



CATA Bulletin

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Nominations sought for NADA director of Metro Chicago

Ballots to nominate a new NADA director to represent Metropolitan Chicago were mailed Sept. 20 to NADA-member dealers in Cook, Lake and DuPage Counties. Completed ballots must be returned and postmarked by Oct. 11.

Art Kelly, who has held the post since 1996, will resign effective Feb. 3, 2003, at the next NADA annual convention. His successor will serve the remaining two years of Kelly's term. Full terms last three years.

Eligible nominees must be an NADA member in good standing; must have an equity interest in the dealership he/she represents; must be the manufacturer/distributor-recognized Dealer/General Manager/Executive Manager of the dealership; must be actively engaged in the dealership's management; and must have his/her principal dealership in the state or metropolitan region he/she represents.

To qualify as a nominee, a candidate must appear on at least 10 percent of the nominating ballots cast. If none receive that minimum, further nominations will be sought. If the nominating process qualifies a single dealer, that dealer would be declared elected without further balloting.

If two or more nominees qualify, election ballots would be mailed Nov. 1 by the NADA.

Dealers queried on CATA operations

A survey mailed to dealers and executive managers of CATA-member dealerships on Sept. 24 seeks their opinions of the association's various activities. Please return completed surveys to the CATA by Oct. 15.

Dealers are asked to rate the CATA on the importance of the range of activities the CATA undertakes and the usefulness of its services.

"The information our members provide in the survey will help the CATA board chart a future course for the association," said Mike McGrath, CATA board chairman.

Respondents can evaluate ongoing efforts such as the Chicago Auto Show and First Look for Charity, the association's annual meeting and golf outing; DriveChicago.com, the Internet portal owned by the CATA dealers it serves; "Drive Chicago," the CATA's weekly radio program; and training programs like CATA Learning University.

Dealers also may rate the association on its ability to disseminate necessary information, through broadcast fax notices and the biweekly CATA Bulletin (by mail and by e-mail) and by telephone, in response to inquiries.

McGrath said the query is important to confirm whether the CATA's operations are effective. "And in the spirit of continuous improvement, we feel that we can do even more to serve our members better," he said.

Birkett, Cohn appeal for CATA support

Two Illinois candidates for state office vowed to CATA directors Sept. 18 that they would best serve the interests of new-vehicle dealers if they win election Nov. 5.

Joe Birkett and Kristine O'Rourke Cohn, the GOP nominees for attorney general and secretary of state, respectively, spoke at a monthly CATA board meeting.

Birkett pledged to retain the Attorney General Auto Dealers Advisory Council, a forum for dealers to maintain a level playing field, primarily

through regulated advertising practices. For example, the council advanced the ruling that dealers may not award gifts with a vehicle purchase if the purchase price is negotiated.

The council is comprised of a growing number of entities—assistant attorneys general, new-car dealers, advertisers, the Better Business Bureau, and staff of the CATA, the IADA in Springfield, the Peoria Dealers Association and CarMax, among others. Birkett said he would consider paring the council.

SEE CANDIDATES, PAGE 4

Payment packing brings unwanted scrutiny

BY GIL VAN OVER
First of Two Parts

Dealer groups from coast to coast are under attack from state attorneys general and consumer advocates who allege illegal payment packing practices and violations of the Equal Credit Opportunity Act and the Truth In Lending Act.

In the first quarter of 2002, consumers filed 504 lawsuits in federal courts and countless actions on state and local levels. Many of the suits seek class action status. Aggressive attorneys general in several states have charged automobile dealers with unfair and deceptive trade practices.

For example, Bob Ciasuilli Automall in New Jersey recently agreed to restitution and fines in excess of \$800,000, as well as a host of amended business practices, in its settlement on an action by the state's attorney general. Clearwater Toyota and Clearwater Mitsubishi are under the microscope of Florida's attorney general. And horror stories resonate from Southern California and that state's attorney general's settlement with Gunderson Chevrolet.

Besides consumers looking for a free lunch, or attorneys general padding their resumes for a run at the governor's mansion, why are dealers under attack?

Automobile dealers sell a lot of cars and trucks, which means there are a lot of potential clients for attorneys and a lot of votes for attorneys general. And since cars and trucks cost thousands of dollars, emotions can be high.

Further, dealers have a reputation, largely unwarranted, that suggests their business practices are not necessarily above board.

Automobile dealers are known to be independent businesses and, as such, are perceived as part of a fragmented industry that cannot mount a consistent defense against charges of unfair and deceptive practices.

Most claims revolve around the practice of payment packing and the proper disclosure of F&I products sold by dealers. To better understand the basis of the allegations, let's review payment packing, the Equal Credit Opportunity Act and the Truth In Lending Act.

Payment packing is a term used to describe a practice

originally promoted by the credit insurance industry. Dealers use the practice to get customers to agree to buy additional F&I products—service contracts, credit life, GAP and window etching—without disclosing the increase in the customer's monthly payment to pay for those products.

