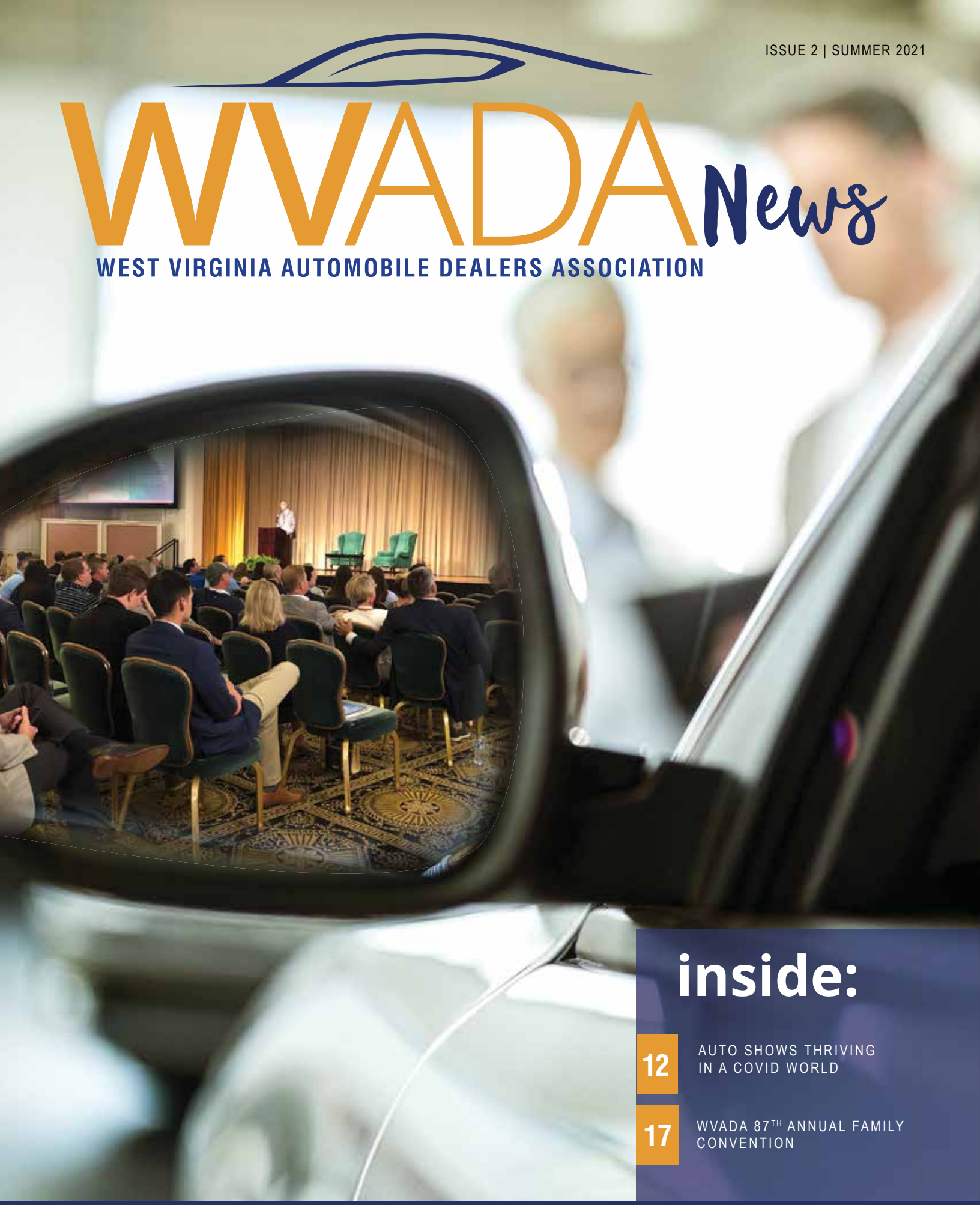
ISSUE 2 | SUMMER 2021

WVADA News

WEST VIRGINIA AUTOMOBILE DEALERS ASSOCIATION



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WVADA News

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President's Message

By Jared Wyrick

LEGISLATIVE UPDATE

New message to come

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Getting to Know Incoming Chair Roberta Olejasz

How do you pronounce your last name?
OH-lee-osh. My husband's family is Polish.

According to LinkedIn, you have a couple of degrees: a bachelor's degree from Virginia Commonwealth University and an MBA from West Virginia University. Tell us about your education. What's the most valuable lesson you learned?
I loved leaving the state to get my undergraduate degree. (I was always going to get to WVU, but I just took the long way around.) I got to experience things outside West Virginia and figure out that West Virginia is where I wanted to be, raise my family, run my business, and have a business for my children to come back to.

When I graduated from VCU, I went through the interview process with several Virginia firms and then came home. I worked for a year in the dealership, saved up my money to pay for my own graduate degree, and got my MBA.

As a state, our children are our biggest resource, but we export too many of them. They often leave and go somewhere else unless there is something for them to come back to. People who have left West Virginia for big cities such as Charlotte, North Carolina, or Charleston, South Carolina, may have lived somewhere else for 20-40 years, but they still come back several times a year, and they talk about West Virginia like it's home. When I look at Instagram, I've seen so many people who actively remember that this is where they are from. They all have a love for West Virginia; we just have to find a way to keep them here instead of letting them go.

Dealerships can help because they have great jobs for people in the community, including teens. My husband and I have instilled a love for West Virginia in our own children, and we want the business to be there for them.

You played basketball! How have sports helped you as a dealer?
Everything is a competition, right? The dealership just provides a different way to compete. That's kind of what we do in our stores. We find a way to compete in a friendly way at every level, the same way we did on the basketball court. It helps us improve and get better every day.

