

## Reading and Response May 2008

### AskPatty.com

#### What Women Want

In the hit movie *What Women Want*, Nick Marshall had the ability to hear women's thoughts. Now you have the opportunity to do something similar by knowing what the largest segment (hint: women) of the car buying market wants! The training is now available to teach you and your team how to attract women to your dealership and how to properly communicate with women to earn their business.

You need to be advertising to your target market. Here's the secret, the target market is no longer MEN; it's WOMEN. In fact, women buy 65% of all new vehicles, 56% of all used vehicles, and they influence (or more importantly they have the VETO power) over 85% of automotive purchases.

The new online [training portal](#) will provide interactive web-based monthly training to your staff. It's one thing to say that you are Female Friendly, and it's another to actually be Female Friendly. This training will teach you what you need to know to communicate and sell more cars to women.

With today's economy, you must have a focused marketing approach; this training will help you close more sales and make more money.

Give me a call, so we can discuss how we can help you attract more women to your dealership and teach you how to communicate with them to close the sale.

Sincerely,

Sarah Draley  
National Sales Director  
[AskPatty.com](#), Inc.

Much Ado Over Nothing  
Or  
Why are the auctions being attacked?

Have you heard the latest rantings about the "Dealer Authorized Buyers" at the auctions who are the source of all the curbbers in Oregon? Have you heard that these authorized buyers are the reason auction prices are

going up? Have you heard that there needs to be new laws put in place to control this? I don't need to defend the auctions; they do a good job themselves. I do, however feel that as a certified vehicle dealer who is actually a part of the industry I should chime in on this debate. I believe the people who imply that legislation is the be all, end all, to societies problems are exploiting our industry issues to perpetuate their own agendas. This mentality is driving us small business owners into our capitalist graves. The inflammation of issues and imposing of new laws is just a tool used by unneeded people to insure their own job security. I realize that all human beings have the need to justify their own existence. Private interest groups and government employees are no exception. The problem is, that once new regulatory tools are in place, government finds it easier to pick on the low hanging fruit (us) and avoid the bears and lions in our forest. Do you ever wonder why cell phone companies get away with offering a free phone ("with a two year contract") They have big dollars to fight with. We don't. By solving industry issues on our own, we circumvent the application of new (constricting) regulatory rules.

First of all, "Dealer Authorized Buyers" are at the auction because **CERTIFIED DEALERS** want them there, not because the auctions decided to let them in. We do not need more restrictive legislation that takes away our right to be represented at the auction by someone other than ourselves. Yes, there are some dealers who do not control their buyers, but they are in the minority and the auctions work with DMV to make them go away.

Authorized Buyers do not need to be certified vehicle dealers, just employees. Look at what the OAR states is an employee of the dealer:

*OAR 735-150-0010 (19) "Employee" means a person over whom a dealer exercises the type of control typically associated with an employer, including but not limited to:*

- (a) Determining the frequency, method and amount of compensation;*
- (b) Determining whether the person's work is continuous or intermittent;*
- (c) Determining the hours or frequency of a person's work; or*
- (d) Retaining the ability to terminate the relationship.*

Following the above I could authorize my son or daughter to buy vehicles for me at the auction. It could be only for the summer and that the compensation will be food, clothing and paying the university tuition. I can have him/her attend only the auctions I want them to attend and how long they should stay at the auction. If they make a mistake, I can withdraw auction authorization and even fire them. Sounds like the definition of "Employee" to me. Certainly a choice I have earned as a law abiding American citizen. Is that another choice we want stripped away by outsiders?

*OAR 735-150-0020(5) An employee of a dealer as defined in OAR 735-150-0010(16) is not required to have a separate dealer certificate in order to buy or sell vehicles on behalf of his or her employer.*

The above addresses the topic of "Dealer Authorized Buyers" at auctions. Because the auctions call some of their sales "Dealer Only Auctions" someone believes only certified vehicle dealers should be allowed into the auctions. If they were called "Dealer and Dealer Authorized Buyer Auctions" there would be no question. Could the auctions change the name of these sales?

I called DMV and asked if they had a problem with dealers having authorized buyers attend the auctions. The manager said "No" and sent me a statement he had sent out on this topic. This is the statement:

**Who can get into the auctions and who can the auctions sell vehicles to?**

The answer is anyone. The auctions are **CERTIFIED VEHICLE DEALERS** and can sell cars to anyone they want, period. The "dealer only" auction is what I would refer to as a self-imposed restriction. The auctions can create and discard these restrictions at any time and can admit anyone they want to these auctions. Who can get in and who can buy is not a DMV issue, it is an auction issue.

