

TREND SPOTTING

Chrysler introduced an SRT version of its popular 300C. The hemi V-8 is bored out to 6.1 liters and the engine can generate up to 425 horsepower. With 420-pound-feet of torque, the SRT can hit 60 mph in just over five seconds. The engine features breathing cylinder heads and exhaust, a revised cam profile, and a 6200-rpm redline.

Jaguar will bring its X-type wagon to the U.S. market in 2005. With an MSRP of \$36,995, the V-6 Sportwagon will join two other new X-types, the V6 Sport Sedan (\$37,945) and the luxury V6 VDP model (\$38,745).

BMW plans to invest more money in its slow-selling Rolls Royce Phantom. First up will be a long-wheelbase version, which targets the Maybach 62 and the Bentley Armage. Look for a Phantom convertible, as well as several models mimicking Bentley's Mulliner. Rolls could also develop a crossover based on the BMW X5/X7 as early as 2008. There is also talk of a Rolls hatchback coupe and even an SUV.

DealerWare LLC, maker of the F&I Menu Wizard software, announced its new D.E.A.L. Cam, a video camera for F&I monitoring, training and evaluation. The D.E.A.L. (Dealer, Evaluation, Archived, Library) Cam lets dealers record F&I deals and upload the videos to DealerWare's secure server via the Internet. Authorized users can view the videos from any location through Internet login. The videos will remain on the server for 30 days. After the 30 days, dealers can opt to get copies of the footage on DVD-R digital media.

Cost segregation can increase cash flow for car dealers

By Robert Rahner, ASA, CFA

Changes to the tax law combined with unprecedented new construction and renovation of car dealerships can add up to significant tax savings for dealers who commission cost segregation studies.

Editor's note: Although dealership accountants and Dealers-Edge (DE 12/8/03, 9/29/03, 12/31/01) have been banging the drum over the benefits of cost segregation studies, many franchised dealers, for their own reasons, have not taken advantage of this tax deferral scheme.

Some of the leading automotive dealers are taking advantage of cost segregation studies as a method to accelerate depreciation deductions and decrease their taxable income. Specialized engineering firms, with their blend of tax, engineering and construction expertise, can reclassify up to 40 percent of a dealership building...costs that the dealer's accountants included in the building itself. The result is a quicker write-off of your buildings and lower taxes for you.

Significant \$\$ involved

How much can be saved? Consider a dealership with a cost (ex-

continued on page 2

Inside this issue

Change in law makes cost segregation studies more attractive	1
How to implement F&I menus – a special presentation	2
Legal: What constitutes a “customer?” – You be the judge	3
At-will employment – not a substitute for good management	4
Dealers use new technology to identify prime prospects	6
Scanners zero in on customer radio listening preferences	6
Teenager claims he was “coerced” into buying car	8

continued from page 1

cluding land) of \$3 million. A typical study performed by a cost segregation specialist can conservatively reclassify 29 percent of the property to a shorter recovery period, resulting in tax savings of \$174,000, first year additional depreciation of \$80,000 and first year tax savings of \$31,000. The typical fee for a project of this type is about \$6,900.

The benefit associated with several recently completed projects are shown in the table below.

Do you have an existing building? No problem. A retroactive study can be performed without the problems associated with amending prior year tax returns or IRS approval.

To determine if a cost segregation study is appropriate for your property, ask yourself the following questions: Is the cost of the building (land excluded) at least \$750,000? Have you purchased, constructed or renovated any property in the past 12 years? Do you plan on retaining the property for at least the next few years?

Type	Study	Benefit	Cost	Property	Property	Property	Property
Volkswagon	New Construction	\$179,000	\$3,541,000	\$531,000	\$23,000	\$693,000	\$2,294,000
Toyota	Retroactive	\$146,000	\$2,743,000	\$181,000	\$5,000	\$641,000	\$1,916,000
Chevy	Acquisition	\$131,000	\$2,615,000	\$263,000	\$15,000	\$751,000	\$1,586,000
Ford	Acquisition	\$172,000	\$3,920,000	\$385,000	\$5,000	\$964,000	\$2,566,000
Lexus	New Construction	\$116,000	\$2,732,000	\$245,000	\$14,000	\$649,000	\$1,824,000
Honda	New Construction	\$210,000	\$3,559,000	\$450,000	\$151,000	\$967,000	\$1,991,000

What is covered

Dealers might not think about such things when they are rebuilding a store or adding service shop capacity but most of the following installations come under the purview of a cost segregation study: compressed air systems, floor drains and piping, electrical dedicated to equipment and exhaust systems in the service area; carpeting, data cabling and specialty lighting in the showroom/office area; and asphalt paving, site lighting and drainage outside the building footprint are examples of items that are reclassified.

