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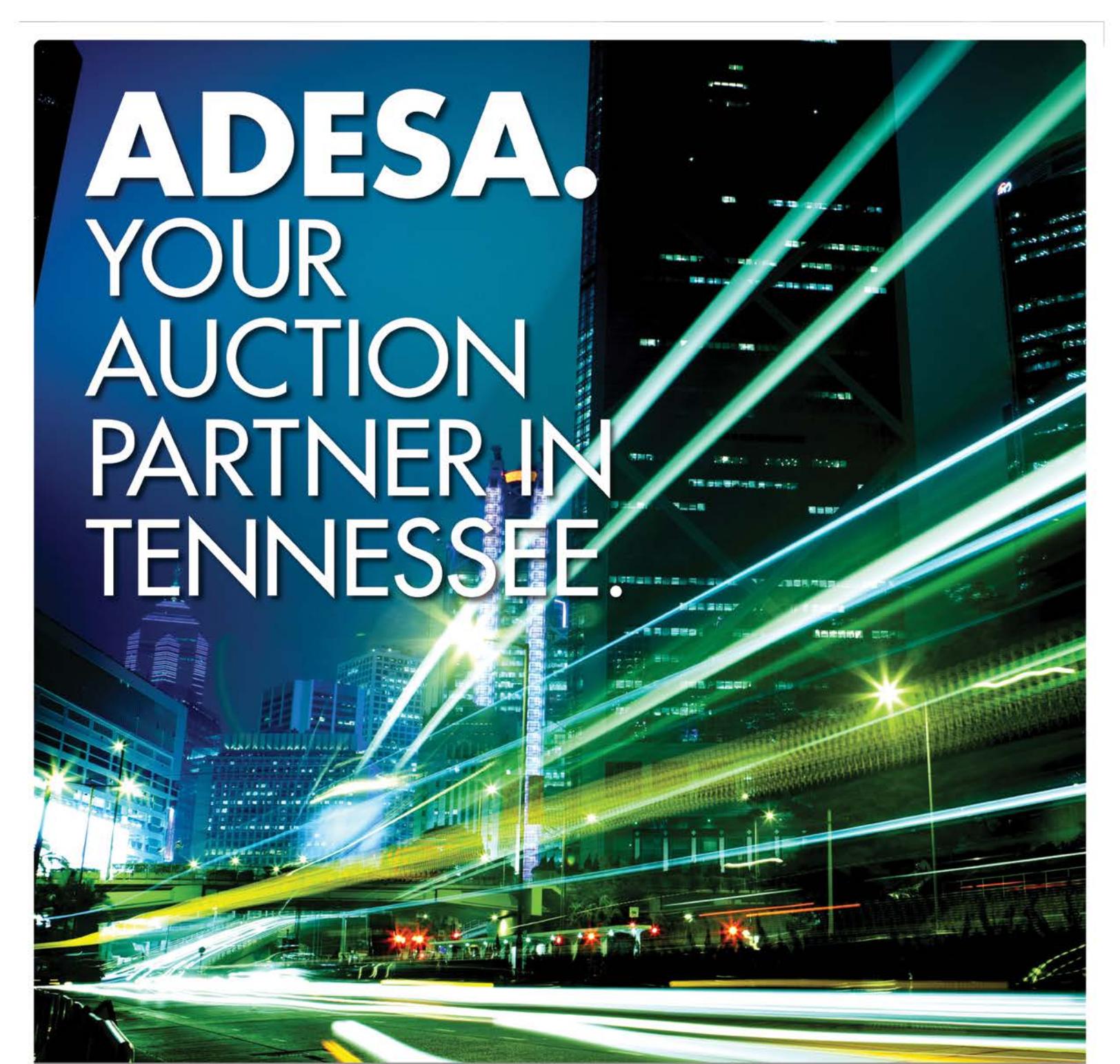
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CREATIVITY IS THINKING UP NEW THINGS. INNOVATION IS DOING NEW THINGS.

– Theodore Levitt
Economist, Harvard professor (1925-2006)

Long before COVID was an every day word, ProGuard began searching for solutions to help our dealers adapt to the changes online shopping were bringing to the buying process. We wanted a tool that was easy to use and after much testing, found it with a company called SnapCell that offers online video capabilities to operate the automotive sales process digitally.

