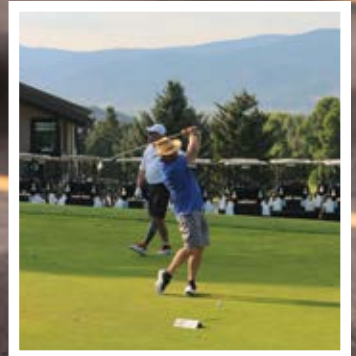
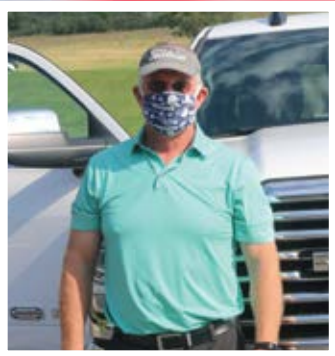
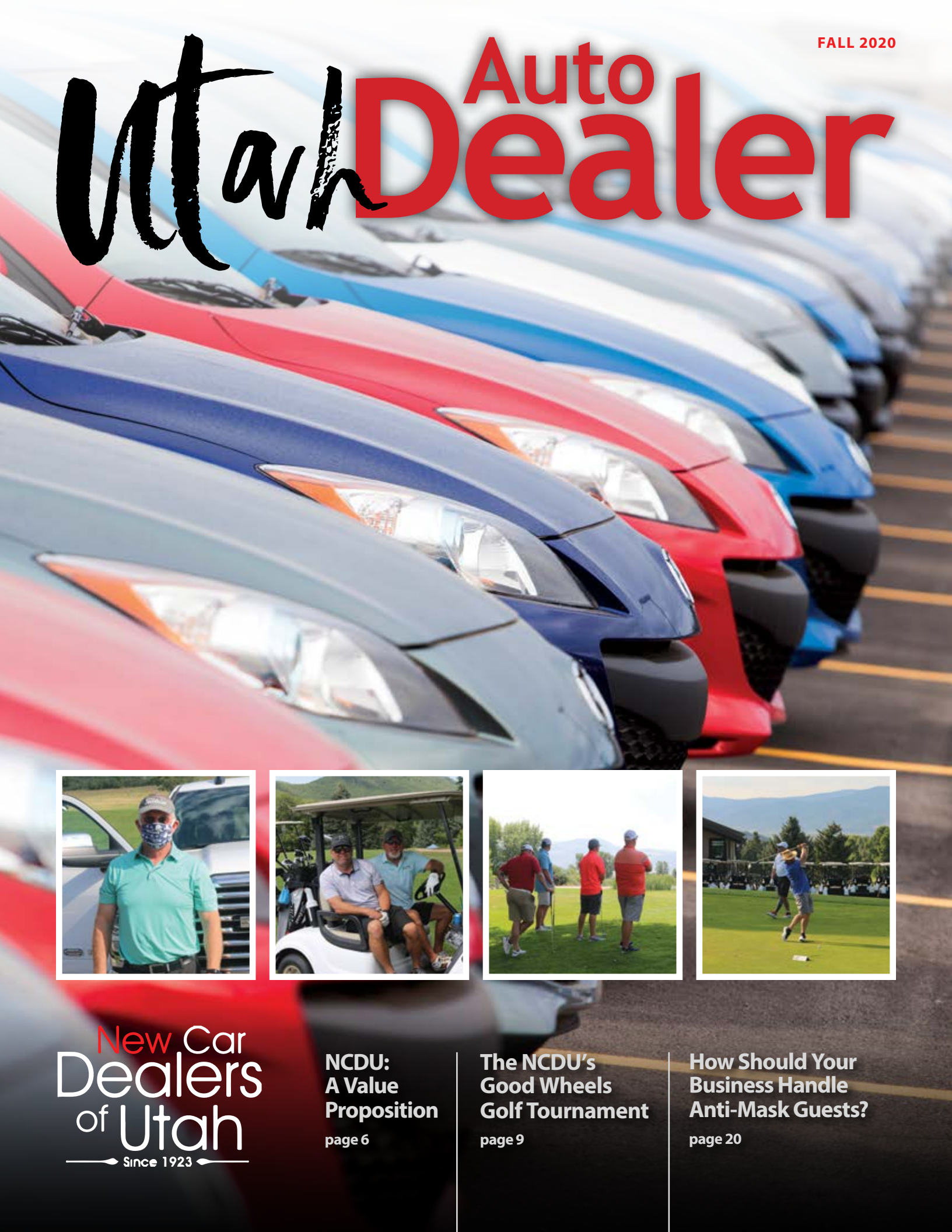


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**Craig Bickmore**, Executive Director



If you feel the same way we do, you want to retire the word “unprecedented” and all the unexpected events of 2020. The year 2021 may still give us more opportunities to deal with unpleasant realities, but at the end of 2020, we are doing our best to find a new normal that keeps us safe from the coronavirus pandemic. Our dealerships are open and selling. We are taking every opportunity to provide for our families and employees and strengthen our communities.