Did you always aspire to be in the auto dealer industry? What has your career path been?
I'm a third-generation car dealer. My maiden name is Robinson.

My grandfather's family were coal miners. He started out in the car business in Ritchie County, West Virginia. After my father graduated from high school, my grandfather moved to Wheeling, which is where we are now. My father went to work for my grandfather as a salesperson after he finished college. When I was three, and my brother Jim was five, my father bought a store about 45 miles south of here. He retired for a couple of years when my brother was in high school, and I was just finishing middle school. Then he found out we wanted to be in the car business. He bought my grandfather's store and started accumulating stores after that.

We have three stores now.
- Dad is still working the first store.
- I am a Chevrolet Buick GMC Cadillac dealer.
- My brother has a Toyota and Ford Lincoln store.

There have been some others along the way, too, like Buick GMC and Chevrolet Mitsubishi, but that's what we have currently. It's been a fun ride.

Who have your mentors been, and what did they teach you?
My dad and my brother are my primary mentors. There's a dealer out of Parkersburg, Dan Wharton Sr., who recently passed away and was instrumental in growing me in the WVADA.

My father taught me everything I know. My father and my brother Jim have really groomed me throughout my whole life as an automobile dealer.

What is the work culture like at your dealership? Which principles are most important to creating a great work environment?
Our culture is a very strong team atmosphere, and we treat our businesses much the same way as we treat sports. We build relationships and have friendly competitions because you win and lose as a team. Our team

Our culture is a very strong team atmosphere, and we treat our businesses much the same way as we treat sports. We build relationships and have friendly competitions because you win and lose as a team.

members have been with us for a very long time. We know them, we know their families and vice versa. We've watched our children grow up together.

Great people work with us, and their excellence is absolutely the key to our success. I feel fortunate to work with such phenomenal people.

Do you have plans to expand?

We always look. We might expand if the right opportunity arises.

What have you done as a dealer to improve diversity?

I'm a woman in the car business, right? That's a tricky question for me. On the one hand, I am a dealer, and my example encourages other women to follow a similar path because my existence demonstrates a possible path for them.

On the other hand, I don't know that we have to improve diversity. We have always focused as a family and a business on doing the right thing. We just hire the right person for the job. That's how we've always done it, and that's how it ought to be. It's part of who the Robinsons are. Nothing about that changed when I became a dealer in 2005.

I was raised that it doesn't matter what your background is. You make your own way. I earned my way in the business by working in every department and learning how the business works. For example, I did things like changing oil. Having broad experience is important so that when you eventually buy your store, your employees know your work background and have a reason to respect you. Their respect is important.

What do you think other dealers could do to improve employee diversity?

Do the right thing and hire the right person for the job.

What are your goals as the incoming chair?

We had our annual convention June 13-16, 2021. Now we have a long list of things we would like to get done in the legislature.

We do need to increase our car inventory. Post pandemic, there is going to be a lot of work for the association. One question is, how are we going to work with the manufacturers to get cars? The microprocessor chip shortage is a real issue because you need the chips to build new cars. Manufacturers stopped making the chips when COVID-19 shut down the country, including car manufacturers, and then General Motors Corp. started producing ventilators. Car manufacturers are currently getting their microprocessor chips from China, which leaves them at China's mercy.

How will your past experiences help you?

I was the association's chair in 2015 and 2016. I left the room after that, but they let me back in again, and I think I can draw from some of those previous experiences.
I have good relationships with the other association leaders, and our dealer body is phenomenal. Jared Wyrick, the association president, is tremendous. Wherever I lack, those guys always pick me up and help me.

How did your dealership do during and after the pandemic closedown in March 2020? What lessons did you learn, and how did the many product shortages affect your business?

We were fortunate. We are thankful to Gov. Justice because he did not close down dealerships. He deemed them as essential, and they have been open the entire pandemic.

As a dealer body across the state, we figured out where we had some overlapping jobs in our stores, and we also figured out what was and wasn't essential. The process allowed us to streamline our businesses. The streamlining helped us accomplish the work we needed to do in a very short time.

Parts are starting to flow now, but there were a lot of shortages. We still have a car shortage. I currently have three new vehicles on the GM lot. Normally I would have 175. That is a big difference, and it's the same with trucks. I could get more any day, but right now, I am getting 8-10 at a time, and they are going out just as fast as they come in.

I am not complaining. Selling trucks or other vehicles as fast as they come in is not a bad problem to have. But do I

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Electric vehicles are not supposed to need as much service. That is what everybody is reading, and that is what is being said. But we've had people bring in their Volts, and we've had some service work to do for them. Service doesn't concern me yet. I'll reserve comments about service on EVs until I see how it works out.

want more product? Absolutely. I don't know when I will get it, but we will get there sometime. The same is true for every dealer across the nation.

How does your dealership serve the community?

My answer to this question is not true just for us; it is true for every dealer in the state and probably every dealer in the nation. The amount of money and work that dealers put into their communities is overwhelming. We are the critical infrastructure to our local communities, and we support everything. That is the No. 1 message that needs to be out there because we don't usually take credit for our community service. Many people would want as much public credit as possible for their support, but we don't. That is just who car dealers are.

At my dealership, we support Little League, travel basketball teams, and driving for the cure. We don't ask for credit for any of it, and we don't put our name on buildings, but we support the three local high schools, along with middle school programs and drug-free programs. Every time someone comes in with someone and asks us to write a check, we give them that support. My dad has coached girls basketball for over 30 years. I am the varsity basketball coach at the local high school. There are 250 children who can grow in their basketball ability starting at age 6. We also support a travel baseball program.