With SnapCell, you can use live video streaming for face-to-face customer contact or to take them on a virtual test drive. On the service lane side of the operation, technicians can explain recommended repairs to the customer, expediting approvals and open up more bays.

Keeping with our tradition of innovation. ProGuard has formed an alliance with SnapCell to bring value to our dealer partners in today's challenging environment. We have negotiated an exclusive discounted trial rate to help incorporate SnapCell into your operations immediately. We believe this technology has great applications today and well into the future and encourage you to take the first step to successful digital marketing.



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Chief Editor Phyllis Sartin

Greetings,

I hope everyone had a nice holiday & each of you are off to a great start in 2021!

We all have had to be somewhat creative since Covid came on the scene. TDN is proud to offer new products and services for our Auction, Advertising, and Member Partners. Change is inevitable and we must continue to make adjustments that achieve goals.

Take a look at our Preferred Partner Program. The benefits are robust and we are adding rewards constantly. Please reach out for assistance & let us know how we can help! Wishing you all the best health and prosperity in the year ahead!

Also I want to give a shout out to Jeff at Speedway Motors in Murfreesboro TN for his assistance. He and his staff run a professional organization.

Disclaimer:

The views, thoughts, and opinions expressed in the text of this publication belong solely to the author and do not necessarily reflect the viewpoint and/or position of Tennessee Dealer News, LLC.

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So What Do You Think 2021 is Gonna Look Like?

Does anyone really know the answer to that question? I've been asked that very question several times this year and it's early. Let's face it, the year 2020 took many by surprise and in many cases it was a very good surprise for the auto industry. New car sales bode pretty well considering unit sales reached about 14.5 million. While this number of new vehicles sold was down considerably from previous highs of 16.8 million, 2020 proved to be very profitable for new car dealers. This profit came from trimmed down operational costs and fewer new cars available to sell leading to higher gross profit margins. Independent used vehicle dealers should also have enjoyed higher gross profit margins due to limited product availability.

I'm hopeful this year dealers and their management teams are better prepared for business as unusual. The pandemic knocked Uber and Lyft off their feet as consumers decided it was medically safer to own their own transportation and not be driven around town by an unknown individual. This sudden demand suddenly put more pressure on the supply and demand of used vehicles. While interest rates will likely remain low, used car loans are once again edging up past 65.3 months and these longer terms will give way to more and more customers with negative trade equity.

Dealers and their management teams must be prepared to be very flexible this year and have the capability to turn their ships around as the winds and waters of the economy change. Used vehicle wholesale prices will rise due to limited availability. Higher wholesale prices lead to higher retail prices. Higher retail prices lead to longer term finance contracts which can lead to more consumers with negative equity making it more difficulty to trade with consumers who either wish to or need to trade more frequently. While gross profits should rise with the market, the cost of doing business will also rise (the anticipated \$15 per hour minimum labor rate, and so on). Employees who get compensated on gross profit should benefit but the dealer getting paid on net

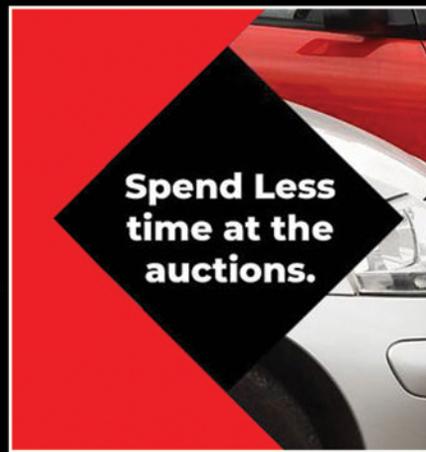
income may not. Dealers must take time to truly evaluate and keep careful eyes on their financial statements to carefully monitor trends throughout the months of the year. Independent dealers using simplified financial data reports are often times at a disadvantage as financial information could be provided either too late (weeks into the next month) or a third party is employed using an accounting system that fails to break down expenses in order to be able to manage the numbers more closely.