Some people talk about life sometimes changing on a dime. That poor dime got dizzy this year. We had our hands full implementing the mandates that keep our employees and our customers safe. What didn't change was the importance of serving our communities, so we continue to look for ways to help our neighbors and friends.

Throughout Utah, I have seen our dealers do the seemingly impossible. The work hasn't been easy, but our safety record is admirable. We are still selling cars, and we are doing it without people getting sick. That is an accomplishment.

We have been impressed by our dealers' leadership, and we know they will continue to do great work. Now that we know the basics of preventing the coronavirus from spreading, it's time to look for the opportunities we have to solve our challenges. That means using the fundamentals that always sell cars. But it also means relying on longstanding relationships and working with the most sophisticated and effective technology we can find.

NCDU is committed to protecting dealer members, but the not-so-secret path to success is our need for all of you to be involved. Without that, we would not be able to accomplish much. We are always doing what we can to protect your businesses and foster strong relationships so that when you have a problem to solve, you also have good friends to support and advise you.

NCDU has an impressive national reputation of working successfully with state legislators to influence the legislature to act in pro-dealer and

pro-business ways. We do this for you, and we can't do it without you.

We believe that every dealer should support the dealership-friendly candidates of your choice. No one likes to talk about money and politics, but candidates need money to fund their campaigns and pay their staff while running for office. Members of the legislature make less than \$300 per day for their service. That sounds generous, but the general session is only 45 days, and the average salary per year is around \$18,530.

Election results matter. Elected officials will ultimately vote on laws that dictate how you operate your business.

Nationally, but not locally, we see a growing trend of dealers doing less on the legislative front. It is vitally important to proactively reach out to our elected leaders and engage with them on important matters that concern how our industry operates in Utah. If you don't know who represents you, now is the time to introduce yourself.

As an association, we are grateful for those dealers, past and present, who know their local legislators and invest time to develop relationships. Why? These are the people who are impacting your life and livelihood. They have the potential to harm your business if we don't advocate for ourselves.

The recent election has been informative, but we continue to live in a time of uncertainty. At the same time, medical experts tell us vaccine development is on the way and will probably start being available around February 2021, if not before.. They also say the pandemic itself will stop its domination of everyday life by the middle of 2021. Life is going to return to normal. It is good to know that many legislators on both sides of the aisle — Republicans and Democrats alike — will go out of their way to protect you and your right to grow your business and serve your customers. Make sure that you know who they are.

Being involved has never mattered more. ◀



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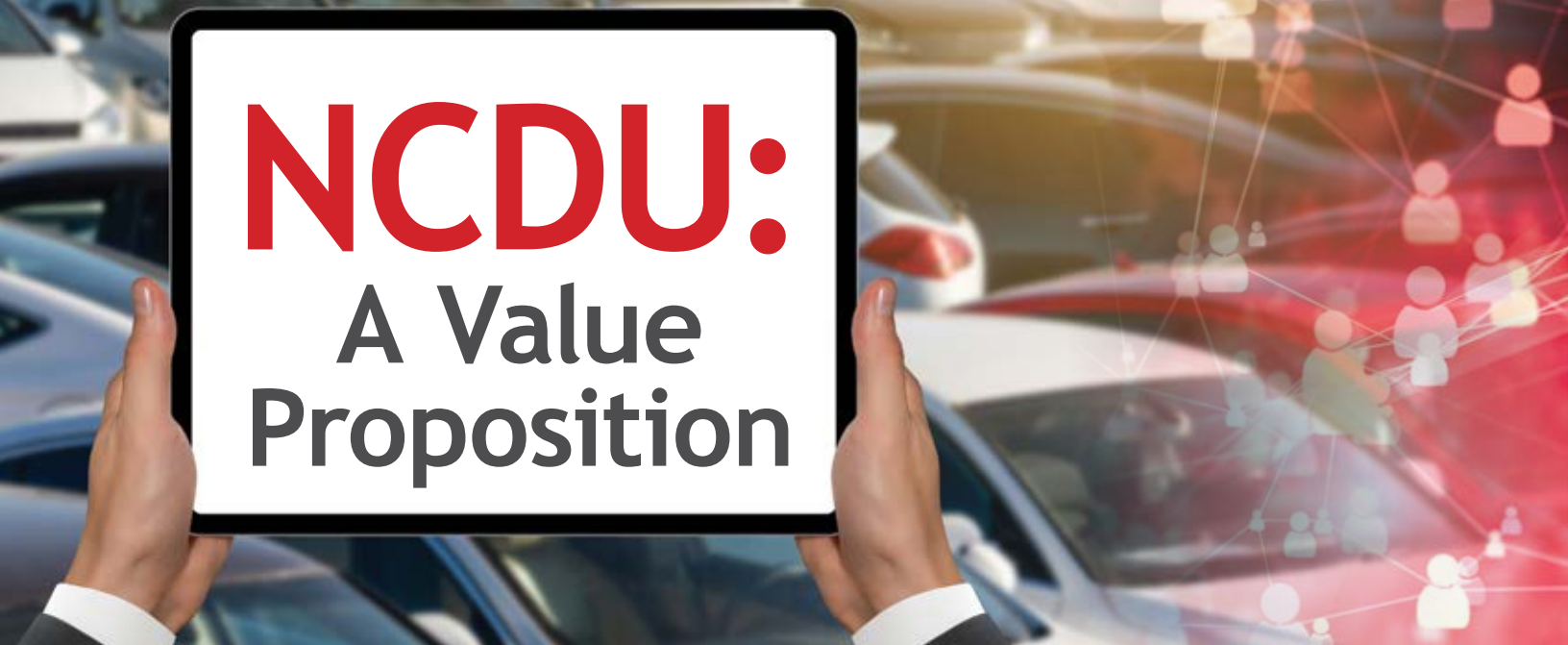
**Spencer Topham**