Direct-to-consumer sales are attacking our franchises. That fact is one of the things that we are going to have to address this year. But let's say car dealers go away. If we go, all of that money is gone, too. It amounts to hundreds of thousands of dollars per year that is just a given for each community.

What are the big issues for West Virginia dealers in the next 10-15 years?

The attack on franchises by direct-to-consumer sales is among the biggest issues for all dealers, and I think it is probably the biggest issue. What is being said, what is being perceived and what is the truth are not always aligned. I am not concerned about Tesla at this point because it was blocked from West Virginia. However, I don't know what could happen later.

EV cars are coming, and it is our job to sell them. The infrastructure to support that is coming, and whether it is here

or not, we will sell what we have to sell. We love to sell vehicles, and we are very excited about electric ones. Car dealers are always excited about the new latest and greatest thing that is coming. Always.

Electric vehicles are not supposed to need as much service. That is what everybody is reading, and that is what is being said. But we've had people bring in their Volts, and we've had some service work to do for them. Service doesn't concern me yet. I'll reserve comments about service on EVs until I see how it works out.

Service has been affected by the parts shortage. At this point, it could just be the problem with COVID. Nobody was working for a while, and there were parts issues for a very long time.
I had a customer who had to go for two months in the summer without air conditioning in their vehicle, due to the parts shortage. We put them in a rental vehicle to go on vacation because it would have been a disaster for them otherwise. Temperatures are in the 90s right now. Can you imagine how awful it would be to go to the beach in a car without air conditioning? But the parts shortages were all due to COVID, and they affected any type of product. If you want to buy a sofa right now, for example, you could be a year out from getting it.

What are your personal interests? What do you do for fun?

We love to spend time with our family. That's our joy. We also like to go boating. My children like to surf behind the boat, and we spend time on the lake with family and extended family.

Tell us about your family.

My husband is a circuit court judge. We met at a WVU football game when he was in law school. We have two children. Reagan, my daughter, is 16. I am fortunate enough that I get to coach her. Max, our son, just turned 14. He is in eighth grade. I help coach his travel team as well.

Is there anything else you would like to talk about?

Our dealer body in West Virginia is a phenomenal group of individuals. I consider myself lucky to spend time with them when I do, and Jared Wyrick, the association president, does a phenomenal job. They all make my job very easy. ◀

Auto Shows Thriving in a COVID World

By Juliet Guerra, NADA Director of Media Relations

Moving into the remainder of 2021 and beyond, auto show organizers are hopeful that OEMs will continue their support by participating in shows across the country.

Throughout the coronavirus pandemic, personal transportation ownership has remained incredibly important to consumers, which has resulted in increased demand for new vehicles. Paired with inventory concerns from plant closures and the current microchip shortage, pent-up demand for new cars and trucks is high.

There is no question that the coronavirus pandemic has changed the way dealers do business and sell cars, but one thing that hasn't changed is the value of auto shows to consumers. To meet consumer demand for vehicles and for an in-person experience, auto show organizers across the country are revamping their respective auto shows to operate in the COVID-19 environment.

"Bringing Auto Shows back for our industry is a big deal and consumers are absolutely ready," said Auto Shows of North America (ASNA) Chair Jenn Jackson. "Auto Shows are the quintessential opportunity to contrast and compare different makes and models in a low-pressure environment. For a consumer who is close to purchase, visiting an auto show will often solidify their decision on their next vehicle."

Consumers are not only ready for in-person events after facing social distancing and mask mandates for more than a year but are ready to shop for their next car or truck in a low-pressure, experiential environment. According to Foresight Research President Chris Stommel, "Auto shows continue to be an incredibly powerful experiential marketing channel and have not declined in the slightest from the consumer's point of view."

"Auto shows are a unique way for us to reach consumers prior to their next vehicle purchase," said Lisa Materazzo, Group Vice President, Toyota Marketing, Toyota Motor North America. "More than 11 million people attend auto shows annually, and two out of three attendees are in market to purchase a new vehicle within a year. Our presence at these shows offers a casual environment for consumers to get questions answered to assist them with their purchase decision."

This holds true from the dealer and auto show organizer perspective. "Nothing influences a consumer like the opportunity to physically experience all aspects of a product and that's exactly what an auto show allows," added Jenn Jackson, also Executive Director of Greater Charlotte Auto Dealers Association, which produces the Charlotte Auto

"An auto show allows us to create a unique experience that provides a window into the capability and lifestyle of our vehicles and provides a way for us to differentiate ourselves from the competition and connect with the consumer."

Show. "Consumers can count the cup holders, check the cargo space, experience the technology, move the seat, and all in such a stimulating environment. There is no superior platform for a manufacturer to highlight their brand and influence purchase decisions than an auto show."

While offering consumers a first-class auto show experience, attendee safety is the top priority for show organizers. Show organizers have adopted enhanced cleaning and safety protocols, including temperature checks, mandatory mask use, increased sanitization stations, and enhanced vehicle cleanings between visitors. At the upcoming Houston Auto Show, visitors are also being asked to complete a short health screening before entering the venue, and the show has implemented the use of online tickets with QR codes to limit attendee and show staff contact.

Some auto shows, including the recent Twin Cities Auto Show in May, moved to an outdoor venue to allow better social distancing and air flow. The Twin Cities Auto Show, for example, was held at the state fairgrounds and featured a variety of interactive elements for attendees; while the Denver Auto Show, taking place September 15-19, will be held at Elitch Gardens Theme Park.

