



The National Association of Dealer Counsel Newsletter

SEPTEMBER/  
OCTOBER 2021

## Money Laundering and Other Suspicious Transactions: What Dealers Can Do To Avoid Being a Target

By Kristen Baiardi and Bob Weller, *Abbott Nicholson P.C.*

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Baiardi



Weller

evidence of training could limit liability for the dealership if an employee knowingly or unknowingly participates in a money laundering transaction.

Among other things, employees should be trained to view each transaction as a whole to determine whether suspicion is warranted. Does the customer exhibit strange mannerisms? Are they nervous? Lack of price negotiation can be a strong indicator of suspicious activity. Does the customer seem uninterested in the vehicle and what options it has?

Likewise, salespeople and F&I specialists should be reminded to scrutinize documentation provided by customers. If the documents provided seem abnormal (*e.g.*, missing key features of a standard driver's license for your state) or outright unbelievable (do not look like the customer), further information should be requested to verify identity. This is also important to ensure the dealership's compliance with the Red Flags Rule to prevent identity theft.

Employees should also be wary if a customer raises the idea of a straw purchase - where a name other than the customer will go on the vehicle title - or if the customer discloses that a third party will be providing the cash payment to fund the purchase.

Dealerships are often targeted by unscrupulous actors. If they are not careful, dealers can (usually unwittingly) become a target in a larger investigation. At best, being compelled to participate in a law enforcement investigation is nerve-wracking, time-consuming, distracting, and expensive. At worst, it could lead to civil and/or criminal liability for the dealership. We offer below several suggestions for best practices for dealers to implement to avoid being a target of criminals and/or investigators.

### Train Employees to Watch for Signs of a Suspicious Transaction

Dealers should work with their attorney to develop appropriate training for employees, including training in anti-money laundering procedures. Dealers should document when employees complete this training, because

**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.

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Most dealers are aware of their obligation to file IRS Form 8300 when more than \$10,000 in cash is received. But it is important to remember that “structuring” transactions to avoid the Form 8300 reporting obligation is also unlawful. Employees should be trained to watch for cash payments just under the \$10,000 reporting threshold, or transactions where two or more separate cash payments add up to around \$10,000. Employees should also be reminded to report to management any customers who inquire about the dealership’s filing of Form 8300.

Employees should be reminded that suspicious transactions may involve a more complicated scheme than a simple vehicle purchase with “dirty” money. For example, a customer could make a cash down payment deposit of \$9500, and then ask for a refund a week later claiming that he decided to purchase a vehicle at a different store. The dealership will likely return the \$9500 by issuing a check, thus “washing” the “dirty” funds provided by the customer. Dealerships can easily be targets of undercover law enforcement agents and other enforcement authorities who may be trying to solve a larger criminal case, so it is important to scrutinize deals for signs of bad intentions.

### **Ensure That Employees Are Comfortable Reporting Suspicions to Management and Declining a Transaction**

While salespeople are not detectives, dealers should emphasize in training that employees play a critical role in the dealership’s compliance efforts. Dealers should remind employees to report suspicious circumstances to their manager so that appropriate due diligence can be conducted to protect the dealership. Employees must be comfortable declining a suspicious transaction, rather than worried that they will face criticism for turning a customer away.

### **Implement Policies to Confirm That Deals Are Documented Appropriately and Necessary Forms Are Filed**

In connection with training, dealers should confirm that they have policies in place to verify that appropriate customer documentation is obtained for all deals and that Form 8300 is filed when necessary. Failure to file Form 8300 when required can lead to hefty financial penalties and scrutiny from the IRS in the form of audits.

### **Be Aware That Law Enforcement Subpoenas Could Look Like Phishing Attempts**

Many dealer clients are properly suspicious of e-mails purporting to be from law enforcement. One of the author’s dealer clients received an e-mail allegedly from a Drug Enforcement Agency agent enclosing a subpoena for dealership records during the early days of the COVID-19 pandemic. The dealer principal’s first instinct was to ignore the e-mail because he doubted that federal law enforcement would communicate in such a seemingly casual way. Thankfully, his next instinct was to contact his attorney to verify the authenticity of the subpoena. The

subpoena was in fact legitimate. Clients should be warned that federal agents are working remotely now and that anything that appears to be an official communication should be vetted by dealer counsel before response.

