

# Kentucky

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AUTO DEALER

ISSUE 2 | 2021

**kada**

OFFICIAL PUBLICATION

POST-PANDEMIC DEALERSHIP  
TRENDS THAT ARE HERE TO STAY  
PAGE 10

KADA 74TH ANNUAL  
CONVENTION  
PAGE 18





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# PRESIDENT'S MESSAGE

JASON WILSON



KADA held its 74th Annual Convention June 14-17, 2021, at the beautiful Hammock Beach Resort. It was wonderful being with everybody and participating in the many events that took place. You may have watched the short intro video we created for the convention. (If you missed it but are interested, there is a video link on page 18.) Although the year is officially over, we are delighted to have 2020 behind us, and we still think 2021 is our year to reclaim all the things the pandemic forced us to put on hold. The convention theme was clear: It's a time to engage, energize and do what needs to be done.

The convention's first day consisted of registration and a reception in the evening. The next day, Joe Cummins, Kim Huffman and I were in charge of the convention kick-off. That was followed by two sessions: a panel discussion about urban science and a presentation by John Iannarelli, a retired FBI special agent executive, about cybersecurity for auto dealerships. Participants were then free to enjoy the rest of the day until it was time for cocktails and a casual dinner.

On Wednesday, a group of KADA leaders, including me, Joe Cummins, Kim Huffman and Dan Renshaw, updated attendees on KADA. Glenn Mercer gave us an update about changes he expects to see in dealerships, and Dan Iosue and Loyd Rawls talked about the importance of succession planning.

The convention's final day was Thursday, June 17, 2021. Golfers had breakfast together and then participated in a fun Golf Scramble, and the convention ended with cocktails and a farewell dinner.

You can see a few pictures from the convention starting on page 18. We had a great time eating s'mores, dancing, and learning how to roll Cuban cigars. There are a couple of fun videos of this on [facebook.com/kadainc](https://facebook.com/kadainc).

We are already looking forward to next year's convention in Asheville, North Carolina, and we hope you will join us there June 20-23, 2022. Even though we are grateful for all the times we met virtually during the height of the pandemic, it's still better to meet face to face.

Right after the convention, we held a Next Gen event on Tuesday, July 20, 2021, at the National Corvette Museum in Bowling Green, Kentucky.

Following that, we hosted our KADA Golf Tournament on Monday, August 9, 2021 at the University Club of Kentucky in Lexington. I think we all appreciate getting together more than we did before the pandemic, but it has been quite a summer even without taking the pandemic into account.

I am excited about this issue of our magazine. Let me give you a brief introduction to some of the articles that may be useful for you:

- Lonnie Rogers wrote an article about the employee retention tax credit. We thought he did a great job explaining the tax credit, so we wanted to share it with you.
- The pandemic changed how we sell cars. We have an article about the dealership trends that are here to stay as a result.
- Cybersecurity is always top of mind for businesses these days, and dealerships are no exception. Julie Cardosi wrote her column about the need to evaluate data security components before a breach takes place.
- We've often introduced you to some of our marvelous dealers, but this time we decided to tell you more about your KADA Team by having a quick Q&A with Melissa Peach. She works in the KADA office as our accounting, membership and kadet administrator.
- If you've ever wondered whether car dealerships matter to Kentucky's economy, wonder no more. We have a chart in this issue that shows just how important Kentucky dealers are; they provide jobs and pump cash into the economy.

KADA works hard to ensure that dealers have the latest information, and we provide many resources to help you do a better job running your dealership. We are growing: since January, we've added 29 dealer members, eight allied members and five preferred partners.

I am honored to be the KADA president, and I hope you will always feel comfortable contacting me or any of the other members of the KADA staff whenever you need help or information.

Be safe as we move from summer into fall! 🍂



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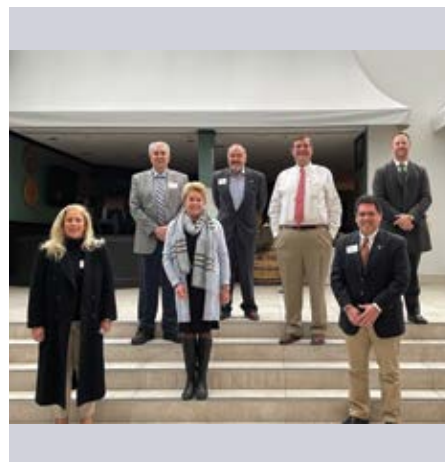
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\*\* The max personal contribution is \$2,000.

\*\* The level amount may not be the exact amount contributed by the dealer member.  
The dealer member could have contributed above the club level.



# 2021 IMPORTANT DATES TO REMEMBER

## KADA DISTRICT MEETINGS

Tuesday, October 12th – Lexington – Lexington Country Club

Wednesday, October 13th – Louisville – Hurstbourne Country Club

Tuesday, October 19th – Paducah – Paducah Country Club

Wednesday, October 20th – Bowling Green – Holiday Inn University Plaza

(All district meetings begin with a reception at 5:30 pm and dinner at 6:00 pm)

Visit [kyada.com](http://kyada.com) for more information on each above event.

