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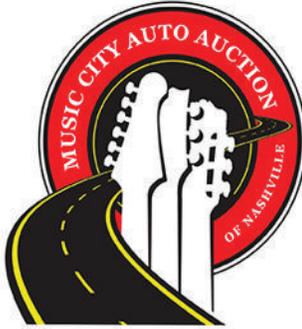
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Chief Editor Phyllis Sartin

I am writing to our Dealers, Auctions, Advertisers, and other interested parties in the 5th 2019 edition of the Tennessee Dealer News. This has been a busy year so far and more exciting projects are on the way. An old boss used to tell us we were going to work hard, have fun, and probably make some mistakes. Please let us know of any errors in our publications. I am so thankful for the opportunity to work in this great industry and we wish all a great rest of 2019.

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Are You More Familiar with Sports Statistics Than You are With Your Own Dealership Stats?

As I travel throughout North America helping auto dealers in gaining more used and new vehicle sales, I'm intrigued by how well versed many managers are on sports statistics but when it comes to knowing their own operational statistics I'm met with blank stares.

Let's talk about R.O.I. (Return on Investment). While sales managers and sales personnel are focused on gross profit, it is the dealer/general manager who is mostly concerned with net profit (profit after expenses but before taxes). Focusing on gross profit per unit sold can contribute to lost sales, as sales personnel and sales managers like to hold for gross. Simply lowering gross in order to sell more units will most likely contribute to a loss of net operating profit. This is why I say It's important to understand R.O.I. Let's take a look at a simple example to see why It's more important for management to know used car department stats over sports stats.

Let's say you sold a used vehicle for \$15,500 that with all costs in, cost you \$13,600. You would

have made a gross profit of \$1,900. Let's assume you had that unit in stock for only 21 days. With this information you would discover your Rate of Return to be approx. 13.9% for the 21 days but your annualized gross return on that investment would be 240.47%.

Now let's look at that very same unit that cost you \$13,600 and making the same \$1,900 gross profit but this time it took you 93 days to sell it. Here's what happens: Your rate of return would remain at 13.9% but your annualized rate of return would only be 54% compared to 240.47%.

Another way to look at gross profit is to calculate the gross profit per day. For example: You made \$1,900 gross profit within 21 days the unit sat in stock or \$90.46 per day versus \$1,900 in 93 days and earning a mere \$20.43 per day. This is why it is essential for management to understand costs and R.O.I. before considering passing on a deal in hopes of earning higher gross profit at a later date.

What I mean is this: should a salesperson happen to receive an offer of \$1450 gross profit within 14 days of acquiring that unit, management should consider

that an offer of \$1450 and a sale within 14 days is an earning of \$103.57 per day even though the potential of making a higher gross profit if the "right buyer" comes in at a later time would earn the dealership \$1,900. Of course the other consideration is that the unit does not sell and becomes an aged unit on the lot.

Following sports stats can be a great deal of fun. Understanding business stats may not be as much fun but it sure can be a great deal more profitable.



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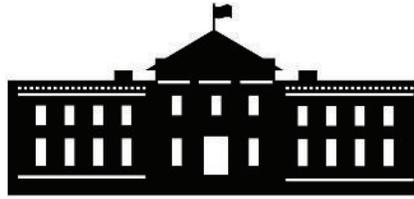
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Auction	Auction	Auction	Auction	Auction	Auction
\$25.00	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00
Jan 2018	Feb 2018	Mar 2018	Apr 2018	May 2018	Jun 2018
Auction	Auction	Auction	Auction	Auction	Auction
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Preparing for the Future of your Business

As a buy here, pay here dealer, you face multiples challenges to run the daily operations of your business, such as finding inventory at a fair price, selling vehicles to the right customers in a very competitive market, and taking care of your customer's vehicle and financing needs.

A revolving line of credit ("RLOC") secured by your finance receivables is a way to improve your cash position, so you can overcome these challenges. A RLOC can be used to pay off your floor plan, reduce investor debt, or fund new operations. By using your finance receivables as collateral for a RLOC, you can maximize your long-term profitability by maintaining your customer relationships. Now is the perfect time to start thinking about using a RLOC to expand your business in preparation for the 2020 tax season.

As a buy here, pay here dealer, it can be difficult to keep track of the various qualifications needed to obtain a line of credit. Understanding these qualifications and the steps you need to take allows you to place your business in the best position for future success.

