

## What's in the Numbers? July 2006

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NADA recently published its annual data regarding the Economic Impact of America's New-Car and Truck Dealers. (The report is available at [www.nada.org](http://www.nada.org)). It is worthwhile reading for any lawyer who represents automobile dealers, as it provides valuable insight into the economic forces that are moving the industry and thus shaping the legal landscape.



Consider the call you receive from Dan the Dealer. He is incensed by the customer who bought a car two weeks ago and has come back for the free pin-striping the salesman promised. There is no documentation of any kind in the deal jacket and your salesman swears on his next two commission checks that he never promised the customer anything. "That's \$250 out of my gross!" yells Dan the Dealer. "She can't get away with that, can she?" At this point, you can launch into a discourse on the law as it relates to oral agreements, alleged unfair and deceptive trade practice and the high cost of litigation, or you could remind Dan of something he already knows. New vehicle department's percentage of net operating profit is 14.5%. Service and parts' percentage of operating profits is 58.5%. So ask Dan the Dealer: Are you better off giving the customer the pin-striping and keeping her service business, or standing by principle and at best losing a service customer, or at worst, inviting a lawsuit costing time and money? It should hopefully be a short conversation.

A few days later, a friend of Dan the Dealer calls you. He says that Dan the Dealer highly recommended you based on your sage advice on his consumer issue. Dan's friend has a real problem. The factory is complaining about his market penetration and CSI scores. The zone representative even made some not too subtle comments about canceling his franchise. "Can they do that?" he asks. You could educate him on the state franchise law and the law of contracts as it relates to his dealer agreement, but you recall something about the economic theory of supply and demand. You ask him what state he is from and what brand he sells. When he tells you he owns a small Ford dealership in California that sells 100 new AND used cars a month, you try not to gasp in horror. A quick look at the NADA data tells you there are 1659 dealers in California and Ford's share of the new car market nationwide has dropped from 25.81% in 1995 to 18.34% in 2005. That's a decline of 29%! In contrast, Toyota's share has almost doubled. Even worse, the total number of Ford units sold has declined in the same time period by 18% while the total number of dealers nationwide has declined less than 1%. You don't want to pile it on, but the dealership attrition that has occurred is in low volume stores and the huge domestic incentives have artificially boosted domestic volume (i.e., it could be much worse). A fair assumption is that California mirrors the national averages and the Ford dealership in question is likely to be a historical footnote. You pause, making sure you choose your words carefully. "How much is your real estate worth?"

Several months pass when the owner of Bernadette's BMW calls you up. Bernadette tells you that her friendly IRS agent called her and wanted to audit her Form 8300s. She is not sure why they are picking on her. "Audit?!" she screams. "I've paid my taxes to the penny!" After explaining to Bernadette that the Form 8300 has nothing to do with her taxes but rather her

receipt of cash payments in excess of \$10,000, she asks “Why are they bothering me?” The NADA data provides a simple answer: odds. The automobile industry accounts for almost 23% of the gross annual retail sales in the United States. Dealership payroll is almost 14% of all retail payroll in the United States. Consequently, dealerships are more likely to be audited on compliance issues relating to taxes, employment, the Privacy Act, and my personal favorite, OFAC/SDN list checking (pat yourself on the back if your law firm complies with OFAC requirements). Moreover, with such a large number of employees, dealers must be sensitive to labor related issues, such as discrimination, compliance with the Americans With Disabilities Act, ERISA and the Family Medical Leave Act.

As lawyers, we have an obligation to be a source of legal knowledge as well as advise our clients. Knowing the business of your client is a good start. Go grab the NADA Data book. It’s a quick and interesting read. It will help you dispense good practical advice along with your legal expertise. It might also be a good time to pull out your legal due diligence check list and send it to your dealer clients.