### **Conclusion**

Being implicated in a money laundering investigation is bad publicity that no dealer wants. The good news is that with robust training and a careful eye by customer-facing employees, the dealership usually can avoid falling prey to criminal money-laundering schemes. Dealers, as always, should consult with experienced counsel to implement appropriate training tailored to the circumstances of each dealership and its particular vulnerabilities. ■

*Kristen L. Baiardi is a shareholder at Abbott Nicholson P.C., devoting a substantial percentage of her practice to representing and counseling motor vehicle dealerships in litigation, regulatory, and other matters.*

*Robert Y. Weller II is a shareholder and co-chair of Abbott Nicholson’s Motor Vehicle Dealer Practice Group, devoting the majority of his practice to representing and counseling motor vehicle dealerships and their trade associations in business, litigation, regulatory, and other matters.*



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## President's Message



Johnnie Brown

*Pullin, Fowler, Flanagan, Brown & Poe LLC  
NADC President*

I hope everyone had a wonderful summer. I am very excited about our upcoming Chicago conference and look forward to seeing everyone. While we may have some restrictions with masks and social distancing, it will certainly be good to meet in person again.

This will be my last column as President. A new election will be occurring at our Fall Conference. I certainly wish to take this opportunity to thank everyone and their efforts to continue to make this Association strong and successful. My service as President has been a privilege and a wonderful experience. While we certainly had the challenge of COVID-19, with the help of many people, our Association remains financially strong and successfully fulfilled its educational mission. I wish to express my appreciation to the Executive Committee and the Board of Directors and its various committees. They have been nothing short of outstanding. Of course, our own Erin Murphy and Jennifer Polo-Sherk of AMS are certainly exceptional individuals and make serving as President of this Association quite easy, and certainly, less stressful.

As we move forward, the National Association of Dealer Counsel is as strong, if not stronger, because of the efforts and unity of its leadership. In Chicago, there will be elections for new officers and board members who will fill roles of individuals who served faithfully and diligently. However, change is quite healthy for any association - bringing new energy, thoughts, and ideas. I know the NADC will be in wonderful hands as we move forward. This makes our Association continue to be the best.

Most of all, it is the membership that truly makes the difference with this Association. I hope we never forget our educational mission. The membership has the opportunity and willingness to learn from one another, and the freedom to ask questions and share knowledge, all under the common pursuit to better represent our clients. While we will face formidable challenges for our clients moving forward, we can certainly better our individual work through the cooperation and communication that exists in this Association. I love receiving e-mails on the list-serve of interesting legal questions and see the many thoughtful responses. I know it improves the legal representation of my clients. I suspect that many of you feel the same way.

Again, thank you for allowing me to serve as your President. It has been one of the most enjoyable experiences in my professional career. I look forward to assuming my role as immediate Past President and working with the new incoming leadership. I also look forward to joining our Past Presidents committee. I would be remiss if I did not thank our founders and past presidents. Without those individuals laying a strong foundation, we would not have been able to build upon their success. See everyone in Chicago. ■



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#### 2022 Attorney Directory

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Profile updates and upgrade materials are due:  
Monday, October 25, 2021

The 2022 NADC Attorney Directory will be handed out at the NADC booth during the 2022 NADA Convention & Expo in Las Vegas, NV on March 11-13, 2022 and mailed to all NADC members after the event.

## CONFERENCE REGISTRATION

Join us for our fall program which will include innovative sessions that will tackles the complex issues facing dealers and their counsel. Registration is open. The registration fee is \$595 per attendee and includes meeting materials, sessions, and meal functions. Registration will close Wednesday, October 20, 2021. [Click here to register.](#)

## Cancellation Policy

Cancellation(s) of the 2021 NADC Fall Conference can be accommodated by NADC up to Friday, October 15, 2021, less a \$25.00 processing fee. After October 15, we are not able to process refunds.

## CLE Credit

CLE Credit will be available for the 600 minutes (this includes the morning breakout) of educational program pending approval in your state (8.5 general credits and 1.5 ethics credits for states that calculate 60 minutes per credit; 10.2 general credits and 1.8 ethics credits for states that use 50 minutes per credit).

CLE credit will be applied towards the state or states entered in your online registration form. Contact Kira Forster at [Kforster@dealercounsel.com](mailto:Kforster@dealercounsel.com) for more information.



## NADC COVID-19 Code of Conduct

Due to the ongoing COVID-19 pandemic, we have taken several precautions to minimize risk in attending the 2021 NADC Fall Conference.

