



Dealer Succession

By Joseph S. Aboyoun, Esq.
Aboyoun Dobbs, LLC

In this Issue:

- Feature Articles 1, 8
- Executive Director’s Message..4
- New Members 9
- Advertising Opportunities 14
- Board of Directors..... 15

REGISTER TODAY! 2023 NADC Annual Member Conference

April 30 - May 2, 2023
 The Ritz-Carlton, Amelia Island
 Amelia Island, FL



Contact Us:

NADC
 1800 M Street, NW
 Suite 400 South
 Washington, DC 20036
 Phone: 202-293-1454
 Fax: 202-530-0659
info@dealercounsel.com
www.dealercounsel.com

It is rare that a dealer has a well-reasoned and approved succession plan. Just as most clients tend to ignore essential estate planning, dealers are apt to put off franchise succession matters until, in many cases, it is too late. One of the primary areas of guidance that an accomplished “car lawyer” can bring to the table is to properly advise his/her client on such matters.

Indeed, the absence of a plan or, worse, a defective one, can have severe, adverse consequences. We have all seen far too many such cases. Not only do these severely disrupt dealership operations, but the impact on the family and other relationships is immeasurable and, sometimes, irreparable.

Conversely, with one exception¹, all major automotive franchisors permit the pre-approval of a succession plan under the Dealer Agreement. With one in place, most of these problems can be mostly avoided or significantly mitigated.

The initial step in the process is to examine your client’s pre-existing franchise agreement and related documents in order to ascertain what succession program may have been previously implemented and approved by the manufacturer. This is typically embodied in a document or section entitled a successor addendum or the like. In many cases, you will find that either one does not exist or the one in place is not in sync with the client’s current estate plan.

Of course, the state franchise law weighs heavily in this area. Most will provide some protection against a franchisor’s attempt to terminate a franchise in the event of death or to arbitrarily reject a succession proposal. Specifically, many states validate a dealer’s right to appoint by Will or other estate planning document a designated family member or employee to succeed to the dealer’s ownership interest. Such states either make it unlawful for

¹ The exception is Volkswagen. In a recent succession involving one of my client’s, VWOA responded: “Please be advised that VWOA does not approve prospective succession plans and will not issue a Successor Addendum or otherwise recognize the succession proposal at this time”. VWOA further noted that it would only evaluate a succession proposal in the event of death, which is, of course, absurd. What is even more absurd is that Volkswagen’s affiliates, including Audi, Bentley, and Porsche, each recognize and approve succession plans. Query, does VWOA’s unique policy violate the covenant of good faith and fair dealing? In certain states, it may violate the franchise statute.

Disclaimer: The *Defender* articles do not constitute legal advice and are not independently verified. Any opinions or statements contained in articles do not reflect the views of NADC. Cases cited in articles should be researched and analyzed before use.

a manufacturer to deny the request or provide that the request can only be denied for good cause.² The law will, in most instances, be helpful in the processing of the succession plan and place the always-opportunistic manufacturer on its heels.

It is also important to have a full understanding of the client's estate plan to properly develop the business succession plan. Indeed, the intended successor owner in the franchise records must be identical to the intended beneficiary of the client's ownership interest in the dealership entity under the applicable estate planning document (e.g. Will or Trust). Typically, this may be the surviving spouse or children (or certain of them) or Trust(s) created for the benefit of either.

The death (or total disability) of a dealer can become extremely difficult, especially if a pre-approved succession plan is not in place. The franchisor's patience in the post-death, transitional period is quite limited, if not downright unreasonable and unfair. In most cases, it is doubtful that they will allow more than a matter of months to process and implement the changes in ownership and management. The stress and pressure that this situation brings upon the survivors cannot be overstated.

The impact of such circumstances extends far beyond the survivors. It creates major trepidation on the part of dealership employees who worry about continuing employment. It also impacts the dealership's business relationships with significant third parties. The most important of these is the dealership's lender. Needless to say, the financing source of the store, whether in the form of a floor plan, a capital loan, or a mortgage, must continue unabated in the event of the owner's demise. Most loan documents include death acceleration provisions. While a lender will, typically, grant time to the survivors to develop a plan, its patience also runs as thin as the manufacturer(s).

Also, the dealership's landlord and lease should not be overlooked in this regard. A transfer of ownership upon death could trigger a termination of the lease or, at minimum, the necessity for the landlord's consent.

All in all, this scenario can be extremely difficult at a time when the survivors are not of the mindset or in a position to deal with the problems. Thankfully, this situation can be avoided or, at least, facilitated with a proper succession plan.

This plan necessarily entails both ownership and management. Specifically, it addresses who will own the dealership upon a dealer's passing, on the one hand, and who will manage franchised operations, on the other. In certain instances, this can be the same person. For example, if the dealer intends to leave the dealership to his/her spouse or child, and that person has both the experience and qualifications to

² See, e.g. ARIZ. REV. STAT. ANN. § 28-4461 (2021); CAL. VEH. CODE § 11713.3 (2022); FLA. STAT. § 320.3206 (2021); GA. CODE ANN. § 10-1-652(a-h) (2020); 815 ILL. COMP. STAT. 710/4 (2021); MICH. COMP. LAWS § 445.1575 (2021); N.Y. VEH. & TRAF. LAW § 463(m) (2021); OHIO REV. CODE ANN. § 4517.56 (2020); OR. REV. STAT. § 650.380 (2021); 63 PA. STAT. AND CONS. STAT. ANN. § 818.314 (2021); and TEX. OCC. CODE ANN. § 2301.462 (2021).



