to address his situation. Specifically, he wanted the leasing company to lower his monthly lease payment. I suggested that the leasing company offer a different "reasonable accommodation," substituting a Ford Fiesta for that 5-Series (sometimes I really amuse myself). The lawyer lessee wasn't thrilled with that solution, but the case went away.

So, my fears that plaintiffs' lawyers would quickly weaponize the ADA turned out to be unfounded - until recently, that is.

Over the last couple of years, we've picked up reports of new ADA activity. This new batch of complaints appears to center around two areas - website accessibility and modifications to vehicles to permit hand controls.

(Continued on page 20)

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And, best of all, do you just happen to have a few million bucks burning a hole in your pocket? If so, have I got a deal for you! Just start a telemarketing campaign or, better yet, hire a third party to start a telemarketing campaign for you, and start calling and texting consumers' cell phones without doing your legal homework. That's just what happened to one Florida Ford dealership that recently settled, for millions of dollars, a federal class action suit for allegedly violating the federal Telephone Consumer Protection Act.

Here's what happened.

In May 2018, Vincent Papa filed a class action lawsuit in the U.S. District Court for the Southern District of Florida, accusing Grieco Ford Fort Lauderdale, LLC, of engaging in "unsolicited marketing directly to consumers' cellular telephones, harming thousands of consumers in the process."

Papa argued that the dealership called and texted him concerning an offer to purchase his vehicle, all without getting his prior express consent to do so. He alleged that the illegal conduct "resulted in the invasion of privacy, harassment, aggravation and disruption of the daily life of thousands of individuals." On behalf of two different class action classes, he sought up to \$1,500 in statutory damages for each call made in violation of the TCPA.

Grieco Ford's telemarketing campaign was reportedly designed by a third-party marketing firm with offices in another state. Guess who wasn't named in Papa's suit? You guessed it - the marketing firm. The dealership was left to defend itself and the actions of the marketing firm against the claims in the lawsuit.

The TCPA regulations distinguish between sales calls and non-sales calls to cell phones that are placed using an autodialer or a prerecorded message. The rule requires "prior express consent" for non-sales calls and requires "prior express written consent" for sales calls. The "prior express written consent" standard applies when a person initiates, or causes to be initiated, any telephone call to a cell phone that includes or introduces an advertisement or constitutes telemarketing (i.e., sales calls) using an autodialer or an artificial or prerecorded voice (i.e., prerecorded message). The Federal Communications Commission regulates text messages as telephone calls. As a result, the consent standards described above apply equally to text messages that are sent using equipment that satisfies the TCPA's "autodialer" standard.

One of the most significant features of the TCPA is the creation of a private right of action that comes with statutory damages, even if the consumer did not sustain any economic harm as a

result of an improper or "illegal" call or text. Courts **must** award \$500 per violation under certain provisions and **may** award up to \$500 per violation under other provisions. Courts also may triple the statutory damages award to \$1,500 per violation for willful or knowing conduct. As you might expect, plaintiffs' attorneys love to bring TCPA cases due to the possibility of class action status and nine-figure statutory damages awards.

Grieco Ford agreed to settle the federal class action suit five months after the suit was filed. The plaintiffs' tally for only five months' worth of work? The dealership agreed to pay \$4,781,160, with the recipients of the unwanted calls and text messages getting up to \$180 each. If you're a plaintiffs' attorney, not a bad day at the office.

So, what lessons can you learn from this poor dealership that will be paying recipients of the unwanted calls and texts almost \$4.8 million? The most important lesson is that it is ultimately the dealership's responsibility to ensure that it has the prior express written consent to call or text a consumer for marketing purposes. Don't rely on a third party to ensure that you have that consent. The best course of action a dealership can take is to engage a lawyer who is knowledgeable about TCPA requirements to review the marketing program on the dealership's behalf.

If you don't heed my warning and hire an attorney knowledgeable about TCPA compliance to review your program, at the very least, make sure you press for an indemnity from the third party and confirm that the company has the proper insurance coverage in case things go wrong. An indemnity won't buy you a cup of coffee if the vendor isn't on a firm financial footing, so check its financial wherewithal to pay.

Finally, if you buy marketing lists, make sure the vendor has assured you that it obtained the proper consents for the calls and/or texts, and get proof of that fact for your files. You've worked hard on your reputation and business; don't make yourself an easy target for plaintiffs' attorneys.



Eric L. Johnson
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Papa v. Grieco Ford Fort Lauderdale, LLC, 2018 U.S. Dist. LEXIS 209834 (S.D. Fla. December 11, 2018).

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BDC Operations

Dealer eTraining only focuses on providing expertise from real world experience. If we never worked it we do not pretend to know it.

Training Method

Dealer eTraining will not stop working for you. Our dealer support system was created to ensure that our clients are always performing at the top of their game. The dealer support system is also a tool we provide our dealers with more automotive internet training, coaching and consulting on a monthly basis. The reason why this part of our program is important is because our clients only get successful if we are hold them accountable.

Consider Dealer eTraining your second manager in command that will assist with goal setting, training and details that are commonly missed at dealerships..

WHAT ACCESS PROBLEMS?

(Continued from page 16)

In the first area, plaintiffs' lawyers argue that people with vision problems are unable to access a dealership's website - not surprising, given that few dealers have attempted to accommodate these users. In the second area, the lawyers claim that dealerships do not have the sorts of hand controls necessary to permit their disabled clients to take vehicles for test drives - also not surprising, since few dealerships have such equipment on hand.