These are just a sampling of the safety measures organizers are taking, some of which are outlined in the ASNA Reopening Roadmap for Auto Shows, a guide produced with input from auto show producers and event industry advisers. All shows are working closely with health and safety officials to ensure that all applicable local, state and federal sanitation guidelines are followed.

Though the timing, locations and safety procedures may have adapted, auto shows remain a vital marketing platform for automakers and a key shopping tool for consumers. In fact, at the recent Oklahoma City Auto Show, held March 5-7, paid attendance was up 13.2%; at the Tulsa Auto Show, held April 16-18, paid attendance was up 14.7%.

"As consumer shopping trends have evolved, we have seen many auto shows quickly adapt, innovate, and improve in terms of immersive display and engagement options," said Vinay Shahani, Lexus Vice President of Marketing. "Lexus remains committed to the auto show format as a strategic tool in our marketing mix to help show consumers our latest products and technologies while driving qualified traffic to our dealer network."

Subaru of America Senior Vice President of Marketing Alan Bethke shares this sentiment. "An auto show allows us to create a unique experience that provides a window into the capability and lifestyle of our vehicles and provides a way for us to differentiate ourselves from the competition and connect with the consumer."

Subaru, Toyota and Lexus are just a few of the automakers who remain committed to auto shows, including those shows taking place in a unique, altered format. While "auto shows are facing a perception issue by OEMs," according to Foresight's Chris Stommel, we simply can't ignore that "consumer-driven metrics show that auto shows are just as relevant today as they ever have been." Moving into the remainder of 2021 and beyond, auto show organizers are hopeful that OEMs will continue their support by participating in shows across the country.

Managing Pricing Discretion in Credit Transactions: A Path Forward

One of the most attractive benefits to consumers in any industry is purchasing products and services at a discounted price. Discounting saves customers money, allows companies to earn their business and disciplines the prices competitors offer for the same items. In a normally functioning market, it is a win-win for both consumers and businesses.

At the same time, discounting involves pricing discretion, and pricing discretion that is not carefully exercised by a business can give rise to concerns about arbitrary pricing and, worse, pricing that discriminates against protected groups of consumers. This concern has driven the efforts of many consumer advocates and government officials over the years to eliminate dealer pricing discretion. In the context of dealer financing, this would be attempted by eliminating the participation that dealers earn for originating credit contracts and replacing it with a non-discountable, flat fee.

Many finance sources that are assigned credit contracts compensate dealers with non-discountable flat fees. The National Automobile Dealers Association takes no position on the form of compensation freely entered into by dealers and their finance sources. Nevertheless, NADA has resisted – and will continue to resist – efforts by the government to prohibit finance sources from compensating dealers with discountable dealer participation for originating credit contracts with their customers. The pro-competitive benefits that dealer participation provides to consumers should not be eliminated by unwarranted and untested government intrusion into the marketplace.

Notwithstanding the flaws of such a mandate, concerns about "unfettered" pricing discretion expressed by the acting chair of the Federal Trade Commission (FTC) and others should not be ignored. Dealers should consider ways to address those concerns while striving to provide their customers with affordable and competitively priced products. One approach a dealer should consider (managing discretion while promoting competition) when earning dealer participation in a credit contract is to adopt the optional NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program (NADA Fair Credit Compliance Program).[1]

The NADA Fair Credit Compliance Program was not developed in a vacuum. Instead, it stems from – and fully adopts – an approach to fair credit compliance outlined in consent orders that the Department of Justice (DOJ) entered into with two automobile dealerships to settle pricing discrimination claims in 2007.[2]

In those consent orders, the dealers were required to adopt specifications known as "Guidelines for Setting Dealer

Reserve." This was how the dealer established the standard participation rate (SDPR) that included in credit offers to consumers (i.e., the dealership would offer an APR the sum of the wholesale buy rate offered by the finance source and its SDPR) unless a "good faith, competitive reason" supporting a lower dealer participation rate was present in the transaction. The consent orders included seven such legitimate business reasons for discounting the SDPR, with the three most common being the presence of a lower cap imposed by the finance source, a consumer's monthly budget constraint and a consumer's access to a more competitive offer. The consent orders further required that any deviations from the SDPR be recorded on a pricing certification form, reviewed by the general manager or his or her designee and retained by the dealership.

In Nov. 2013, while speaking at a Consumer Financial Protection Bureau (CFPB) Auto Finance Forum, a senior DOJ official[3] validated this approach when explaining that:

> (i) pricing discretion is not prohibited by the Equal Credit Opportunity Act;
>
> (ii) when exercised, pricing discretion presents a fair lending risk that needs to be managed; and one way to manage that risk is to adopt the approach outlined in the 2007 DOJ consent orders. [4]

Two months later, after extensive preparation and review, the three national trade associations representing franchised automobile dealers released the NADA Fair Credit Compliance Program.

As noted above, the NADA Fair Credit Compliance Program fully adopts the framework established in the DOJ consent orders and builds on it. A dealer who adopts the program has it approved by its board of directors and appoints a senior dealership official to serve as the Program Coordinator (PC). The PC oversees the implementation and maintenance of the program by establishing the SDPR, conducting initial and periodic training, reviewing pricing certification forms, submitting an annual compliance report to the board and performing other related tasks. The program explains each of these steps in detail.

Since its inception, the NADA Fair Credit Compliance Program has gained widespread support from many prominent observers both inside and outside of the industry.[5] Recent additions to the list of supporters include:

> (i) the American Bar Association, which overwhelmingly approved a resolution at its 2020 annual meeting that, in part, urges governments at all levels to offer "a safe harbor against pricing discrimination claims for dealers that faithfully implement the NADA/NAMAD/AIADA Fair Credit Compliance Policy and Program"; [6] and
>
> (ii) a CFPB Taskforce on Federal Consumer Financial Law, which made a similar recommendation to the CFPB and the Federal Reserve Board in Jan. 2021.[7]

The FTC has also seen value in this approach to managing pricing discretion. It included the framework and many elements of the NADA Fair Credit Compliance Program in a May 2020 consent order it entered into with an automobile dealership to settle allegations of intentional credit discrimination.