If you choose to attend in person, you agree that you will abide by the following standards:

- Do not travel if you are sick
- Do not attend the conference if you feel sick
- Wash your hands frequently
- Follow all posted venue guidelines including, but not limited to, social distancing guidelines, mask guidelines and traffic-flow signs
- Abide by the current City of Chicago ordinances\* pertaining to COVID-19 guidance during your time in Chicago even if these ordinances differ from the State of Illinois Executive Orders
- Use provided hand sanitizer stations
- Be considerate - be kind

\*Please note that while on the premises of the Ritz-Carlton, Chicago any violation of the current mandates/city ordinances pertaining to COVID-19 or otherwise, may result in removal from the premises without the ability to return.

Your registration indicates your understanding and acceptance of the terms of this Code of Conduct. You further understand and accept that should you violate the terms of the Code of Conduct and are asked to leave the premises; you will not be issued a refund of any fees paid to NADC.

By completing my 2021 NADC Fall Conference registration, I agree that I have read, understand, and agree to the NADC COVID-19 Code of Conduct and will abide by these regulations while participating in the 2021 NADC Fall Conference.

**Please note:** In alignment with the CDC's guidance, Chicago is now mandating that businesses require masks for everyone (including both customers and staff), regardless of vaccination status, in all public indoor settings. We will inform you if the mandate changes.

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The Ritz-Carlton Chicago  
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## SUNDAY, OCTOBER 24

- 3:00 to 5:00 pm • Salon BC  
**Board Meeting**  
5:30 PM • The Grand Foyer  
**New Member Reception**  
6:00 to 7:30 pm • The Grand Foyer  
**Reception**  
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## MONDAY, OCTOBER 25

- 7:30 am • The Grand Foyer  
**Registration**  
7:30 to 8:30 am • St. Clair Ballroom  
**Breakfast**  
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Dealer Risk Services  
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- 8:30 to 9:00 am • The Ritz-Carlton Ballroom  
**Opening Remarks and General Meeting of Members**  
9:00 to 10:30 am • The Ritz-Carlton Ballroom  
**Session 1: Ethics Session: The Tech Never Stops**  
Stuart Teicher  
10:30 to 11:00 am • The Grand Foyer  
**Break**  
All Monday Breaks Sponsored by:



11:00 am to 12:00 pm • The Ritz-Carlton Ballroom

### Session 2: The Closing Day

Charles Gallaer, Arent Fox LLP  
Ken Rosenfield, Rosenfield & Company PLLC

12:00 to 1:00 pm • St. Clair Ballroom

### Lunch

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1:15 to 2:15 pm • The Ritz-Carlton Ballroom

### Session 3: 3 Questions Dealers Must Answer in the Affirmative (Or Face Extinction over the Next Decade)

Shawn Mercer, Bass Sox Mercer  
Richard Sox, Bass Sox Mercer

2:15 to 2:30 pm • The Grand Foyer  
**Break**

2:30 to 3:30 pm • The Ritz-Carlton Ballroom

### Session 4: COVID-19: Wrapping Up and Lessons Learned

Doug Greenhaus, NADA  
Kaye Lynch-Sparks, NADA

3:30 to 4:00 pm • The Grand Foyer  
**Break**

4:00 to 5:00 pm • The Ritz-Carlton Ballroom

### Session 5: What Do I Owe You? Comprehensive Compensation Guidance for Automotive Dealership Employees

Katharine Batista, Offit Kurman, P.A.  
Ari Karen, Offit Kurman, P.A.

5:00 to 6:30 pm • Lakeside  
**Reception**

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## TUESDAY, OCTOBER 26

7:30 to 8:30 am • St. Clair Ballroom

### Breakfast

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7:30 to 8:30 am • Salon BC

### Tax Breakout Session

Allen Magee, Dixon Hughes Goodman LLP  
Jon Gee, Dixon Hughes Goodman LLP

8:30 to 10:00 am • The Ritz-Carlton Ballroom

### Session 6: NADA Update

Andy Koblenz, NADA  
Paul Metrey, NADA

10:00 to 10:15 am • The Grand Foyer  
**Break**

All Tuesday Breaks Sponsored by:



10:15 to 11:15 am • The Ritz-Carlton Ballroom

### Session 7: The EV Transition: Threats and Opportunities for Automotive Dealerships

Patrick Anderson, Anderson Economic Group  
Cristina Benton, Anderson Economic Group