Do you have net income that is currently taxed? Cost segregation is a valuable service if you can answer “yes” to these questions. □

Robert Rahner, CFA, ASA is Senior Project Engineer for Cost Recovery Solutions, LLC, a specialized engineering firm that provides cost segregation services. He has provided cost segregation studies for hundreds of clients ranging from small businesses to Fortune 100 companies.

Join DealersEdge for Surviving the Legal Assault on F&I

Audio conference scheduled to present ways to avoid F&I litigation and still boost profits.

The screws continue to tighten on dealership F&I departments. Class action lawsuits are still on the rise with the result that well-intentioned car dealers have to defend themselves against often-frivolous allegations of payment pack-

ing, Truth-In-Lending violations, and worse.

But there is good news. DealersEdge invites dealer/principals, general managers, controllers, and F&I managers to join nationally recognized trainer

Becky Chernek on November 11 in a lively 90-minute discussion of ways dealers can reduce their legal exposure and still grow their F&I profits.

The format will be a conference call, which means participants can attend from their own offices or anywhere as long as they have access to a telephone. During her presentation Becky will cover:

- ▶ Why menu selling has become the preferred F&I solution for car dealers
- ▶ The five keys to profitable menu selling
- ▶ How to design an F&I menu to achieve maximum results
- ▶ How to avoid the most dangerous legal pitfalls

- ▶ Techniques for dramatically reducing the time customers spend in F&I
- ▶ Up-sell methods for increasing product penetration and \$PVR
- ▶ And much more

An audio conference can be a valuable adjunct to a managers' meeting. For one registration fee, dealers can convene their F&I managers, sales managers, GMs, and others in a training room for 90 minutes of professional instruction and back-and-forth Q&A.

Click on www.dealersedge.com or call Mike Bowers at 800-321-5312 for more details about this important presentation. □

You make the call

When is a customer not a customer?

One person agrees to buy a vehicle and another agrees to pay for it. Which one is legally the dealership's customer?

A 16-year-old boy bought a pick-up truck from a car dealership. The boy's grandparents had agreed to pay for the truck as a gift for their grandson. The teenager made a down payment on the truck and then was to drive it to his grandparent's house to pick up a check for the balance. You guessed it. The kid crashes the truck, killing his father and injuring two others. The question that made it to the Missouri Court of Appeals is: Who is actually the dealership's customer? The teenage driver or his grandparents?

The particulars

The teenage driver visited the dealership with his father to test drive some vehicles. He returned the next day with his parents to negotiate the sale. He wrote his own check to the dealership for \$2,000, but his grandmother agreed to finance the remainder owed.

The dealership accepted his check and indicated on the receipt that the payment was from the driver

and his grandmother jointly. The driver then left in the truck to pick up a check at his grandmother's house and return it to the dealership. On the way, he crashed the truck into a car, killing his father, who was a passenger, and injuring a couple in another car. The couple sued the driver, and the parties entered into a consent judgment of \$1 million against the driver.

But the couple privately agreed they would only take insurance money in the judgment. They were paid \$100,000 from an insurance policy carried by the driver's father. They attempted to recover the remainder from the dealership under a general garage policy. In order to claim that money, they had to prove the driver was not a customer of the dealership. The trial court determined the driver was not a customer, and the insurance company appealed.

You make the call. How did the Appeals Court rule? Check the answer on page 7. □

Dealership People & Profits

More on “At-Will” employment policies

An at-will policy statement is an important element in maintaining management flexibility. This flexibility should not be used as an excuse to short-circuit normal disciplinary and termination procedures.

In the September 15 issue of *DealersEdge* we discussed what “employment-at-will” really means and what it does not mean. While it is generally not a good rule to terminate employees solely by falling back on the at-will relationship, a clearly written at-will statement is still a valuable tool. It can protect your policies and procedures so that they are not interpreted as contracts that must be followed exactly.

Have a reason

If you should not terminate solely by saying that an employee is at-will, how do you terminate a problem employee when a manager has not properly documented performance deficiencies? Your best bet is to follow your normal disciplinary process, even if that means taking extra time before you terminate the employee. Here are five steps to consider before firing an at-will employee:

1. Give notice to the employee of the specific performance problems and the consequences of not improving.
2. Establish goals for improvement.
3. Set a reasonable time frame for meeting the goals (normally two weeks to 30 days).
4. Follow up to see if there is improvement.
5. Terminate the employee if the goals have not been met.