BE A CONTRIBUTOR!
We are always looking for submissions to publish in the Defender. Please send your contributions or proposals for articles to:
Kyle Sipples, Editor,
KSipples@autosavergroup.com

be a dealer, the succession plan should be both simple and seamless. However, in many cases, these are two entirely different persons/entities (or groups).

In the latter scenario, the client may desire to leave all or a substantial portion of his/her ownership interest to his/her spouse or a Trust for his/her benefit. The latter is known as a Qualified Terminable Interest Property (or QTIP) Trust under I.R.S. § 2056. This Trust is designed to maximize the so-called marital deduction under the federal estate tax law in order to vastly reduce, or even completely defer, the estate tax upon the passing of the first spouse.

If the spouse is not involved in dealership operations, or his/her involvement is limited (e.g. office manager), he/she may not qualify to manage the dealership from the franchisor's perspective. In such case, a general manager or outside person may be necessary to satisfy the manufacturer's requirement that a qualified, experienced individual be selected to manage the dealership operations. As such, in the succession plan, the QTIP may be designated as the succession owner and the general manager (or the new manager) is designated as the dealer manager. The general manager's title has a variety of names depending upon the manufacturer – e.g. "Dealer Operator" in the case of General Motors and Chrysler, "Center Operator" in the case of BMW, and "Approved Automotive Operator" in the case of Toyota.

A significant issue in these scenarios is whether the general manager must have an ownership interest in the dealership to qualify for his/her position. Many manufacturers, such as Lexus and Toyota, prefer that the general manager have so-called "skin in the game". Of course, the issue of equity can be challenging. Many dealership families prefer to avoid an equity relationship with the GM for obvious reasons. However, where it is unavoidable, the arrangements must be carefully structured to protect the family. In doing so, the following are recommended:

- The percentage of the ownership sold or granted to the GM should be the minimum required by the manufacturer to qualify for the position. This will vary from manufacturer to manufacturer. The minimum is typically not less than 5%.
- Preferably, the equity should not carry voting privileges.
- The GM should be required to execute an equity agreement that imposes restrictions on the transferability of his/her equity rights and

provides for the repurchase of the ownership interest in certain specified events – e.g. death, disability or termination of employment.

- The GM, as employee, should remain subject to termination for the usual “for cause” reasons.

These equity scenarios can involve complex issues, such as the determination of price and the manner in which the employee should pay or earn his/her equity. Simply stated, the equity agreement must be negotiated with care and specificity and, of course, should be crafted optimally to protect your client.

There is one final note of caution. Processing succession plans with the manufacturers is, in most cases, an arduous and protracted process. Most give priority to the processing of pending buy-sells. These franchisors ascribe low priority to succession matters, as well as lifetime ownership and management changes. Many even flaunt their legal obligations. It can be a very frustrating and costly process for your client. The key to the successful conclusion of such matters is tenacity and a constant reminder to the franchisors of the dealer’s statutory right to effectuate these changes.

Too often, a dealer mentions his/her desire to avoid these succession problems. Unfortunately, it is far less frequent that he/she follows through. As their counsel, it is incumbent upon us to point out the many problems created with no plan in place (or a defective one) and

the significant benefits to be derived from a well-designed and pre-approved succession plan. ■

Joseph S. Aboyou is the managing member of Aboyou Dobbs LLC located in Morris County, New Jersey. For over 40 years, Mr. Aboyou has been involved in the purchase and sale of automobile dealerships which has developed into a long-standing reputation for the handling of automotive-related transactions. He has extensive experience in handling franchise dispute resolution proceedings. He also engages in extensive estate planning matters for car dealers, including buy/sell agreements, estate tax reduction techniques, and successor addendum issues.

Updated Member Contact Information

Please make sure to notify NADC Staff (info@dealercounsel.com) if your contact information has changed so that your records can be updated accordingly. We list updated contact information in *The Defender* so all members can be aware of the change.



SAFETY RECALL LIABILITY ARE YOUR CLIENTS COVERED?



Are they gaining **all** available profits?



Are they catching **100%** of **all** safety recalls?



Do they know their **Safety Recall Liability Score**?



Would they like to know the **Best Practices**?

Have your dealer clients obtain their Safety Recall Assessment Report. It only takes 2 minutes > www.autoap.com/assessment

Executive Director's Message



Erin H. Murphy
NADC Executive Director

Dear NADC Members,

I hope that you all have made your travel plans to join us in Amelia Island, FL for the NADC Annual Members Conference – April 30 – May 2nd. If not, it is not too late! Registration and hotel information can be found here: <https://www.dealercounsel.com/events/2023-nadc-annual-member-conference>

As a reminder, we will be offering Part 2 of our Dealer Counsel 101 Course on Sunday, April 30th from 12:00 – 2:30 PM.