If you want to know how 2021 is going to turn out take a look at your own numbers. If you can't answer the following questions you may be in for another surprising year ahead; What was your percentage of gross profit on sales? What was your percentage of net profit on sales (before taxes). What was the percentage of compensation against gross profits earned? What percentage of your gross profit did you spend on marketing and advertising? You control the future.



Joe Lescota

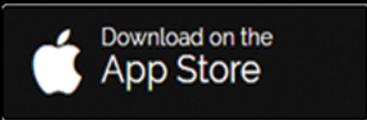
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The Cure in Any Market: Attitude + Activities

Depending on who's providing the forecast, vehicle sales in 2021 are projected to be somewhere between up and down. Given that we know so little about what the future holds, what can Tennessee dealers do today to ensure they grow market share regardless of the conditions they face?

While I generally write about how culture and processes drive real market share growth, these can mean different things to different managers. Moreover, when your sales are moving up in an up market, managers tend to think they've already got great processes driven by a great culture. Often, they're just rising with all the other boats in the same rising tide.

So, instead of harping on these, I thought I'd deliver two concepts many find easier to understand than culture and processes. Plus, these concepts can be applied to any team – even those who believe they're already equipped with a great culture and great processes. These are attitude and activities.

Attitude

Simply put, a manager's attitude affects their sales team's attitude. In fact, managers' attitudes affect everything. Stores that are successful in any market have managers that share three common principles that drive their attitudes: They love what they do, they believe everyone is a buyer, and they want everyone on their team to succeed.

When managers live these principles every day, their salespeople are motivated to do more without the need for threats, written warnings, or insincere rah-rah meetings.

Of course, attitude is important, but it's only half the equation. I've worked with owners and managers who have terrific attitudes, yet their dealership is still just treading water. Why? Simple; they're afraid to drive the activities that deliver results. Basically, they're a bunch of really nice guys and gals who allow mediocrity.

Activities

Look at any true top seller – those who sell twice what the average salesperson in their store sells – and you'll see someone who is always active. Simply put, if they're not in front of a prospect, they're on the phone, they're writing an email, they're mailing a birthday card, or they're generating new business through other means (social selling, for example).

The biggest difference between top sellers and bottom dwellers is how they fill their days. Superstars work on moneymakers; average sellers enjoy timewasters.

Here's a hint: Keeping salespeople active is best thing a manager can do for his or her team. Furthermore, if you already have the attitude that you want everyone on your team to succeed, then driving productive sales activities will be natural to you.

But driving activities is not the same as running a sweatshop. Driving activities is also not ensuring your team is busy – I mean, everyone's "busy" in the car business, right? Driving activities means ensuring your team is constantly and consistently productive, efficient, and effective.

It's not about screaming, "Everybody better make 50 calls today!" It's about making sure they complete their "money" calls for the day, and that they're using their time wisely in (and sometimes out of) the dealership.

Driving activities is the best thing you can do for your sellers. When you drive activities, your salespeople sell more cars, they make more money, their workday goes by more quickly, and you keep them engaged. The opposite? Well, salespeople who are not productive or engaged only think about survival and about how much this place sucks.

Productive and engaged employees, not surprisingly, don't quit.

Good News / Great News

The good news is that if salespeople always did what we needed them to do, we never would've invented sales managers. The great news is that as a sales manager you only need to train and reinforce best practices every single day for the rest of your working life.

You see, not everyone on your team will progress at the same speed. Most will take one step back for every two steps forward. It's your job to keep them moving in the right direction; growing their skillset; increasing their sales; making them successful.

When sales managers have a great attitude and drive the activities of their team, great things happen. The greatest, of course, are that turnover declines while sales and grosses increase... regardless of what the market is doing.

Good selling!



Steve Stauning
Founder
Stauning Solutions Group

Steve is the author of *Ridiculously Simple Sales Management* and *Assumptive Selling*; as well as a respected automotive industry veteran and founder of Stauning Solutions Group – a leading training & consulting firm – and the free sales video training website SteveStauning.com. Steve's consulting work puts him in dealerships nearly every week, working side-by-side with managers, salespeople, and internet teams to help them improve their sales, processes, and profits. Prior to this, Steve served in various automotive leadership roles, including as the Asbury Automotive Group's (NYSE: ABG) director of ecommerce, the director of the Web Solutions division of Reynolds & Reynolds, and as the general manager of Dealer Web Services for Dominion's Dealer Specialties.