To support your actions, you should document the performance issues and the steps taken before terminating the employee. This record helps establish the fairness of your process and can help you defend

against any subsequent discrimination or wrongful discharge claims.

Of course, you may encounter circumstances where you feel you cannot take the time to follow your normal disciplinary procedure. In these cases, it is still better to discuss the specific problems with the employee and explain that they are the reason for the termination. If you simply invoke the at-will relationship and give no reason for the termination, the employee may assume that the true motive is related to discrimination or some other illegal act, and thus seek legal recourse.

New employees

The introductory period (30 to 90 days normally) is one situation where the “no reason” at-will clause may be properly invoked to terminate an employee. This period is usually structured as a trial where the new employee can be terminated without following normal policies. In other words, the employee is already on notice and job security expectations are low.

However, as with your longer-term employees, if you do not identify a reason for the termination, you may unnecessarily cause the employee to suspect discriminatory motives. Therefore, if you can point to a particular reason why the new employee is not performing well (for example, poor job or interpersonal skills), you may be able to reduce the odds that discrimination or other employment claims will be filed.

At-will statements

Even if you don't rely on the at-will relationship for terminations, a well-written at-will statement helps maintain your flexibility in applying your policies. Several

courts have ruled that employers that have not included an employment-at-will statement in their policies may be legally required to follow their policies uniformly, without regard to the circumstances.

For example, in a Washington State case, the court decided that a paper salesman's at-will sales agreement was modified by the company's handbook, which he received later. The handbook did not contain an at-will clause and, in fact, promised specific treatment in certain circumstances.

If you rely on your at-will language and still end up in court, try to present as many of the following seven points as possible:

1. The at-will statement is written in clear, understandable language, not legalese.
2. It thoroughly explains what the at-will relationship means.
3. It clearly states that no dealership representative may change the at-will relationship through oral or written promises.
4. It explains that the dealership's policies and practices are not intended to create a contract.
5. It is prominently displayed, such as in bold type, in a separate introductory policy, or set apart in other policies.
6. It is repeated where appropriate in other policies, particularly those outlining work rules and disciplinary procedures.
7. It is included in other employment documents, such as application forms and offer letters.

Management matters

An at-will clause is a valid, but blunt, legal tool that grants you some flexibility in applying your personnel policies. It should not be used, however, as a substitute for sound disciplinary and termination procedures. Poor and inconsistent discipline and termination procedures can provoke unwarranted suspicions of discrimination and thus create unnecessary exposure.

While an at-will clause may not prevent you from being sued, it can be helpful as a defense when policies are not, or can not, be followed. Therefore, you are best advised to manage your business so that lawyers and courts are your last line of defense, not a substitute for sound procedures. □

HR Briefs

More Americans covered by retirement plans at work. Retirement plan participation rates remained steady in 2003, but coverage among low-educated workers is not what it used to be. The portion of all workers in an employment-based retirement plan – whether a defined benefit or a defined contribution plan – rose to 42 percent last year, up slightly from 41.8 percent in 2002. That's the latest word from the Employee Benefit Research Institute after studying the most recent Census data. Retirement plan participation among full-time, full-year workers ages 21-64 reached 57.1 percent, up from 56.7 percent in 2002. Those employed by the largest firms or the public sector showed the greatest participation gains. While participation among college graduates has leaped in recent years, it has become more rare among those without advanced degrees. For workers ages 21-64 without a high school diploma, the level declined from 31.5 percent in 1987 to 21.9 percent in 2003. The slide was less severe for high school-only graduates, falling from 43.9 percent in 1987 to 42.6 percent in 2003.

Dealers may get break for Guard, reservist benefits. Small businesses that offer paid military leave to employees in the National Guard and Reserves may get a tax break if a provision of the Senate corporate tax bill that passed recently becomes law. Sen. Mary Landrieu filibustered to reach an agreement to include the Guard and Reserve provision, which includes tax credits for small employers paying the salaries of citizen-soldiers who are called up for active duty, as well as tax breaks if employers need to hire a temporary replacement worker. According to a Government Accounting Office study, 41 percent of Guard and Reserve members take a substantial cut in salary when they are called to the front lines. "This places a terrible burden on their families," Sen. Landrieu said in a statement. Only 17 percent of all employers offered paid military leave this year, compared with 28 percent in 2003 and 35 percent in 2002, according to the 2004 benefits survey by the Society for Human Resource Management.