When looking for a finance partner, you can prepare your stores to more easily gain a RLOC by using an acceptable data management system, documenting your policies and procedures, ensuring your accountant has industry experience, and hiring outside counsel to review your contracts and deal jackets. In following these guidelines, your business will be in a better position to obtain a RLOC.

There are many options when it comes to finding a partner to provide financing solutions for your dealership. However, finding the right partner who will work alongside you to ensure a smooth transition, regardless of your dealership needs, will ensure you do not lose customers and can continue to operate your business effectively. As a division of the national organization American Credit Acceptance, Spartan Financial Partners has the financial backing and unique position to use its auto finance expertise to custom tailor a simple and straight forward RLOC to meet your specific dealership needs. Spartan's industry experts can also share industry best practices with you that may improve your finance receivables portfolio performance or reduce your operating expenses. Explore how Spartan's flexibility, auto finance knowledge, and industry expertise can provide you with a competitive RLOC to help grow your business.

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

A TALE OF TWO DEALERS

For this month's article I thought I'd share some personal experiences to illustrate why it is so important for dealers and finance companies to invest their time and resources in compliance. Dealer "A" and its related finance company received a demand letter from a very active consumer trial lawyer regarding the sale and financing of a vehicle. The letter attacked everything from the disclosures made in the sale process, the quality of the vehicle in relation to its value, and the actions of the RFC in servicing and collecting on the account, and threatened that a lawsuit was imminent.

Luckily, for Dealer "A", it knew a thing or two about compliance. It had chosen to get its documents reviewed yearly, had written policies and procedures and had a documented training program, and even had someone in charge of compliance that conducted spot checks on various matters. Dealer "A" even held quarterly compliance meetings with us (again, documented) and had its personnel interact with us on a regular basis on things like customer complaints and operational issues that arise.

Needless to say, when the attorney demand letter arrived, Dealer "A" didn't panic, it had me look into the matter and craft a reply that included information about its compliance program, training initiatives, and why it was in a strong position to defend this matter, should the attorney choose to proceed. The attorney went "dead in the water" after that first salvo and was never heard from again. While I can't be sure, I like to think that the attorney was discouraged from pursuing the matter. After all, there are lots of cases out there, and maybe he moved along and chose to pursue an easier target when he saw that Dealer "A" had its compliance house in order.

Contrast that to Dealer "B", who only came to me after receiving a similar demand letter. This dealer never took the time to weave true compliance into its operations. Like a lot of dealers, the owner shared with me that he meant to pay more attention to compliance, but it always got pushed back when there were more pressing business issues. As a result, its had vague written policies that didn't really match what personnel did, there was no true training strategy, just new hire training on how to sell cars and use the various systems, and a review of the deal jackets showed some sloppiness and inconsistencies.

Unfortunately for Dealer "B", there wasn't a whole lot of ammunition to discourage the consumer's lawyer, and it wound up spending lots of time defending the lawsuit. Remember, lawsuits aren't just expensive, they are a distraction to personnel and can weigh down the entire business. While this wasn't a "bet the company" kind of case, it sure disrupted the dealer for several months and created financial pressure and encouraged some "copy-cat" complaints when other customers learned of the lawsuit. On the bright side, though, after learning the hard way, Dealer "B" began to pay more attention to compliance and figured out that an ounce of prevention is more pleasant than a pound of cure.

Whether its consumer lawyers, regulators, or even your own bankers or other capital sources, you'd better believe that at some point someone is going to put your commitment to compliance under the microscope. You'll be in a much better position to survive that scrutiny when you tackle compliance on a regular basis and make it a part of your daily consciousness. Don't know where to get started? Feel free to reach out to me at info@ignitecp.com

Steve Levine is Chief Legal and Compliance Officer of Ignite Consulting Partners, where he provides guidance to car dealers, finance companies and other industry participants about compliance, best practices, and issues affecting the car sales and finance industry. Follow him on Twitter @LawyerLevine for his commentary on industry compliance developments.



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Don't Forget About the Military Lending Act

Until December 2017, the auto industry operated under the understanding that the federal Military Lending Act's (MLA) exclusion from coverage for credit transactions "expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased," extended to essentially all auto financing transactions. In other words, dealers thought that they didn't have to worry about complying with the MLA. However, the Department of Defense (DOD) turned that understanding upside down when it announced that financing "credit-related costs" mean that the transaction would be covered by the MLA.

