

# Virginia autodealer

PUB 3. ISSUE 1 2022



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Session That Drove  
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**It is Time to Review  
Your Employment  
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**March and April  
Community Service Roundup  
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## A Message From President and CEO *Don Hall*



The last two years have shown us just how important it is that we elect pro-dealer candidates who will work with us at the State Capitol on the issues impacting our stores and our customers. Without elected leaders who understand our industry, we face an uphill path on every issue.



This is our first print issue of Virginia Dealer magazine since before the before the pandemic. And with life returning to normal (all things considered), we wanted to get back to delivering a quality print product to our members. Welcome back.

For the last two years, VADA has fought hard to protect and inform our dealers about restrictions that threatened their business and livelihoods. And as we learned to work in COVID and turn the page on the pandemic, we cast our sights to the Virginia General Assembly, which this year considered a range of bills dealing with numerous business and dealer-focused issues.

One of the best examples of how VADA works in the legislative world is a bill that that addressed unfair warranty and recall reimbursements. It overwhelmingly passed thanks to our efforts, access to legislators, and more than 800 letters that dealers and service technicians sent to their elected officials. Those letters, and our voice, mattered.

The new law, which we expect to be signed by Gov. Glenn Youngkin, will ensure your stores are fairly compensated by

manufacturers for warranty and recall work. No more struggles to get paid. These are real dollars that will impact your bottom line and protect technician jobs.

If you are not a part of the process, you also can't fight back against policies you don't like, such as last year's passage of the state's overtime law that failed to protect our long-standing dealership overtime exemptions.

VADA was able to work with legislators to secure a temporary fix last year and secured a permanent fix that is on its way to Governor Youngkin's desk to be signed.

The last two years have shown us just how important it is that we elect pro-dealer candidates who will work with us at the State Capitol on the issues impacting our stores and our customers. Without elected leaders who understand our industry, we face an uphill path on every issue. We ask every dealership leader and manager to join our "All In" 2022 PAC fundraising campaign — every contribution is more fuel to help us secure policies that keep our industry moving in the right direction. Give now at [vada.com/pac22](http://vada.com/pac22).

We also look forward to welcoming you all to our Annual Convention in Asheville, N.C., June 19-22. If you have not done so, register online at [vada.com/convention](http://vada.com/convention) and take advantage of our room rates for an extended stay in the North Carolina mountains.

This convention offers VADA and our members the opportunity to take to the road and come together in a family-friendly gathering that offers a chance to network and learn.

In the following pages, you'll meet or be reintroduced to Virginia dealers and hopefully pick up a few new ideas to make your dealerships run more efficiently and effectively. Please also support our partners who advertise in this magazine and show them how much you appreciate their backing of the retail automotive industry in Virginia — one that continues to bless us all and bring competition, innovation, and choice to drivers every day. ★

President and CEO  
Virginia Automobile Dealers Association

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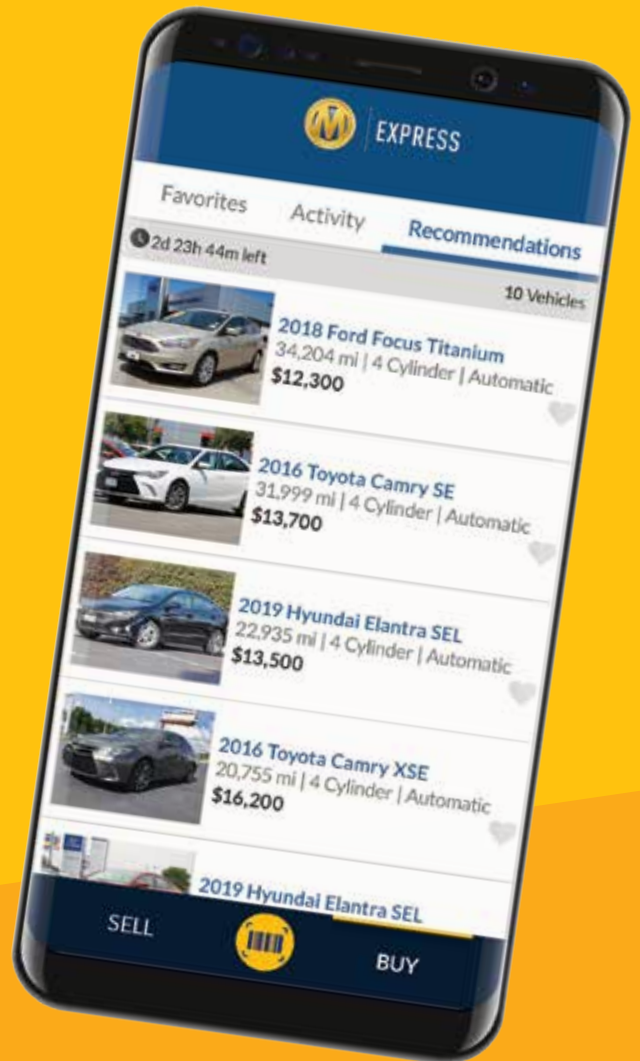
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COX AUTOMOTIVE

# Lindsay Honored As TIME Dealer Of The Year Nominee For Virginia



## Christopher Lindsay Wins National Recognition for Community Service and Industry Accomplishments

The nomination of Christopher Lindsay, dealer at Lindsay Chevrolet in Woodbridge, Virginia, for the 2022 TIME Dealer of the Year award was announced by TIME.

Lindsay is one of a select group of 47 dealer nominees from across the country who were honored at the 105th annual National Automobile Dealers Association (NADA) Show in Las Vegas on March 11, 2022. The announcement of this year's annual award was made by Viktoria Degtar, Global Chief Revenue Officer, TIME, and Doug Timmerman, president of Dealer Financial Services, Ally Financial.

The TIME Dealer of the Year award is one of the automobile industry's most prestigious and highly coveted honors. Recipients are among the nation's most successful auto dealers who also demonstrate a long-standing commitment to community service.