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3. Common Interests – Talk about something other than the sale.
4. Respond promptly - This shows that the customer is a priority.
5. Add Value – Offer something of value early in the process.
6. Management example – Managers must be role models.
7. Conversations not sales pitches – Keep it casual. Customers feel being pushed.
8. Be genuine – Customers can tell when you are being insincere.
9. Make lives easier – Make you clients enjoy working with you.
10. Be patient – Sales relationships take time and the process has an ebb and flow.
11. Maintain relationships – follow up regularly with past customers. Its PAYS!!

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FTC Staff Report on Buying and Financing Cars: Part 2

In July 2020, the Federal Trade Commission (“FTC”) issued its “Staff Report on Buying and Financing Cars.” The Staff Report consisted of two separate reports – a report from the FTC’s Bureau of Consumer Protection (“BCP”) entitled “Buckle Up: Navigating Auto Sales and Financing,” and a joint study entitled “The Auto Buyer Study: Lessons from In-Depth Consumer Interviews and Related Research” issued by the BCP and the Bureau of Economics. This article, the second in a two-part series, will address the “Auto Buyer Study.”

The “Auto Buyer Study” details the results of an in-depth interview study of 38 recent auto buyers. The purpose of the “Auto Buyer Study” was to examine the car-buying process using thorough consumer interviews about their experiences and perceptions in purchasing and financing a vehicle through a dealer.

The results of the “Auto Buyer Study” revealed several areas of the car buying process that consumers did not understand. Specifically, the FTC noted the following key areas of concern:

- **Deficiencies in Research:** While most consumers engaged in some type of research regarding both the vehicle and the dealer, the consumer interviews indicated that consumers often didn’t collect the information that is most helpful in negotiation either vehicle cost or financing.

- **Emphasis on Monthly Payment:** Most consumers focus only on the amount of the monthly payment, failing to consider other factors such as interest rate, down payment, and the term of the transaction.

- **Failure to Negotiate:** Most consumers did not attempt to negotiate the terms of the transaction, other than the sales price and the value of the trade. In fact, most consumers did not even know they could negotiate other key terms of the transaction, such as interest rates and add-on product prices.

- **Add-On Confusion:** Consumers indicated that contract add-ons, such as GAP insurance and extended warranties, were confusing. Specifically, consumers indicated they were confused about the benefits and limitations of add-ons as well as the cost of such products.

- **Consumer Understanding:** Consumer interviews indicated that most consumers did not know or understand all the details of their transactions. This lack of understanding was potentially compounded by the length of the transaction.

The “Auto Buyer Study” is just a stepping off point for FTC changes to the auto industry. In fact, in the Study, the FTC specifically noted that “[t]he lessons from the study provide a foundation for development of consumer education or for further research into potential modifications of the buying process.” Auto Dealers should remain mindful that the “Buckle Up” Report issues along with the “Auto Buyer Study” references the FTC plans to “focus on law enforcement and deceptive or unfair tactics in the auto industry as they arise, bringing cases against dealers as appropriate.” As a result, Auto Dealers should pay close attention to this FTC guidance regarding the car buying process, review policies and procedures, and if necessary, incorporate changes to prevent unfair trade practices, and remain in compliance with federal law.

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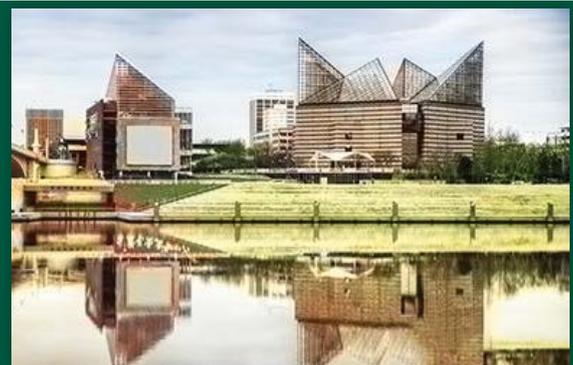