Payment packing occurs when a customer agrees to a purchase price and the dealer quotes a monthly payment that is \$10 to \$40 higher than what is needed to cover the price of the vehicle, taxes, license, title and Doc fees. The additional \$10 to \$40 creates a pack in the payment so that the F&I manager can sell optional products without increasing the payment the customer already agreed to. Using the terms "free," "included" or "protected payment" when referring to the optional products are indications that the payment was packed in the sales process.

The Equal Credit Opportunity Act was enacted in the 1960s to protect consumers against discriminatory lending practices. The act prohibits discrimination against consumers based on race, sex, age, religion and marital status. Dealers must comply with the Equal Credit Opportunity Act because the courts treat dealers as a creditor in the indirect financing transaction with its lenders.

The Truth in Lending Act has been around more than 40 years. Consumers sue dealers under the act, charging that dealers do not properly disclose the sale of soft and hard ads; do not provide adequate disclosures about the entire transaction; and do not consistently assess certain state-mandated or permitted fees, such as Doc fees, on all retail transactions, both credit and cash.

What can a dealership do to protect itself? Part Two in the next edition of this newsletter will provide some tips.

Gil Van Over is president of gvo3 Consulting and provides proactive F&I Office compliance review services for automobile dealers. He also is available as an expert witness. He can be reached at (312) 961-9065.

www.cata.info

Add www.cata.info to your list of Web site favorites, and you'll have the link to obtain oodles of CATA stuff.

Review past editions of this newsletter, or use the keyword search for specific topics. Also, download forms to use with non-English vehicle transactions.

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18W200 Butterfield Road

Oakbrook Terrace, IL 60181-4810

630-495-CATA [2282] phone 630-495-2260 fax

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Listings of items for sale are subject to the approval of the CATA. Candidates for employment must submit a full résumé to the Editor.

Review past editions at <http://cata.drivechicago.com/>

Jerry H. Cizek III President, Publisher
Erik K. Higgins Editor, Director of Dealer Affairs

Wage and hour regulations: a quiz

The nuances of the Fair Labor Standards Act are many, and especially relevant for dealers who experiment with different types of pay plans or operate under a “one-price” mode.

At some dealerships, no employees—not even the salespeople—are paid a commission, even if they work more than 40 hours a week. Under the FLSA, must a sales rep be paid time-and-a-half for exceeding a 40-hour workweek?

No. Automobile salespeople are exempt from the overtime provisions of the FLSA. How they are paid is irrelevant, as long as they are paid at least the minimum wage. The exemption from overtime extends to some other dealership employees as well.

According to a publication by the NADA: “In general, service salesmen (also) fall within this overtime exemption. Specifically, employees variously described as service writers, service advisors, or assistant service managers whose primary duty is to record the condition of a vehicle and write up a report indicating the parts and mechanical work needed for restoration may qualify for the exemption provided that more than 50 percent of their sales volume is for non-warranty work.”

Parts counter employees and mechanical technicians also are exempt from the overtime provisions of the FLSA.

Tales abound of dealers who, having violated the FLSA, must pay hundreds of thousands of dollars in back pay and penalties. For dealers to test their compliance, a quiz has been developed based on information taken from the U.S. Labor Department’s Web site, www.dol.gov

Pencils ready!

1. Dealership general management establishes a policy that over-

time will not be paid unless it is approved in advance. An accounting clerk works extra hours to complete a task. Should the clerk be paid time-and-a-half for the extra hours?

- A. Yes, federal law requires it.
- B. No, the clerk disobeyed a company rule.
- C. Only if the work was an essential part of the job.

ANSWER: A. Under the FLSA, employees are entitled to be paid for all hours worked.

2. What is the current federal minimum wage?

- A. \$4.50 an hour
- B. \$5.00 an hour
- C. \$5.15 an hour
- D. \$6.15 an hour

ANSWER: C, \$5.15 an hour.

3. How many paid holidays does the federal government require a car dealer to give each year?

- A. Five
- B. Seven
- C. Nine
- D. None

ANSWER: D, None. Holidays are a matter of agreement between employers and employees.

4. An enthusiastic car porter who doubles as the clean-up person for the service department agrees with the service director that he will accept only straight time for any hours above 40 put in during a week. Is this a legal agreement?

- A. Yes, it is a valid agreement between employer and employee.
- B. No, it violates federal law.
- C. It is legal as long as the agreement is completely voluntary.

ANSWER: B. Employees are not permitted to waive their right to overtime pay.

5. The general manager docks his salaried dealership controller for working only 32 hours one week due

to a family funeral. Is this legal?

- A. Yes, an employee does not have to be paid for time not worked.
- B. No, salaried employees cannot be docked for hours not worked.
- C. Yes, the controller must be paid as long as he had a good excuse.

ANSWER: B. A company cannot withhold pay from a salaried worker unless the situation is covered in a written leave policy.