Lindsay was chosen to represent the Virginia Automobile Dealers Association in the national competition — one of only 47 auto dealers nominated for the 53rd annual award from more than 16,000 nationwide.

"I am fortunate to work with a diverse group of people," nominee Lindsay said. "Each employee is a gift, and I am grateful to have



The TIME Dealer of the Year award is one of the automobile industry's most prestigious and highly coveted honors.



had the opportunity to mentor, influence and help our team members flourish in their personal and professional lives." He added, "I am also blessed by a wonderful customer base that continues to do business with our family and helps us to grow every year."

Lindsay has deep roots in Virginia's retail automotive industry, dating back to 1963, when his grandfather, Charles T. Lindsay Sr., founded Lindsay Cadillac of Alexandria. His father, Charles T. Lindsay Jr., proudly carried on this growing business. And after earning a B.A. in English from the University of Richmond





in Richmond, Virginia in 1988 and after a brief stint in the golf industry, Lindsay joined the family enterprise full-time in 1989.

“I started my automotive career as a ‘lot boy’ in the summer of 1985 while in college,” he remembered. “I worked hard, hustled, and earned the respect of the sales force, who were obviously watching me closely. I bonded with them and returned the next summer.” Lindsay’s first full-time position was as assistant to the used-car manager of the Cadillac dealership. “I loved every part of it from day one,” he said. “Buying and selling used cars became my passion, and the auctions became my second home. I carried my wallet in one back pocket and a Black Book in the other.”

When he and his father set out to expand the dealership concern beyond Alexandria, they purchased a Chevrolet store in Woodbridge in 1998, and Lindsay became the dealer principal at age 33. “I was young and nervous but determined to succeed,” he said. “Our location outside of Washington, D.C. and between two military bases provided an opportunity to flourish. And today, we are the top-selling Chevrolet dealer in Virginia.”

Currently, he runs the operation with his two brothers, Chip and Mike. The Lindsay Automotive Group encompasses dealerships in Virginia and Maryland, representing brands Buick, Cadillac, Chevrolet, Chrysler, Dodge, Ford, GMC, Jeep, Lexus, Ram, Volkswagen, and Volvo, as well as a Harley-Davidson store.

“I am unbelievably fortunate to be a third-generation automobile dealer,” Lindsay said. “My father and grandfather worked incredibly hard to establish the Lindsay name as one you can trust and one that will honor every aspect of your automotive experience. They did this through countless hours of civic

volunteer work and charitable giving to establish Lindsay Automotive as a brand of integrity and confidence.”

And Lindsay continues that legacy through his volunteer and philanthropic efforts. He has served the Inova Alexandria Hospital Foundation, Fort Hunt Youth Athletic Association, the Basilica School of St. Mary (Alexandria), Catholic Charities USA, and Knights of Columbus. He has a deep appreciation for all Alexandria charities, especially the Child and Family Network Center and the Alexandria Scholarship Fund.

“Our company has always focused our giving on the communities where our employees live and work,” Lindsay said. “Our top priority is children. To date, we have donated more than \$5 million to schools, associations, nonprofits, and other groups. Our contributions have supported those at-risk, people with special needs, sports programs, extracurricular activities, medical needs, playground refurbishment, people facing food insecurity, and more.”

Dealers are nominated by the executives of state and metro dealer associations around the country. A panel of faculty members from the Tauber Institute for Global Operations at the University of Michigan selected one finalist from each of the four NADA regions and one national Dealer of the Year. The three finalists received an additional \$5,000 for their favorite charities. The winner, Bob Giles of Giles Automotive in Lafayette, La., received an additional \$10,000 to give to charity, donated by Ally.

In its 11th year as exclusive sponsor, Ally also recognized dealer nominees and their community efforts by contributing \$1,000

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to each nominee's 501(c)(3) charity of choice. Nominees will also be recognized on AllyDealerHeroes.com, which highlights the philanthropic contributions and achievements of TIME Dealer of the Year nominees.

"In cities and towns across the country, auto dealers make a big economic impact — going the extra mile to strengthen their communities," said Doug Timmerman, president of dealer financial services, Ally. "It's an incredible achievement to be nominated for TIME Dealer of the Year. The program not only recognizes leadership in business and customer service, but also a commitment to giving back and doing it right."

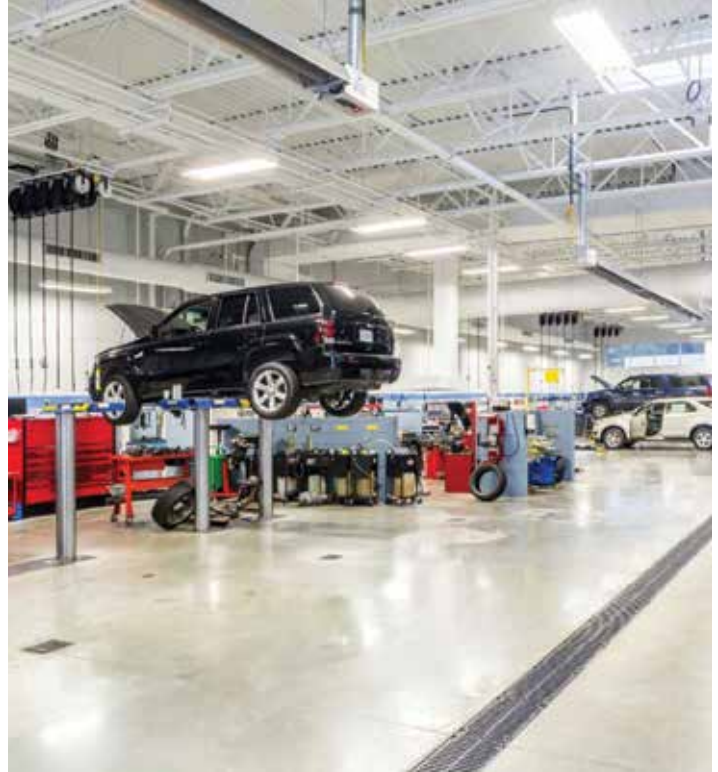
Lindsay was nominated for the TIME Dealer of the Year award by Don Hall, president and CEO of the Virginia Automobile Dealers Association. Lindsay and his wife, Maura, have five children. ★