It has been my experience that the auctions respond to the dealer community and service our needs. They

provide a central location where many dealers can offer excess or aged inventory for sale to other dealers. It is in the best interest of the auctions to cater to our needs and they do.

The one area that we may want to see a change in is the public auctions. Dealers asked the auctions to have the public sales auctions. When you take inventory to the dealer auction and it does not sell, take it back to the car lot. If you leave your "no-sales" to run in the public auction, they could end up in the hands of a curber. Every time we retail inventory through the auctions we teach the public that avoiding the car lots is a better way to buy a car. Stop leaving your "no-sales" at the public auctions. No legislation needed. Every time we add a new law we add more costs to our operation and give government more leeway to control us at their own personal discretion. The last time I remember dealer legislation passing, it was for education. It appeared to be a great idea. We're all still paying for that one. (I wonder who got that one passed?) We simply need to work with the auctions.

I read one of Monty Kings (OVDA) articles suggesting that the auctions are guilty of turning a blind eye to the unlicensed "Authorized Buyers" "who drive up the prices we pay for vehicles." These buyers have every right to make a living serving the wholesale needs of the larger dealers. If they peel one off and try to sell it to the public let's bust them. The auctions are one of DMV's biggest allies in these matters. The auctions have little to do with the prices we are paying and "Authorized Buyers" are bidding what we tell them to. The price is a function of supply and demand. Right now the supply of quality used vehicles is down, so the price goes up. Not to say that the auctions have nothing to do with increasing prices. When the auctions allow the public to purchase vehicles at special events, I believe this can drive up costs, mainly at the lower end cars and trucks. I have had a few debates with one of Brasher's GMs. Their reply is simple, "we provide another avenue to dispose of unwanted dealer inventory." That's a reasonable reply. We can't stomp our feet, call them names, and demand they run their business the way we want them to! We can try to work with them to achieve a win-win situation. If we don't like the result, we can walk. God bless capitalism!

When legislation is needed to help or protect our industry, you will find me up front pushing to get it passed, but only as a last resort. When someone is trying to pass un-necessary or restrictive legislation, I will fight it.

## MARCH Legal & Legislative

With the presidential election primary process in full swing and Spring just around the corner, our nation's economy and energy related issues continue to dominate the legislative and regulatory agenda.

### FEDERAL LEGISLATIVE ACTIVITY

#### ***Congress Passes "Kids and Cars" Act***

Senate Bill 694, The Cameron Gulbransen Kids Transportation Safety Act, which was approved by the House in December, passed unanimously in the Senate. The Bill is named after a 2-year-old New York boy who was accidentally run over and killed in 2002 when his father backed his SUV out of the driveway. The Bill, dubbed The "Kids and Cars" Act, requires the National Highway Traffic Safety Administration to create a database of deaths and injuries of children in non-traffic but auto-related accidents. It also requires NHTSA to study whether to require that power windows and door panels

reverse direction when they detect an obstruction, similar to how automated garage-door openers operate. President Bush signed the Act into law.

## **FEDERAL REGULATORY ACTIVITY**

### ***Yearly Fuel Economy Increases Established***

NHTSA has completed its proposal establishing annual fuel economy increases and sent it to the White House Office of Management and Budget for review. The proposal covers passenger cars beginning with 2011 models and light trucks starting with the 2012. NHTSA proposed four years of fuel economy increases could be revised by the OMB which has authority to review the regulation. NHTSA began work on its proposal in May after President Bush ordered federal agencies to begin drafting new regulations to increase fuel efficiency and reduce tailpipe emissions after the Supreme Court ruled that the federal EPA had the right to regulate tailpipe emissions as a greenhouse gas under the Clean Air Act.

NHTSA is seeking to reverse a November 2007 decision of the federal appeals court in San Francisco that tossed out the light-truck increases as insufficient, for failing to address why the so called light trucks are allowed to pollute more than passenger cars and for not properly assessing the benefits of reducing greenhouse gas emissions when it set the new standards. NHTSA's proposal also includes a credit-trading system for manufacturers as spelled out by the recently enacted Energy Bill.