Dealer 101: Employment Law Exposures Sunday, April 30, 12 - 2:30 PM

This program is an introduction to the dealership environment and the legal and regulatory issues dealership principals and managers are likely to encounter. It is designed for those attorneys relatively new to dealership operations and issues, or those more experienced attorneys who may be very knowledgeable about one legal area and wish to gain knowledge of other legal exposures faced by motor vehicle dealers. This session is part two of a three-part series for Dealer 101 and will focus on a general introduction to employment and human resources exposures.

Please make sure to select this session during registration if you plan on attending. A light lunch will be served.

If you have any questions about the upcoming conference at all please contact Jennifer Polo-Sherk at jpolo-sherk@dealercounsel.com.

NADC Member Benefits Survey

I hope you all have seen our communication regarding the NADC Member Benefits Survey. The NADC Board of Directors is

currently exploring potential ways to further enhance the value of the organization and offer maximum benefits to our members.

As part of the process, we are asking our members to participate in a survey of NADC. The survey will take less than 10 minutes to complete and the responses to this survey will be a critical component in assisting the Board.

Your responses are confidential. Only the survey responses will be available to NADC. Results will be reported in aggregated form, except for open ended responses which will be edited to remove any identifying information.

Your participation is very important to

NADC, but it is of course voluntary. You may skip any question or quit the survey at any time, although we hope you will try to answer every question as best you can based on your own experience and perceptions about NADC, even if these are limited.

The survey will be open until April 15, 2022. Thank you in advance for your participation!

If you have any questions or comments about the survey, please contact Executive Director Erin Murphy at emurphy@dealercounsel.com. ■

[NADC Member Survey...Please Click Here!](#)



FLORIDA | NEW YORK
NEW JERSEY | CALIFORNIA | TEXAS

Since 1996, we have strived to be the best in class for the specific industries that we serve.

We have developed such significant industry expertise, that we not only function as an outside firm to prepare financial statements and tax returns, but are a true business partner, confidant, and valued member of the teams we serve.



TAX

Timely, personal attention in the fast-paced world of tax planning and compliance.



ATTEST

Utilizing state-of-the-art software and strategic alliances to deliver effective audits.



CONSULTING

Specialized Automotive Dealer Services, Business Advisory and Emerging Technology Services tailored for you.



PAUL KAPLAN, CPA, MBA, CGMA Partner

Paul's career spans over four decades in public accounting. Throughout his career, he has worked for national, regional, and local CPA firms as a partner, senior partner, and chief operating officer. His experience includes Attestation, Tax Planning and Compliance, Profitability Consulting and Analysis, and Merger/Acquisition Services.

After practicing on his own for several years, Paul formed KDMS, LLC with two other CPA's. Together they doubled revenue each year focusing on Attestation and Tax Planning/Compliance in the middle market. In mid-2014 the opportunity presented itself to merge with a truly remarkable organization, Rosenfield & Co., PLLC, where Paul is now Partner and a pivotal member of the team in the firm's New York office.

MEET PAUL AT THE SPRING NADC CONFERENCE!

WWW.ROSENFIELDANDCO.COM

2023 NADC Annual Member Conference



April 30 - May 2, 2023

The Ritz-Carlton, Amelia Island • Amelia Island, FL

Program Information

Join us for an informative and educational program focusing on the following topics:

- Dealer 101: Employment Issues
- NADA Update
- 2023's Top Legal Issues for Automobile Dealers
- EVs: The End of Franchising?
- Website Accessibility – Compliance and Defense Strategies
- Are You Listening? The Cars We Drive Say a Lot About Us
- In-House Counsel Roundtable
- Rebirth of Customer Satisfaction Indices – A Modern Day Punitive Weapon
- Transportation Transformation: Federal and State Mandates for Cleaner, Greener, and Fewer Vehicles
- Identifying and Investigating Fraud in a Post-Pandemic World
- Selling a Retail Automotive Dealership

Register Today!
[click here.](#)

Hotel Information

Note: The hotel room block is sold out; if you are looking for a room please contact jpolo-sherk@dealercounsel.com to be added to the waitlist.

Also, please contact Jennifer Polo-Sherk if you need to cancel your hotel room so we can move someone off of the wait list.

Hotel Options for Overflows

1. [Courtyard Amelia Island](#) - Rooms currently starting at \$319+taxes/night - 5.5 mi from Ritz-Carlton (15 min drive)
2. [Residence Inn Amelia Island](#) - Rooms currently starting at \$286+taxes/night - 4 mi from Ritz-Carlton (10 min drive)
3. [Omni Resorts Amelia Island](#) - Rooms currently starting at \$730+taxes/night - 4 mi from Ritz-Carlton (10 min drive)

Cancellation Policy

Reservations cancelled within seven days of arrival will be charged both the first and last night's room and tax. Guests who neither arrive nor cancel reservations will be charged room and tax for the duration of the confirmed stay. Guests departing before their confirmed departure will be charged room and tax for all remaining nights of the reservation.

