Except from an email John Pico sent an attorney

You asked: “Is an insolvent store worth blue-sky?”

Here’s the information I said I would pass along.

In ***City of South Gate v S&M Auto Sales***, 2d Appellate District, California, 2012, [not certified for publication], South Tate took the dealership property under eminent domain. S&M sued the city for loss of business goodwill.

The trial court said S&M failed to prove that a dealership that was losing money was entitled to goodwill.

(*Calif. Code of Civil Procedure 1263.510(a)* provides a means for loss of goodwill in eminent domain takings.)

In ***Inglewood Redevelopment Agency v. Aklilu,*** No. B185107, Decided: July 30, 2007, the court's permitted an opinion of loss of business goodwill under the ***cost-to-create method***, which resulted in the finding of goodwill despite the nonexistence of any profits

The dealer lost this case, in my opinion because of lousy preparation by the attorney.

But read the case. I believe it has a great discussion of the history of goodwill recovery and, although it was not certified for publication, it will supply a dealer’s attorney a fantastic background and knowledge upon which to build a case for his client to recover damages.

This is not legal advice. I am a retired attorney or, as I like to say a “Recovering Attorney.”

I just want to give you, or a friend of yours, a place to get some information that might be helpful when faced with a similar problem.

I have not seen very many dealerships with a -0- value blue sky, even if they werelosing money. The only way a store has a zero blue-sky value is if the buyer cannot make any money if he or she owned it, or if the buyer is going to lose money the first year he owns it.

Any store you can make money with is worth something beyond assets. If an airline thought it could make a million dollars with another 737, would a

737 bought from a profitable airline be worth something and one bought from an insolvent airline be worth zero?

What you are paying for is a business opportunity.

Many dealers would pay to get an open point because they think they could make money with it.

When you buy an insolvent dealership:

- you don't have to build a building
- you have parts and service customers lined up the minute you close escrow
- you are in the phone book
- and you have a customers' list.

If you are successful in obtaining an open point, you will have to build a building; wait a year or so to develop your service and parts departments and pay to establish a presence in the market.

John Pico is the founder and managing partner of Advising Automobile Dealers LLC, has represented and advised dealers since 1972 and has been recognized by both state and federal courts as an expert.

He also served as court appointed "Consultant to Debtor" in bankruptcy cases, "Court Appointed Mediator" in automotive disputes, "Court Appointed Arbitrator / Appraiser" in partnership disputes, "Court Approved Consultant to Receiver" in a check-kiting case, as a "Superior Court Mediator" in dealership/lender litigation.

He has consulted on upside-down positions and out of trust positions in the millions of dollars and has completed over 1,000 automobile dealership transactions, whose combined values exceed One Billion Dollars. He also authored, and National Legal Publishing Company published, the first book in the Library of Congress on Buying, Selling and Representing Automobile Dealerships.

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