\*\*Please note that the meetings in Paducah and Bowling Green are Central Standard Time\*\*

## STAY CONNECTED WITH KADA THROUGH FACEBOOK, WEBSITE AND OUR PODCAST



[kyada.com](http://kyada.com)



[facebook.com/kadainc](https://facebook.com/kadainc)

Podcast is available on Spotify, Apple Music and YouTube channel: Kentucky Horsepower



# NADA MANAGING PRICING DISCRETION IN CREDIT TRANSACTIONS: A PATH FORWARD

One of the most attractive benefits to consumers in any industry is purchasing products and services at a discounted price. Discounting saves customers money, allows companies to earn their business and disciplines the prices competitors offer for the same items. In a normally functioning market, it is a win-win for both consumers and businesses.

At the same time, discounting involves pricing discretion, and pricing discretion that is not carefully exercised by a business can give rise to concerns about arbitrary pricing and worse, pricing that discriminates against protected groups of consumers. This concern has driven the efforts of many consumer advocates and government officials over the years to eliminate dealer pricing discretion. In the

context of dealer financing, this would be attempted by eliminating the participation that dealers earn for originating credit contracts and replacing it with a non-discountable, flat fee.

Many finance sources that are assigned credit contracts compensate dealers with non-discountable flat fees. The National Automobile Dealers Association takes no position on the form of compensation freely entered into by dealers and their finance sources. Nevertheless, NADA has resisted – and will continue to resist – efforts by the government to prohibit finance sources from compensating dealers with discountable dealer participation for originating credit contracts with their customers. The pro-competitive benefits that dealer participation provides



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## MANY FINANCE SOURCES THAT ARE ASSIGNED CREDIT CONTRACTS COMPENSATE DEALERS WITH NON-DISCOUNTABLE FLAT FEES. THE NATIONAL AUTOMOBILE DEALERS ASSOCIATION TAKES NO POSITION ON THE FORM OF COMPENSATION FREELY ENTERED INTO BY DEALERS AND THEIR FINANCE SOURCES.

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to consumers should not be eliminated by unwarranted and untested government intrusion into the marketplace.

Notwithstanding the flaws of such a mandate, concerns about “unfettered” pricing discretion expressed by the acting chair of the Federal Trade Commission (FTC) and others should not be ignored. Dealers should consider ways to address those concerns while striving to provide their customers with affordable and competitively priced products. One approach a dealer should consider (managing discretion while promoting competition) when earning dealer participation in a credit contract is to adopt the optional NADA/NAMAD/AIADA Fair Credit Compliance Policy & Program (NADA Fair Credit Compliance Program).<sup>1</sup>

The NADA Fair Credit Compliance Program was not developed in a vacuum. Instead, it stems from – and fully adopts – an approach to fair credit compliance outlined in consent orders that the Department of Justice (DOJ) entered into with two automobile dealerships to settle pricing discrimination claims in 2007.<sup>2</sup>

In those consent orders, the dealers were required to adopt specifications known as “Guidelines for Setting Dealer Reserve.” This was how the dealer established standard participation rate (SDPR) that included in credit offers to consumers (i.e., the dealership would offer an APR the sum of the wholesale buy rate offered by the finance source and its SDPR) unless a “good faith, competitive reason” that supports a lower dealer participation rate was present in the transaction. The consent orders included seven such legitimate business reasons for discounting the SDPR, with the three most common being the presence of a lower cap imposed by the finance source, a consumer’s monthly budget constraint and a consumer’s access to a more competitive offer. The consent orders further required that any deviations from the SDPR be recorded on a pricing certification form, reviewed by the general manager or his or her designee and retained by the dealership.

In November 2013, while speaking at a Consumer Financial Protection Bureau (CFPB) Auto Finance Forum, a senior DOJ official<sup>3</sup> validated this approach when explaining that:

(i) pricing discretion is not prohibited by the Equal Credit Opportunity Act;

(ii) however, when exercised, pricing discretion presents a fair lending risk that needs to be managed; and one way to manage that risk is to adopt the approach outlined in the 2007 DOJ consent orders.<sup>4</sup>

Two months later, after extensive preparation and review, the three national trade associations representing franchised automobile dealers released the NADA Fair Credit Compliance Program.

As noted above, the NADA Fair Credit Compliance Program fully adopts the framework established in the DOJ consent orders and builds on it. A dealer who adopts the program has it approved by its board of directors and appoints a senior dealership official to serve as the Program Coordinator (PC). The PC oversees the implementation and maintenance of the program by establishing the SDPR, conducting initial and periodic training, reviewing pricing certification forms, submitting an annual compliance report to the board and performing other related tasks. The program explains each of these steps in detail.

Since its inception, the NADA Fair Credit Compliance Program has gained widespread support from many prominent observers both inside and outside of the industry.<sup>5</sup> Recent additions to the list of supporters include

(i) the American Bar Association, which overwhelmingly approved a resolution at its 2020 annual meeting that, in part, urges governments at all levels to offer “a safe harbor against pricing discrimination claims for dealers that faithfully implement the NADA/NAMAD/AIADA Fair Credit Compliance Policy and Program”;<sup>6</sup> and


(ii) a CFPB Taskforce on Federal Consumer Financial Law, which made a similar recommendation to the CFPB and the Federal Reserve Board in Jan. 2021.<sup>7</sup>

The FTC has also seen value in this approach to managing pricing discretion. It included the framework and many elements of the NADA Fair Credit Compliance Program in a May 2020 consent order it entered into with an automobile dealership to settle allegations of intentional credit discrimination.<sup>8</sup>

CONTINUED ON PAGE 8



#### CONTINUED FROM PAGE 7

Notwithstanding its broad support, the NADA Fair Credit Compliance Program remains optional. Its adoption does not guarantee that a dealer will be protected from liability for a fair credit violation. However, if faithfully adopted, implemented and maintained, the NADA Fair Credit Compliance Program provides a dealer with a well-regarded path forward in a very challenging environment. This should not be overlooked when a dealer discusses how it will ensure its customers' fair and lawful treatment with its attorney. 