Please note that ride share services (Uber, Lyft) can be limited on Amelia Island.

Transportation Services for Hotel Guests

Below is a list of transportation services the hotel suggests to get around Amelia Island:

Car Service/Group Transportation

- Blue Sky Transportation
<https://www.blueskyofamelia.com/> | Claudia, 904-557-621
- Montego Transportation
<https://montegolimo.com/about-us/> | Phil Huber, 904-583-733
- Barr's Transportation
www.barrstransportation.com | 904-642-1662
- Amelia Island Luxury Transportation
<https://ameliaislandluxurytransportation.com/> | 904-371-4424
- Lifestyles Executive Transportation
<https://www.lifestyletransportation.com> | 904-335-0863

Taxi Service

- Amelia Car Service | Tony Grego, 904-415-3066
- Yellow Jacket Transportation | Ted Peoples, 912-467-1726
- Ray's Rides | 904-583-6858
- Tom's Island Transportation (Luxury) | 904-321-7994

2023 NADC Annual Member Conference



April 30 - May 2, 2023

The Ritz-Carlton, Amelia Island • Amelia Island, FL

Thank You to our Sponsors



NORTH AMERICA'S HIGHEST VOLUME DEALERSHIP BROKERAGE FIRM

A TEAM OF INTEGRITY



MOSHE STOPNITZKY
President



JASON STOPNITZKY
Co-Founder & Western



JESSE STOPNITZKY
Partner, RV & Marine



JONATHAN FORGY
CPA



KELLI COUWENBERG
Corporate



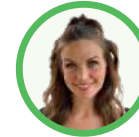
JON COUWENBERG
Corporate



APRIL MILLER
Corporate



LISA REINGOLD
Corporate



CORI GUNDERSON
Corporate



JOHN MECHAM
Rocky Mountain



JONNY MECHAM
Rocky Mountain



PAUL KECHNIE
Texas & Midwest



MARK SHACKELFORD
Texas & Midwest



JAY HOPKINS
Texas & Midwest



ERIC SCOTT
Texas & Midwest



EMILY BOURNE
Texas & Midwest



GEORGE CHACONAS
Southeast & Powersports



COURTNEY BERNHARD
Southeast & Powersports



JUAN PARDO
Southeast & Powersports



KIRK FELIX
Southeast



BRAD GEORGE
Southeast & Powersports



GERSHON ROSENZWEIG
Northeast



MATT WILKINS
Northeast



DAN ARGIRO
Trucking & Equipment



PAT ALBERGO
Trucking & Equipment



ALEX ARGIRO
Trucking & Equipment



ROB ARMSTRONG
Canada



BRUCE MARCIA
Canada Outdoor Recreation



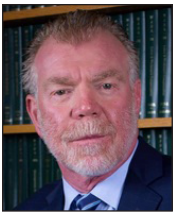
We pledge to do it right, every time, one client at a time.



Performance
BROKERAGE SERVICES

949. 461. 1372 • PERFORMANCEBROKERAGESERVICES.COM

CALIFORNIA | UTAH | TEXAS | ILLINOIS | OHIO | FLORIDA | NEW JERSEY | VIRGINIA | CANADA



Associational Standing: Stuck in the Mud Somewhere in the Swamps of Jersey¹

By Jim Appleton, *New Jersey Coalition of Automotive Retailers (NJCAR)*

Experienced dealer counsel know all too well the difficult position dealers find themselves in when automakers implement policies or procedures that run afoul of state franchise laws, such as facilities mandates, warranty reimbursement, allocation and stair-step or two-tier pricing. When it comes to franchise protections, many automakers subscribe to the notion that it is “easier to ask for forgiveness than permission”. Automakers know that it is a rare and usually desperate case when a franchisee steps up to individually challenge their franchisor.

When an automaker rolls out a new program or procedure that dealers find objectionable, franchisees often turn to state and metro dealer associations to right the wrong. State franchise laws are, essentially, a patchwork of provisions designed to stop some heavy-handed manufacturer program or policy designed to shift costs or impose new burdens on retailers. Even in situations where state laws clearly prohibit manufacturer behavior and establish specific guardrails intended to protect dealers from unfair trade practices, OEMs push ahead, banking on the fact that no dealer is likely to challenge their actions, unlawful or not. Dealers fear retribution and manufacturers have plenty of means at their disposal to punish non-compliant dealers.

As a dealer advocate and head of a state dealer association, I am often frustrated that our efforts to defend dealer franchise rights feel like an exercise in futility. We write franchise laws designed to level the playing field and protect dealers from heavy-handed manufacturer business practices that undermine the dealer franchise system. But those laws mean nothing if manufacturers won't respect them, and dealers, understandably, are reluctant individually to enforce their rights. Those laws also mean nothing if courts, as explained further in detail below, dismiss those lawsuits that are filed seeking enforcement of those rights on procedural grounds without ever addressing the illegal nature of the manufacturer business practices at issue.