Notwithstanding its broad support, the NADA Fair Credit Compliance Program remains optional. Its adoption does not guarantee that a dealer will be protected from liability for a fair credit violation. However, if faithfully adopted, implemented and maintained, the NADA Fair Credit Compliance Program provides a dealer with a well-regarded path forward in a very challenging environment. This should not be overlooked when a dealer discusses how it will ensure its customers' fair and lawful treatment with its attorney.[8] ◀

This article is offered for informational purposes only and is not intended as legal advice.

This article was prepared by Paul D. Metrey, Vice President, Regulatory Affairs for the National Automobile Dealers Association.

[1] *The program and other supporting material are available at nada.org/faircredit.*

[2] *In re Pacifico Ford, DOJ Civil Action No. 07-3470 (September 4, 2007) (consent order); In re Springfield Ford, DOJ Civil Action No. 07-3469 (September 4, 2020) (consent order), available at justice.gov.*

[3] *Steven H. Rosenbaum, Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice.*

[4] *CFPB Auto Finance Forum (November 14, 2013), currently available at consumerfinance.gov/about-us/blog/live-from-the-cfpb/.*

[5] *See, for example, the statement made by Rep. Joyce Beatty (D-Ohio) before the U.S. House Financial Services Committee in March 2016 referring to the NADA Fair Credit Compliance Program as a "wonderful document" while Rep. Beatty held up the publication and asked that it be included in the record; and testimonials from 12 prominent industry attorneys expressing support for the program (available at nada.org/faircredit), including from former CFPB Assistant Director Rick Hackett, who stated his belief that the program "can resolve issues raised by the CFPB related to discretionary pricing… assuming it is faithfully executed as described by NADA."*

[6] *American Bar Association, Resolution 116B (August 3, 2020), available at americanbar.org.*

[7] *Taskforce on Federal Consumer Financial Law (TFCFL), CFPB, TFCFL Report Volume II, Recommendation 66 (January 2021), available at consumerfinance.gov.*

[8] *In re Bronx Honda, FTC Docket No. Case 1:20 (May 22, 2020) (consent order), available at ftc.gov.*

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87th Annual Family Convention

The WVADA 87th Annual Family Convention took place June 13th-16th at the Greenbrier Resort in White Sulphur Springs. Thanks to our Corporate Sponsors: Protective and United Bank. This was the first big event we have hosted since COVID-19 and we had a record turnout! To begin our convention, Congresswoman Miller kicked off our BB&T Welcome Reception by addressing our members; and we also had special guests Senate President Craig Blair and Speaker Roger Hanshaw join us. Gold Touch hosted our Casino Night (Blackjack Tournament) to continue Sunday night, which turned out to a big hit. The weather stayed perfect for us the following day for our attendees to enjoy our Federated golf scramble on the Old White Course. The fun didn't stop there as we concluded our day with the Ally-Rita-Ville Block Party with live music, food, and a relaxed, welcoming atmosphere, where we were joined by a very special guest, Governor Jim Justice. Tuesday, our attendees had the option to participate in the Capital Automotive and Arnett Carbis and Toothman Sporting Clay Shoot or the Good News Mountaineer Garage and CVR Wine & Design. While we have a great time at our convention, we also held industry-relevant business meetings Monday and Tuesday mornings.

Our 87th Annual Convention came to an end Tuesday night at our Chairman's Dinner, where we honored T.R. Hathaway and Chris Miller. T.R. passed the gavel to our incoming Chair, Roberta Olejasz. Our night ended with a crowd on the dance floor and attendees enjoying the interactive Komax photobooth. ◀

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COUNSELOR'S CORNER

By Johnnie E. Brown, Esq., Pullin, Fowler, Flanagan, Brown and Poe, PLLC

Hello everyone. We just had our wonderful annual convention. It certainly uplifted my spirits to see everyone in person. Lots of great information was received, and I hope you have taken the time to contemplate how it can benefit you at your respective dealerships.

I apologize for taking us away from the positive reflection of the annual convention to some more sobering thoughts we should acknowledge and appreciate to protect our life's work.

Motor vehicle dealers face significant challenges moving forward. There is certainly an ongoing attack on the franchise model with manufacturers attempting direct sales. Not only do we face this challenge from several new electric vehicle manufacturers, but we are also confronted with actions from our long-standing traditional manufacturers. They disguise their efforts to engage in direct sales by controlling every aspect of the retail process under the misguided narrative of bringing customers to our dealerships.

Likewise, there is a movement of changing a traditional revenue stream that dealers receive, the "holdback," to no holdback. We see an attempt to replace holdback with incentives based upon unreliable customer retail and service surveys, sales quotas and unreasonable and unnecessary facility requirements. As you are aware, your Association is working diligently to combat these types of improper practices.

Dealers withstand the unwarranted public perception that they oppose the sale of electric vehicles. The National Automobile Dealer Association ("NADA") is working diligently to combat this false narrative, but dealers can also be part of changing this incorrect impression. We all know that it is only through the dealer body that electric vehicles can genuinely reach the everyday consumer. New motor vehicle dealers are an integral part of providing the infrastructure needed to charge and service electric vehicles. Only dealers have the skills and experience to accomplish this effort in the retail space instead of manufacturers who do not understand the local customer who has been coming to your dealership for years.