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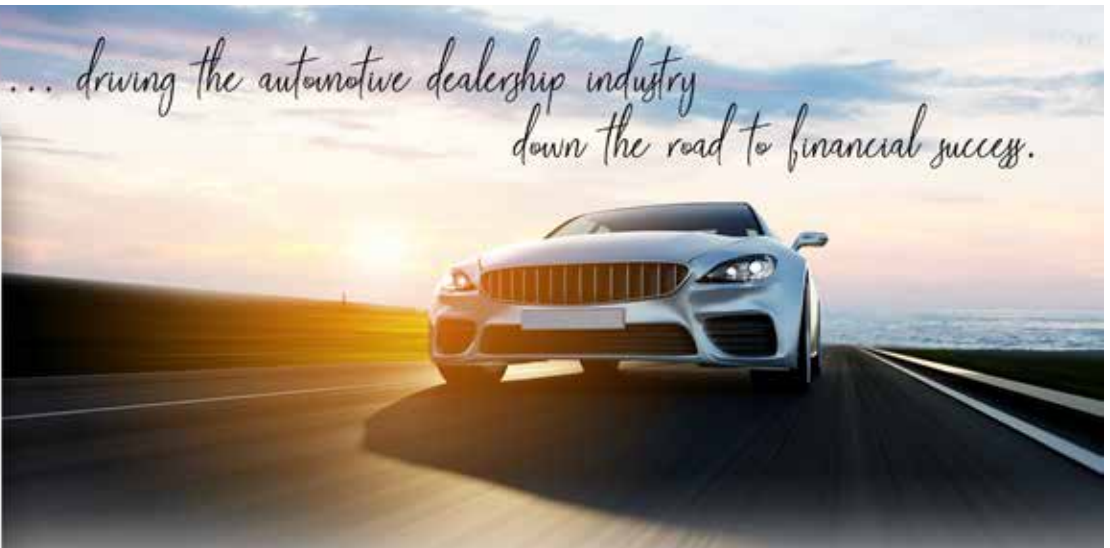
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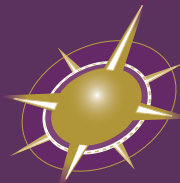




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# Spending Time with Emily Beck

## VADA Chairwoman and third-generation owner of Marlow Auto Group

**E**mily Beck's legal career put her on the road back to running the northern Virginia dealership her family started decades ago.

Beck, a former partner and vice-chair of the dealership practice at the Hudson Cook, LLP law firm, is chairwoman of VADA and the third-generation owner of Marlow Auto Group, the business her grandfather, Guy Marlow, started in 1947 as a Kaiser-Frazer dealership.

The business grew under Beck's father, John Marlow, and now operates three stores: a Chrysler, Jeep, Dodge, Ram store in Front Royal, Va., Tri-State Nissan in Winchester, Va. and Marlow Ford in Luray, Va.

She wasn't planning to get into the dealership business after graduating from the University of Virginia. Instead, Beck went to Washington, D.C. and studied international corporate law at American University. She got an offer from a D.C.-area law firm,



“Emily grew up around the business her whole life,” Hall says. “She is a woman full of integrity. She’s less about her. She’s more about the greater good.”



in the auto business. My husband said, ‘Don’t just call human resources. Find the guy you want to work for. Call him directly and ask to meet him to learn about what he does.’ I called Tom Hudson at Hudson Cook who told me they weren’t hiring but to send a resume.

I did, and he said they made an executive decision that they were hiring and to come in for an interview. That’s how I got hired at Hudson Cook. The firm had a large auto finance compliance practice, which allowed me to work with dealers and finance companies all over the country. That was a great experience doing public speaking, traveling, writing, and consulting.

If there was a retail part of law, I was in it. I loved it and worked with great people who were like family. But eventually, it got to the point where I had my first son, and my dad was getting older. I was spending all this time in other people’s stores. I kept thinking: Why am I not doing this for my own store? I returned home to work with our family dealerships 11 years ago.

#### **Where did you first start at Marlow Motors?**

The plan was for me to work in all departments. But within a very short period of time of my coming home, my dad had an emergency quintuple bypass surgery and was out of the store. Ready or not, I was in charge. There was baptism by fire and no time to get reacclimated.

#### **What was it like for your dealership during the pandemic?**

It has been the absolute best of times and the worst of times, sometimes on the same day. I have never been more proud of my team. I have also never been more scared for my team. If anyone has any doubt about the resiliency of the American car dealer, they don’t understand what happened [during the pandemic].

but amid an economic downturn, the position was cut before she even started.

She eventually landed a job at Hudson Cook, LLP, a law firm specializing in consumer credit compliance. VADA President and CEO Don Hall notes that experience has made Beck an expert on many of the legal issues dealers face.

“Emily grew up around the business her whole life,” Hall says. “She is a woman full of integrity. She’s less about her. She’s more about the greater good.”

Beck and her husband, Andrew, live in Winchester with three children: Olin, Marshall, and Margaret. Let’s hear from Emily about her background and where our industry is headed.

#### **How did you get into the car selling business?**

After the first law firm I applied to rescinded its job offer, I took a job at a really small law firm. It paid the bills, but the whole time I was thinking, ‘What do I know that no one else knows?’ I knew the car business because I grew up in it. I called the NADA, and they gave me a couple of names of law firms specializing

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The word “grit” comes to mind. We did whatever it took to take care of our team and our community.