This article is offered for informational purposes only and is not intended as legal advice.

This article was prepared by Paul D. Metrey, Vice President, Regulatory Affairs for the National Automobile Dealers Association.

<sup>1</sup>The program and other supporting material are available at [www.nada.org/faircredit](http://www.nada.org/faircredit).

<sup>2</sup>In re Pacifico Ford, DOJ Civil Action No. 07-3470 (September 4, 2007) (consent order); In re Springfield Ford, DOJ Civil Action No. 07-3469 (September 4, 2020) (consent order), available at [www.justice.gov](http://www.justice.gov).

<sup>3</sup>Steven H. Rosenbaum, Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice.

<sup>4</sup>CFPB Auto Finance Forum (November 14, 2013), currently available at [www.consumerfinance.gov/about-us/blog/live-from-the-cfpb/](http://www.consumerfinance.gov/about-us/blog/live-from-the-cfpb/).

<sup>5</sup>See, for example, the statement made by Rep. Joyce Beatty (D-Ohio) before the U.S. House Financial Services Committee in March 2016 referring to the NADA Fair Credit Compliance Program as a "wonderful document" while Rep. Beatty held up the publication and asked that it be included in the record; and testimonials from 12 prominent industry attorneys expressing support for the program (available at [www.nada.org/faircredit](http://www.nada.org/faircredit)), including from former CFPB Assistant Director Rick Hackett, who stated his belief that the program "can resolve issues raised by the CFPB related to discretionary pricing... assuming it is faithfully executed as described by NADA."

<sup>6</sup>American Bar Association, Resolution 116B (August 3, 2020), available at [www.americanbar.org](http://www.americanbar.org).

<sup>7</sup>Taskforce on Federal Consumer Financial Law (TFCFL), CFPB, TFCFL Report Volume II, Recommendation 66 (January 2021), available at [www.consumerfinance.gov](http://www.consumerfinance.gov).

<sup>8</sup>In re Bronx Honda, FTC Docket No. Case 1:20 (May 22, 2020) (consent order), available at [www.ftc.gov](http://www.ftc.gov).



# MEET YOUR KADA TEAM: MELISSA PEACH



For those of you who have not had a chance to meet Melissa, she's been with KADA since December 2016, handling our meeting and event planning and helping with our day-to-day business administration.

We sat down to chat with Melissa and get to know her more.

## **Choose three words or phrases to describe yourself.**

1. Dedicated
2. Honest
3. Hard-working

## **Where are you from?**

I live in Lawrenceburg, Kentucky. We relocated to Lawrenceburg when I was in middle school many years ago. I'm originally from Western Kentucky. That's where all my family lives, and I visit often.

## **Tell us a little about your family (your parents and siblings, your current family, or both).**

I am married to my husband, John, and together we have four children, all girls. My oldest is Kennedy, then Savannah, Aubrey and Paisley. We have one dog named Copper. We have a small farm in western Anderson County, where we raise goats and chickens.

## **What is your educational background?**

I have an associate's degree from Western Kentucky University in office systems administration. It's a business degree.

## **What is the best piece of advice you ever got?**

Always be a team player. I played sports all the way through high school, and the

importance of being a team player is one thing I learned from that. It's a life lesson.

## **Describe your life purpose in three sentences or less.**

My life purpose is to be the best wife and mother that I can be. I want to raise my four daughters to be hard-working and independent young ladies.

## **How did you hear about KADA? Why did you want to work for the association?**

I was making a life change and was looking for a career change to go with it. The KADA position involved doing some of the work I'd done before, such as planning meetings and events, along with business and database administration.

## **What do you love about your job?**

I love everything about my job, but I especially enjoy meeting the dealers across the state of Kentucky and building relationships with them. I also enjoy the flexibility, traveling for meetings and our annual conventions.

## **What are your hobbies?**

Outdoors is my favorite place to be; I love the lake life. We go camping, boating and fishing. I like to travel, and I love spending time with my family. I also coach girls softball and girls basketball in my local community. 🏞️





# POST-PANDEMIC DEALERSHIP TRENDS THAT ARE HERE TO STAY

By Sharon Kitzman, VUE DMS

COVID-19 changed every aspect of our society, including the way dealerships operate and how consumers purchase vehicles. As states reopen and businesses return to normal operations, some key trends will continue even after the coronavirus is under control. Here is what you can expect to see post-pandemic and how to position your dealership for success in the long run.

## Online Car Shopping and Purchasing

According to Haig Partners, 30% of new car sales last year in the U.S. were conducted online, compared to 2% pre-pandemic. Millennial shoppers, in particular, want to buy or lease through their smartphones and just come to the dealership to close the deal. To meet this demand, you can create a better car buying experience by creating a virtual sales manager role and invest in tools that streamline the online car buying process. This ensures customers efficiently go through the decision-making process and feel confident that your dealership is the best one from whom to buy their next car.