**Matthew Muir**



**Daniel Daines**



# NCDU: A Value Proposition

**R**ecently we had a conversation with a dealer who asked, “why does the association get involved with so many things that look on the surface to take away our focus from the most important reason we exist, the legislative and government relations?”

We are grateful for the opportunity to explain what the association does and how it functions.

NCDU is 100% committed to protecting the dealers and the franchise system that has been and will continue to be the premier model to sell and service vehicles to the motoring public. There is no better way to efficiently and professionally distribute automobiles and the products that accompany them, such as competitive financing and other products, than through a franchised dealer. Depending on which statistic is used, the new car dealers in Utah generate between 14% and 17% of the taxable sales for the state. That is an incredible number, which is a vital foundation block for Utah’s economy.

Since 1979, when the franchise law was first established, to the re-write of the franchise law in 1996, the association has continued to amend the law to keep ahead of the manufacturer’s attempts to weaken the dealer network, push their costs on to us and control the free enterprise principles that make us successful. It has been our role and responsibility to keep the integrity of the franchise system intact.

So how does the association function so that the New Car Dealer franchise system remains strong and prosperous? Here are some of the things that the association does to ensure its legislative and government relations success:

- Most importantly, we realize that the new car dealers’ lifeblood in Utah is the franchise system. Only the dealers and the association will do whatever it takes to protect and preserve it. We have others that will lend a hand, but the heavy lifts have always come from us.
- The success of our association’s governmental efforts has always depended upon our members’ support for all of our legislative efforts. Meetings at the capital, hosting

legislators at your dealerships, serving on boards and commissions, running for political office, attending dealer meetings across the state, and being a part of other meaningful functions and activities are critical.

- We understand the importance of personal relationships with the legislature and government agencies that oversee our industry.
- Along with the dealers’ contacts and the team at NCDU, we know and deal with the vast majority of the 104 Utah legislators on a first name basis and maintain an excellent relationship with all of the government divisions who oversee our industry.
- Since 1994, we have not increased our dues. In 1998 we actually reduced dues by 25% asking dealers to instead put that money into our association PAC to help pro-business candidates be elected.
- Over the past six years, we have spent over \$400,000 above and beyond our normal budget to stave off legislative efforts that potentially had the effect of eliminating the franchise law, including all the legislation surrounding the Tesla issue.
- From the standpoint of value of our franchise law, consider the unreimbursed expenses that your dealerships would not be able to recoup if we did not have a fair and equitable warranty and parts reimbursement at retail. How much would that cost per store?
- One of the great benefits over the last 21 years has been the Saturday/Sunday closing law that gives the dealers and their employees a six-day work cycle. This eliminates employee burn out as well as reduced expenses which directly impact customers with lower costs
- We retain excellent legal counsel to keep us current on the relevant automotive issues
- Our relationship with NADA’s legal and legislative staff is as good as any association in the country. NCDU played a significant role along with NADA and others to pass the 2017 federal tax bill that kept floor plan interest as a deductible business expense. This means over 650 million dollars in tax savings annually to the dealers throughout the United States
- Throughout the year, staff members of NCDU attend national legal and legislative meetings, participate in



interim legislative meetings at the capital and other locations, are active in business coalitions to advance our dealers interests further, and meet with city officials and other groups to help them understand the value and need for a robust franchise system.

So the second part of the dealer's question was, "why is the association involved in other activities other than its stated mission"? Hopefully, the following information will provide more insight for our members as to why we are also involved in other activities.

- NCDU is a (501c6) trade association whose mission is to advocate for our membership base in all the critical areas in which they function. We also have two "for-profit" entities that are wholly owned subsidiaries of the association. We also operate two "not-for-profit" entities (UADA Group Insurance Trust and Good Wheels Charitable foundation), which have their own boards and budgets. Our funding mechanism is not based on the typical association platform of heavy member dues. In contrast, we based our funding principally on a business model, so our members' burden is very minimal. In 2020 our member dues were \$76,556.00, and the associate member dues were \$21,500.00. Our overall budget for the year 2020 (excluding the Trust and Good Wheels) is between \$750,000 and \$800,000, making total dues from our members, approximately 10% of our budget.
- What we have found over the years is that the business model we have, if done right, can allow the mission of the association, **"to protect and preserve the franchise system,"** to be accomplished in an effective, efficient, and expert manner, all the while keeping costs to the members very low.