**What did the dealerships in the Marlow Auto Group do that they weren't doing before COVID-19? Did you ramp up your digital operation? Did you do sales and service visits to customers' homes?**

We had the blueprint in place for a lot of these things before COVID happened. But then COVID required us to really lean into these things in a way we hadn't before. We pride ourselves as being innovative problem solvers. I'm a working mom. My biggest pet peeve is: don't waste my time. If you make me take off work to come here and service my car, I'm going somewhere else. So we had always asked ourselves, “How do we use innovation to save our customers time?” That was part of our DNA already. And then suddenly that shifted to, “How do we use innovation to keep our customers safe?”

We had already put in place extended service hours from 6 a.m. to 10 p.m. some time ago. Social distancing is naturally baked into early and late hours. We leaned into our digital retailing tools to sell cars online and deliver them to customers' homes or reduce the amount of time at the dealership or bodies in the building. We always thought of these tools as a way to take care of working families and save people time. We didn't think of them as a way to keep people safe. The tools were there, but they just became more meaningful with COVID.

**What is the value of the VADA? What is your vision for not only the association but the industry in Virginia and beyond?**

VADA was essential in keeping us informed and being our experts. Most dealers don't have legal counsel on staff. VADA does a lot of lobbying, and they do a great job. I also felt like they were our coaches saying, “This is how you navigate these choppy waters.”

Perhaps even more importantly, VADA did a magical job telling our story to people who were making the decisions to make sure we had a seat at the table. Not only do dealers benefit from it, but so do the customers and the community. Imagine if we were shut down, what would that have meant for people who rely on us for their transportation needs?

**Where do you see this association and the industry heading?**

VADA is going to play an amazing role in continuing to tell our story because I think a lot of people — lawmakers and customers — make decisions based off of stale information about our industry.

They think buying a car today is like the last time they did it (about 11 years ago, on average). They don't understand how different and evolved we are, nor do they understand the regulations we face. As the industry changes and consumer demands change, there are a lot of misconceptions about our business that VADA is going to have to combat.



**What's it going to take to get more women or people of color into leadership positions (besides having a dealership in the family)?**

We need more mentors and role models.

I had amazing male mentors growing up in the law firm and with my dad. But I didn't have any female mentors in the auto industry. I used to think I handled things so differently than the men in the room. And at times, because no one in the room looked or acted like me, I thought that I was doing something wrong. It took me a while to realize that the things I was doing differently actually were my competitive advantage. I deal with that in hiring women. They think about what they don't know instead of thinking about what they bring to the table. I always tell them, “We can teach you all of that. I want you here because of all the other stuff we can't teach you: Your life experience.”

I think it's happening, but I don't think it's happening quickly enough. I think part of that is just by getting the message out and letting people see that we don't look the same that we did 10 years ago. ★



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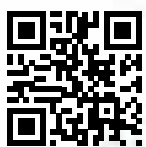


# All In PAC 2022 Campaign

Next year’s General Assembly races will be the most crucial election season in decades with every seat in the state House and Senate up for grabs. The time to start raising money to elect pro-dealership candidates isn’t next year. It’s right now in 2022.

We need every member of VADA to contribute to our PAC, including Dealership Owners, General Managers, Dealer Operators, Parts and Service Directors, Finance and Insurance Managers, and Used/New Car Managers. This election will heavily impact not just these dealership leaders but everyone who reports to them. So please contribute to support our PAC, our industry, and your business. Many association members throughout Virginia have already contributed to our PAC. Their investment shows they are All In for our future. Are you?

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# Honoring 2021's TIME Dealer of the Year Nominee, Dan Banister



As part of this edition of the Virginia Auto Dealer, VADA also wants to recognize the 2021 TIME Dealer of the Year Nominee. Because we did not publish our magazine during the unusual times brought by the pandemic, we were unable to spotlight Dan Banister of Banister Nissan of Chesapeake. However, we are happy to share this interview as we offer our heartfelt yet belated congratulations to him on his well-deserved nomination. *(This article has been edited for length and content.)*

## How did you become a car dealer? Did you always aspire to be part of the automotive industry?

When I first got a job at a dealership in 1992, I expected working at the dealership was going to be temporary. I was right out of college, and I wanted to get into federal law enforcement. My first month at the dealership, I was the Salesperson of the Month. I got promoted about a year later, and the car business wouldn't let me go. I caught the car business bug.

I have a motto: "Learn the job before you get the job." With each promotion I received, I hit the ground running. I didn't need on-the-job training because I learned the job before I got the job. As a result, I always learned the next job before stepping into it. I kept getting promoted, and I worked my way up through almost every position in sales. Eventually, I found a business partner who allowed me to buy them out over a 10-year period. I bought them out three years ago.

## Describe your educational background. What did you study?

I studied criminal justice at the University of North Carolina at Charlotte. I use the sociology, psychology, and time-management classes I took there almost every day. I've also taken NADA automotive courses.

## Are there any specific individuals who had a major impact on your career? For example, who were your mentors, and what did each mentor teach you?

My mother and father taught me to respect my fellow human beings no matter what our differences may be, never judge, and always try to help those in need; always stay humble; believe in myself; and never take no for an answer. I developed a strong work ethic while I was growing up by watching them.

During the long 12-hour days at the office, my wife supported me and then continued to support me after I came home too tired to do anything. She was a single parent for the first few years of our lives together because I was at work ALL the time.

My pastor, Bishop Kim Brown, has given me and continues to give me the spiritual guidance and spiritual covering I have needed for the last 20 years. It keeps me focused on my dreams, has taught me work/homelife balance, and I've learned to leave the boss hat at the office and wear the husband and father hat at home.

Thanks to God, I saw success most of the time. When I had an opportunity, I made sure I was prepared for it. There wasn't a lot of training when I started in the car business, so you had to hit the ground running when the opportunity came. The manager didn't want to sit and hold your hand if you weren't ready to run. If you failed, most likely, you were out.

Today, I develop my staff. I want to get them ready for the next position while mastering their current position. I use my experience when I sit down with my people who want to grow. I

try to help them navigate around some of the obstacles and brick walls that I encountered. We speed up their career path.

From a personnel standpoint, the car business is attracting a different type of person too. Many are college-educated and are looking to make the car business their career. Many are looking for a work-life and family balance. They want a 40-hour-a-week job, so they can have a better life balance.