So, it often comes down to dealer associations to assert rights on behalf of their dealers. After all, dealer associations were formed in large part to serve as advocates for neighborhood new car dealers and to advance public policy that fosters greater investment in an extensive network of independent new car franchises that sell and service motor vehicles. This includes our advocacy for laws that protect consumers and automotive franchisees from heavy-handed anti-competitive and/or anti-consumer business practices. That advocacy usually involves direct lobbying at the State House for or against laws that affect auto

retailing and sometimes it involves advocacy at the courthouse to assert or seek to preserve a right that dealers are either unable or unwilling to assert on their own behalf. But to carry out that role at the courthouse, dealer associations must overcome the issue of standing.

When does a dealer advocacy group have standing to sue on behalf of its members and when don't they? A 4 1/2-year-old case in New Jersey sheds light on how the courts view the threshold issue of standing for dealer advocacy groups. It all started in October of 2018 when NJCAR filed its initial complaint against Mazda in the United States District Court for the District of New Jersey (*New Jersey Coalition of Automotive Retailers, Inc. v. Mazda Motor of America*, Case 3:18-cv-14563), seeking declaratory and injunctive relief in connection with the automaker's implementation of the Mazda Brand Experience Program (MBEP). NJCAR claimed that Mazda created and implemented an

Mark Your Calendar:

**2023 NADC Fall
Conference
October 22-24, 2023**



**The Ritz-Carlton, Chicago
Chicago, IL**

¹ *Rosalita (Come Out Tonight)*, Bruce Springsteen, *The Wild, the Innocent and the E Street Shuffle*, 1973.

illegal two-tiered pricing regime by allowing New Jersey Mazda dealers to earn discounts or incentives for each vehicle sold based on the dealers' compliance with certain conditions of the MBEP.

Specifically, NJCAR claimed that the MBEP violated three separate provisions of the New Jersey Motor Vehicle Franchise Practices Act (NJMVFPFA):

- The MBEP's provision of per vehicle discounts to Mazda dealers based on their compliance with certain criteria creates vehicle price differentials among all New Jersey Mazda dealerships in violation of NJSA 56: 10-7.4(h)

- The MBEP denies benefits to Mazda dealers that do not have exclusive Mazda facilities but rather use their facilities for multiple brands (dual facilities) in violation of NJSA 56: 10-7.4 (j); and

- The MBEP denies benefits to Mazda dealers that do not have an exclusive, image compliant facility in violation of NJSA 56: 10-7.4 (I).

Unfortunately, NJCAR has never been able to reach the merits of these claims, which are firmly supported by the plain language of the NJMVFPFA. Instead, at the outset, Mazda filed a motion to dismiss NJCAR's complaint for lack of standing, which was ultimately granted by the lower court. Mazda argued that NJCAR lacked associational standing under the three-pronged test established by the Supreme Court of the *United States in Hunt v. Washington State Apple Advertising Commission*, 432 US 333 (1977), which requires an associational plaintiff to establish that:

- a) its members would have standing to sue in their own right;
- b) the interests it seeks to advance are germane to the association's purpose; and
- c) neither the claim asserted, nor the relief requested requires the participation of individual association members.

The lower court found that NJCAR met the first prong but did not meet the second prong because the interests NJCAR seeks to protect in this action are not germane to its purpose.

On appeal, the Third Circuit in 2020 reinstated the lawsuit on the grounds that the lower court wrongly concluded NJCAR lacked associational standing. Undaunted, Mazda doubled down by asserting that the Third Circuit Court ruling overturned the District Court only as to the second prong of the *Hunt* test and that NJCAR still lacked associational standing because it failed the third prong; that is, that the claim required individual dealerships to participate. It seemed a frivolous claim, insofar as the Third Circuit had already ruled NJCAR had associational standing. And this time around, a new District Court Judge sided with NJCAR and ruled on February 28, 2023 that the Coalition satisfied all three prongs of the *Hunt* test. Judge Quraishi ruled "no", since the Coalition was asking for a declaratory judgment that the MBEP was illegal on its face, participation by individual dealerships was not required.

Finding that NJCAR met all three criteria to establish associational standing, however, didn't settle the procedural dispute over standing. Indeed, in a stunning turn of events, the District Court went on to rule that associational standing was one thing, but statutory standing



NADC Welcomes New Members

Fellow Members:

Barrett Charapp Beaty

Mahdavi, Bacon, Halfhill, and Young, PLLC
Fairfax, Virginia

Jill Bell

Hill Ward Henderson
Tampa, Florida

Carmen Cato

Hill Ward Henderson
Tampa, Florida

Michael Crook

Parker Poe Adams & Bernstein LLP
Raleigh, North Carolina

Clayton Davidson

MCNEES WALLACE & NURICK LLC
Harrisburg, Pennsylvania

Gillian Hobson

Group 1 Automotive
Houston, Texas

Brianna Lohmann

Shutts & Bowen
Orlando, Florida

Aaron Weisman

Lithia Motors, Inc.
Medford, Oregon

Full Members:

Blair Knox Cleveland

Butler Automotive Group
Macon, Georgia

Angelique Strong Marks

CARS.COM, Inc.
Chicago, Illinois

John Moses

Hudson Automotive Group
Charleston, South Carolina

is still a must and the NJMVFPFA doesn't specifically grant NJCAR standing to sue. All this back and forth over 4.5 years of litigation to get to this? The statute doesn't specifically grant standing to sue. So, associational standing be damned. Case dismissed.