### ***EPA States Grounds for Denying California Waiver***

Last week the EPA justified blocking California from regulating auto emissions by saying the problems of global warming aren't unique to one state. The EPA denial also blocked more than a dozen other states from implementing the tailpipe emissions reductions sought by California. The EPA stated that California does not have the "compelling and extraordinary conditions" required for a waiver under the Clean Air Act, because the rest of the nation suffers similar effects of global warming. As a result, California does not merit the establishment of separate state greenhouse gas emissions standards for new motor vehicles.

### ***Chairman Dingell Releases White Paper on Global Warming***

House Energy and Commerce Committee Chairman John Dingell issued a "White Paper" recently on state and local roles in global warming policies as a prelude to introducing emissions cap-and-trade legislation this year. The paper says State and local climate initiatives may be counterproductive to a federal global warming program. Chairman Dingell is issuing a series of these papers with Rick Boucher who chairs the Subcommittee on Energy and Air Quality.

As Congress considers legislation on global warming, one of the most contentious issues is whether federal legislation should pre-empt state and local governments from setting

their own pollution-control standards. The paper warns that broad state and regional climate initiatives “may interfere with the efficient functioning of the federal cap-and-trade program” by forcing industry to comply with multiple regulations. It goes on to say that under a nationwide cap on greenhouse gases, a state-level cap on greenhouse gases “might shift emissions from the more stringent state to other states” without reducing national emissions.

## **OTHER ACTIVITY OF INTEREST**

### ***Gasoline and Diesel Prices Continue to Rise***

USA Today reported that last Friday, Diesel fuel hit a record high price and gasoline prices remain on the rise as a result of \$100-a-barrel crude oil prices and tight supplies as refineries switch to producing costlier summer-blend, clean-air gasoline that is required by federal regulations. The nationwide average price for diesel was a record \$3.54 per gallon while regular-grade gasoline averaged \$3.11, below the record national average price of \$3.22 set last spring. What does this mean to the average consumer and our economy? One industry analyst calculated that the higher prices mean consumers spent \$1.19 billion for fuel Friday, some \$250 million more than a year ago, when gasoline averaged \$2.28 a gallon and diesel averaged \$2.58.

### ***American Consumer Confidence at 14-Year Low***

A recent ABC News/Washington Post consumer confidence survey showed that the confidence of American consumers remains at a 14-year low, with less than half of Americans having a positive rating of their personal finances. The report’s Consumer Comfort Index was steady at a minus 37, its lowest reading since November 1993. They also reported its index of consumer sentiment fell to a five-year low, while its expectations index fell to a level that is the lowest in 17 years.

## **CASE OF THE MONTH**

Our Case of the Month deals with something we all face in the motor vehicle industry: what constitutes a customer list and how is it protected?

Robert Martin was a former employee of Al Minor & Associates (AMA), an actuarial firm that designs and administers retirement plans and works with about 500 clients. AMA hired Mr. Martin in 1998 as a pension analyst. He later organized his own firm and resigned in 2003.

Although he took no documents with him containing confidential client information, he

successfully solicited 15 AMA clients with information from his memory. AMA charged in a lawsuit that he had violated Ohio's Trade Secrets Act. A judge found that Mr. Martin had misappropriated AMA's client list, and ordered him to pay \$25,973 in fees that AMA would have earned from its former clients.

The 10th District Court of Appeals affirmed the lower court, and Mr. Martin appealed to the Ohio Supreme Court. He argued that AMA should not have the right to control use of his memory and, furthermore, that the firm had an opportunity to protect its information through an employment contract, which it did not utilize. Mr. Martin did not take any actual documents. He simply memorized certain aspects of documents enabling him to contact those individuals, and earn fees that should have gone to AMA.

Justice Terrence O'Donnell, writing for the court, said nothing in state law indicates the General Assembly intended, for purposes of trade secrets, to distinguish between information reduced to a tangible form and information that has been memorized. He went on to say "The legislature ... could have excluded memorized information from the definition of a trade secret or added a requirement that such information be reproduced in physical form in order to constitute a trade secret, but it did not, and we are not in a position to read such language into the statute."

In today's motor vehicle industry, employees tend to be more transient than in the past. We live in an electronic age where data can be easily and quickly transported without detection. Although decisions like this offer us some comfort, the best way to protect your dealership and its information remains through a written agreement.