In my opinion, working tons of hours is not the future of the car business. I refuse to work 70-80 hours a week, and I don't ask for those hours from my staff. I want them to have a healthy family life. I want them to be at children's games and recitals. When my children were young, I missed a lot of that. I am making up for it now. I don't want anybody to miss out on those family times. The car business has had a high divorce rate. When you are at the office all the time, something will suffer, and it will probably be your family.

### **What is the most rewarding part of your career?**

To see the growth in those that I've worked with. It bothers me to see somebody struggling financially. I know how it feels to struggle. I remember budgeting myself for three meals a day on \$10.15. I am fortunate to be around a lot of good people, and I can look and see what our impact has been in the community. Maybe a customer made some bad decisions or has had a tough time. Buying a car may not be the best thing for them right now. It may be getting an item fixed on their credit so they can qualify for a better loan. For me, it is not just about selling a car. When a customer is in a bad spot, I love when we are able to put them in a better situation. It makes me smile every day.

### **What do you think will be some of the auto industry's dominant trends in the next 5-10 years?**

I think electric vehicles will be one of the main things. Most of the cars sold during the next 10 years will probably be electric, and the infrastructure will get much better for them. In my opinion, most dealerships will go to the one-price model. Some are already gravitating, and I am moving to that model myself. Many transactions will be completed online, but most customers will still want to come to the dealership to test drive and take delivery. More dealerships will be more like a boutique and won't have 500 to 1,000 cars to choose from. Vehicles will be made to order.

### **What is the biggest impact of being a VADA member? What makes it beneficial?**

VADA does a phenomenal job of building relationships with the leaders who regulate our business and is well-respected. VADA puts our issues on the State Capital floor and is right there to advocate for Virginia dealers. Also, VADA has a day where we all gather at the state capital and meet as a dealer's association with all the leaders and senators. We sit down, get to know them, and tell them our issues directly. In my opinion, we have one of the best dealers associations in the country.



### **Are you involved in any civic or charitable organizations?**

Yes, I'm on a few boards: The Elder's House, the Chesapeake Public Library, Hampton Roads Automobile Dealers Association (HRADA), Motor Vehicle Dealer Board of the Commonwealth of Virginia (appointed by Governor Terry McAuliffe,) the National Dealer Advisory Board for Nissan, Nissan Mid-Atlantic Regional Dealer Board, Chesapeake Forum, the Virginia Automotive Dealers Association (VADA) Board of Directors, and the Chesapeake Regional Health Foundation Board Member.

### **Looking back at your career and life, please list three things you have learned and would like to pass on as a mentor to others within the auto industry.**

Learn the job you want before you get the job. Long hours are not always the recipe for success. You should work smarter and never be content.

### **What does the TIME Dealer of the Year nomination mean for you?**

It really is a big deal, but the award is not just for me. It's for the entire dealership. We touch the community together. I am grateful to give back to the community that has been so good to me, my family, and the staff. I didn't realize how big it was to be nominated until I saw the community's reaction. Then I looked at the nominees, and I said, "Wow, I'm in tall cotton here." I was humbled to be honored. There are so many good dealers in Virginia and the United States, and to be recognized as one of them is quite an honor. It's still hard to believe.

### **Was there an "aha" moment in your career that defined you?**

It maybe isn't an "aha" moment, but the thing that started me was in 1997 when I had my first general manager job in Rock

*continued on page 16*



continued from page 15

Hill, South Carolina. My advertising agency came up with a marketing campaign called "Dan the Man." The slogan was, "Come see Dan the Man today." I am still known as "Dan the Man" now. The "Dan the Man" campaign made me a household name for many years.

**Describe your all-time favorite vehicle (it can be one you've owned or something on your wish list). What are you currently driving?**

My all-time favorite is a Nissan GTR. If I could drive any car in the world, that's what it would be. And today, I am driving the GTR.

**What is your favorite way to spend your free time? Do you have any unusual hobbies?**

I love spending time with my family. My wife and I have been married going on 24 years. I met her in 1995 at the first dealership I worked. She was a service customer, and I greeted her. She's been my rock and has helped me succeed in the car business. For so long, I spent so much time away from home, and when I was home, I was not there mentally. She was a single parent for all intents and purposes, but she supported me and didn't complain. She held the family together. When my son hit 10, that's when I really became a dad. If I had to give anybody kudos, I would say she is the most influential person in my life.



She could have made it very tough for me early on in my career. If you don't have a stable home life, it's hard to be a successful anything. But she kept us together.

My parents have been married for 60 years, and I have one brother and two sisters. I am the youngest. We all live in different parts of the country but make it a point to get together at least once a year.

VADA is proud to acknowledge "Dan the Man" Banister on his 2021 TIME Dealer of the Year nomination. ★

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## Best Practices Quiz

By Michael G. Charapp, Mahdavi, Bacon, Halfhill & Young, PLLC

**I**n the last six months, we have reported on best practices you should adopt for your dealership operations. This quiz tests how carefully you have given attention to the suggestions.

1. You have received a letter from your franchisor that your sales performance is substandard in breach of your obligations under your dealer sales and service agreement. You should:
  - A. Challenge the claim because you have had no new vehicle inventory.
  - B. Deny the claim you have breached your DSSA because you have complied with your obligations under it.
  - C. Take the franchisor up on its offer of assistance.
  - D. All of the above.
2. You are purchasing three used vehicles at wholesale from a dealer in another state. You have done business with the dealer before, and you know the person with whom you are negotiating. He sends you wire instructions to pay for the vehicles. It is OK to wire the money based on the email since you know the people with whom you are dealing. True or False?
3. As a franchised dealer, you cannot sell a vehicle for export from the United States under your dealer sales and service agreement. If you do, you will face franchisor penalties. You are contacted by a buyer who asks you to sell him a new vehicle and deliver it to the port to be shipped overseas. You should:
  - A. Question the buyer. If he will not sell it, but he will use it personally overseas, you can do the deal.
  - B. Refuse to do the deal.
  - C. Bump the price to pay for the expected penalties.
  - D. None of the above.
4. Competing dealers are advertising vehicles at prices you know they don't intend to honor. To compete, you advertise vehicles at a price, but when the customer comes in, you will





only sell the vehicle at its higher current market value. This is OK if:

- A. You use a disclosure in your ad that the customer may pay a higher price because of market conditions.
  - B. You disclose the higher price in fine print in the ad and break out the elements, including a sales commission fee that justifies the price increase.
  - C. You advertise vehicles you do not have available, planning to offer higher-priced vehicles when the customer comes in.
  - D. None of the above.
5. You are careful to obtain a completed I-9 form from every new employee. You have studied the form carefully, and you know the document or documents that are most effective to prove the new hire's identity and authorization to work. To keep your records clean, you tell the new hire what he should provide to prove those facts. True or False?



In the last six months, we have reported on best practices you should adopt for your dealership operations. This quiz tests how carefully you have given attention to the suggestions.



6. You offer a comprehensive warranty that covers all mechanical and electrical systems of the used vehicles you sell, which is much better than anything provided by your competitors. You may mark on the FTC buyer's guide that you are offering a "FULL" warranty to show your warranty's coverage is superior. True or False?
7. Besides vehicles in your used vehicle inventory, what vehicles should have an FTC buyer's guide:
- A. New vehicle demonstrators.
  - B. Used vehicle demonstrators.
  - C. The spouse of the dealer's demonstrators.
  - D. All of the above.
8. The FTC and the CFPB have both changed dramatically from the days of the Trump administration. Both are once again led by bureaucrats critical of dealer F&I practices. A dealer concerned about federal enforcement should have in place:
- A. A fair lending program under which F&I personnel commit to treat all customers equally.
  - B. A program for sale of voluntary protection products based on a menu.
  - C. A fair lending program that establishes a starting point for rate and provides for downward rate deviations for non-discriminatory reasons.
  - D. A program for sale of voluntary protection products that sets prices for VPPs and provides for downward price deviations for non-discriminatory reasons.

*continued on page 20*

**Answer Key:**

**1. D.** All of the above. That your dealership should be deemed sales ineffective based on measurements during the last two years is ludicrous. New vehicles have never been in such short supply. You cannot sell what you do not have.

*In any response to factory criticism, there is one rule of thumb: YOU ARE NEVER IN DEFAULT UNDER YOUR DSSA, so don't admit it. Whether you are in default is a complicated question to be decided in a legal proceeding.*

*If a franchisor offers assistance, take it up on the offer. Follow its teachings, and it becomes a partner in any continued failure to meet its usually flawed measurement of success. And you just might improve.*

**2. False.** Even though you are comfortable doing business with another dealer, a hacker can alter the email delivered to you by inserting the hacker's bank account information rather than the selling dealer's. ALWAYS verify wire instructions by a phone call to a known phone number before sending a wire. If you are providing the wire instructions to your account, always include a message reminding the person wiring the money to do the same.

**3. B.** You should refuse to do the deal. It does not matter who or what the buyer is. You are being asked to do a deal that your franchisor forbids. That the buyer will drive the vehicle for personal use, even if true, makes no difference. The prohibition against export in your DSSA covers not only sales for resale abroad but sales for personal use. And bumping the price to cover expected franchisor penalties not only leaves you open to a lawsuit by the buyer, penalties are not the only sanctions a franchisor can seek to impose if it believes the dealer is intentionally operating in violation of the DSSA.

**4. D.** None of the above. Advertising a vehicle for a price at which you do not intend to sell it is a classic bait and switch tactic, violating the federal FTC Act and state unfair and deceptive practices acts. That is not cured by a disclosure that contradicts the advertised price because of market conditions. It is not cured by adding a fee not authorized by law, especially when that fee results in a fine print price that contradicts the large print price. It is not cured by advertising a vehicle you do not have available for sale since the FTC and state regulators expect you will have sufficient supply to satisfy expected demand or you disclose your limited supply (advertising by stock number or VIN achieves that).

**5. False.** Employees must document their identity (List B on form I-9) and authorization to work in the U.S. (List C on Form I-9) or provide a document that establishes both their identity and employment authorization (List A on Form I-9) within three business days of their first day of employment. But the choice of the documentation belongs to the employee. Many investigations of employer practices have been launched because of allegations that an employer required a particular form of proof.



**6. False.** Under federal law, a full warranty includes numerous consumer rights that no dealer warranty on a used vehicle provides. Any warranty you offer is a limited warranty.

**7. All of the above.** A demonstrator is for sale, so it should have an FTC buyer's guide affixed to its window. That is clear for a used car used as a demonstrator. It is also true for a new vehicle used as a demonstrator as long as it has been driven more than for moving it or road testing it before delivery since that makes it a used car for purposes of the FTC Used Car Rule (but not necessarily for other purposes under state or federal law). And that is even the case for the demonstrator being driven by the spouse of the boss.

**8. C. and D.** (You didn't see that coming, did you? We never said you could pick only one answer.) Consumer zealots for years have been concerned about what they have called dealer mark-ups on financing rates offered to consumers. That terminology shows a misunderstanding of the process since dealers offer competitive finance rates in which the cost of credit to them is just one factor. But the FTC and the CFPB are now headed by individuals who see some inherent evil in dealers charging rates in excess of the buy rate.

Both federal agencies are also interested in how dealers and consumers agree on prices that consumers pay for voluntary protection products. Their new top regulators have stated they believe dealers discriminate in setting VPP prices.

Not only must dealers be concerned about federal agency attention, they must be concerned about the U.S. Justice Department, state attorneys general, and private litigants. Given the increased exposure, finance sources are again concerned about how dealers and consumers agree on rates consumers will pay for finance and how VPPs are sold.

