

# McNees Automotive Dealership Law Group

The attorneys in McNees Wallace & Nurick's Automotive Dealership Group have been counseling automotive dealership clients since 1988 in a broad range of matters. The retail automotive business is laden with manufacturer demands and regulatory oversight. Dealers need legal counsel who have dealt with the unique issues arising from the purchase or sale of dealerships and dealership real estate. We have a team of experienced advisors who understand the automotive business and provide effective representation and assistance in all matters affecting your dealership. Our experience has demonstrated that early advice and counseling will prevent a problem from developing into a formal dispute. When a formal dispute arises (court action, audit, licensure proceeding), the experienced counsel at McNees can guide you through the process.

## UNDERSTANDING THE BUSINESS OF AUTOMOTIVE DEALERSHIPS

### Buy/Sells

Whether it's the acquisition of a single point or sale of a dealer group, our attorneys have the experience and knowledge to guide you through a sale or acquisition. The automotive-specific aspects of a buy/sell (e.g., manufacturer approval, rights of first refusal, etc.) are well known to our attorneys.

### New Points and Relocations

Pennsylvania dealer franchise law specifies the parameters for establishing a new point and for dealership relocations. Whether you are the new point or relocating dealer, or are facing a competing new point or a relocating competitor, we can advise you on the law and guide you through the rights and remedies available to you.

### Dualing

Manufacturers routinely limit dealerships' ability to dual franchises and, in many instances, are demanding that dealerships un-dual franchises. A brand's poor position in the marketplace, or insufficient volume, makes it difficult for dealers to justify stand-alone dealerships. We can counsel you on the law in this area and assist you in making the best decisions, while also assisting you in educating your manufacturer on its duties and responsibilities to you.

### Terminations

Has your dealership received a termination notice? Poor sales performance and the failure to meet agreed-upon facility requirements are the leading reasons for a manufacturer to seek termination. Manufacturers may not terminate a dealership without proving that they have just cause to do so. Dealers have a right to protest terminations to the Pennsylvania Vehicle Dealer Board and to continue to operate during the hearing and review process. We routinely counsel dealerships in these matters.

### Warranty and Sales Incentive Audits

Sales incentive and warranty audits remain a mechanism for manufacturers to charge back dealers. Good relations with your sales and service representatives are unlikely to be of help when responding to chargebacks resulting from audits, because the auditors are separate

from the manufacturer's operational employees. The Vehicle Dealer Board and Pennsylvania's Commonwealth Court have considered these issues and laid the foundation for what is and is not permissible in audit chargebacks. We can assist you in educating the manufacturer on the state of the law and in challenging unwarranted chargebacks.

### Consumer Protection

If you are selling cars, you inevitably will have an unhappy customer, even if it is only a case of buyer's remorse. Customers have a lot of outlets to complain to – the Attorney General's Bureau of Consumer Protection, the Better Business Bureau, any agency that regulates you, and private attorneys. We know the consumer protection laws and regularly deal with the regulators who oversee dealerships.

### Advertising

Whether you are using radio, newspaper, television, mailers, or the Internet to communicate with buyers and prospective buyers, the same state and federal laws relating to advertising apply. Pennsylvania's Office of Attorney General regularly scrutinizes and monitors automotive dealership advertising practices. We review and edit advertising to help dealers avoid enforcement actions. We also counsel dealers facing enforcement because of non-compliance with advertising regulations.

### Licensure Requirements

Automotive dealers have many licensure requirements – dealership licenses, salesperson licenses, inspection licenses, installment sellers licenses, tag agent licenses. We assist dealerships in dealing with unique licensing issues, and in securing, maintaining and updating licenses.

### Banking Audits

The Pennsylvania Department of Banking actively audits automotive dealerships to ensure compliance with the Motor Vehicle Sales Finance Act. This often includes scrutinizing a dealership's leasing and buy-here/pay-here practices as well. Civil penalties and consequences for non-compliance in this area can be extreme. We can assist you in making sure you are in compliance and defend you when faced with enforcement action.