11:15 to 11:30 am • The Grand Foyer  
**Break**

11:30 am to 12:30 pm • The Ritz-Carlton Ballroom

### Session 8: Dealer Digital Issues Update: Privacy and Data Security Issues Facing Dealers

Brad Miller, NADA

12:30 to 12:45 pm • The Ritz-Carlton Ballroom  
**Closing Remarks**

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# How the Cloud Is Changing the Auto Industry

By Gordon Wisbach, *GW Marketing Services.*

We have all heard the phrase “get your head out of the clouds,” but, now, the cloud is where everything is! Most online infrastructure and the tech with which consumers interact on a daily basis involve the cloud. The automotive industry is also becoming more cloud-based, using global hyperscalers such as Google Cloud, Microsoft Azure, and Amazon Web Services. This service impacts everything in the automotive industry from how we interact with our vehicles to how engineers crunch their data and even how manufacturers create the cars.

These third-party specialists make it possible for data to be extracted securely and efficiently from coworkers and teams across the globe. Traditional infrastructure using on-site servers and VPNs is incredibly expensive. The cloud saves manufacturers (and dealers) both time and money. The convenience could be the ultimate business tool, which could lead to the path of success as the industry moves into the future.

As consumers continue to embrace cloud-based technology, it will be important for the auto industry to do so as well. More and more vehicles will be connected to the cloud to remind drivers about maintenance, make them aware of battery levels in electric vehicles, and even remind people where they parked. Plus, the cloud will be vital in the development and advancement of autonomous vehicles.

Microsoft Azure and Volkswagen teamed up to develop “Automotive Cloud,” which works in the background, ensuring a smooth experience for the consumer. The idea here is to eventually have all cars using cloud-based applications to increase customer satisfaction. People expect every device to be connected. Why should their cars be any different?

Some newer cars have infotainment systems built in with some apps available, but most buyers still opt to use their Apple CarPlay or Android Auto, allowing a fully integrated experience between their vehicles and their phones’ connectivity. Apple CarPlay has become a “must-have” feature when choosing a vehicle, influencing the buying decision, though most vehicles made after 2017 have this option.

The cloud really does touch every level of the industry. Parts suppliers use it to increase efficiency and part quality through machine learning. Manufacturers use the cloud internally and for serving their customers (customer service, sales, marketing). Dealers use the cloud to engage their local markets and do targeting research like pre-qualifications. And then ultimately consumers are reaping both infotainment and safety benefits of this technology in their vehicles on a daily basis.

The cloud is “limitless”—at least that’s what they say. As automotive technology grows, hyperscalers provide a large playing-field where the industry can expand. And as consumers’ technological appetites grow, automakers will need to take advantage of all the cloud has to offer. ■

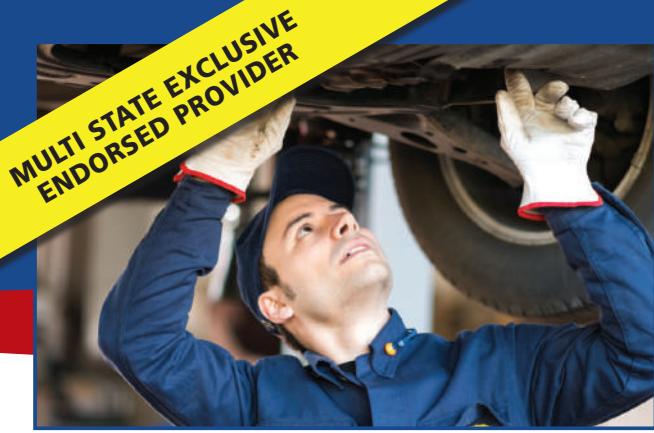
*Gordon Wisbach, Jr. is the founder of GW Marketing Services, an auto dealership brokerage and consulting firm located in the Boston Metropolitan area.*

*You can learn more at [gwmarketingservices.com](http://gwmarketingservices.com), or you can contact Gordon at [gordon@gwmarkatingservices.com](mailto:gordon@gwmarkatingservices.com) or 508-395-2500.*



## 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@dealerounsel.com](mailto:emurphy@dealerounsel.com).**



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# *In Memoriam*



**Stuart Rosenthal**

*(From the GNYADA News Bulletin)*

We are very sad to report that Stuart Rosenthal passed away recently. Stuart, who served as GNYADA's General Counsel and Vice President of Legal Affairs for nearly 20 years, succumbed to complications from a tragic accident in his Westchester home several weeks ago.