- Some Utah associations have very large members (banks, credit unions, hospitals, etc.) and others have many members like the Utah Realtors do, at approximately 11,000. This gives them a vast membership base and quite a bit of funding. NCDU has approximately 150 members, so to assess big dues is just not practical. Therefore, we operate several businesses that all function to support the operation of the association.
- Participating in the other dealer services, our "for-profit entities" is also vital to the association's long-term success. These services are the primary funding sources that enable NCDU to do what we do best.
- As an NCDU team, we balance both legislative/government relations while, at the same time, operating a very successful small business as a principal funding source for the organization.

This is where we need your help. The question asked by one of our dealers gives us an opportunity to ask our membership to support our association in a more significant way. With the background on our mission and what is involved in making it all work, we would ask that you take a more in-depth look at what we offer in terms of products and services and obtain them from us. A listing of our many products and services are included for your consideration.

Remember, the sole reason we exist is to ensure all Dealers are successful. We will continue our commitment to work hard and ensure this success happens. It is a privilege to be part of what we consider to be the greatest industry on the planet. ◀

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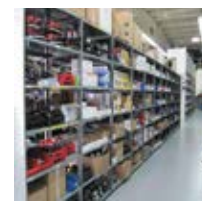
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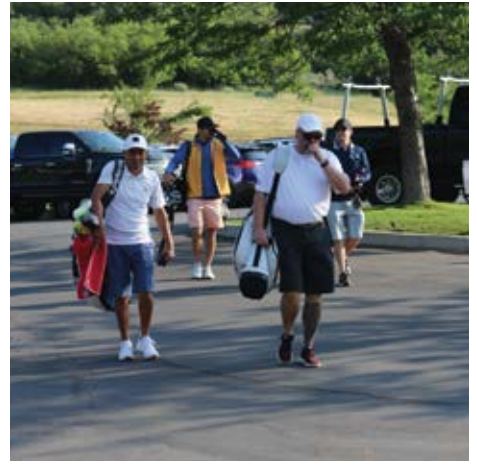
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# Agility and Anticipation — A Vital Partnership

Daniel Burrus

**W**hile exponential change is always moving, businesses and even whole industries traditionally move slower than they should, often finding themselves disrupted and working hard at being agile alone. During the Coronavirus pandemic, all industries were disrupted in one way or another. Many had to close their doors for the time being and forfeit the growth and profits they make from in-person customers.

Pandemic or not, the escalating exponential pace of disruption and change should not be surprising. The Three Digital Accelerators of exponential change that I first wrote about way back in 1983, which include computing/processing power,

digital storage and bandwidth, continue to create a predictable path that takes us to transformation.

Given the initial slow pace of exponential change, it makes sense that agility is the established tool of many organizations — the act of reaction. Moreover, many organizations see agility as the single most vital strategy to use when dealing with *digital disruption*.

### Agility Isn't Enough

Exponential change has reached a tipping point that creates problems and disruptions in both number and magnitude faster than agile organizations can handle. Organizations being disrupted by digital technology indicate that agility alone is not



as useful as it was when an exponential change was moving more slowly. Agility can only slow down the speed with which you fall behind, like a race car driver closely following the leader without making a move to pass.

Being agile doesn't lend itself to innovation, particularly the sort of game-changing innovation that every organization strives for. As soon as COVID-19 was starting to hit the United States and before the lockdown, movie theaters in several states began to pivot by way of hosting drive-in movies in their parking lots, while drive-in concerts hosted by artists such as country singer Keith Urban are the music counterpart to the drive-in movie experience.

### What Is Agility Good For?

Given the profound stage of exponential change we are currently in, agility's reactive nature still provides value for organizations and individuals. The ability to be agile is a key strategy to have. There will always be unforeseen problems that demand rapid solutions and other challenges that require quick analysis and response.

It's important to keep agility in a proper context; it is the ideal strategy for unpredictable change and reacting quickly after a change occurs. Essentially, avoid using agility as the panacea to change and innovation that many organizations assume it is; it's just another way to protect the status quo.

### What Is Anticipation?

While agility remains vital in some ways, it needs to be balanced with a new key strategy — *anticipation*. If you want to become the disruptor and turn change into a game-changing opportunity, you must anticipate what's to come.

My *Anticipatory Organization Model* has proven itself over time and is geared to showing organizations and individuals how to anticipate the future and make bold moves by turning disruption and change into an opportunity and advantage, identifying and acting on a change before it occurs, identifying and pre-solving problems *before* they occur, and jumping ahead with the confidence that comes from certainty.

One of the keys to the proven methodology is identifying both Hard Trends and Soft Trends. *Hard Trends* are based on future facts — things that will happen, or future events we can all bank on. By contrast, *Soft Trends* are based on assumptions and represent future possibilities — something that may or may not occur, but that is open to influence.

Leveraging those two concepts allows organizations of all sorts to plan and carry out strategies with a newfound confidence level that fosters rapid growth and accelerated innovation.