## Telecommuting and Remote Operations

The lockdowns forced some dealerships to temporarily close their doors at a time when consumers moved away from ride-sharing to car ownership. Many dealers allowed their staff to work from home and continue helping customers through their buying journey

to minimize disruption. Your sales staff can be more efficient in a remote environment by using your DMS to:

- Setup prospective deals and quickly offer different payment options on the fly
- Schedule appointments to test drive cars and have the vehicle delivered to their home
- Enable customers to complete most, or all, of their contracts and payments digitally

## Mobile Service Drives

More vehicle purchases mean more cars that require maintenance. Many dealers continue to operate their service drives during COVID by offering mobile services, such as picking up the vehicle from the customer's home and bringing it back after an oil change and tire rotation. What was once considered a concierge luxury service is becoming more popular. To do this effectively, you will need DMS that does not require VPN offsite, so your team can effectively deliver exceptional service at your customer's convenience.

## Digital Marketing and Promotions

Consumers are more internet savvy than ever before, and COVID made digital advertising even more essential. Identify websites



and social channels where your customers hang out and try to be present there. Leverage advanced social advertising capabilities to target specific audiences and get your dealership in front of people who may not know your brand or the special offers you are running.

### Secure Virtual Payments

The days of handing cash and credit card to the cashier before picking up a vehicle are fading quickly. As consumers strive to avoid crowds, being able to pay for their car in advance – quickly and securely – has been vital during the pandemic and beyond. Ensure your DMS provides an easy way for customers to pay online and track it within the repair order for your records.

### Cyberattacks

Cybercriminals often target automotive dealerships due to the high volume of sensitive data, which has increased since the pandemic began. With the rise in remote work and more car buyers on the market, this threat will continue. According to Blum Shapiro, dealerships that invest in cloud technology are well positioned due to higher security protocols. A cloud-native DMS, for example, can help protect your data through immediate security patches and updates. It can also backup your records in the cloud so you don't lose critical information in the event of a hack.

Many of these dealership changes are long overdue and the COVID-19 pandemic accelerated the digital retail process. Despite the emergence of online used car marketplaces, such as Vroom and Carvana, dealers proved our industry's ability to adapt and succeed under unprecedented circumstances. The goal now is to stay ahead of competitors for the long haul by implementing an agile workforce, robust processes and modern cloud solutions that enable you to maximize productivity, customer satisfaction and profitability. 📈



Sharon Kitzman leads the launch and long-term growth of VUE DMS. Her expertise in DMS technology is key to helping VUE clients to optimize their operations with innovative solutions. Previously, Sharon managed the strategic direction and product development for Reynolds & Reynolds and Dealertrack. Her experience spans every area of dealership software development including sales, marketing, product lifecycle management, process re-engineering, OEM management, professional services and customer service.

Sharon is a recognized leader in the automotive industry and has received many accolades including Automotive News Top 100 Leading Women 2015 and 2020, Auto Remarketing Women in Retail 2021, and AutoSuccess Women at the Wheel 2021. She has a Bachelor of Business Administration from Ohio State University.

# Driving Kentucky's Economy

## Annual Contribution of Kentucky's New-Car Dealers

Numbers reflect annual economic activity during 2020.



**230**  
**DEALERSHIPS**  
(new car)



**27,964**  
**TOTAL JOBS**  
(created by dealerships)  
Includes 12,750 direct jobs and  
15,214 indirect and induced jobs.



**55**  
**EMPLOYEES**  
(average per  
dealership)



**\$9.5B**  
**TOTAL SALES**  
(all dealerships)



**\$745M**  
**PAYROLL**

**\$58,435**  
Average Annual  
Earnings

**\$213M**  
State and Federal  
Income Taxes Paid

Includes income taxes paid for direct,  
indirect and induced jobs.



**0.9%**  
**REGISTRATIONS**

Kentucky's Share of Total  
U.S. New-Vehicle Registrations

**\$570M**  
**STATE SALES  
TAX PAID**

Source: Center for Automotive  
Research, IHS Markit, NADA,  
Taxfoundation.org, U.S. Bureau of  
Labor Statistics, U.S. Census Bureau



**NATIONAL AUTOMOBILE DEALERS ASSOCIATION**

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# EMPLOYEE RETENTION TAX CREDIT: TOO GOOD TO BE TRUE?

By Leon M. Rogers, Tetrick & Bartlett, PLLC



The Employee Retention Tax Credit (ERTC) provides a 70% tax credit on the first \$10,000 in wages per employee. For each quarter the business meets criteria in 2021, a 50% tax credit equivalent to \$10,000 in wages per employee in 2020 is granted for qualifying businesses.

The tax credit refund can still be claimed by amending payroll tax returns. The qualifying criteria being applied by our firm is the reduction in revenue test, subject to a government shutdown as a non-essential business.

A few consultants are saying every business can qualify for the ERTC, claiming specific whole industries qualify. The retail automobile industry seems to have been targeted as qualifying. I have received several communications from clients – contacted either directly or through a referral from a friend by these consultants – claiming they qualify without reviewing any of the

supporting data. The fees charged by these consultants range from a low of 5% of the credit calculated to as high as 15%.