In both instances, the plaintiffs assert that they represent a class of "similarly situated" persons, and their lawyers drop a demand letter on the dealership, threatening a class action lawsuit unless - guess what? - the dealership forks over some long green.

If your dealership has gotten wind of these developments and has moved to address them, good for you. If not, you probably want to sit down with your lawyer, and maybe with your insurance company, too, and discuss what you need to do to avoid these attacks.



*Thomas B. Hudson
Of Counsel*

*Tom is the CEO of CounselorLibrary.com and Of Counsel in the law firm of Hudson Cook, LLP. Tom has written several books and is the publisher of **Spot Delivery**®, a monthly legal newsletter for auto dealers. He is Editor in Chief of **CARLAW**®, a monthly report of legal developments for the auto finance and leasing industry. Tom can be reached at 410-865-5411, or by email at thudson@hudco.com.

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THE AMERICAN CAR DEALER IS THE FUTURE REALLY THAT BAD?

We have all heard the rumble that trouble is coming, a recession is around the corner, Car dealers are beginning 2019 with a heavier inventory of unsold vehicles on their lots, some analysts say this will cause factory's to slow production, People are buying cars from vending machines and are having them delivered to their house, Interest rates are on the rise and incentives will be cut, sales will suffer, In the next 9-10 years 40% of all new cars will be sold to Millennials, history tells us the consumer visits 5-6 Dealerships before making a purchase now they say it is one, they constantly shop online, all of these statistics and more face the Dealer moving forward. Experts say this will cause the US. auto sales to cool this year.

OK, if all of this is true are you still opening the doors tomorrow? Of course you are, and you will have a plan just as you did when you opened. NADA has forecast 16.8 million new cars and light trucks will be sold in 2019 so with that in mind you need to make up on average a 1.1% difference from the last 4 years, plus your growth target; yes, I said GROWTH. People are buying SUVs simply because they are practical and with the implementation of 8 and 9-speed transmissions gas mileage is fantastic. With the current trends, it is actually easy to grow, you even have a new tax law that will put money in the pockets of customers, so take advantage of the Tax season with a well-executed plan each month. Rebates on new electric cars are being greatly reduced, so where do you grow? Used Cars.

Let's take a look at our Used Car Lot in 2019- 2020: You know that Ford is cutting production of sedans with the Mustang and the Focus Active being the exceptions GM, Toyota, and others will be following with cuts on models with disappointing sales. There are customers that will seek these vehicles. So along with your usual best sellers include off lease "like

new" models of these cars on your Used lot. Create new awards programs for the best top 3 CSI scores from your sales team. People are researching online then going to one store? Then that store will be yours. Keep your dealership at the top of the Search on the internet; promote your store as the store to find those hard to get models and line them up on half of your road frontage at the store. Train and Train again on creating the WOW experience for every customer and make yours the one store they come to. Is the future bad for you the Dealer? No, it's just different; be smarter than the other guy; the weak will perish in the face of challenge, but the strong shall prosper.

"You can't always get what you want. But if you try sometimes, you just might find you get what you need." ~ Rolling Stones

"If you don't hunt it down and kill it, it will hunt you down and kill you." ~ Flannery O'Connor

"You don't drown by falling in the water; you drown by staying there." ~ Edwin Louis Cole



Barry Gilreath
CEO

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Auctioneer Spotlight



Phillip was born and raised in Clarksville, TN. After high school, he went to Murfreesboro, TN and Middle TN State University for a degree in Agribusiness and Economics. The day after graduation from college he began classes at Nashville Auction School and North TN School of Real Estate.

Since that time, Phillip has been devoted full time to the Auction and Real Estate Industries. He is presently the Owner & Broker for Phillip Traylor Auctions & Land and the Managing Auctioneer for Berkshire Hathaway Auction Team in Clarksville. Phillip is also an Auctioneer for many large auction corporations such as Manheim, Adesa, America's Auto Auctions, Carmax, Compass Auctions, Dealer's Auto Auction and many others.

Phillip's lovely wife, Denise, is a vital part of the organization and is also a real estate affiliate broker. Together, as a team, they oversee the day to day operations of contracting, advertising, conducting and closing many auctions throughout Middle TN and Southern KY. They provide solutions to client's needs through live, online and simulcast sales. They also oversee a team of specialists helping non-profits reach their fundraising goals through auctions.

Phillip is a lifelong devoted member of Mt. Hermon Baptist Church and serves on the board of directors for both the TN Auctioneer Association and the Montgomery County Cattleman's Association.

Phillip and Denise have two wonderful daughters, Sarah and Rachel, and reside on the family farm just outside Clarksville.

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- Beaman Group
- Toyota Financial
- Nissan Open
- GM Financial
- LeasePlan
- Newton Motors
- Santander Consumer
- Chrysler Capital
- Ford Credit
- Wholesale Inc.
- Plus many other consignors
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AT 9:00 AM CT

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- Ford Credit
- GM Financial
- Hyundai Financial
- Mercedes-Benz Financial Services
- Nissan Infiniti Remarketing Services
- Sullivan Automotive Group
- Toyota Lexus Financial Services
- US Bank
- Wholesale Inc.
- Plus many more

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