According to the DOD, if a purchase-money transaction also finances "credit-related costs"—such as Guaranteed Auto Protection insurance and credit insurance premiums—then creditors must identify covered borrowers, provide required disclosures, calculate the Military Annual Percentage Rate of the transaction, and otherwise comply with the MLA's consumer protections. By contrast, if the transaction only finances "costs related to the object securing the credit"—such as leather seats, extended warranties, and even negative equity—then it is not covered by the MLA.

You may be thinking, "That's no problem—we'll just comply with the MLA." However, unfortunately, the issue is further complicated by the fact that the MLA prohibits using the title of a vehicle as security for a transaction with a covered borrower. This leaves dealers in a "catch 22." That is, transactions with covered borrowers that finance credit-related costs, like GAP or credit insurance, are covered by the MLA. But the MLA prohibits those transactions because they are secured with a vehicle title. So what can dealers do?

The most conservative approach is to stop selling GAP and other types of credit insurance products completely. Many in the auto finance industry have chosen to take this conservative approach because of the MLA's ban on arbitration provisions and its draconian penalties—nonconforming transactions are void from inception, and the MLA provides both criminal and civil penalties, attorney fees, along with a private right of action, which could be brought as a class action lawsuit.

If discontinuing the sale of GAP and other credit-related products and services isn't feasible, dealers could check the covered borrower status of every applicant, and not offer GAP or other credit-related products to covered borrowers.

Creditors who take this approach should also take advantage of the MLA's safe harbor for covered borrower status determinations. However, this approach does present risk, as offering products and services only to certain consumers, but not to covered borrowers, could result in allegations of UDAAP, or could support claims that such practices violate the laws of states that prohibit discrimination on the basis of military status.

Finally, one last way to finance a credit-related cost in a purchase-money auto financing transaction entered into with a covered borrower and to comply with the MLA, is to not take a security interest in the vehicle being purchased. Understandably, this is a business risk that most dealers and finance companies are not willing to take.

Though many have anticipated that the DOD would withdraw its guidance regarding "credit-related costs" and the MLA's purchase money exclusion, it has not yet done so. Accordingly—at least for now—dealers must still wrestle with the DOD's interpretation, and decide how best to comply with the MLA in their auto deals.

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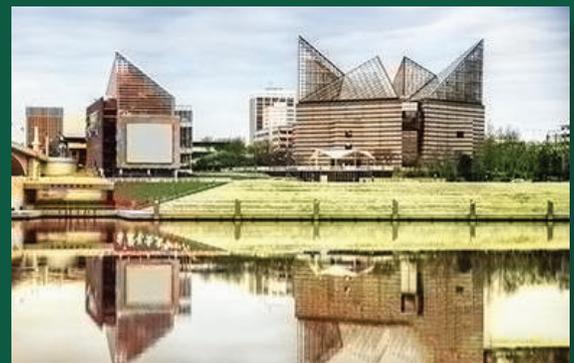


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The CARLAWYER®

Case of the Month

by Nicole F. Munro and Thomas B. Hudson

When a buyer bought a car, one of the stickers on the car listed a "dealer price" of \$29,500, individual costs for three add-on products ("3M," "Pro Pak," and "New Car Detail & Dealer Prep"), and a price, including add-ons, of \$30,600. The buyer negotiated the price down to \$27,400.

The buyer signed a purchase order showing the negotiated price and listing "sold w/prep" and "pro pkg (muds, tray, locks)" under the heading "ACCESSORIES." He also signed a sales contract that stated the negotiated price and listed nothing under the heading "Dealer Added or Deleted Options." The retail installment contract listed no add-ons. Finally, he indicated on a "Mandatory Disclosure Statement" that he declined "Rock Guard Chip Protect" and other products and services.

The buyer sued the dealership and the assignee of his retail installment contract. He claimed that the dealership breached its contract with him by failing to provide him with the add-on products that it promised him and that the assignee either participated in or knew of the dealership's misconduct.

The federal trial court granted summary judgment to the defendants, and the federal appellate court affirmed, finding that the dealership delivered everything it promised the buyer under the sales contract. The appellate court found that the "3M" add-on was either door edge guards, which the buyer never claimed that he did not receive, or a spray film to protect the finish of the car's hood, which he expressly declined. The "Pro Pak" add-on consisted of mud flaps, a trunk tray, and wheel locks, which the buyer admitted he received.