In Eligible Employers Guidance, the ERTC states, in essence: “an employer [with an essential business] may be considered to have a full or partial suspension of operations ... if the business's suppliers are unable to make deliveries of critical goods.” An aggressive approach to the interpretation of this section is being used to qualify businesses that do not meet the revenue or direct shutdown order criteria.

Any dealer engaging a tax credit specialist should do so with the knowledge that their refund claims are subject to audit and could also be subject to interest and penalties if they are determined to be non-qualifying.

We suggest the following inquiries be made before engaging a tax credit specialist:

1. How long has the specialist been in business?
2. How many clients have they represented before the IRS, and how many CPAs, attorneys, and other qualified personnel do they employ to represent their clients before the IRS? Curriculum vitae (CVs) on these individuals should be provided.
3. Does the specialist reimburse defense costs, penalties, and interest?
4. Does the specialist follow the published guidance to ensure that claims will be made only in cases that adhere to the letter of the law?
5. Do they provide a clear and quantifiable substantiation of the qualification criteria before asserting the business is eligible?

We encourage all dealerships to determine if they qualify for this benefit provided by the federal government and have complete and accurate data to substantiate any claim.

Dealerships should consult with their CPA and/or attorney before signing an ERTC assistance contract to ensure there are no misunderstandings with the provider for the risks you and they are assuming in connection with any credit received. 🚗

---

Leon M. (Lonnie) Rogers, CPA/ABV/CFF, is the managing member of Tetrick & Bartlett, PLLC, providing accounting, tax, valuation, and consulting services to automobile dealers since 1977. Tetrick & Bartlett, PLLC currently serves over 50 dealers in West Virginia, Virginia, Ohio, and Pennsylvania and is a member of the AutoCPA Group, a nationwide organization made up of 25 CPA firms specializing in services to automobile dealers. Lonnie can be reached at [lrogers@tetrickbartlett.com](mailto:lrogers@tetrickbartlett.com), or 304-624-5564.

# CUSTOMER DATA BREACH SECURITY— DEALERS SHOULD ENSURE DATA SECURITY COMPONENTS ARE IN PLACE AND ENFORCED IN EXISTING AND PROSPECTIVE VENDOR AGREEMENTS

By Julie A. Cardosi, Law Office of Julie A. Cardosi, P.C



With alarming frequency, we hear news of the latest data breach or privacy intrusion involving customer information. Indeed, as this article was going to print, reports surfaced of an OEM's circulated memorandum to its franchised dealers advising them of a vendor data breach potentially affecting more than a reported 3.3 million customers and prospective car buyers<sup>1</sup>, causing the industry to once again take inventory of data security and privacy issues.

According to the reports, along with public statements issued by the OEM, customer information was ostensibly collected for sales and marketing purposes by the OEM's vendor and allegedly held in an unsecured electronic file which was compromised, impacting customers' sensitive information related to vehicle purchases, loans and leases. Additionally, while the details of the breach are still developing, it's been further reported that dealers that use a specific lead management program offered through the vendor may also be impacted. The OEM preliminarily reported that the customers' potentially compromised data consisted of driver's license numbers, and in some instances, dates of birth, Social Security numbers and account numbers, as well as email addresses and telephone numbers. So, what does this mean besides the possibility of litigation, potential liability, regulatory scrutiny and investigation and unsettled or unhappy customers?

The most recent data breach incident is yet another reminder to dealers of the significance of the need to regularly evaluate the data security components of both existing and prospective vendor contracts and agreements. Customers' privacy and their assurance of its security when doing business with your dealership is not only important to your dealership's goodwill and reputation in the retail community, it's also the dealership's legal obligation.

Even prior to this most recent OEM vendor security breach incident, the privacy and security of customer information has been and continues to be a primary focus of federal and state regulatory enforcement activity. In one of its recent consumer protection enforcement cases relating to breach of data security, the Federal Trade Commission (FTC) charged Ascension Data & Analytics, LLC<sup>2</sup> with violations of the FTC's Standards for Safeguarding Customer Information Rule ("Safeguards Rule"), 16 C.F.R. Part 314, and the Gramm-Leach-Bliley ("GLB") Act, 15 U.S.C. § 6801 et seq., by failing to properly vet and oversee protection of customer information placed in the cloud-based storage system by its vendor. The alleged breach resulted in over 60,000 customers' private, personal information being exposed (i.e., names, dates of birth, Social Security numbers,



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## CUSTOMERS' PRIVACY AND THEIR ASSURANCE OF ITS SECURITY WHEN DOING BUSINESS WITH YOUR DEALERSHIP IS NOT ONLY IMPORTANT TO YOUR DEALERSHIP'S GOODWILL AND REPUTATION IN THE RETAIL COMMUNITY, IT'S ALSO THE DEALERSHIP'S LEGAL OBLIGATION.

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loan information, etc.), and the FTC sought to hold the mortgage data analytics company responsible for the breach of its hired vendor in failing to develop, implement and maintain a comprehensive information security program in contravention of the Safeguards Rule. The Safeguards Rule requires that third-party service providers also be mandated to protect the security of customers' personal information. Parenthetically, in the most recent security breach incident involving the OEM and its vendor, the OEM advised its dealers that it has informed the appropriate law enforcement authorities and is working with cybersecurity professionals to assess the scope of the problem.