Kelly's Korner

## Negative Equity

I read in a recent e-mail that a lender bounced a contract because the contract showed negative equity. The F&I manager was beside himself. A bounced contract hurts cash flow and, more than likely, the customer needed to be called and asked to resign a contract. While this occurred in Pennsylvania, I wonder how many of you run into this situation.

I understand that the federal government and many states want negative equity to be disclosed on a separate line in the itemization portion of the retail installment contract. While it still affects the amount financed, it does not affect the sales tax or the license plate fees.

I am continually amazed when I hear that some lenders refuse to recognize negative equity. My question to them is, why? It simply makes sense. We have been writing retail installment contracts for years without any

cash investment from customers. Customers desire to trade in vehicles prior to being in any equity status. In fact, most customers acknowledge they are in a negative equity position. They simply want to know how much negative equity they are refinancing.

Equity takes cash - either at the beginning, during, or at the end of the ownership. I do not know of any other way to reap the rewards of a positive equity position when it comes to vehicles.

For those few states that do not recognize negative equity, I recommend dealer principles and state associations to work together toward getting lenders and state legislation in sync with federal regulations and opinions.

As we all know, I am not a lawyer and is this article is not meant as legal advice. It is an educational piece and a plead for consistency in dealing with the negative equity plague.

*Article written by Jan Kelly, President of Kelly Enterprises. She is a sales trainer and consultant, convention speaker and writes frequently for industry publications. For information about training opportunities or joining one of our F&I 20 groups, call 800.336.4275 or visit [www.JLKelly.com](http://www.JLKelly.com).*

## **TID BITS from the INSURANCE GUY**

By: Larry Hecht, Hecht & Hecht Insurance Agency Inc.

### **GAP:**

Guaranteed Auto Protection (GAP) is one of the few products to arrive in the last few years that will be sold in the Finance Office for a long time to come. In 1999, Regulation Z (Truth in Lending Act) was updated to specify how GAP would be disclosed on a finance contract, which paved the way for lender approval of the product. Customers perceive the benefit of GAP and find it affordable, while lenders are accepting it as a soft add for finance contracts. GAP is a type of protection that covers a finance or lease contract against the difference between the amount of money owed on a vehicle at the time of a total loss due to theft, collision, fire, or any insured peril and the fair market value of the vehicle that the customer's insurance company pays. The insurance deductible is not covered on Oregon due to Oregon Statute.

There are two types of GAP protection: GAP insurance and a Debt Cancellation Agreement. In Oregon only GAP insurance may be sold. This requires that the dealership have a Business Entity Insurance License and the individual selling the GAP policy have an Individual Insurance License, both of which are issued by the Oregon Department of Consumer & Business Services, Insurance Division. These licenses allow the dealership and individual to sell limited lines of credit insurance products without the requirement of passing a test. These credit lines are credit health, credit life, credit involuntary unemployment, GAP, and mechanical breakdown insurance. The applications can be found on the Oregon Insurance Division website under "Information for Insurance Producers" and then under "Licensing Forms" the form numbers are 3000 & 3001. For more detailed information on GAP contact Dick Proudfoot, Northwest Financial Services, 503-705-7597.

### **Health Care**

Group Health Insurance is becoming a very volatile issue. It just keeps getting more expensive. And apparently is going to take another big increase. Previously health insurance carriers could only use employee age, family status and zip code to determine rates. Now the carriers may use: employee age, dependent ages, geographic location, employer contribution, longevity with the current carrier, employee participation percentage, medical history, smoker/nonsmoker, and wellness integration. In the next six months this is

going to impact groups tremendously. Companies with a small number of employees (2-50 lives) that have a high average age, some or a lot of medical claims are going to see significant rate increases. In order to have some cost containment employees need to understand the new market. Employers need to be educated, as do their employees. It seems that many health insurance agents sell their product to the employer and then the insurance company takes over. For a health plan to be effective and beneficial for everyone in the plan the group needs to know and understand the plan and what coverage's are provided, how their behavior affects the group premium, how to access care in efficiently and how their behavior affects the group premium.

### **Disaster Preparedness:**

Of all businesses that close down following a disaster, more than 25 percent never open their doors again. Having adequate insurance and a disaster plan is key. For business owners trying to decide what kinds of insurance they need for their business, the I.I.I. has just published the print version of *Insuring Your Business: A Small Business owners' Guide to Insurance*. Whether it's property insurance, liability protection, life insurance for key employees or workers compensation, the book has a wealth of information for small business owners. There are also chapters focused on insurance for specific types of business. To purchase a copy of *Insuring Your Business* check out the Insurance Institute bookstore at [www.iihs.org](http://www.iihs.org).