Trend alert!**Technology allows targeting of advertising to specific markets**

Venture investors are taking an interest in companies that produce ads to appeal to selected groups of consumers. Significant implications for car dealers.

With newly developed technology, a car dealer in the Washington D.C. area, for instance, wouldn't have to be limited to one television ad that has to appeal to a broad marketplace. Instead, the dealer could air ads for its upscale brands in affluent areas like Arlington or Bethesda, while promoting its buy-here, pay-here business in zip codes where residents may have less purchasing power.

In recent years advertisers have grown increasingly worried about the effectiveness of conventional television advertising. Cable TV and the Internet have diluted audiences and resulted in fewer people watching programs on over-the-air outlets.

But in just the last few years, venture-capital firms have poured millions of dollars into start-up companies developing software designed to get viewers to actually watch broadcast ads. Television stations are just now starting to roll out those services, which enable advertisers to broadcast commercials tailored to specific groups of viewers.

High tech direct marketing

In the next year or so, advertisers in some regions will even be able to use the technology to target individual households – a sort of direct marketing over TV.

The idea is that by using this targeting technology the ads can be made more relevant to groups of viewers, thereby making them less likely to change channels during commercial breaks and more likely to respond favorably to the messages in the ads. For advertisers, the ability to hook viewers has taken on a new sense of urgency amid the growing popularity of new types of video recorders, like TiVo, which allow TV watchers to zip past commercials.

One of these start-ups is Visible World, a New York firm that has raised about \$28 million in funding since its launch in February 2000. Visible World has developed software that, within seconds, can produce thousands of versions of a TV commercial, changing features such as music, voiceover and graphics to enhance its appeal with specific groups of viewers.

Currently, the technology is being used to help deliver customized ads to specific TV programs and designated markets. But Visible World also has initial agreements with two cable operators that could begin sending commercials to individual households as soon as 2005.

Most cable operators reportedly plan to make household-level TV advertising available in the 2006 to 2008 time frame. □

More ad trends**Fine tuning radio advertising**

A company that identifies the radio stations drivers listen to as they drive by dealerships is expanding its reach.

Every month a dealership in the Washington, D.C. area spends \$90,000 on radio advertising. For years, it spent \$25,000 on one talk-personality station and another \$25,000 on a contemporary music

station. Both were recommended by an advertising agency, which consulted ratings from Arbitron.

But when the dealer signed on with a service called MobilTrak two months ago, he found that Arbitron's top

two stations didn't even rank in the top 10 for in-car radio listeners driving past the dealership. So the dealer shifted his budget, allotting the most money to a news show and a contemporary music station identified as popular by MobilTrak.

In 14 locations around the Washington D.C. area, the devices, about the size of a shoe box, are sensing which radio stations drivers are listening to by picking up faint electronic signals emitted from car antennas as they drive by.

The MobilTrak technology (*DE 5/24/04*) hopes to mount nine more units around Washington to monitor the listening habits of more than 1 million drivers and present the results to advertisers eager to better reach the audience in the country's eighth-largest radio market.

Car dealers go for it

The most enthusiastic adopters have been car dealers, who generally believe that 80 percent of their business is with people who live or work within 10 miles of a given dealership.

The monitoring aims to help dealers choose where to advertise by giving them a snapshot of which stations

consumers tune into as they drive by their showrooms.

The approach is the most recent example of the powerful ways marketers are using technology to track customer behavior in natural settings. The strategy in slightly different form is already well entrenched in supermarkets, which track customers' purchases with loyalty cards. Much to the alarm of privacy advocates, technology is helping marketers identify their ideal customers, such as the frequent buyer of a certain brand of detergent, and fine-tune their selling.

One drawback to MobilTrak is that it captures only radio listening in cars, which accounts for 33 percent of all radio listening. Another third of radio listening takes place at work and the rest is done at home. Also, MobilTrak captures only FM stations. But MobilTrak counters that research shows there's no indication that preferences are different at home than in the car. The company also said it plans to introduce technology that picks up AM and satellite station signals in 2005.

