

Automobile Dealerships – Out of Trust Situations – Tips For the Dealer

By John Pico, BA, JD

Almost every financial organization has a workout department. Their names are as varied as Problem Loan Administration; Central Loan Department; or Special Assets Department. A dealer may be assigned to one of these special departments, or a member of the department may start appearing at meeting with the dealer's regular bank officer.

The courts have consistently upheld the rights of lenders to have workout teams and to have those teams, within broad parameters, take affirmative actions to protect the lenders' interests.

Matching the average dealer's experience with work-outs, to that of the lender's experience, would be equivalent to matching a high school football team against a professional team. The professionals have played the game hundreds of times. They have seen and heard hundreds of presentations, arguments, excuses and reasons for a dealership's problems, while the dealer, lacking experience, is encountering the trauma for the first time. Realizing the dealer will probably be a neophyte, with respect to workouts, the following rules are provided the dealer, as a plumb line, to be followed throughout the workout procedure:

1. Do Not Confuse Friendship with Business. Factories and lenders have seen and heard most of the workout plans any dealer could suggest. They have probably seen versions of each plan which have been refined over generations by some of the best minds in the business. Their experience, however, cannot help the dealer get the best benefits for the dealer.

Employees of the factory/lender have an obligation to their corporation and in turn to its shareholders, to get the best contract for their corporation. There is nothing wrong with that; they have a legal duty to their shareholders and creditors to protect them, not you.

They will, however, indicate whether or not your workout plan is "acceptable" or "unacceptable" to them. If the proposed plan is

“unacceptable”, one of two things can happen. The dealer can keep proposing plans, until one is accepted, or the factory/lender might suggest an acceptable alternative.

If the factory/lender suggests a plan acceptable to them, it means just that: the workout plan is acceptable to the factory/lender. It does not mean, and should not mean, the factory/lender will not approve some other plan, which may be more beneficial to the dealer, if the dealer knows what to request and how to structure it.

2. Do Not Confuse Optimism with Confidence. Optimism means expecting a plan will work. Confidence means knowing what to do if it does not. Never act without confidence.

3. Do Not Value a Dealership by the “SOT + Assets” Formula. The odds against that plan working are about the same as the odds against winning the lottery, except the ante is higher.

4. Do Not Say “SOT”. Sometimes a dealer talks in terms of SOT (Sold Out of Trust) or OT (Out of Trust) with the factory or lender, when the dealer actually has SAU (Sold and Unpaid) units. Once the dealer refers to an out of trust situation, it puts the factory/lender in a precarious position. All sorts of rules then come into play, both legal rules and company rules, which would not have had to take effect if the dealer used the phrase SAU. The factory/lender can't read minds to know the dealer really meant SAU, instead of SOT. From the moment the phrase SOT is used, the only thing the listener knows for certain is, if there is a law suit and the listener were asked if the dealer said he or she were SOT on such and such a date, the listener would have to answer “yes.” Don't put them in that position.

5. Do Not Lie. Don't lie to yourself; don't lie to the factory; don't lie to the lender.

Dealers, who lie to themselves about their problems, how they got there, or their ability to solve them, base their entire solution upon a lie and, without exception, compound and complicate the original problems.

A lie to the factory/lender will alienate the only entities which have both the ability to help and the most to gain, besides the dealer and the dealer's

family, in finding a workable solution. When in doubt, remember what Mark Twain said: “I never got hurt by anything I didn’t say.” He also said that when he was ninety, he recollected he had worried about a lot of things in life, most of which never happened.

6. Do Not Panic. There are many challenges in business, and being short of cash is but one of them. Numerous dealers have been there before and numerous dealers have survived.

Analyze the problem as if it were someone else’s problem, and compose a short letter as if you were giving advice to another dealer. The advice should be to get professional help. A storm at sea, calls for seasoned sailors. No one would want a crew with little experience in storms, unfamiliar with navigation, no charts, no radar and no one to call upon for advice. A dealer with a SOT problem is in a big storm, except it won’t go away with time. Without help, the dealer’s family, friends and employees will all be affected. The dealer has to make tough decisions, or time will make them-and the dealer will not like the decisions time makes.

At the time the lender has the second meeting, referred to above, wherein the lender wants the dealer to sign the work-out agreement, the dealer should be prepared to structuring of the work-out plan, the handling of a keeper, the method of repayment and such.

As soon as you know you are OT, your first call should be to us (or someone as experienced as us) and your second call (after visiting with us, your attorney and accountant) should be to the credit company. Telling the credit company you have sold and unpaid units before they tell you, is vital to establishing a foundation upon which to build a work-out plan. At the same time, Automotive Advisors’ experience is vital to the dealer and the dealer’s attorney and accountant, in providing constructive suggestions and in planning and recognizing realistic options.

Starting in 1972, Pico entered the automobile business by representing dealership groups such as Tasha Corporation (once the 17th largest dealer group in the country before it sold to AutoNation), and handling sales such as Lucy DiGulio’s sale of her deceased husband’s share of Prospect Motors (currently the largest General Motors dealership in the nation) to Skip Halverson.

Before retiring from the active practice of law in 1980 Mr. Pico and his law firm represented numerous automotive dealers in the reorganizations, purchases, and sales of dealerships. He both tried cases as the attorney for the dealerships and arbitrated and mediated dealer related cases.

Mr. Pico built upon his experiences and became a student of the industry by receiving training and attending seminars with respect to the various departments in new car dealerships, participating in National Automobile Dealer Association (NADA) Management Education Program, having "hands-on "experience" operating a store by filling in as General Manager on an "interim" bases. In 1986, after five years of research and two years of writing, Mr. Pico authored and National Legal Publishing Company published the nation's first book on Buying and Selling Automobile Dealerships.

Mr. Pico is recognized as an expert in the field of buying, selling and investing in automobile dealerships. In addition, both State and Federal Courts have also recognized Mr. Pico's expertise and in various legal proceedings he has been:

- Approved by the U.S. Bankruptcy Court, 10th Circuit, District of Colorado, pursuant to Rule 202 of the Bankruptcy Code, as "Consultant to Debtor" in sale of a new car automobile dealership;
- Approved by the U.S. Bankruptcy Court, 9th Circuit, Northern District of California, pursuant to Rule 202 of the Bankruptcy Code, as "Consultant to Debtor" in sale of a new car automobile dealership;
- Approved by the U.S. District Court, 8th Circuit, Wisconsin, as Arbitrator/ Appraiser in new car Dealership litigation;
- Approved by the District Court of Colorado as expert in dealership valuation litigation;
- Approved by the Superior Court of California as:(a) "Consultant to Court Appointed Receiver" in check-kiting case,(b) "Expert Witness", with respect to dealership valuations, and(c) Superior Court Mediator in dealership/lender litigation.

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