Importantly, the privacy and security consumer protection laws cited above also apply to auto dealers, which is one reason the most recent OEM vendor data security breach should serve as a reminder to all auto dealers to ensure they and their vendors have comprehensive programs in place for the protection and security of customer information. This includes but is not limited to: (i) ensuring any potential third-party service provider has developed, implemented and maintains a comprehensive information security program before the dealer enters into a business relationship with that vendor; (ii) requiring contractually that all third-party vendors comply with applicable federal and state statutory and regulatory requirements and prescribing contractually such vendors' responsibility for compliance and for ensuring the security of customer information pursuant to the Safeguards Rule and related federal and state law requirements, including listing the safeguards vendors must have in place and follow; and (iii) continuously monitoring third-party service vendors' compliance with applicable federal and state laws and adherence to the contractual requirements through the dealership's establishment and implementation of an audit program to effectively monitor the vendors' practices.

Protection of customer data and ensuring your third-party service providers do the same is not only vital to your business, it is also your legal obligation. Ensure your data security programs and those of your vendors are in place, implemented and strictly monitored. Dealerships' compliance with their legal obligations, including ensuring compliance by their third-party vendors, will serve to protect the security of customer data and preserve the dealership's goodwill and business success. 🚗



Julie A. Cardosi is an attorney and president of the private firm, Law Office of Julie A. Cardosi, P.C., of Springfield, Illinois. She has practiced law for 35 years and represents the business interests of franchised new vehicle dealers. Formerly in-house legal counsel for IADA, she concentrates her practice in the areas of mergers and acquisitions and other transfers of dealer ownership, franchise law, commercial law, state and federal regulatory compliance matters, including employment, and other areas impacting day-to-day dealership business operations. She has also served as an Illinois Assistant Attorney General and Deputy Chief of the Consumer Fraud Bureau of the Attorney General's Office. The material discussed in this article is for general information only and is not intended as legal advice and should not be acted upon as such. Dealers should consult their own private legal counsel for application to their specific circumstances. For more information, Julie can be reached at 217-787-9782, ext. 1, or [jcardosi@autocounsel.com](mailto:jcardosi@autocounsel.com).

<sup>1</sup>Vellequette, Larry P., "Vendor Linked to VW Data Breach Named in Memo to Dealers", Automotive News, June 11, 2021.

<sup>2</sup>See In the Matter of ASCENSION DATA & ANALYTICS, LLC, <https://www.ftc.gov/enforcement/cases-proceedings/192-3126/ascension-data-analytics-llc-matter>



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Kentucky Automobile Dealers Association (KADA) is pleased to recommend a broad range of products and services aimed at controlling expenses in every facet of the dealership. The following products and/or services are recommended by the association's Board of Directors and endorsed through the association. These vendors are reviewed periodically to ensure the quality of products and services meet the needs of our dealers and can provide special pricing through group buying.



**Dealer Online Auction Platform**  
Paul Mink, 629-237-9593  
pmink@acvauctions.com



**Dealer Management System**  
Ernest Lattimer, 516-547-2242  
ernest.lattimer@coxautoinc.com



**KADA Automotive Group Health Insurance**  
Steve Church, 502-499-6880  
spchurch@shepherdins.com



**Workers Compensation**  
John Foresman, 502-489-6255  
jforesman@uscky.com



**Extended Warranty Program**  
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Todd Howard, 859-699-7222  
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Kevin Voges, 812-204-2251  
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Larry Dorfman, 404-732-5910  
ldorfman@apcoholdings.com



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**Warranty Parts & Labor Reimbursement**  
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# KADA 74TH ANNUAL

KADA would like to thank everyone who participated in our convention in Palm Coast, Florida. We had an incredible time meeting, learning, relaxing and spending time together face to face.

Thank you to all the dealers who attended – along with their families – and to the sponsors whose support was crucial to putting this on. This was our biggest convention in many years thanks to your support and involvement! Please enjoy the following convention photos as well as this short video for those who missed it!



<https://youtu.be/mdsSugY1XBM>

We hope to see ALL of you next year in Asheville, NC at the Omni Grove Park Inn from June 20-23, 2022 for our 75th Annual Convention.





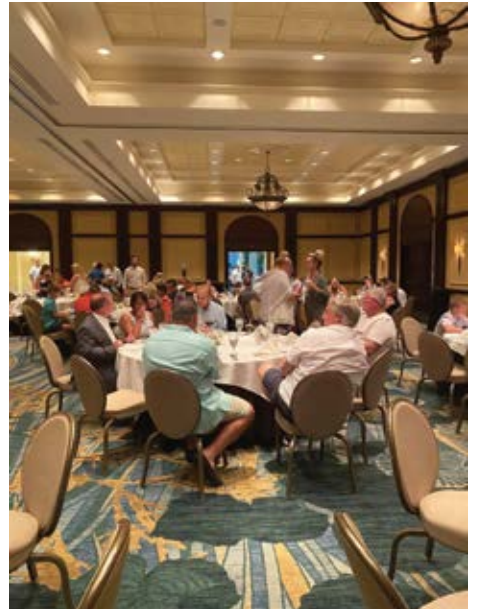
# CONVENTION













# KADA HOSTED NEXT GEN AT THE NATIONAL CORVETTE MUSEUM

Thank you to everyone who attended our Next Gen event, Tuesday, July 20th, at the National Corvette Museum.