6. Dealership policy is to pay employees every two weeks. An hourly employee works 60 hours in one week and 30 hours the next. How much overtime is he due?

- A. 20 hours
- B. 10 hours
- C. None

ANSWER: A. Overtime hours cannot be averaged over multi-week periods.

7. An hourly lube technician being paid near the minimum wage is charged for dealership-required uniforms. The charge reduces the tech’s average hourly pay to less than the minimum wage. Is this legal?

- A. Yes.
- B. No

ANSWER: B. Employer-mandated charges cannot bring a worker’s hourly wage below the minimum.

8. An accounting supervisor spends half her time supervising the accounting staff and half her time doing the same work as the staff. Is she eligible for overtime?

- A. Yes, she is not considered an executive under FLSA.
- B. No, she is primarily a manager.

ANSWER: A. Even though she supervises other employees, she does not qualify for the executive exemption to the overtime provisions of the FLSA.

How’d you score?

Northwood U.'s auto show Oct. 4-6

Billed as the world's largest outdoor new-car auto show and produced by university students, Northwood University's 39th annual international auto show is Oct. 4-6 at the Midland, Mich., campus. Admission and parking are free.

More than 450 domestic and international cars, trucks, recreational vehicles, vans, and experimental and specialty vehicles will be displayed, and an automotive aftermarket exhibit will be set up near the campus's student union.

Show hours are 1-6 p.m. Oct. 4, 9 a.m.-6 p.m. Oct. 5, and 10 a.m.-5 p.m. Oct. 6. For more details, visit the university Web site at www.northwood.edu.mi/autoshow/index.html

Auto chiefs converge on Paris

PARIS—The leaders of the world's major automotive companies were to gather at the Paris Auto Show last week to seek a global outlook on environmental issues, the first such gathering ever.

Jean-Martin Folz, chief executive of PSA Peugeot-Citroen, broached the idea of an informal discussion about the environment with automotive leaders in Japan.

Folz has met with his Japanese counterparts several times, especially Toyota Chairman Hiroshi Okuda. PSA and Toyota have a joint venture to make small cars in Poland.

Folz, who also is president of the European Automakers Association, invited the members of the Japanese Automotive Manufacturers Association and the U.S. group, the Alliance of Automobile Manufacturers, to join him in Paris on Sept. 27. A PSA spokesman said he expected all the auto chiefs would attend.

Besides a general discus-

sion about protecting the environment, Folz specifically will try to address ways of promoting "diesel acceptance" in markets where diesels are rare, such as Japan and the United States.

A study released this month by the French Agency for the Environment and Energy Resources endorsed the clean nature of some modern diesels.

In an 18-month study of diesel-powered Peugeot 607 taxis that had filters for particulate matter, the agency found the exhaust was as clean as an equivalent gasoline engine while producing 20 percent less carbon dioxide.

PSA and Volkswagen are leaders in diesel sales in Europe; 40 percent of new cars there use diesel.

Folz stood in a good position to host the meeting because PSA is very active in forming joint ventures and he knows most of his colleagues already. PSA and Ford are making diesel engines together.

More women enjoy shopping for vehicles: poll

Shopping for cars and trucks at dealerships is more fun for women.

In a summer survey, 45 percent of women said they enjoyed shopping for a vehicle, compared to 36 percent of men. Just 7 percent of women said they hated the vehicle shopping experience, versus 15 percent of men, a St. Louis marketing research company, Moritz Research, found.

"The old notion that women are treated poorly at the dealership seems to have gone by the wayside, as they are reporting more positive feelings toward vehicle shopping than

men," said David Ensing of Moritz Research.

"On the other hand, one-fifth of Americans still dislike the vehicle shopping process. But the two biggest complaints, people and process issues, are things that dealers can easily address," he said.

The main things survey respondents said they disliked or hated about vehicle shopping were dealing with salespeople, negotiating a final price, arranging for financing, and the length of time the process takes.

The random national telephone survey polled 501 men and 503 women.

Marketplace

Office Manager/Controller Experienced, devoted, quality-focused. GM, Chrysler, VW, Nissan, and Honda general ledger knowledge. Eight years dealership experience, from cashier to management. ADP and Reynolds & Reynolds. Shannon McCarthy, 630-637-0349.

Candidates

CONTINUED FROM PAGE 1

Cohn, currently chairwoman of the Winnebago County Board, decries what she calls an ineffective performance by first-term Secretary of State Jesse White.

"We don't have a proven administrator, a proven professional in that office," Cohn said. "I have more energy in my right arm than other people who have run

that office."

Cohn's campaign, "Lose the Wait," and her Web site, www.nowait.org, blast White for delays attendant with renewing driver's licenses and obtaining vehicle registrations, and for errors like lost drunken driving records that enabled some drivers to remain on the road.

"Government," Cohn said, "is not a place where you harbor people who can't get jobs in other places."