A more short-term challenge requiring our immediate attention is the possible aggressive action we will see from the new national administration. We have already learned of statements made by Biden administration officials expressing their desire to eliminate dealer margin and prohibit, or strictly limit, the sale of voluntary protection products.

I encourage all dealers to review the NADA guides on fair credit compliance and voluntary protection products. These provide practical and essential guidelines, but I do warn of the danger of simply using a form without legal guidance. These policies need to be modified to fit your individual business. Simply having a form policy in place, which likely never will be read or followed, is worse than having no policy at all. Using these forms as a basis and then carefully making them applicable to your business is crucial and can provide guidance and protection.

The word of the day is "compliance, compliance and compliance." There is no more useful way to prevent lawsuits and create an environment for selling and servicing motor vehicles and voluntary protection products to consumers. Of course, there are many aspects to compliance:

- Are your corporate records in place and up to date?
- Do you have appropriate employment policies and procedures established and documented?
- Do you have your vendor contracts organized and hopefully reviewed before you obligate yourself to these typical one-sided contracts? (There is the day-to-day management of Occupational Safety and Health Administration and environmental concerns, in addition to the all-important consumer laws and manufacturer mandates and programs.)

Fortunately, you do not have to go through these things alone, and there are experts to help you through each of these challenges. Your Association stands with you and works hard to support you. You should obtain appropriate and competent legal counsel in these areas as you move forward and lay the foundation to minimize legal exposures and maximize revenue in a proper and compliant manner.

As we move forward this year, the Counselor's Corner will focus on some specific aspects of compliance to assist you in eliminating exposures. Stay tuned and informed, and we hope that the remainder of 2021 remains positive for you. ◀

Mr. Brown serves as General Counsel for the West Virginia Automobile Dealers Association. If you have any questions, you may reach him at (304) 344-0100 or jeb@pffwv.com. For more information visit pffwv.com.

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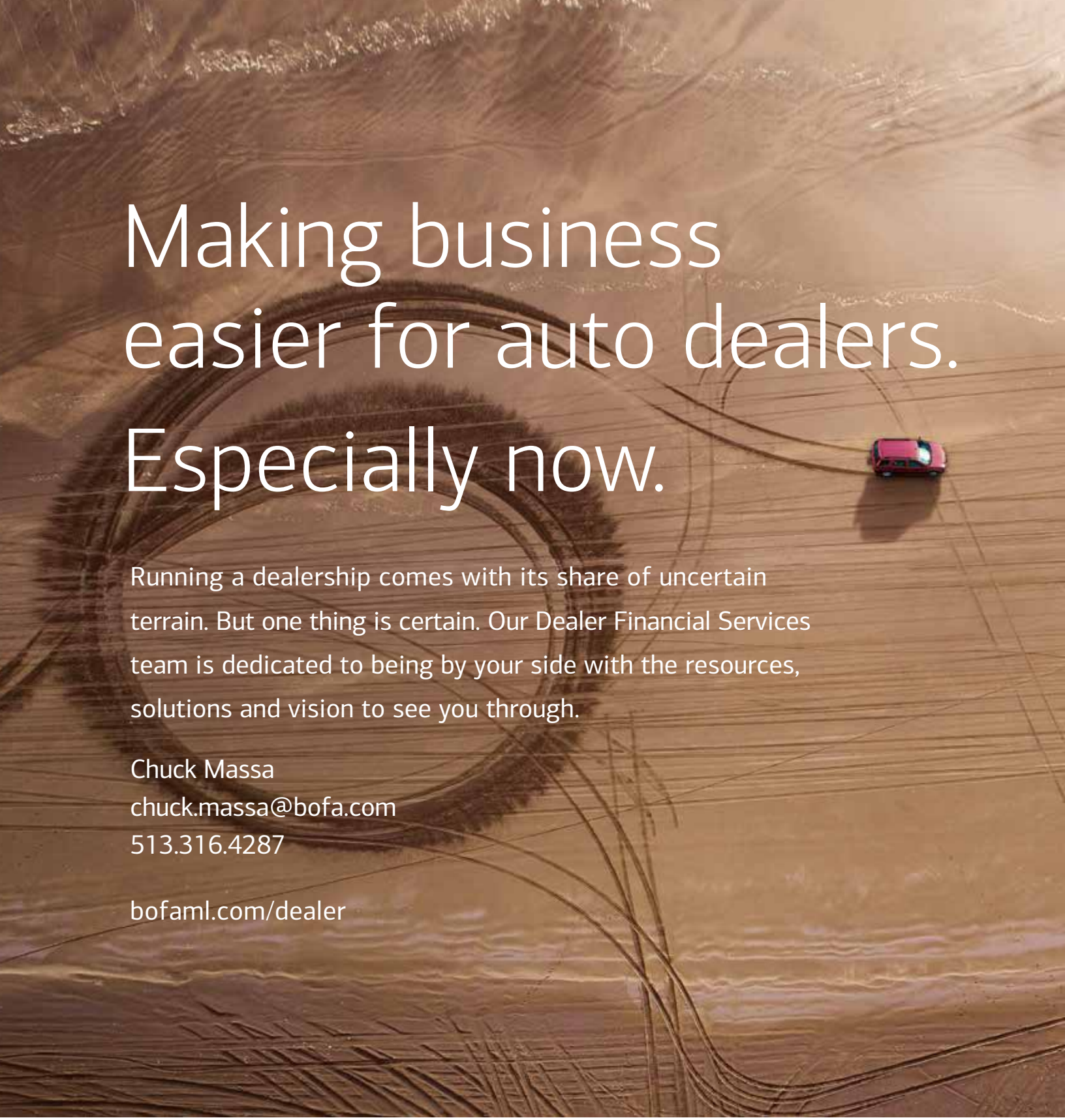