By discerning what Hard Trends and Soft Trends are, you have the opportunity to pursue innovation at every level, from everyday innovation increasing productivity to world-renowned forms of disruptive exponential innovation that upends an entire industry like never before.

### Where Does Agility Fit?

Now understanding what it means to be anticipatory, it might seem like you should skip being agile altogether, which

is wrong. Agility continues to be an extremely important component in an organization.

The key is to keep agility in a proper context. Far too often, I see an organization use agile, reactive innovation. You can successfully innovate this way, but you will not jump ahead with the lower risk of applying anticipatory Hard Trends to see predictable game-changers.

Being anticipatory can actually serve to improve your organization's agility. If a particular Hard Trend identifies a future certainty, you can prep with the ability to better respond or act before it occurs. By the same token, being aware of Soft Trends affords you the opportunity to influence them to your advantage: a far more proactive and effective form of agility.

Consider agility and anticipation as synergistic strategies; when used together with strategic intent, they can accelerate innovation, growth and results. By adopting an anticipatory mindset and culture, change and disruption become your biggest competitive advantage. ◀



Daniel Burrus is considered one of the World's Leading Futurists on Global Trends and Disruptive Innovation. The New York Times has referred to him as one of the top three business gurus in the highest demand as a speaker.

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# Hard Trends — Easier to Identify Than You Think

Daniel Burrus



**A** well-worn cliché says there are only two things you can be certain about: death and taxes. With apologies to those who agree with that statement, there are many, many more examples of out-and-out certainties. Was Sunday followed by Monday last week? Absolutely. Will that be the case next week? You can count on it.

A more timely and, in some ways, comforting example involves the ever-changing situation we find ourselves in today with COVID-19. This pandemic has seemingly pressed pause on time, stifling businesses in many ways and rattling

humankind as we're told that each day is fluid, and we're not sure what the next day will bring. Monday will still follow Sunday, but will it be business as usual? Right now, the answer is no.

But, if Hard Trends, or future certainties, are as easy to identify as I maintain, what is the Hard Trend in all of this? It's as obvious as my days-of-the-week anecdote above: This virus will end and that is a fact that will happen. Because of this, you better believe that, aside from the length of the coronavirus's impact, there are still Hard Trends in every industry, plus plenty of

opportunity in the disruption that is this global pandemic.

To be able to identify Hard Trends during these unprecedented times, we must diagnose the very concept of Hard Trends and how they can lead to significant game-changing opportunities for you and your organization.

## What's a Hard Trend?

As previously stated, a Hard Trend is a future certainty, in that it is something we know is going to occur whether we want it to or not. Opposite of Hard Trends are Soft Trends, which are future possibilities



“

This pandemic has seemingly pressed pause on time, stifling businesses in many ways and rattling humankind as we're told that each day is fluid, and we're not sure what the next day will bring.

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general rule, will there be more or less government regulation in the future? If we've learned anything from the coronavirus pandemic, it is that there will definitely be more. As innovations emerge amid the lockdown, new governmental regulations will evolve in response to them. This is true, regardless of the industry or organization, making this a Hard Trend.

**Technology.** From the ever-increasing accessibility of 3D printing to holographic telepresence, technology will inevitably become more functional, more sophisticated and more widespread. In addition to how we have learned to use already-existing technology during the pandemic, this makes technology in any capacity a Hard Trend; we will always be finding a newer, better way to accomplish a task or create something.

#### Why Hard Trends Matter

Knowing that something is a future certainty means so much more in times like these. It's central to your organization's planning and subsequent execution of innovation, even during an economic shutdown.

In terms of government regulation, coupled with the ever-changing spectrum of this pandemic and subsequent lockdown, being aware of the Hard Trend of growing government regulation allows you to become more anticipatory with those additional guidelines foremost in your mind, allowing you as an organization to continue to progress and grow.

that may or may not take place. In the case of Soft Trends, these can be changed to your and your organization's benefit.

To further explore my Hard Trend Methodology and how it can help you be more anticipatory during times like we currently face, I have grouped Hard Trends into three primary categories for identification purposes.

**Demographics.** This can be age, race, gender, or any other defining characteristic of a group. During this pandemic, an example is an older generation like the Baby Boomers. The fact that they are more susceptible to COVID-19 is a definite Hard Trend.

**Government Regulations and Oversight.** For this category, a broad question immediately comes to mind: As a

Leveraging Hard Trends to your advantage is how you can also pre-solve problems before they exist. Case in point: When the United States government mandated a stay-at-home order, closing the physical operations of many nonessential businesses, many threw up their hands in frustration, while others decided to adapt and overcome, taking advantage of opportunities to continue to operate during a shutdown — and profited accordingly.

What you can expect is that Hard Trends — identified and acted upon — can offer enormous opportunities for those organizations with the mindset of always keeping their eyes open to the future.

continued on page 16

“

**What you can expect is that Hard Trends — identified and acted upon — can offer enormous opportunities for those organizations with the mindset of always keeping their eyes open to the future.**

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continued from page 15

### Use Soft Trends to Influence the Future

There are certain things about the future that we can't change. Some are rather obvious. For instance, spring will always follow winter. New Year's Day will always be January 1, at least in many parts of the world. Those are chronological certainties.