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The CARLAWYER®

Federal Developments & Case of the Month

by Thomas B. Hudson and Eric L. Johnson

FEDERAL DEVELOPMENTS

CFPB and FRB Maintain Dollar Thresholds for Exempt Consumer Credit and Lease Transactions. On November 18, the CFPB and the FRB announced that they are maintaining the dollar thresholds in Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing) for exempt consumer credit and lease transactions. The Dodd-Frank Act provides that these thresholds must be adjusted annually by any annual percentage increase in the consumer price index. Based on the annual percentage increase in the consumer price index as of June 1, 2020, TILA and CLA protections generally will apply to consumer auto credit transactions and consumer leases of \$58,300 or less in 2021.

CFPB Settles Misrepresentation Claims with Payment Accelerator Program Provider. On November 20, the CFPB issued a Consent Order against U.S. Equity Advantage, Inc., and its owner, finding that the company misrepresented its auto payment accelerator program, which deducts payments from consumers' bank accounts more frequently than the consumers' original payment schedule and then transmits those funds to consumers' creditors or servicers. The CFPB alleged that these misrepresentations violated the Consumer Financial Protection Act of 2010's prohibition against deceptive acts or practices.

Specifically, the CFPB alleged that USEA misrepresented the consumer savings from the program by failing to include the \$399 enrollment fee in its calculations. The CFPB alleged that the program's costs would ordinarily exceed any savings because of the enrollment fee. The CFPB also alleged that USEA stated in advertising that it has helped hundreds of thousands of customers save \$29 million or more in interest by participating in the program when it had no basis for making this claim. The Consent Order imposes a judgment of \$9,300,000 in consumer redress, but that amount is suspended based on an inability to pay, and USEA instead will be required to pay \$900,000 and a \$1 civil money penalty to the CFPB.

CASE OF THE MONTH

Dealership's Right to Compel Arbitration of Car Buyer's Claims Under Arbitration Provision in Retail Installment Contract Was Extinguished Once Contract Was Assigned to Finance Company: In connection with her used car purchase, the buyer signed a retail installment contract (RIC) that included an arbitration provision. After the RIC was assigned to a finance company and the buyer defaulted, the finance company repossessed the car. The buyer sued the dealership where she bought the car, the car salesman, the finance company, and several individuals, asserting numerous state law claims.

The dealership moved to compel arbitration, and the trial court denied the motion, finding that the dealership's right to compel arbitration was extinguished when it assigned the RIC to the finance company. The Court of Appeals of South Carolina affirmed. The dealership argued that the trial court erred in denying its motion and that the effect of the assignment of the RIC on its right to seek arbitration should have been decided by an arbitrator.

The appellate court determined that, under South Carolina law, once a contract is assigned, the assignor has no remaining rights in the contract. Therefore, the dealership had no right to compel arbitration or to have the issue of arbitrability decided by an arbitrator. See Sanders v. Savannah Highway Automotive Company, 2020 S.C. App. LEXIS 114 (S.C. App. October 21, 2020)

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WHEN TO SETTLE AND WHEN TO FIGHT IN GENERAL SESSIONS COURT

Throughout the lifespan of a business, unfortunately every dealer will find itself defending a lawsuit. Some are defensible, some are not and others are completely baseless. This brief article will discuss the pros and cons of defending your business in litigation and coming to terms with the realization that the “first loss is normally the best loss.”

The typical courts that a dealer will find itself in is either Tennessee General Sessions’ division (disputes less than \$24,999) or the Circuit/Chancery division (greater than \$25,000). Since individuals can represent themselves, General Session typically will have the plaintiff unrepresented by an attorney. Very few times will any discovery be taken in General Session and normally you’ll walk into a “trial by ambush” situation on the hearing date. Circuit/Chancery Court, however, does provide an opportunity to conduct an investigation, send discovery requests and take depositions.

Unless a dealer is willing to give something up (cash, refund, new vehicle), General Session rarely ends in a settlement prior to the hearing. This is partially due to the plaintiff wanting their day in court, but also due to a dealer not willing to bend for a plaintiff whereas it’s not going to cost an arm and a leg to have an attorney represent the dealer in court.