Programs stressing that dealership personnel must not discriminate are not enough. You must be in a position to show that your process prevents discrimination. The best solutions are programs in which you establish beginning prices for finance at the same increase in basis points over the buy rate and in which you establish uniform prices for VPPs, and you allow downward price deviations only for non-discriminatory reasons. The programs available from the National Automobile Dealer Association meet those guidelines. Consider using those. ★



# A General Assembly Session That Drove Dealers Forward

**T**he General Assembly session entailed more than two months of lobbying, legislating, and letter writing by the VADA team and our members.

All that hard work has paid off, and our dealers can take pride in our association's accomplishments at the State Capitol. This was truly a legislative session that drove our industry forward.

Keeping pro-dealer legislation on track is a very complex process. It's a lot like selling a vehicle. There are a lot of moving parts that need to fall in the right place at the right time, and it takes persistence to get the deal done.

And VADA worked with both sides of the aisle to garner bipartisan support on issues having a direct impact on our dealerships.

A key example of that success was the unanimous passage this session of VADA's priority legislation that strengthens the statutory language requiring that dealers receive the retail amounts they are entitled to for warranty/recall repairs performed for manufacturers by clarifying how the retail amount is calculated. This is a win by VADA and dealers that will directly and positively impact your bottom line, save headaches, and retain jobs.

The measure heading to Gov. Glenn Youngkin for his signature also requires manufacturers to fully reimburse our stores for customer rental cars during these recall repairs and pay dealers when we assist in fixing software upgrade issues on behalf of the carmakers.

Our association also saw success in leading the charge to secure passage of legislation to preserve our long-standing dealer exemptions that were left out of Virginia's Overtime Law when it passed last year. Working with our allies in the House and Senate, both chambers approved that legislative fix which is also on its way to the Governor's desk.

We continued our efforts to support EV adoption in Virginia, and we also worked to kill measures that would have made it

difficult for dealers who choose to do so to use arbitration to work out customer issues.

We didn't win every battle. The \$40 million we sought in on-the-hood rebates for electric vehicle sales did not make it into the budget, but we will keep fighting for these EV rebates that are so critical to boosting EV sales.

If you want the full rundown of what this session means for dealers, get the full update from the VADA legislative team in our High Octane podcast about the General Assembly at [teamvada.libsyn.com](http://teamvada.libsyn.com). ★

## VADA Action Center



VADA's priority 2022 General Assembly legislation to address warranty/recall reimbursement was driven in large part by service managers and leaders at new car and truck dealerships who engaged in the process and wrote more than 800 letters to Virginia legislators through our Action Center. Many wrote personalized messages on how passing the bill would impact them personally and professionally.





# Legal Columns

## It is Time to Review Your Employment Arbitration Agreements

By Michael G. Charapp, Mahdavi, Bacon, Halfhill & Young, PLLC

**W**hether to use a pre-dispute arbitration agreement for employment issues is a choice for each dealer to make. If you have chosen to use such an agreement, it is time to review it.

In October 2018, we wrote an article titled “The #MeToo Movement and Workplace Arbitration,” in which we explained a U.S. Supreme Court opinion that validated the use of mandatory, pre-dispute arbitration agreements in employment disputes caused states to attack arbitration of employment disputes involving sexual harassment claims. Since most employers choose to have their arbitration agreements subject to the Federal Arbitration Act, state action was ineffective. As a result, the U.S. Congress passed The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, which President Biden signed into law on March 3, 2022.

The Act amends the Federal Arbitration Act so that “at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, or the named representation of a class or in a collective action alleging such conduct, no pre-dispute arbitration agreement or pre-dispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal or State law and relates to the sexual assault dispute or the sexual harassment dispute.”

What does this mean for your dealership? Should any sexual harassment or sexual assault claims be brought against your dealership by an employee after March 3, 2022, any pre-dispute employment arbitration agreement you entered with your employees can no longer govern determination. An employee may bring a lawsuit, or even a class action case, against the

dealership in federal or state court alleging sexual assault or sexual harassment.

It is time to review your pre-dispute employment arbitration agreements if you have chosen to use them. Does your arbitration agreement have mandatory arbitration provisions and class action waivers that could cover sexual harassment and sexual assault disputes? If so, there are some steps you need to take:

- Recognize that the provisions mandating arbitration and class-action waivers for sexual assault or sexual harassment disputes are no longer enforceable.
- Amend your agreement so it complies with the FAA as amended by this Act to specifically exclude sexual assault and sexual harassment claims.
- Although this Act only affects sexual assault and sexual harassment claims, make sure that your pre-dispute employment arbitration agreement provides for arbitration “except as prohibited by law,” so the whole agreement is not ruled illegal by a judge.

Like any new law, this legislation leaves several questions unanswered. If the sexual assault or sexual harassment claims are mixed in with others, can the others be arbitrated? Will courts be able to quickly act on specious sexual assault or sexual harassment claims brought to defeat application of an arbitration provision? In cases of sexual assault or sexual harassment that must go to court, will jury waivers be effective? These are all issues that must be decided, and under the new law, they are to be decided by courts, not by arbitrators. ★



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# NADA Honors Carmen Hinton

## Automotive Services Manager at Carter Myers



View Carmen's video at [facebook.com/ValleySubaruVA](https://facebook.com/ValleySubaruVA) and click "Videos"



I look forward to what the future holds in the auto industry for ALL women.



The National Automobile Dealers Association has named Carmen Hinton as the winner of the 5th annual Women Driving Auto Retail Video Contest, sponsored by Stellantis. The service manager at Carter Myers Automotive's Valley Subaru in Staunton, Va., was announced as the contest winner in March during the NADA Show 2022.

"I am very proud to say that CMA has molded me into who I am today. I started working here at a young age and have learned not only work skills but also life skills," Hinton said. "They invest in their employees, and the value shows within everyone. Having Liza

Borches as the CEO and being a woman herself goes to show all women they can reach the top with no limits and no barriers. Liza has been a tremendous inspiration to me and the ladies I lead. I look forward to what the future holds in the auto industry for ALL women."