Other future certainties have nothing to do with the calendar. For example, are the phones we use in the future going to be capable of doing more or less? Of course, they'll be able to do more. That's a certainty.

But what about those things that aren't quite so cast in stone? For instance, will it be colder tomorrow than today? No one can say for certain. Will the stock market rise or fall? Your guess is as good as mine.

### The Definition of Soft Trends

Although events that lack certainty may be unnerving to some, I absolutely love them. I call them Soft Trends, and they are a central principle of the overall Anticipatory Organization Model.

Soft Trends are future maybes: those events, developments and other things that may or may not take place.

As I mentioned earlier, one of the greatest appeals of Soft Trends is that they can be changed. They can be altered and, depending on what you know about them and how you use them, they are open to influence, leverage and, ultimately, enormous opportunity.

Further, there are positive Soft Trends as well as negative Soft Trends — in so many words, those trends that you want to maintain and build on and those that you may wish to reverse.

For instance, one Soft Trend is the growing number of students furthering their education through online learning. That's

certainly a good thing and a Soft Trend that you may like to nurture and possibly leverage.

By the same token, the number of obese people continues to increase — a Soft Trend, and a negative one. In looking to influence this Soft Trend, you'd likely investigate ways to try to reverse this disturbing health pattern.

### Hard and Soft Assumptions

Another component of Soft Trends is the assumption that underlies them. On the one hand, there are Hard Assumptions — defined, empirical data and information. Soft Trends supported by Hard Assumptions are more likely to happen.

For instance, rising health care costs in the United States is a Soft Trend, but one supported by Hard Assumptions — decades of data detailing steady increases in costs. That makes it more likely to continue in the future.

On the other hand, Soft Trends underscored by Soft Assumptions are less likely to occur. Moreover, treating them as though they offer greater certainty than they do can be a dangerous misstep.

For example, when the Affordable Care Act (ACA) was implemented, there was a Soft Assumption that there would be enough young people signing up to offset the higher costs of older participants. One problem: There was no comprehensive research in place to support that — one of many Soft Assumptions that had an adverse effect on the ACA's launch.

### The Need to Carefully Identify Soft Trends

Paying attention to Soft Trends can unlock enormous opportunities for you and your organization.

But the caveat is first recognizing the difference between Soft Trends and Hard Trends, which are future certainties. The simplest explanation is, if you have to think about it, it's a Soft Trend. Hard Trends are generally obvious at first glance.

Moreover, it's critical to separate Soft Trends driven by Soft Assumptions from those underscored by Hard Assumptions. Even though Soft Trends are never a future fact, they carry a far greater confidence level when associated with Hard Assumptions. A Soft Trend with a Soft Assumption, on the other hand, could be much less of a sure thing.

You can see that Soft Trends offer enormous opportunities if you know how to identify them and with what level of confidence you can use them to your advantage. So, with that in mind, what Soft Trends can you pinpoint that will impact you, your organization or your entire industry? ◀



Daniel Burrus is considered one of the World's Leading Futurists on Global Trends and Disruptive Innovation. The New York Times has referred to him as one of the top three business gurus in the highest demand as a speaker.



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# Corporate Gifting



Gifts can have a strong, positive effect on the recipient. The right gift at the right time is a delightful experience that can seal the deal for a business relationship and build a trust-filled, reciprocal relationship. One survey found that 80% of potential customers said they are more likely to become customers of companies that provide them with the gift of personalized experiences.

Gifts tell people that you or your organization cares about the recipient enough to do something nice for them. They can also be a great way to strengthen your brand image. If you create an emotional connection to your brand with someone, the lifetime value of that brand connection increases by 306%.

Even something as simple as sending mail can make people feel valued. If you've ever looked into an empty mailbox, you know that the experience is very different from looking in and seeing a well-chosen gift sitting there. Here are some other facts about mail you may not have realized:

- 81% of people look at it the day they get it, even if they discard it.
- 79% think direct mail is more convenient than email because they don't have to go online to see it.
- 75% open direct mail.
- 40% of campaigns with direct mail succeed in acquiring customers, and 27% sell more goods than campaigns without it.
- 38% of recipients respond to how well the mail has been done. Something of good quality reinforces the brand.

Unfortunately, gifts can also be complicated. An inappropriately expensive gift, a low-quality gift or a gift that offends someone can all cause damage.

Keep in mind; a gift is not the same as an incentive. There are no preconditions; if someone has to reach a goal to get something, then whatever they get is a reward and not a gift. If it is part of an agreed-to benefit package, it is also not a gift.

Gifts from an organization can be divided into two kinds: those for customers or potential customers and those for employees.

Start with potential customers. Inexpensive gifts are often handed out at events or in return for someone's email address. At a convention, a company might choose to give away all kinds of branded merchandise to whoever stops by the company's booth: caps, hoodies, stationery and even bottles of water are all possibilities. In exchange for an email address, it's common for companies to give away digital goodies such as short books, informative infographics or white papers.