Attendees enjoyed a guided museum tour with Derek Moore, Director of Collections & Curator, a delicious dinner, and a legislative overview and Q&A with Senator Mike Wilson and Representative Steve Sheldon.

We all enjoyed a great evening and hope to see you at one of our upcoming Next Gen events.

To find out more information about becoming a KADA Next Gen member, please contact Jason Wilson at 502-695-3333 or [jason@kyada.com](mailto:jason@kyada.com). 🇺🇸







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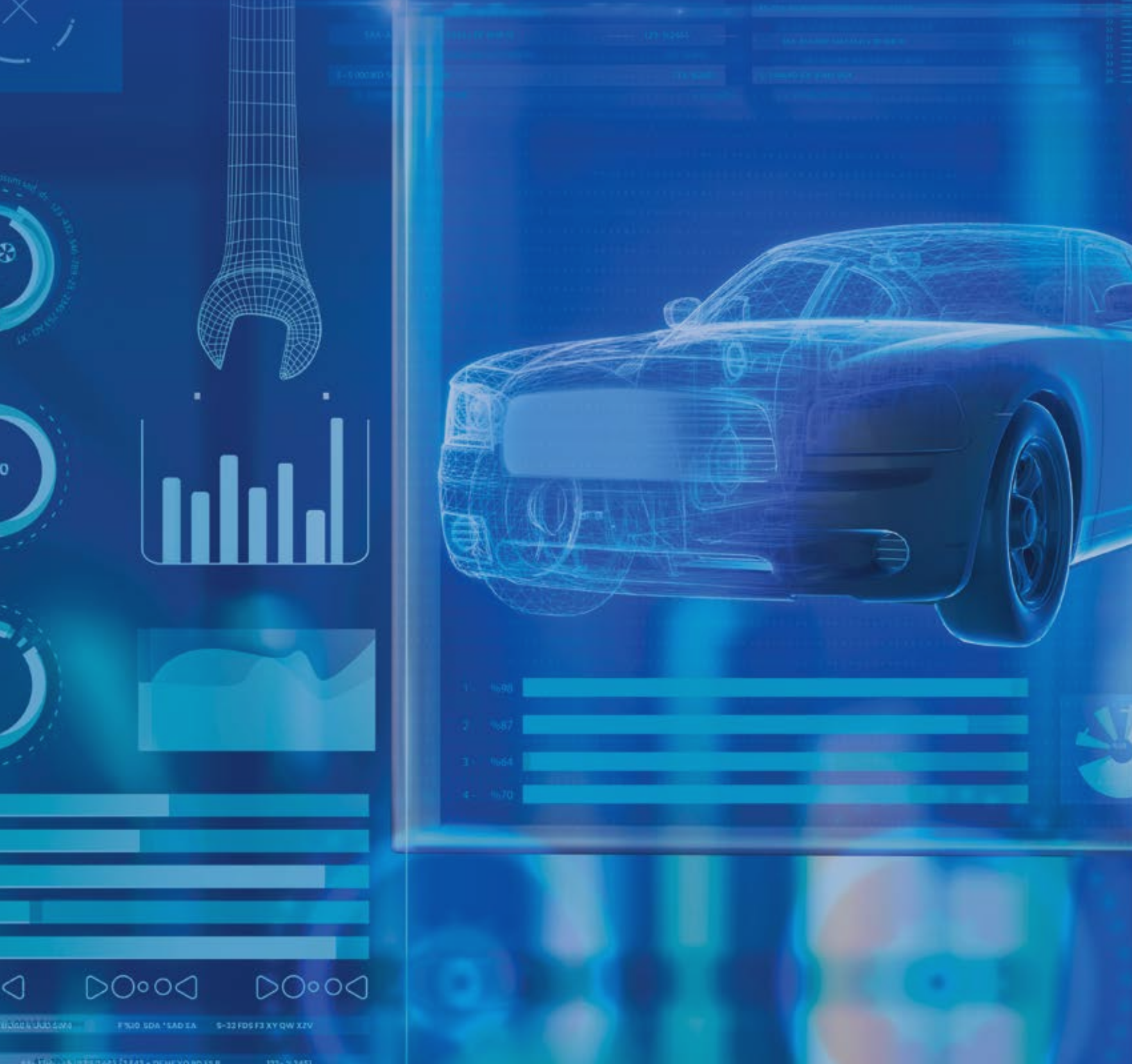


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# KNOW YOUR RIGHTS:

## MANUFACTURER INCENTIVES PROGRAMS







Each month, KADA's legal counsel, Ron Smith and Sarah Bishop from Stoll Keenon Ogden PLLC, will offer a look at applicable Kentucky statutes and their impact on Kentucky dealers. This month, their focus is on Kentucky's dealer incentive statute.

**THE PROBLEM:** As dealers know, over the past few years most manufacturers have reduced gross profit margins on their vehicles, sometimes making it unreasonably difficult for dealers to actually make any money on new vehicle sales. In order to influence dealer behavior, manufacturers have instituted various "conditional" "incentive" programs requiring dealers to meet a smorgasbord of requirements in order to "earn" gross profit margin incentives. Some of these involve certified training, customer services and the like. However, depending on the dealers' markets, some can be impossible for the dealer to justify in light of the expenses associated therewith (for example: separation of an operation franchise from a previously manufacturer-approved dual facility; constructing a new building; expensive showroom reconstruction; and requirements for expensive equipment). In one recent case, the distributor approved a dealer's upgraded facility. Three months later, the manufacturer changed the definition of 'units in operation,' declared the dealer's facility noncompliant and took away a 2% facility compliant contribution contained in the manufacturer's incentive program. The dealer successfully contested that issue and the 2% has been restored and will run through 2023.