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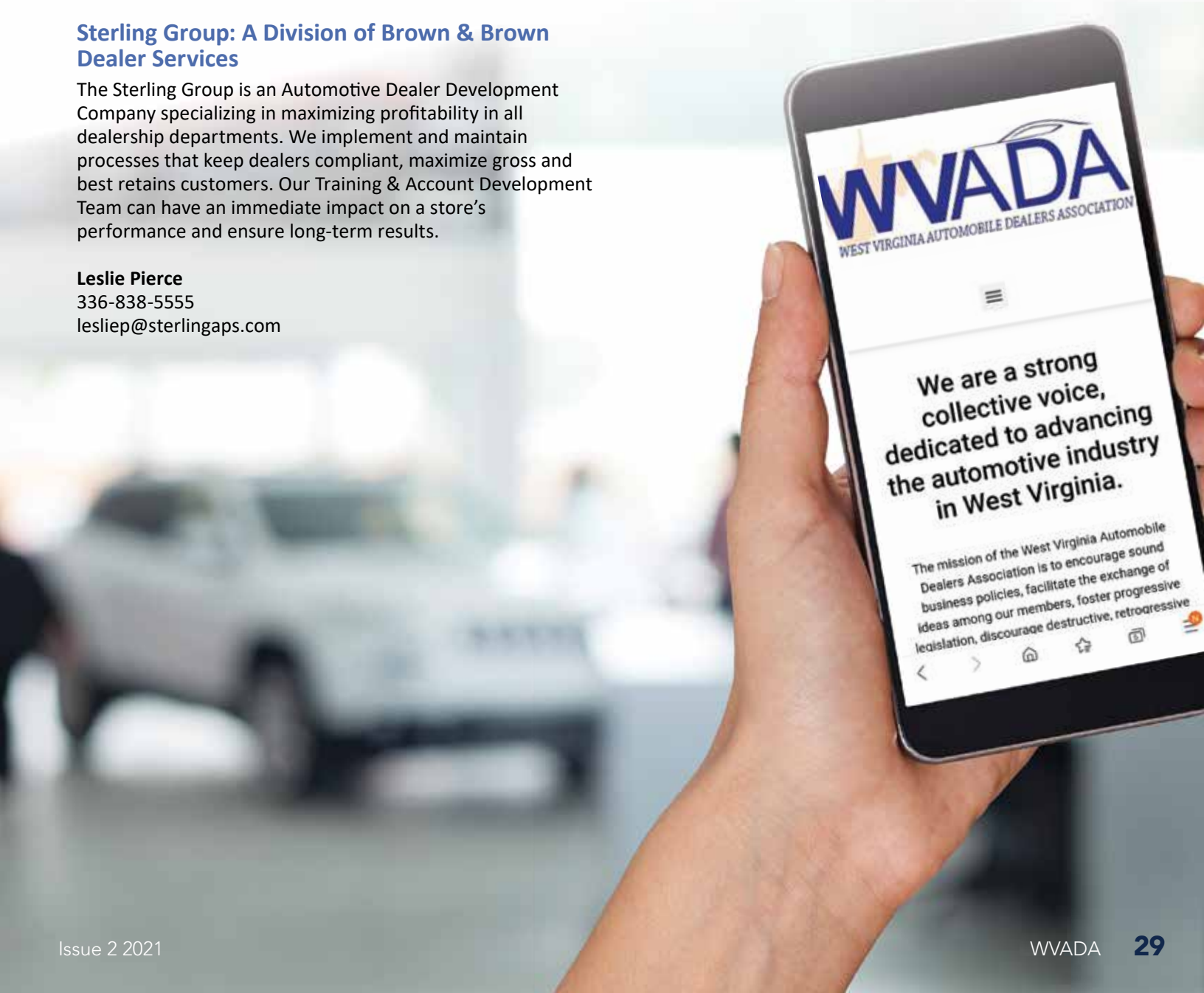

Employee Retention Tax Credit: Too Good to Be True?

By Leon M. Rogers
Tetrick & Bartlett, PLLC

The Employee Retention Tax Credit (ERTC) provides a 70% tax credit on the first $10,000 in wages per employee. For each quarter the business meets criteria in 2021, a 50% tax credit equivalent to $10,000 in wages per employee in 2020 is granted for qualifying businesses.

The tax credit refund can still be claimed by amending payroll tax returns. The qualifying criteria being applied by our firm is the reduction in revenue test, subject to a government shutdown as a non-essential business.

A few consultants are saying every business can qualify for the ERTC, claiming specific whole industries qualify. The retail automobile industry seems to have been targeted as qualifying. I have received several communications from clients – contacted either directly or through a referral from a friend by these consultants – claiming they qualify without reviewing any of the supporting data. The fees charged by these consultants range from a low of 5% of the credit calculated to as high as 15%.

In Eligible Employers Guidance, the ERTC states, in essence: "an employer [with an essential business] may be considered to have a full or partial suspension of operations … if the business's suppliers are unable to make deliveries of critical goods." An aggressive approach to the interpretation of this section is being used to qualify businesses that do not meet the revenue or direct shutdown order criteria.

Any dealer engaging a tax credit specialist should do so with the knowledge that their refund claims are subject to audit and could also be subject to interest and penalties if they are determined to be non-qualifying.

We suggest the following inquiries be made before engaging a tax credit specialist:

1. How long has the specialist been in business?

2. How many clients have they represented before the IRS, and how many CPAs, attorneys, and other qualified personnel do they employ to represent their clients before

the IRS? Curriculum Vitae (CVs) on these individuals should be provided.