Many conventions have been postponed, canceled or moved online. That doesn't mean you can't give gifts to potential customers:

- Allyoop, which sells beauty and body care products to women, sends gifts before scheduled phone calls and as part of their direct mail. Connect rates for calls and completion rates for meetings both increased 20%, the reply rate for direct mail went up to 45% and the conversion rate increased to 25%.
- AlterG, a medical device company, sends potential customers an Amazon gift card and a custom tumbler after a sales call. The campaign's ROI was 434%, and the pipeline value of the 34 new opportunities this campaign created was more than \$1 million.
- LiveRamp sent gifts along with direct mail invitations. Response rates were more than 30%, response time decreased 90%, and conversions to meetings from cold contacts increased 35%.

For longterm customers, you might want to choose a gift that is better than swag but not expensive enough to break any rules. It should also be clear that you are only saying thank you and have no expectation of special treatment in return. Many organizations have limits on how big a gift can be. For example, a basket of food or dinner and a show might be acceptable, but not if either one is unusually expensive. An association magazine subscription is a surprisingly good gift because it is direct mail, and people like getting direct mail. More than that, it helps you strengthen your relationship with association members.

Employee gifts can be used to retain your best employees and to keep morale high. Although it is vital to offer competitive wages and a good benefits package, and things like casual Fridays may also play a role, don't stop there. You could offer a business retreat for staff where you provide an enjoyable experience combined with team-building exercises. Give people a chance to complete pleasant and interesting group tasks that allow them to socialize outside their

regular departments. Provide lower-level employees and senior managers time to become better acquainted as they develop and share their skills and ideas.

Some companies allocate part of the budget so managers can reward exceptional accomplishments. They might reward employees who:

- Close an important sale
- Complete a training program
- Do a particularly good job with customers
- Have a milestone event to celebrate
- Put in long hours to complete a vital deadline
- Save the company money by suggesting an improvement

A gift card or a voucher might be a good gift in this situation. In a case where a group of employees achieves something notable, go for a group reward. That is admittedly trickier in a COVID-19 world where you can't just rent out a movie theater for the entire company or get everyone tickets to a sporting event, but come up with something that involves everyone. ◀

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# How Should Your Business Handle Anti-Mask Guests?

*A Five-Step Action Plan*





**A**s an increasing number of businesses begin to require face coverings in their facilities — whether as a result of a local legal mandate or in the interest of public safety — there has been a corresponding increase in the number of well publicized reports of customers and guests reacting in a belligerent, hostile or even violent manner after being asked to comply with mask rules. What should your business do to minimize the chances of such an incident occurring in your workplace, and what should you do if an anti-mask guest disrupts your business? Here is a five-step plan to address this unfortunate part of our new reality.

### **Step One: Understand That You Are Permitted to Require Employees and Visitors to Wear Cloth Face Coverings or Masks**

While many jurisdictions already require that businesses have their employees and any members of the public who enter their facilities wear masks, you may be wondering whether you can require masks if your jurisdiction does not have such a mandate in place. The answer is simple. As a private business, you can decide whether you allow customers or visitors onto your property if they are not wearing a mask. This is similar to the “no shirt, no shoes, no service” policy that you commonly see at businesses.

The Centers for Disease Control and Prevention (CDC) and World Health Organization (WHO) recommend the use of face masks or cloth face coverings as part of a comprehensive plan to help slow the spread of COVID-19. Face masks should be worn when employees or visitors will interact with other people. They are not the only method, but they are one of the strategies recommended by experts to slow the spread of COVID-19.

CDC guidance provides several exemptions indicating who should not wear masks: “Cloth face coverings should not be placed on young children younger than two years of age, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the cover without assistance.” And although you may have a policy or be subject to a state or local obligation to require facemasks, you may also have an obligation to accommodate the individual if doing so is possible. Taking a few precautions, as outlined below, will allow you to refuse entry to customers without masks.

### **Step Two: Be Proactive With Your Mask Policy**

Providing notice to customers, visitors, and guests of your mask requirement prior to their arrival at your business can help reduce confusion and prevent an uncomfortable situation. Personal service providers (such as spas and salons) and hospitality businesses (such as hotels and restaurants) should provide notice of your policy when confirming reservations. A simple message to visitors and guests is best, not only confirming the reservation but highlighting your efforts to keep them and your staff safe by sharing your social distancing and masks requirements. Posting notices on your public-facing website, apps, and social media platforms to notify visitors of your policy is recommended; you can also use

**continued** on page 22



It is always wise for your manager to avoid raising their voice and to refrain from physical contact. If the situation escalates, your manager should know to call on your own security personnel or local authorities in the same manner you would handle a trespassing situation.



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emails or texts as additional communication tools. You should post conspicuous signs in prominent places at your entrances. The notices should include a statement that you have the right to refuse entry or service to anyone not complying with the requirement, particularly where required by local law. Many jurisdictions, in fact, already require such signage.

Consider having a staff member stationed at the entrance to remind guests of your requirement. Many businesses, such as retailers, hotels and restaurants, have taken their policy a step further to offer masks to visitors when they enter. For hotel guests who will be staying for extended periods, have guests sign an acknowledgment of the policy with an agreement to adhere to it. Be specific about consequences — tell guests that they will be asked to put a mask on if they are discovered without one and asked to leave the property if they refuse to comply.