Often, a dealer's market must drive his or her decision. A recent example is the Lincoln Vitrine Program (Vitrine is French for "glass display case"). Previously approved dual Ford- Lincoln dealerships theoretically will be required to separate and at a minimum, build a new Lincoln showroom along with a customer waiting area, etc. Most smaller Ford-Lincoln dealerships simply could not afford or justify that expense, considering their normal sale of a few cars per month. Accordingly, those dealers were denied the percentage incentive available to larger dealers in the program. In short, these incentives are functionally unavailable to small-market dealers, resulting in less gross profit per vehicle available to the dealer to generate sales. A few years ago, Hyundai/Genesis, after being rebuffed in their effort to separate Genesis from Hyundai, as a result of dealer pressure, litigation and administrative actions, allowed continued combination of the franchises. Recently, however, a program involving incentive payments and facility requirements for Hyundai standalones and Genesis standalones are slowly accomplishing what Hyundai/Genesis originally intended: the elimination of smaller market Genesis dealers unless the dealer constructs a building.

All of these incentive programs are short-term programs. Ford can eliminate the Lincoln program annually in the Hyundai/Genesis program is also short-lived. Dealers are ultimately forced to decide whether to make an investment that is economically unfeasible, most of the time in both the short-term and long-term.

A potential remedy is found in KRS 190.070(3)(a), which makes it illegal for a manufacturer or distributor to discriminate in favor of one dealer against another dealer holding a franchise for the

CONTINUED ON PAGE 26

## THE RIGHT OF THE DEALER TO DEMAND DATA FROM THE MANUFACTURER AND THE POTENTIAL FOR TREBLE DAMAGES SHOULD BE PERSUASIVE IN DISCUSSIONS WITH MANUFACTURERS ABOUT NEW INCENTIVE PROGRAMS AND THE REQUIREMENTS SET FORTH THEREIN.



### CONTINUED FROM PAGE 25

same line make, where the manufacturer does not make “Any vehicle, part, or other product that is not available to each dealer at the same price, including discounts, rebates, incentives, or other payments or allowances affecting the net price of the product;”. The question here is whether or not the incentive program has a disparate impact on smaller market dealers. In the Lincoln program, the incentive is actually on the vehicle and is not payable until the vehicle is sold at retail, which could violate the statute.

Additionally, KRS 190.070 (2)(f) provides that a manufacturer may not offer, “refunds or other types of inducements” to a dealer of one line make without making the same offer available to all dealers of the same line make. Along these same lines, KRS 190.070(3)(d) prohibits manufacturers from discriminating against one dealer in favor of another dealer of the same line make by furnishing only one dealer with “Any promotional or advertising payment or allowance that is not made available to each dealer on proportionally equal terms.”

Kentucky’s Statute on incentive programs is one of the better statutes in the nation while the KRS 190.070(1)(h) statute on facility improvements could be improved. A general prohibition exists where requiring the improvement would not be reasonable, given current political or business conditions.

If a manufacturer violates this non-discrimination provision, a manufacturer/distributor cannot defend itself by claiming that the promotional payment or allowance was made to all dealers IF the offer was conditioned upon the dealer meeting criteria that are unreasonable and unnecessary to fulfill the dealer’s obligations under the franchise agreement. KRS 190.040(4). To establish that its criteria are reasonable and necessary, the manufacturer must establish that it was meeting the requirements established was

within the dealer’s control to meet the requirement imposed on the dealer as a condition of the offer. For smaller markets dealers that is the essential question.

If a dealer believes it has been discriminated against with respect to incentives, the dealer has a statutory right to demand in writing that the manufacturer provide within 30 days information relevant for the dealer to determine if discrimination occurred. KRS 190.070(5). If such information is not provided within 30 days, the burden of proof in any subsequent proceeding will fall to the manufacturer to prove that discrimination did NOT occur. If a dealer is discriminated against, it can recover three times the value it would have received if the manufacturer had not discriminated against it. KRS 190.070(6).

The right of the dealer to demand data from the manufacturer and the potential for treble damages should be persuasive in discussions with manufacturers about new incentive programs and the requirements set forth therein. Likewise, the requirement that any incentive program must be based upon reasonable and necessary criteria works in dealers’ favor in those instances where manufacturers implement programs require significant financial commitments that may not be commercially reasonable in light of current economic circumstances. Many dealers (particularly in smaller markets) can’t justify expense based on volume.

For further information, please feel free to contact any of the following individuals. 📍

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KADA: Jason Wilson, (502)695-3333; or  
Stoll Keenon Ogden Automotive Dealership Services members:  
Ron Smith, (317) 822-6787; or  
Sarah Bishop, (502) 875-6245.



# KADA GOLF TOURNAMENT RECAP

The KADA Golf Tournament teed off Monday, August 9, at the University Club of Kentucky in Lexington. Attendees had a great time networking and having fun with their fellow dealers. We hope you will join us at our next event! 🏌️





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