It is true. Nowhere in the NJMVFPFA does it say anyone other than a "franchisee" can sue to assert or enforce provisions of the statute. While the court acknowledged that NJCAR argued that it had statutory standing under the zone of interest test (substantially similar to the second prong of the *Hunt* test) the court made no effort to determine if NJCAR satisfied the test. The court leaned in on statutory standing and relied upon two New Jersey State Superior Court decisions that were readily distinguishable because the plaintiffs in those cases were dealers or would be dealers (not trade associations) that never actually obtained franchises that would have allowed them to sue under the statute and the decisions had nothing to do with associational standing. The district court also cited a Third Circuit case which can also be distinguished because in that matter a labor union sought relief for itself, whereas in this matter NJCAR was seeking relief solely on behalf of its members.

It is worrisome and frustrating that the District Court would not allow an association formed to protect its members' interest to do just that using the statute enacted to protect those very same interests. No doubt the issue of associational standing comes down to a delicate balancing act. On the one hand, dealer associations must have access to the Court House to advocate on behalf of their dealer members, especially in instances when individual litigation against a franchise or is too expensive or will do irreparable harm to a dealer's relationship with an automaker. On the other hand, associational standing in the wrong hands is an invitation to frivolous litigation and carries a real potential for abuse of legal process. Surely, dealer associations do not desire standing to sue in every case on every issue. The *Hunt* analysis ensures the right balance can be struck.

Whether the court reached the proper result in the Mazda matter or not, it seems clear that belt and suspenders are in order. In New Jersey, at least, it appears associational standing is not enough, even when:

d) association members would have standing to sue in their own right;

e) the interests the association seeks to advance are germane to its purpose; and

f) neither the claim asserted, nor the relief requested requires the participation of individual association members.

This "what good is associational standing" analysis has also recently been reinforced by the dismissal of a similar lawsuit filed by NJCAR in State Superior Court. *New Jersey Coalition of Automotive Retailers, Inc. v. Ford Motor Company*, (MER-L-234-20) was filed after the original Mazda case was dismissed and while it was pending appeal in an effort to reach the merits of a similar claim challenging the Lincoln Commitment Program (LCP). In a terse opinion delivered February 28 of this year, the Superior Court simply refused to consider the associational standing question and ruled straight away that the Coalition lacked statutory standing under the NJMVFPFA.

It is worth noting, here, that some states, such as California, have a plenary grant of associational standing incorporated into their state codes. Other states, such as Georgia, North Carolina, Washington and West Virginia, have associational standing provisions specific to motor vehicle dealer franchise law. Florida is considering legislation that would allow dealer associations to challenge manufacturer programs that appear to violate state franchise laws in an administrative proceeding. In most state jurisdictions, and in the federal courts, associational standing is governed by common law principles requiring genuine parties in interest and the three-prong test established by *Hunt*. But, after 4 1/2 years of litigation, it is now clear that the easiest and most effective way for associations like NJ CAR to carry out their critical role on behalf of aggrieved dealers would be to amend state franchise statutes to specifically grant standing to dealer associations to sue on behalf of their members. ■

James B. Appleton has served as President of the New Jersey Coalition of Automotive Retailers (NJCAR) since 1997. The Coalition represents the Garden State's \$40 billion-per-year auto retail industry, which is comprised of more than 500 franchised new car and truck dealerships. Mr. Appleton is a member of the Board of NADC and served as 2014 Chairman of ATAE. He is a graduate of Rutgers University and the Seton Hall University School of Law. He is admitted to practice in New Jersey and New York.



NADC Member Announcements

Do you have an announcement or accomplishment that you would like to share with the NADC community? Please send any news that you would like to share to: emurphy@dealercounsel.com.

**SAFETY RECALL LIABILITY
ARE YOUR CLIENTS COVERED?**

Would you like to protect them?



Schedule a demo
NADCdemo@autoap.com

www.autoap.com/dealer-testimonials.html

**RETAIL WARRANTY
REIMBURSEMENT**

- ✓ **OPTIMIZED:** Proprietary software guarantees you the best result
- ✓ **FAST:** No one completes your submission faster
- ✓ **GUARANTEED:** You only pay when you are approved
- ✓ **SECURE:** Your data & customer information is protected

(888) 477-2228
Info@DealerUplift.com
www.DealerUplift.com




ECONOMIC CONSULTING • LITIGATION SUPPORT



THE
FONTANA
GROUP, INC.

WWW.FONTANAGROUP.COM



**Smart decisions.
Lasting value.™**

To learn more about our dealership services,
visit crowe.com or contact Jodi Kippe at
+1 954 489 4742 or jodi.kippe@crowe.com.