The buyer cited an advertised list of "protection packages" for the car to argue that he should have also received "All-Season Floor Mats," but no package advertised on the list included mud flaps, trunk tray, wheel locks, and mats.

Finally, the "New Car Detail & Dealer Prep" add-on referred to the dealership's cleaning of the car before delivery. Internal documents indicated that the dealership cleaned the car before the buyer took possession of it.

Because the buyer's claims against the assignee depended on the success of his claims against the dealership and his claims against the dealership failed, the appellate court found that his claims against the assignee failed as well.

See Singh v. American Honda Finance Corporation, 2019 U.S. App. LEXIS 16062 (9th Cir. (W.D. Wash.) May 30, 2019).

(Continued on page 20)

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In Times of Peace, Prepare for War

I just finished up a very active conference season. I've been on the "conference circuit," as some would say, since early January. Being on the conference circuit has enabled me to reconnect with friends, colleagues, clients, and federal and state regulators and to meet potential new clients along the way. One thing I've learned from being on the circuit is that some of you are not using your time wisely.

Ever heard the phrase "In times of peace, prepare for war"? The saying has been around forever but is often attributed to Niccolò Machiavelli, the father of modern political philosophy and political science, who stated, "War should be the only study of a prince. He should consider peace only as a breathing-time, which gives him leisure to contrive, and furnishes as ability to execute, military plans."

What he meant was that the time to prepare for war is not when war is imminent but rather when times are peaceful. One of the most effective ways to ensure peace is to be armed and prepared to defend yourself at all times.

How does that quote relate to legal compliance? I listened closely while on the conference circuit and heard some people say that the Consumer Financial Protection Bureau has been "neutered" and/or is going to disappear. I also noticed that as I began to tell some folks how being compliant can actually benefit them and their organizations, their eyes glazed over, they shifted their focus, and they started backing away. They weren't ready to hear what I had to say because they think the war is over.

Had they listened, I would have told them that although the perception is that the CFPB has shifted its focus from enforcement to education, the Bureau is still an active enforcer. A quick scan of the CFPB's posted enforcement actions will confirm this. And the Federal Trade Commission has ramped up its efforts against dealers and others in the auto finance industry. Not to be outdone, state regulators and attorneys general have picked up the perceived slack in the federal enforcement efforts, vowing to hold alleged bad actors liable for crimes against consumers in their states.

So, how can you prepare for war in this perceived time of peace? If you're a dealer, think about the last time you had your consumer-facing documents reviewed by knowledgeable counsel. You're using these documents every day with hundreds of customers. If things go south with the purchase or financing, do you know what a state regulator, attorney general, or plaintiff's attorney will want to review? Your dusty old documents that haven't been reviewed or updated since forever.

Because these documents are mass-produced for use in all your transactions, where there's one affected consumer, there are others, making a nice little class action possibility for a

plaintiff's attorney. A deal jacket review doesn't take that long to perform, and it'll show you where you may have holes in your defensive front.

Another way to prepare is to appoint a compliance officer and set up a compliance budget. No money allocated for compliance means no compliance. Your officer also needs some compliance training because he or she doesn't know what he or she doesn't know. It's like sending your troops into battle without armor, a shield, or a sword.

What about your advertising? Do you know the federal and state rules that apply to your advertising, and have you had your advertising reviewed recently? It's really easy (and cheap) for the FTC or a state attorney general to see your advertisements on TV, on YouTube, on the web, or in the newspaper and notice that they aren't compliant. A review of your advertising and marketing materials will show where your lines of defense may be weak. You also can use this review as an opportunity to create a standard process for creating and approving all advertising and marketing content before it is launched.

Another hot area right now is repossession. Do you know the state rules that apply to maintaining buyers' property post-repo? What does your retail installment contract say? Do you or your repossession company charge the buyer a fee to store the property or to get his or her personal property back?

If you're like one of those people that I heard or met on the conference circuit who thinks the war is over and you can conduct business the way you've always done it, think again. Don't wait until the battle has started to properly prepare your lines of defense. In these times of perceived peace, start preparing for war.

Eric L. Johnson is a partner in the Oklahoma City, OK office of Hudson Cook, LLP. Eric can be reached at (405) 602-3812 or ejohnson@hudco.com. This article is provided for informational purposes and is not intended nor should it be taken as legal advice.

