

A Matter of Principal or Principle?

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One of the risks dealers assume when they open their doors for business is the threat of lawsuits. In a country where it seems that anyone can sue anyone else for anything, lawsuits are simply a fact of life for businesses.

There are ways that dealers can mitigate the risk of lawsuits. A robust compliance management system, incorporating, as it should, a complaint management program and a compliance monitoring and auditing process, will go a long way toward lowering a dealership's risk profile. Care in hiring and initial and continuing compliance education, with a healthy dose of ethics training, will help, too. Using a well-drafted mandatory pre-dispute arbitration agreement also will shortstop court challenges.

Couple all these steps with a culture of compliance that comes from the top ownership and management of the company, and a dealership likely will find that lawsuits are few and far between.

But, no business is bulletproof, least of all businesses that deal with consumers who enjoy the protections of laws and regulations that are in place expressly to assist them in seeking redress of their grievances with sellers of consumer goods.

So, against that backdrop, pretend you have been served with a summons and complaint in a lawsuit. The plaintiff is a customer who believes that you have treated her unfairly or illegally. You have had correspondence and phone calls with the customer, and, despite feeling that the customer's complaint is unjustified, you've made an offer, generous in your view, to settle the matter. Unmollified, the customer has retained a lawyer, and the lawyer, doing what lawyers do, has prepared the lawsuit papers that are now in your hands.

What's your reaction to these developments? Are you outraged that the customer rejected your perfectly reasonable settlement offer and escalated the dispute by hauling her lawyer into the picture? With steam coming out of your ears, have you vowed to fight the lawsuit all the way to the Supreme Court, declaring, "It's a matter of principle!"?

If so, go take a cold shower, and we'll talk again in a few minutes. When we do, I'll suggest to you that perhaps the choice you make isn't a matter of *principle* but is, instead, a matter of *principal* - your principal, to be precise.

You see, the good news is that the overwhelming percentage of lawsuits do not go to

trial. When I was a law student, we were told by our professors that 95% of cases settle before trial. Granted, it's been awhile since I darkened the door of a law school classroom, but I'll bet that percentage hasn't changed drastically.

If that percentage still stands, then in 95 cases out of 100, sooner or later you and your customer will agree to settle your dispute to avoid trying the case in a courtroom. The decision, really, is not *if* you settle the case, but *when* - and, of course, the amount of the check you will write.

If you stick to your guns on the grounds that it's the principle of the matter that counts (and how the lawyers, yours and your customer's, love to hear those words), you'll make the customer's lawyer and your lawyer very happy. Why? Because they can engage in all the pre-trial maneuvers, motions, and discovery that lawyers are known for, with each step and each document adding to your ultimate bill. That principle will cost you principal.

Or you can bite your tongue and take the matter off the table quickly by agreeing to the customer's initial demand, or something close to it. Keep in mind that the first check you have a chance to write usually will have the fewest zeros.

Occasionally there may be reasons to take a matter all the way to trial, as risky as that course of action can be. For example, in some geographic areas, there are lawyers who specialize in suing dealers and who you might encounter again and again, and you don't want to get a reputation with those lawyers as an easy mark.

But, if you can avoid making it a matter of principle, settling matters quickly will allow you to keep more of yours - principal, that is.

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