### **Claims – Burglary and Theft:**

Renters experience more property and auto related crime losses than do homeowners. Renters incur 30% higher burglary related claims in the houses and apartments than do homeowners. And a renter's vehicle is 50% more likely to be stolen than vehicles of a homeowner. Another interesting statistic, 96% of homeowners and only 43% of renters are insured.

### **Long Term Care Insurance:**

In some respects the facts of life are encouraging. The number of Americans over the age of 80 is expected to quadruple in the next 15 years, according to Alfred Clapp Jr., president of Financial Strategies & Services Corporation. On the other hand, perhaps 40% of men and 50% of women will need custodial care.

### **Severe Weather Woes:**

Much of the country has been experiencing heavy rain and severe weather. Many are finding themselves knee-deep in soggy basements and are wondering if insurance will help out. Many people figure, since they are not on or often even near a river or an ocean, they don't need flood insurance. Or they figure, since they have homeowners or business insurance, they need nothing more. However property damaged by flood is only covered by flood insurance. Typically, flood insurance covers damage caused by the general condition of flooding, meaning that it applies when a body of water overflows from above-normal cyclical levels. Most creeks, rivers and major bodies of water have predetermined flood level stages; however, the policy also covers surface water runoff that accumulates in low-lying areas. Flood insurance does not cover damage to property directly caused by rain entering your home or business through openings in walls or the roof. However, homeowners, renters or business insurance may cover these types of losses.

A more realistic loss experienced by many property owners is flooded basements from backed-up sewers or inability of sump pumps to handle runoff from major torrential downpours. Coverage for these types of perils is often available as an endorsement to an existing homeowners or business insurance policy. Although basement water backup is excluded under most homeowners insurance policies, coverage can be obtained by purchasing an endorsement (average cost is \$50/year). Some insurers include full coverage for sump pump failure while others specify items that are covered. Since coverage and limits vary by insurance company, read your endorsement or check with your agent.

Hecht & Hecht Insurance Agency Inc. is available to assist and discuss any of your insurance needs. We continue to research and acquire additional insurance markets to bring the best of the best that is available. We can be reached at [info@hechtinsur.com](mailto:info@hechtinsur.com) or Evelyn 503-542-1131 or 800-609-0979.

**READING & RESPONSE FORM**  
**OIADA CONTINUING EDUCATION PROGRAM**  
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<b>ARTICLE:</b>	<b>QUESTION</b>
President's Letter	"Authorized Buyers" do not need to be certified vehicle dealers, just employees.  (1) True _____ False _____
Hecht & Hecht	96% of homeowners and only 43% renters are insured. A renters vehicle is 50% more likely to be stolen than vehicles of a homeowner.  (2) True _____ False _____
LLR	In March the EPA justified blocking California from regulating auto emissions by saying the problems of global warming aren't unique to one state.  (3) True _____ False _____
AskPatty.com	Women buy 65% of all new vehicles, 56% of all used vehicles, and they influence (or more importantly they have the VETO power) over 85% of automotive purchases.  (4) True _____ False _____

Hecht & Hecht Dealers with a business Entity Insurance License can sell limited lines of credit insurance products, like credit health, credit life, credit involuntary unemployment, GAP and mechanical breakdown.

(5) True \_\_\_\_ False \_\_\_\_

Kelly's Korner Equity takes cash – either at the beginning, during, or at the end of the ownership. I do not know of any other way to reap the rewards of a positive equity position when it comes to vehicles.

(6) True \_\_\_\_ False \_\_\_\_

LLR The "Kids and Cars" Act, requires the National Highway Traffic Safety Administration to create a database of deaths and injuries of children in non-traffic but auto-related accidents.

(7) True \_\_\_\_ False \_\_\_\_

I certify to OIADA that I have personally read these articles in The Oregon Dealer News Magazine  
Continuing Education Packet # 5-08

## Scroll Down To Check Your Answers

### READING & RESPONSE FORM OIADA CONTINUING EDUCATION PROGRAM Complete this test or the Certificate of Completion form for May 2008

#### ARTICLE:

#### QUESTION

President's Letter

"Authorized Buyers" do not need to be certified vehicle dealers, just employees.

(1) True x False \_\_\_\_

Hecht & Hecht

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