Visit www.crowe.com/disclosure for more information about Crowe LLP, its subsidiaries,
and Crowe Global. © 2021 Crowe LLP.

Audi2198-002K



**Reynolds
& Reynolds®**

Integration that Powers Performance®

Find the solution for your automotive needs:
www.reyrey.com



**CHECK YOUR
BLIND SPOT.**

Compliance + Investigative + Security
Services for the Automotive Industry

guidepostsolutions.com



RICHARDS, WITT & CHARLES, LLP
CERTIFIED PUBLIC ACCOUNTANTS

Discover why so many **successful** automobile
dealers have put their **trust** in us for over **30 years**.

**From Auditing & Accounting Solutions to
Tax Planning & Compliance**

100 Ring Road West, Garden City, New York 11530
www.autocpa.net/trust
info@autocpa.net 516.741.0515



NEW ENGLAND'S PREFERRED BROKER

**AUTO DEALERSHIP
SALES - ACQUISITIONS - EVALUATIONS**





Maximizing Value for Your Clients

www.nancyphillips.com 603-658-0004 auto@nancyphillips.com



CAPITAL AUTOMOTIVE

Helping Auto Dealers Leverage
Real Estate Equity 100%

Expanding Existing Operations • M&A Support
Tax-Deferred Options • Estate & Succession Planning
Over 21 Years Serving Dealers

www.CapitalAutomotive.com • (703) 288-3075



MOST AWARDED
Service Contract Company in the Industry!

CNA NATIONAL
WARRANTY CORPORATION

www.cnanational.com | 800.345.0191



DAVE CANTIN GROUP
The Automotive Acquisition Specialists

Sign up to receive dealership listing alerts
www.DaveCantinGroup.com

800-722-8621

CALIFORNIA | DALLAS | CHICAGO | FLORIDA | NEW YORK

STRENGTH
IN THE AUTOMOTIVE SERVICE INDUSTRY

withum
AUDIT TAX ADVISORY

Dedicated to providing world-class service, innovative solutions and industry expertise, specializing in dealership valuations, due diligence and forensic/fraud services and much more to the automotive industry.

BE IN A POSITION OF STRENGTHSM



Bob Brown, CPA, Partner (732) 572 3900 withum.com

WEINER LLC Certified Public Accountants & Consultants

Providing Automotive Litigation Support,
Valuations, and Mergers & Acquisitions Assistance
From a Unique Perspective

For More Information Contact:
Larry Weiner, CPA, CrFA, Managing Partner
201.746.9700 Ext:305 or lweiner@weinerllc.com
85 Chestnut Ridge Rd, Suite 114
Montvale, NJ 07645
www.weinerllc.com



COMMITTED TO YOUR SUCCESS

KERRIGAN ADVISORS

The Leading Sell-Side Advisor and
Thought Partner to Auto Dealers

Professional. Confidential. Proven.

www.KerriganAdvisors.com (949) 202-2200

Securities offered through Bridge Capital Associates, Inc. Member FINRA, SIPC



MOSS ADAMS

INSIGHT RISES IN THE WEST

ACCOUNTING / CONSULTING / WEALTH MANAGEMENT

Assurance, tax, and consulting offered through Moss Adams LLP. ISO/IEC 27001 services offered through Cadence Assurance LLC, a Moss Adams company. Investment advisory offered through Moss Adams Wealth Advisors LLC. ©2022 Moss Adams LLP

STAY OUT OF COURT

Over 200 state laws regulate the electronic personal information your customers leave in trade-ins, lease returns, and loaners. Do you have administrative and technical measures to delete it and build compliance records?

It's easy to protect yourself

 **PRIVACY4CARS**



We Thrive In Untangling Emotional Knots

For almost half of a century, The Rawls Group has partnered with advisors and dealers to facilitate strategies to overcome issues impacting growth and sustainability, such as:

- Dealer, Successor, and Leadership Development
- Talent Recruitment and Retention
- Team, Family and Behavioral Dynamics

Leverage Our Free Assessment & Motivate Action:
www.rawlsgroup.com/assessment

Learn More:
kendall@rawlsgroup.com | (850) 294-3042



NADC members are entitled to a comprehensive reinsurance evaluation for each of your dealer clients — no cost, no obligation.



Mark Barnes
 Sr. Vice President
 (949) 637-2777
mbarnes@portfolioco.com



2 ways we make your job easier...
 CounselorLibrary.com, LLC



Visit us at www.counselorlibrary.com

Performance

BROKERAGE SERVICES



We pledge to do it right, every time, one client at a time.

949. 461. 1372 • PERFORMANCEBROKERAGESERVICES.COM

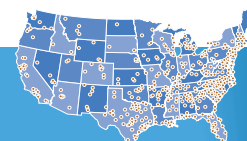
One of the Nation's Most Experienced Auto Dealership Brokers

- Dealership Brokerage
- Appraisals
- Consolidation
- Litigation
- Consulting
- 40 years in business
- 400+ transactions
- 550+ appraisals

Hire Gordon Wisbach

508-395-2500
Gordon@gwmarketingservices.com
GWMarketingServices.com

DHG dealerships



driving relationships forward

2,500+
 Rooftops Served Nationwide

140+
 Dedicated Dealership Professionals

6
 Of The Top 10 Dealership Groups Are DHG Clients

50
 States With Dealership Clients

877.DLR.CPAs | dealerships@dhgllp.com

Assurance | Tax | Advisory | dhgllp.com/dealerships



PROTECT THE DEAL

With Brokers You Can Trust



NationalBusinessBrokers.com
info@NationalBusinessBrokers.com 800-576-9875

Don't get run over.