## **PennDOT Relations**

Dealer plates, registration and titling issues, and inspection activities are three continuously active areas of any automotive dealership business, and licenses and privileges you do not want to be without. We can assist your dealership if it is faced with enforcement actions or other challenges in these areas.

## **State Police**

The Bureau of Patrol, Vehicle Fraud Investigators routinely monitor dealerships and pursue enforcement actions for alleged violations. This can result in administrative enforcement as well as criminal actions. We routinely counsel automotive dealerships in these areas.

## **Environmental Laws**

Environmental concerns can permeate many levels of your business. You may be concerned with issues related to storage tanks and spray booth permits, possible leaks from in-ground lifts and floor pits/drains, asbestos and air conditioner certifications, waste disposal requirements, and regulatory reporting. Also, especially in transactions involving real estate, you may be confronted with conducting and interpreting property environmental audits, and managing potential cleanups. We have advised our dealer clients (buyers and sellers) on hundreds of these matters and can provide the experienced guidance to see you through.

## **Dealership Succession and Estate Planning**

Planning for the future is as important as day-to-day operations. Your Dealer Agreement, Pennsylvania law and franchise relationships will all be involved in developing a sound business succession plan. We can assist and counsel you on entity structure, franchise issues and estate planning, including tax minimization.

## **Labor and Employee Issues**

Whether it involves discrimination claims, wage and payment issues, compensation plans, hiring or firing decisions, FMLA and ADA issues, overtime exemptions, handbooks and employment policies, or union

organizing attempts, our labor and employment lawyers have counseled and successfully represented numerous dealerships in resolving and preventing these types of claims. If you need help navigating the alphabet soup of governmental agencies (PHRC, EEOC, NLRB, OSHA, OFCCP, DOL, and L&I), or if your management team would benefit from training on sexual harassment avoidance, FMLA and ADA compliance, union avoidance, or any other topics of concern, we can help.

## **Leasing Operations**

Considering a leasing operation? We can walk you through the do's and don'ts in leasing, to make sure you are in compliance.

## **Dispute Resolution/Mediation**

As the trend in the legal world moves away from courtroom actions, disagreements with a manufacturer are being subjected to mediation, arbitration, or other forms of dispute resolution. Internal appeals of manufacturer disputes, as well as mediation required where a dispute is going before the Pennsylvania Vehicle Dealer Board, are areas where we can provide assistance with direct appearances as your attorney, or to help a dealer prepare a strategy where a lawyer cannot attend. We have been successful in using the Pennsylvania franchise law protections as a tool to force a manufacturer to provide the dealer the protections and benefits guaranteed under the law in all levels of dispute resolution matters. We can help bring a dispute to a close in a reasonable fashion, and to allow the parties to move forward with their business relationship to sell and service vehicles, for the benefit of all.

## **Real Estate Matters**

Real estate is a crucial element for all dealership operations. From the purchase or leasing of land, to navigating through the municipal approval process, dealership real estate issues present unique challenges different from those normally associated with commercial real estate. We routinely work with dealers in all aspects of the property acquisition process, as well as obtain approvals for new dealerships and expansions.

## **AUTOMOTIVE DEALERSHIP LAW TEAM**

**Amy Capobianco Marsar, Chair**  
717.237.5415  
acapobianco@mcneeslaw.com

**Mark Calore**  
570.209.7220  
mcalore@mcneeslaw.com

**Benjamin Ward**  
717.237.5461  
bward@mcneeslaw.com

**James P. DeAngelo**  
717.237.5470  
jdeangelo@mcneeslaw.com

**Kelley E. Kaufman**  
717.237.5248  
kkaufman@mcneeslaw.com

**Ilan Z. Weinberger**  
301.732.4274  
iweinberger@mcneeslaw.com

**Clay Davidson**  
717.237.5496  
cdavidson@mcneeslaw.com

**Elizabeth P. Mullaugh**  
717.237.5243  
emullaugh@mcneeslaw.com