With more than 40 years of experience as a lawyer in automotive, regulatory, dealer franchise, and consumer law, Stuart left an indelible mark on the franchised new car and truck dealership community and will certainly be missed.

For nearly two decades, Stuart served as General Counsel and Vice President for Legal Affairs of the Greater New York Automobile Dealers Association (GNYADA). While at GNYADA, Stuart played a key role in the Association's many legal, legislative, and regulatory initiatives which included several major revisions to New York's Franchise Law along with numerous compliance and regulatory matters on local, state, and federal levels. Dealers often relied on Stuart's broad knowledge which he used to provide helpful practical answers to many complex issues they faced.

During his time at GNYADA, Stuart was instrumental on the "Any Car Store" legislation, which sought to prohibit non-franchised dealers from selling new vehicles, and he worked to limit vicarious liability on lease vehicles.

He was selected to serve on the New York City Mayor's Task Force on Automobile Insurance Rates, alongside the Commissioner of Consumer Affairs, the President of the BBB of NY, and leading insurance law practitioners. In 2011, he was selected as a panel member on the U. S. Federal Trade Commission's look into the future of Automotive Retailing, The Road Ahead. Stuart also served as a member of the NADC Board of Directors.

In 2014, Stuart went on to start his own practice, Law Offices of Stuart A. Rosenthal - Automobile Dealership Law & Compliance, where he continued helping dealers comply with all aspects of dealership requirements, addressed legal issues they faced, and created workable solutions for them. Stuart was highly respected by industry attorneys and Association Executives who represent franchised new car dealers. Dealers and industry leaders often sought out Stuart for his expertise in dealership law.

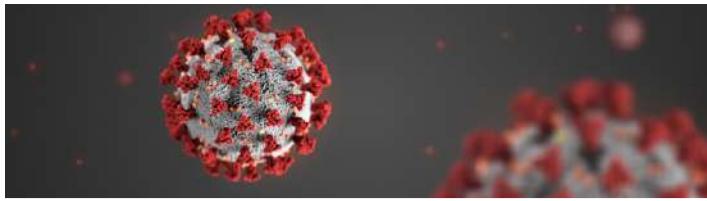
Prior to joining the Association in 1995, Stuart was an Assistant Attorney General under three New York State Attorney Generals, worked at the New York City Department of Consumer Affairs where he held several leadership roles, and was Vice Chairman of the National Conference on Weights and Measures (U.S. Department Commerce) and Chairman of its Laws and Regulations Committee during that time.

Stuart had a love for cars and motorcycles that didn't always make his family comfortable, especially his love of riding motorcycles. Maybe more than most, he loved being involved with the annual New York International Auto Show, in any way possible.

Stuart is survived by his wife Kathy, his two children Benjamin (Brooke) and Devorah, and grandchildren Parker and Lily.

On behalf of NADC, we express our heartfelt condolences to Kathy and the Rosenthal family.





## NADC COVID-19 Resources

NADC strives to be an important resource for you during these uncertain times. In addition to the list-serve, NADC has set up a resource page on the **E-Library section** of the web-site ([www.dealercounsel.com](http://www.dealercounsel.com)). Once logged in as a member, please search for "COVID-19" and the resource page will populate. You can also find the page here:

<https://www.dealercounsel.com/articles/covid-19-resources-0>

Please note that the eLibrary is only accessible to NADC attorney and trade association executive members.

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# What Happens When Flying Cars Fall From the Sky?

By Mark Paul, CEO, *AutoAp, Inc.*

An interesting headline caught my eye the other day. An Economist story stated, “Fasten your seat belts: Flying taxis are about to take off at last.” <https://www.economist.com/business/2021/04/03/flying-taxis-are-about-to-take-off-at-last>

My first reaction? Flying cars have been talked about for decades but have not yet come to fruition. This time, however, flying cars seem to be gaining more traction, especially with deals like Electric air-taxi startup Lilium merging with a former GM executive's SPAC in a \$3.3 billion deal. <https://www.bloomberg.com/news/articles/2021-03-30/former-gm-executive-s-spac-acquires-air-taxi-startup-lilium>

Of course, any advance in technology creates an entire new range of challenges. What happens if one of those air taxis suddenly falls from the sky? Safety recalls are now a daily part of the auto industry. It is not too far-fetched to recognize that flying cars could bring significantly more risk to drivers, passengers, pedestrians... and now people on the ground, nowhere near a street!