Anderson Economic Group has the industry expertise, connections, and clout to stand up to the big guys.

Rely on our expert testimony to protect your interests.

517.333.6984



AndersonEconomicGroup.com/expertise/automotive

Moving
FORward
requires
VISION

FORV/S

ASSURANCE / TAX / ADVISORY

forvis.com

FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office.



DSMA SPARKING NEW STANDARDS FOR ALL AUTO M&A FIRMS.

DSMA's In-house operation management teams are unmatched by any traditional brokerage firm and include: **Acquisition Management | Legal | Financial | Marketing**

1,500 Dealership Valuations **370** Completed Transactions

For further information, visit DSMA.com 



- ▶ IT Consulting
- ▶ DMS Conversions
- ▶ Managed Network Services
- ▶ M & A Services
- ▶ Fractional CFO
- ▶ Fractional CIO

Tom Olney
Partner
tom@owlautocs.com
C: 770-377-6251

owlautocs.com



**The Leading Buy-Sell
Advisor for Higher Value
Dealerships**

560+
DEALERSHIPS
BOUGHT OR SOLD

290+
TRANSACTIONS

\$8.5B
IN VALUE

Represented **20** of the
Top 150 Dealer Groups -
More Than Any Other
Firm.

954.646.8921 / HAIGPARTNERS.COM

DEFENDER

2023 Advertising Opportunities

Yes! I would like to purchase an ad in the *NADC Defender*.

½ page ad \$150.⁰⁰
5" high x 7.5" wide, no bleeds

¼ page ad \$100.⁰⁰
5" high 3.75" wide, no bleeds

Months:


- April 2023
- May 2023
- July/August 2023
- October 2023
- November/December 2023
- June 2023
- September 2023

Contact:

Erin Murphy
emurphy@dealercounsel.com


NADC

1800 M Street, NW
Suite 400 South
Washington, DC 20036
Phone: 202-293-1454
Fax: 202-530-0659

Dealership Document Management

Where compliance and convenience meet.

Access every document, from any DMS, anytime. 

Connect with us. Visit one-view.com



BE A CONTRIBUTOR!

We are always looking for submissions to publish in the Defender. Please send your contributions or proposals for articles to:

Kyle Sipples, Editor,

KSipples@autosavergroup.com



Volume XX, Number 3
MARCH 2023

Kyle Sipples, Editor

KSipples@autosavergroup.com

*Defender, The NADC Newsletter is published by the
National Association of Dealer Counsel*

1800 M Street, NW, Suite 400 South, Washington, DC 20036

Phone: 202-293-1454 • Fax: 202-530-0659 • www.dealercounsel.com

NADC Board of Directors

Jami Farris

Parker Poe Adams & Bernstein LLP
Charlotte, NC
President

Scott Silverman

DSR Motor Group
Needham, MA
Vice President

Eric Baker

Wisconsin Dealer Law
Madison, WI
Treasurer

Donald W. Gould, II

Johnson DeLuca Kurisky & Gould, P.C.
Houston, TX
Secretary

Johnnie Brown

Pullin, Fowler, Flanagan, Brown & Poe PLLC
Charleston, WV
Immediate Past President

Jim Appleton

New Jersey Coalition of Automotive
Retailers, Inc.
Trenton, NJ

Ronald Campione

DOWC, LLC
Parsippany, NJ

Victor Danhi

ArentFox Schiff LLP
San Francisco, CA

Kate Kelley

CarMax
Richmond, VA

Evan Nahmias

City Enterprises, LLC
Franklin, TN

Shari Patish

Hall Automotive, LLC
Virginia Beach, VA

Timothy Robinett

Manning, Leaver, Bruder & Berberich, LLP
Los Angeles, CA

Sarah Seedig

Holland & Knight LLP
Denver, CO

Michael Semanie

Killgore, Pearlman, Semanie, Denius &
Squires
Orlando, FL

Kyle Sipples

Autosaver Group
St. Johnsbury, VT

Erin H. Murphy

NADC Executive Director
Washington, DC

Past Presidents

Andrew J. Weill

Weill & Mazer
San Francisco, CA

Stephen P. Linzer

Retired
Phoenix, AZ

Oren Tasini

North Palm Beach, FL

Patricia E. M. Covington

Hudson Cook, LLP
Richmond, VA

Rob Cohen

Rob Cohen, PLC
Newport Beach, CA

Michael Charapp

Mahdavi, Bacon, Halfhill, &
Young, PLLC
McLean, VA

Jonathan P. Harvey

Jonathan P. Harvey Law Firm
Albany, NY