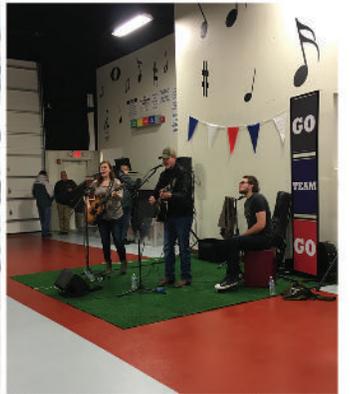
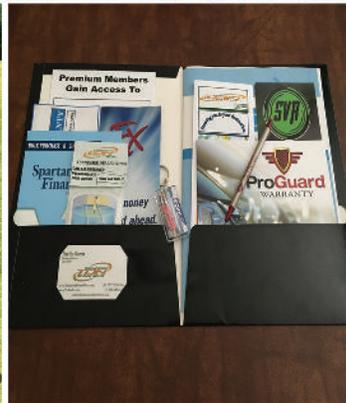
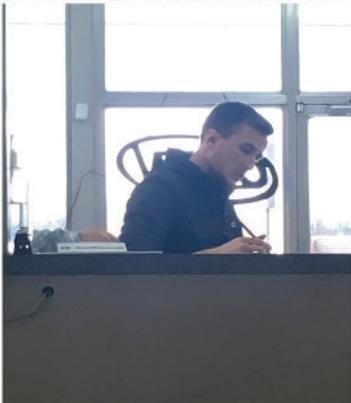


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Tennessee Dealer News

On The Road



This Month's CARLAWYER® Compliance Tip

(Continued from page 16)

The Case of the Month involves a car buyer's attack on a dealership's sales practices related to "ancillary products," or, as industry likes to call them, "voluntary protection products." We've seen several attempts by consumer advocates and regulators to curb what they claim are unfair and deceptive practices in the sale of these products. If you don't have written practices and procedures in this area, created and periodically reviewed with the assistance of knowledgeable counsel, you may find yourself behind the compliance eight ball.

So, there's this month's roundup! Stay legal, and we'll see you next month.



Thomas B. Hudson
Of Counsel



Nicole ("Nikki") F. Munro
Partner of Hudson Cook, LLP

**Thomas B. Hudson was a founding partner of Hudson Cook, LLP, and is now of counsel in the firm's Maryland office. He is the CEO of CounselorLibrary.com, LLC, and is a frequent speaker and writer on a variety of consumer credit topics. Tom can be reached at 410.865.5411 or by email at thudson@hudco.com.*



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Auctioneer Spotlight



In Memory of

Gary Brewington

December 12, 1949 - July 27, 2019

Gary Howard Brewington, age 69 of Cookeville was born December 12, 1949, in Cookeville, Tennessee. Gary passed away Saturday, July 27, 2019, after an extended illness. Funeral services for Gary were held Tuesday, July 30, 2019, at Washington Avenue Baptist Church.

He was a longtime member of Washington Avenue Baptist Church. Gary worked as an auctioneer with Manheim Auto Auction for over 35 years. Prior to this, he worked at Tennessee Auto Auction. He was an entrepreneur throughout his life, owning several businesses including Cookeville Auto Auction, Brewco Auto Sales and Brewington Auction and Realty. He was formerly part-owner of Dyer Funeral Home. Gary also worked at Putnam County Emergency Management Services. His interest in farming and agriculture led him to serve on many related community boards and organizations. He was Past President of Putnam County Co-op Board, Putnam Cattleman's Association and Cumberland Beef Breeders Association. He also served on the Tennessee State Fair Board and the Putnam County Fair Board. Gary will be fondly remembered as the announcer for the Horse Show at the Putnam County Fair for many years. His passion for the Tennessee Walking Horses gave him the opportunity to serve as announcer for horse shows throughout the Upper Cumberland and other states for over 40 years. He was the auctioneer for the Wisser Farm Horse Sale in Shelbyville, Tennessee for several years and sponsored the Flag Horse at the Tennessee Walking Horse Celebration in Shelbyville, Tennessee for many years.

Gary will truly be missed by the auto industry



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- Enterprise Holdings
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- Sullivan Automotive Group
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- US Bank
- Wholesale Inc.
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