3. Does the specialist reimburse defense costs, penalties, and interest?

4. Does the specialist follow the published guidance to ensure that claims will be made only in cases that adhere to the letter of the law?

5. Do they provide a clear and quantifiable substantiation of the qualification criteria before asserting the business is eligible?

We encourage all dealerships to determine if they qualify for this benefit provided by the federal government and have complete and accurate data to substantiate any claim.

Dealerships should consult with their CPA and/or attorney before signing an ERTC assistance contract to ensure there are no misunderstandings with the provider for the risks you and they are assuming in connection with any credit received. ◀

Leon M. (Lonnie) Rogers, CPA/ABV/CFF, is the managing member of Tetrick & Bartlett, PLLC, providing accounting, tax, valuation, and consulting services to automobile dealers since 1977. Tetrick & Bartlett, PLLC currently serves over 50 dealers in West Virginia, Virginia, Ohio, and Pennsylvania and is a member of the AutoCPA Group, a nationwide organization made up of 25 CPA firms specializing in services to automobile dealers. Lonnie can be reached at lrogers@tetrickbartlett.com, or 304-624-5564.

In Eligible Employers Guidance, the ERTC states, in essence: "an employer [with an essential business] may be considered to have a full or partial suspension of operations … if the business's suppliers are unable to make deliveries of critical goods."

Post-Pandemic Dealership Trends That Are Here to Stay

By Sharon Kitzman

COVID-19 changed every aspect of our society, including the way dealerships operate and how consumers purchase vehicles. As states re-open and businesses return to normal operations, some key trends will continue even after the coronavirus is under control. Here's what you can expect to see post-pandemic and how to position your dealership for success in the long run.

Online Car Shopping and Purchasing

According to Haig Partners, 30% of new car sales last year in the U.S. were conducted online, compared to 2% pre-pandemic. Millennial shoppers, in particular, want to buy or lease through their smart phones and just come to the dealership to close the deal. To meet this demand, you can create a better car buying experience by creating a virtual sales manager role and invest in tools that streamline the online car buying process. This ensures customers efficiently go through the decision-making and feel confident that your dealership is the best one from which to buy their next car.

Telecommuting and Remote Operations

The lockdowns forced some dealerships to temporarily close their doors at a time when consumers moved away from ride sharing to car ownership. To minimize disruption, many dealers allowed their staff to work from home and continue helping customers through their buying journey. Be more efficient in a remote environment by using your Document Management System (DMS) to:

- Setup prospective deals and quickly offer different payment options on the fly
- Schedule appointments to test drive cars and have the vehicle(s) delivered to a customer's home
- Enable customers to complete most, or all, of their contracts and payments digitally

Mobile Service Drives

More vehicle purchases mean more cars that require maintenance. Many dealers operated their service drives during COVID by offering mobile services, such as picking up the car from the customer's home and bringing it back after an oil change and tire rotation. What was once considered a concierge luxury service is becoming more popular. To do this effectively, you'll need a DMS that doesn't require VPN offsite, so your team can easily deliver exceptional service at your customer's convenience.

Digital Marketing and Promotions

Consumers are more internet savvy than ever before, and COVID made digital advertising even more essential as people

avoided high-touch surfaces. Identify websites and social channels where your customers visit and try to be present there. Leverage advanced social advertising capabilities to target specific audiences and get your dealership in front of people who may not know your brand or the special offers you're running.

Secure Virtual Payments

The days of handing cash and credit card to the cashier before picking up a vehicle are fading quickly. As consumers strive to avoid crowds, being able to pay for their car in advance – quickly and securely – has been vital during the pandemic and beyond. Make sure your DMS provides an easy way for customers to pay online and track details within the repair order for your records.

Cyberattacks

Automotive dealerships are often targeted by cybercriminals due to the high volume of sensitive data, and this has increased since the pandemic began. With the rise in remote work and more car buyers on the market, this threat will continue. According to Blum Shapiro, dealerships investing in cloud technology are well positioned due to higher security protocols. A cloud-native DMS, for example, can help protect your data through immediate security patches and updates. It can also backup your records in the cloud, so you don't lose critical information in the event of a breach.

Many of these dealership changes are long overdue, and the COVID-19 pandemic simply accelerated the digital retail process. Despite the emergence of online used car marketplaces, such as Vroom and Carvana, dealers proved our industry's ability to adapt and succeed under unprecedented circumstances. The goal now is to stay ahead of competitors for the long haul by implementing an agile workforce, robust processes and modern cloud solutions that enable you to maximize productivity, customer satisfaction and profitability. ◀

Sharon Kitzman leads the launch and long-term growth of VUE DMS. Her expertise in DMS technology is key to helping VUE clients to optimize their operations with innovative solutions. Previously, Sharon managed the strategic direction and product development for Reynolds & Reynolds and Dealertrack. Her experience spans every area of dealership software development including sales, marketing, product lifecycle management, process re-engineering, OEM management, professional services and customer service.

Sharon is a recognized leader in the automotive industry and has received many accolades including Automotive News Top 100 Leading Women 2015 and 2020, Auto Remarketing Women in Retail 2021, and AutoSuccess Women at the Wheel 2021. She has a Bachelor of Business Administration from Ohio State University.

You can create a better car buying experience by creating a virtual sales manager role and invest in tools that streamline the online car buying process. This ensures customers efficiently go through the decision-making process and feel confident that your dealership is the best one from which to buy their next car.

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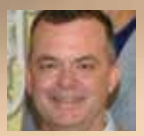

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