The price of the MobilTrak service ranges from \$500 to \$6,000 a month, depending on the client and the number of locations they want to monitor. MobilTrak also operates in Seattle, Los Angeles, New Jersey and Charlotte. □

You make the call *Continued from page 3*

The insurance company appealed the court's decision, which held the driver was not a customer. If the driver was not a customer, the insurance company would be liable to the injured couple under a garage policy it issued for the dealership. However, the Court of Appeals determined the driver fell under the definition of "customer" even though he was not paying for the truck.

The Court of Appeals determined the primary issue in the case was whether or not the driver was a customer of the car dealership when he wrecked the truck. It concluded the circuit court erred in ruling he was not a customer.

"Viewing the evidence in the light most favorable to the (suing couple) – even assuming, as the trial court seemed to do, that (the grandmother) was the pickup's primary purchaser – the only reasonable inference to be drawn from (the teenager's) negotiat-

ing the pickup's purchase and his paying part of the purchase price as co-purchaser was that he was a customer," reasoned the court's opinion.

The court looked at the parties' intent when the contract was drawn for the purchase of the truck. It also considered the definition of the word "customer." It referred to both the Webster's Third New International Dictionary of the English Language Unabridged and Blacks' Law Dictionary definitions of the word. Based on those definitions, the court could not accept the injured couple's claims that the driver must be a purchaser to be a customer.

The Court of Appeals reversed the trial court's ruling.

Cit. Jacob Bailey, Respondent, vs. Federated Mutual Insurance Company, Appellant; No. WD63419; handed down Oct. 12, 2004. □

Dealership sued by teenage customer over “intimidating” sales practices

A recent lawsuit filed in Iowa alleges dealership actions, which, if true, illustrate some of the worst stereotype of the auto retailing business.

An Iowa teenager alleges that two salesmen for a Ford dealership forced him to buy a pre-owned BMW using profanity and physical intimidation. The lawsuit names two of the dealership’s sales staff individually as well as the dealership and its owner.

The details:

The teenager says he went to the dealership to look at Mustangs, because his father had previously bought him one. While in the store, the lawsuit alleges that one of the salesmen convinced the boy to test drive a 1993 BMW, then said store policy required certain paperwork after all test drives. The paperwork ended up being a purchase agreement.

Throughout, the teen maintains he said he wasn’t interested in buying a car but later was referred to another sales rep to arrange financing. Though the teenager never signed any credit forms, a signed application later was approved with his monthly wages incorrectly inflated to \$1,894. The car, valued by Kelly Blue Book at \$7,690, sold for \$12,280, the lawsuit states.

The dealership employees say the suit has no basis and that they never met the teenager. □

NEW IDEAS

AeroWing Load Bars are rigid tempered-aluminum crossbars, coupled with steel clamp components, which provide a 220-pound load capacity on most applications. These bars accept all Mont Blanc Bike, Ski/Snowboard and Canoe/Kayak/Surfboard Carriers, as well as other brands. Full front-to-rear adjustability of the crossbar assemblies offers versatility for carrying most any load type. Locks are included for theft-proof security. These bars are available in 43- and 53-inch lengths with a satin anodized finish. For more information, go to www.perrycraft.com or (800)777-7081.

Hidden Hitch has a new 12-volt accessory adapter that plugs into a 7-way trailer connector, effectively turning it into a 12-volt power source. It is the only product of its kind on the market. According to the company, a variety of electrical appliances can then be run from the adapter, including small refrigerators, coolers or radios. The adapter (part number 38012) retails for \$15.84. Interested dealers should contact Hidden Hitch at (877) 869-6787 or online at www.hiddenhitch.com.

A new 3D All-Season floor mat is designed to protect a car’s floor with a three-layer structure. The upper layer is designed with a special tough looped polyester, Turfpet™, available in popular colors to match the car’s interior color. For product details visit www.forcartex.com.tw.

DealersEdge – The Auto Dealer’s Management Briefing is published 24 times a year by WD&S Publishing, 1200 Tices Lane, East Brunswick, NJ 08816. www.dealersedge.com. Copyright © 2004 by WD&S Publishing. All rights reserved. No part of this publication may be reproduced in any form without the written permission of the publisher. This publication is designed to provide accurate and authoritative information about its subject. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal advice or other expertise is needed, services of a competent professional should be sought.

SUBSCRIBER INFORMATION

Please call **800-321-5312** to subscribe. Subscription rate: \$347 yearly (24 issues); \$597 two years; \$857 three years.

Editorial: **800-321-5312** • Fax: **800-314-4770**

Editorial Director: Mike Bowers
Art Director: Jay Lander
Publisher/COO: Brian McCallum
Publisher/CEO: Jim Muntz