## Technology Is Getting Ahead of Our Ability To Manage It

Thinking about the impact of safety recalls on flying vehicles may be a tad premature. But, as someone who helps dealers cost-effectively manage safety recalls, the impact of new technology is near and dear to my heart.

I also spent more than a decade in the Aerospace Defense Industry, creating technologically advanced aircraft avionics. The design, development, parts sourcing, and project management required to meet extreme quality requirements were – and are – cutting edge. Consider this: How many parts are there in an airplane and how many are there in a vehicle? Lufthansa has reported it has a plane with approximately 6 million parts. That compares to just 30,000 parts in an average Toyota.

Whatever the timeframe for flying cars, vehicles are becoming more technologically advanced with electric/autonomous vehicle technologies and connected cars moving closer to being mainstream every day. Vehicle complexity – due to ever-increasing vehicle-safety features – is already increasing safety recalls with new challenges for dealers.

Look at the consumer and NHTSA's uproar from recent Tesla autopilot malfunctions. Tesla grabbed headlines all across the industry. And, what happened when Hyundai had some electric vehicle fires? It led to an 82,000-vehicle recall at \$11,000 per repair.

Flying cars will not be as large as a Lufthansa commercial airliner, but to make a car fly will require more parts and systems. More parts and systems equal more complexity. More complexity means more things can go wrong. And, of course, when things go wrong with ground-based vehicles in the auto industry, what happens? Recalls. “Pull over” is not an option when you are in the air. Airborne vehicles can fall out of the sky! That is a heck of a way to determine there is a safety recall that needs to be published and rectified.

The average neighborhood dealership will not be selling flying cars for the foreseeable future, but they will be knee deep in even newer technologies. Electric vehicles and autonomous vehicles are technological marvels, but the minute something goes wrong, they are high-profile targets for recalls.



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## What Should Dealers Do Today?

First, dealers need to make a cultural shift that recognizes the importance of safety recall management. This includes putting the right systems in place to manage the recall process.

If you do not have a written policy covering how the organization will handle recalls, your liability will increase. Having all employees well-versed in the policy and buying in to proactively managing safety recalls will help avoid selling vehicles with open safety recalls.

Next, one team member needs to own the entire recall process. Even in a large dealer group, there should be one employee dedicated to “owning” safety recalls for the entire organization.

Finally, if your dealership automates the recall management process, you will catch recalls you may be missing, which also means additional profits! The dealership can turn to third parties, such as AutoAp, to assist with the recall process. Those who embrace technology are making more money by proactively identifying and fixing vehicles with open recalls. In addition, they are limiting liability by taking steps to mitigate sales of vehicles with open recalls, while reducing time and expense in doing so.

Dealerships who put these steps in place might not be selling flying cars in the near future, but cars will be flying out of their service bays, generating revenue and limiting liability. ■

*Mark Paul started AutoAp in 2012 to drive consumers to dealers with a mobile app. In 2014 – after the dramatic rise in safety recalls – due to strong encouragement by AutoAp’s dealer clients, the company pivoted to focus solely on helping dealers manage recalls. He recently published the book: “Safety Recalls: Think You’re Covered?”, which shines a light on the broken safety recall ecosystem and what dealers can do to protect themselves and their customers.*



## BE A CONTRIBUTOR!

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

*[jamifarris@parkerpoe.com](mailto:jamifarris@parkerpoe.com)*



## NADC Welcomes New Members

### Full Members:

#### **Melanie Dittrich**

David Stanley Auto Group  
*Midwest City, Oklahoma*

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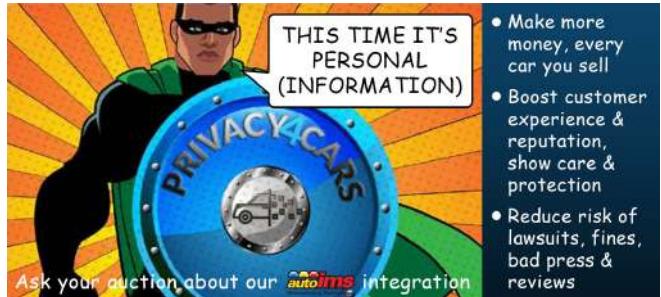
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**Volume XVIII, Number 8  
SEPTEMBER/  
OCTOBER 2021**

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

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