The main issue we remind our clients if contemplating a settlement is to determine if it is worth going before an open court and defending the dealership’s actions. A settlement can permit the dealer an opportunity to restrict the plaintiff (usually a disgruntled customer) from posting negatively about their experience online. For these reasons, settling before a hearing can keep your dealership’s goodwill untarnished which ultimately will benefit you in the long run.

As for meritless claims or defensible claims, we will defend the dealer’s actions in Court to the fullest extent. General Sessions do not have a jury as the trier of fact, but a Judge ruling on the admissibility of evidence and weighing the evidence. One of the main issues plaintiffs encounter in general sessions is having the correct witnesses present, or any at all. Without witnesses, much of their evidence will be excluded as impermissible hearsay.

Whichever the circumstance may be, it is always best to meet with your attorney to determine what is the best course to proceed not only for the case before the court but also for the dealership as a whole.



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This Month's CARLAWYER® Compliance Tip

Dealers should pay particular attention to the Case of the Month on page 16. The circuit court found that although the RIC was governed by the Federal Arbitration Act, state law governed the issue of assignment as to the enforceability of the arbitration clause that was in the RIC. Applying South Carolina law in this case, the court found that once the RIC was properly assigned, the assignor dealer retained no interest in the right that was transferred (the RIC). Only the finance company could've enforced the arbitration clause against the consumer; not the dealership.

The case didn't mention whether the dealer had the ability to arbitrate the consumer claims in a document that wasn't assigned, such as via the Purchase Agreement. You should review your purchase and financing documents for arbitration language and see if your state law cuts off your ability to arbitrate if the RIC is assigned.



Thomas B. Hudson
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Garrett Brink Jacoby

DECEMBER 17, 1951 – DECEMBER 16, 2020

On Wednesday December 16th, 2020, Garrett Brink Jacoby, a Patriot, who was lovingly called "Gar or Gar-boy," departed from this life for eternal freedom after battling pancreatic cancer. He was surrounded by his loving family that morning, and was honored peacefully and respectfully for being the veteran that he was. Garrett "Gary" was born on December 17th 1951, in La Grange, Illinois to Harry and Betty Jacoby. The third of four boys, Gary grew up in a full house playing baseball and watching his beloved, Ernie Banks with the Chicago Cubs. Having a successful all-star basketball career, Gary wore number 13, and stood at 6'3" at the Hinsdale South High School in Clarendon Hills, Illinois. He was also in many plays, reciting impressively long parts, at the local Theatre in Western Springs. He went on to join the Air Force, where he would serve our great nation that he loved and respected. A graduate of Northern Illinois University, he inherited an entrepreneur spirit from his Father and grandfather. With a charming Jacoby wit and an esteemed radio voice he excelled at his sales jobs and would eventually run and/or own multiple companies in the automotive industry in California, Georgia, Florida and Tennessee. His greatest release was his love for golf and fellowship on the golf course, as well as, his love for getting on his Harley and riding on many exciting excursions. He thoroughly enjoyed sharing those experiences with his grandsons. Gary and his wife Tami knew each other for 40 years from childhood. They reconnected in 2013 and married in 2016 the year "The Cubs Won the World Series!" Their main wedding color was Cubs Blue! Tami lovingly called him "Gary, her Hurricane from Florida." They made their life together in Chattanooga with their 3 Pups and 3 Cats. Running their business selling GPS trackers and hiring reps for SVR tracking, they were able to add fun side trips along the way having adventures all around the U.S. They also travelled to Brazil, London, Scotland, and on their last Christmas together, Switzerland. He was Tami's Patriot, Love and Best Buddy. Their Annual trip to Washington DC was filled with family and celebrating our Nation's Veterans during the ride of the Patriots called "Rolling Thunder." He had a deep love for family, friends and this country: "One Nation under God, indivisible, with Liberty and Justice for all." Gary is survived by his wife Tami, his daughter Bronwyn, son-in-law Jose and 3 Grandsons Jose, Xavier and Kasper. His brothers Dave, Ron, and Steve, along with several nieces and nephews. Donations in Gary's honor can be made at the National Law Enforcement Memorial Fund or Operation Homefront.

The Tennessee Automotive Industry will sincerely miss Garrett Brink Jacoby.

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