The video contest is part of NADA's Women Driving Auto Retail initiative, which highlights the voices of women working in dealerships and encourages other women to pursue automotive careers. The video contest celebrates women who work in all areas of car or truck dealerships and aims to encourage more women to pursue a career in auto retail. ★



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# March Community Service Roundup



Virginia dealerships took to social media to honor Women's History Month and to celebrate International Women's Day this March. Our businesses raised money for local nonprofits, and they helped shelter animals find a home.

We're shining a light again on our dealers' efforts to help their communities, and we'd like to call attention to more of them.

If you know of a scholarship, donation, community partnership, food drive, or other charitable gesture that dealers are involved in, please let us know by emailing [jkelly@vada.com](mailto:jkelly@vada.com).

**Beyer Subaru** received the car maker's 2022 Love Promise and Community Commitment Award. Among the reasons the dealer was recognized is for "taking action in causes like the environment, health, education, and pets that impact the lives of their community." The Alexandria dealership supports the National Campaign to Prevent Teen Pregnancy, and the business partners with local groups such as Meals on Wheels, Senior Services of Alexandria, United Community Ministries, and Virginia's largest high school dropout prevention program.

**Carter Myers Automotive** announced that CMA's Colonial Subaru raised \$13,325 for the ASK Childhood Cancer Foundation in 2021. That resulted from the dealer donating \$25 to that cause for every car it sold last year.

"This means every time we moved a life forward by finding that perfect new Subaru for someone, we moved more lives forward by giving back to our community," Carter Myers says on its philanthropy blog.

**Sheehy Auto Group**, which includes 31 dealerships from Richmond, Va., all the way up to Baltimore, has donated

\$196,000 to 17 charities in Richmond, Va., Maryland, and Washington, D.C. The donations are part of Sheehy's Annual Giving Program, where dealers partner with local nonprofit groups, says a news release about the program.

The Richmond, Va. groups that benefitted in this donation round are Mercy Mall of Virginia, which received \$25,000, and ACES, which received \$13,000.

**Priority Hyundai** in Chesapeake is working with Hope for Life Rescue Inc. and 13News Now to find homes for rescued animals. The 13News Now television station covered this month's pet adoption drive.

**AutoNation Toyota Leesburg** and other AutoNation dealers around the country are partnering with cancer charities to raise millions of dollars to fund cancer research and treatment through its DRVPNK initiative.

"At AutoNation, it's about more than selling and servicing cars and trucks," the Northern Virginia dealership says on its Facebook page. "It's about taking care of people."

To donate and get more details about the AutoNation DRVPINK campaign, go to [autonation.com/our-purpose/drive-pink](http://autonation.com/our-purpose/drive-pink).

**Coming up:**

**The Hampton Roads Automobile Dealers Association** will hold its annual Charity Golf Tournament at Ford's Colony in Williamsburg on May 10. For nearly 35 years, the HRADA has been sponsoring the tournament, benefiting the Youth Automotive Training Program that provides scholarships to local students interested in becoming automotive technicians. For more details on the tournament, go to [www.hrada.com/golf-invite](http://www.hrada.com/golf-invite). ★



# April Community Service Roundup



**P**age Auto Group, which has a family of dealerships across Central Virginia, has pledged \$150,000 to the Children's Hospital of Richmond at VCU. Part of the commitment includes partnering with Andrew Getchell, sales manager at West Broad Kia, whose son, Luke, passed away in 2019 from leukemia. Page's work with CHoR was featured in a write-up from the hospital foundation's spring magazine.

**Priority Chevrolet** in Chesapeake said this month's Priority Charity Bowl ODU Spring Game, done in partnership with sponsors Old Dominion University and the ODU Football program, raised money for 45 children's charities in Hampton Roads. The WAVY-10 television station said the event brought in more than \$800,000 for those charities.

The folks over at **Banister Automotive** were at Booker T. Washington High School in Norfolk recently speaking with students about the car lending profession, credit & financial literacy, and discussing the dos and don'ts when purchasing or leasing a vehicle. The visit was done in partnership with Communities in Schools and the Youth Investors Group, a nonprofit that focuses on providing opportunities for Black youth through financial literacy and entrepreneurship.

**McDonough Toyota** recently added solar panels to the top of their Staunton, Va. showroom. The 45-year-old, family-owned and operated dealer partnered with Tiger Solar to design, build, and install the 92.6-kilowatt system that Tiger Solar says will offset 100% of the McDonough service center's electricity needs. The solar energy company says installing the panels means the dealership stands to benefit from lower operating

costs and from the ability to charge electric vehicles using the power of the sun.

"Toyota's hybrid technology revolutionized the car industry, so I thought it would be a good idea to look at some options on reducing our carbon footprint," McDonough Toyota President Steve McDonough said in a statement. "Solar is great for the environment, and I can save money at the same time."

**Rick Hendrick Chevrolet Buick GMC** in Richmond is a proud sponsor of the Western Regional Youth Association which operates youth baseball and softball programs. Through the Chevrolet Youth Sports program, the dealership provides equipment bags, first aid kits, batting tees, ball buckets, and free instructional youth clinics to community members.

The dealership says it's honored to support a sports program that "brings so many smiles to kids and their families in Richmond."

In case you missed it, the **Hanover County Sheriff's Office** said thanks to Mechanicsville Toyota for its continued support of the HCSO Foundation, which "directly supports the men and women of HCSO and their families during a time of need." The dealership donated \$5,000 to the foundation in January.

And finally, dealers are gathering on May 10 at Ford's Colony in Williamsburg for the **Hampton Roads Automobile Dealers Association's Annual Charity Golf Tournament** that's raising money for the Youth Automotive Training Program. In partnership with local community colleges, that program offers scholarships for students interested in a career as automotive technicians. ★



# Thank You

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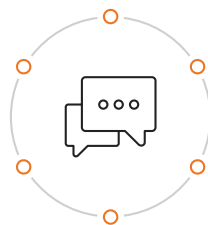
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