### **Step Three: Train Your Staff**

Your staff will be more likely to effectively enforce your requirement for masks if they understand why you have the requirement. Train your employees on all health and safety measures you are implementing, including the face mask requirement, and the reasons why you are implementing these measures. You should emphasize that these measures are for their protection as well as the protection of others that they interact with.

Educate your employees about your state or local government requirements, so they understand what is required and what is not. Additionally, because both OSHA and the CDC have included masks in their respective recommendations and guidance, requiring masks for both employees and visitors could help avoid an OSHA General Duty Citation or similar challenge by local health and safety authorities.

It is also crucial to train your visitor and customer-facing employees on how to politely request them to wear a mask. For example, consider something like, “Our policy is to

require all visitors to wear a mask. May I provide one to you?” If the guest refuses, communicate a clear procedure to your employees for how to address this unfortunate situation (Step Five provides suggestions).

### **Step Four: Reasonably Accommodate Visitors If They Have a Medical Condition**

Visitors may refuse to wear a mask by claiming they have an underlying health condition that prevents them from doing so. Although an individual may have a condition that makes it difficult to wear a mask (e.g., a pulmonary condition), it is highly unlikely the person is carrying a doctor’s note to that effect. Further, some state public health orders prohibit you from requiring medical documentation when this type of exemption is claimed. For these reasons, it is best not to require documentation from a visitor to support their request.

Even though you may have a policy or are subject to a state-ordered obligation to require facemasks, you may also have an obligation to accommodate the individual if doing so is possible. Instead of engaging in discussion with the customer or guest about whether they are exempt from your rule, consider whether you can offer an accommodation that would allow them to either access your business or your products/ services. Some examples could include curbside service, online shopping for products, or by letting them know they can enter your business at another time. You could also look into other alternatives that would not inhibit breathing, such as requiring your guests to wear a full, clear face shield.

However, it is important to recognize that accommodation recommendations are based on highly fact-specific analyses that need to take into account the medical condition of the guest, the type of business you are conducting, and any specific state or local laws that present additional requirements (or punish offending businesses with stiff monetary penalties). You will want to coordinate with legal counsel for clarity regarding general or specific situations that may arise at your place of business.



What if a visitor doesn't say they have a medical issue but instead presents a card or literature indicating that masks are unsafe? Social or political objections do not allow customers to refuse to wear masks. However, rather than engage in confrontations, it is best to remind a visitor of your rule and offer alternatives for how to access your business.

### Step Five: Delicately Deal With Visitors Who Refuse to Comply

If you've taken all of the steps above and you still have a visitor who refuses to comply, what do you do? A clear policy and training are key. Share the exact phrase you want your employees to use when dealing with an anti-mask guest, such as, "If you will not wear the mask per our policy, I have been instructed to contact my manager who will need to discuss this with you." If your frontline employee is unable to coax your guests or customers to comply, you should have a designated manager to handle the removal of a visitor. Do not ask or expect a non-management employee to handle the removal of a noncompliant visitor, guest, or customer. Instead, encourage them to immediately involve a manager.

That manager will need guidance on what your business wants to do if a guest or visitor becomes belligerent. The first step in such an unfortunate situation should be for the manager to meet the guest in a private location, share your policy, and, if applicable, the local/state ordinance or any acknowledgment the guest may have signed upon arrival or at the time of reservation. The manager should inform your visitor that they will be asked to leave if they continue to refuse to comply. If the guest does not cooperate, your manager should escort the

individual to the exit and inform them that they are welcome to return if they comply with the policy or when the need for a mask is gone. Where applicable, your manager should offer to reschedule an appointment or reservation.

It is always wise for your manager to avoid raising their voice and to refrain from physical contact. If the situation escalates, your manager should know to call on your own security personnel or local authorities in the same manner you would handle a trespassing situation. Regardless of how the situation concludes, your manager should immediately document the incident in objective, non-emotional terms. They should be instructed to provide the documentation to key personnel (human resources, legal, etc.) as soon as possible, and your business should retain the report in the event you are required to later demonstrate what happened.

### Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of our Post-Pandemic Strategy Group Roster. You can also review our FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers. ◀

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# Find Money by Sharpening Expense Management

Julie Becker-Myers, Director of Dealer Consultation, Ally Academy

**D**ealerships are learning on the fly how to manage greater market swings than previously imagined. One fundamental action you can take now — reducing expenses — can help strengthen your dealership's finances no matter what the future holds.

As you think through ways to manage costs and increase cash on hand, there are many places to look. As you take tighter control of your expenses, be sure to keep the following top of mind:

## Re-Evaluate What's Currently on the Table

Pausing to take a close look at your current expenses may be the most

meaningful action to shore up your finances. Different departments may have separate budgets and expenses, but have you considered how those costs might be more related than you think?

Don't just take a clean-sheet approach. Clear off an entire table and look at the physical bills to ensure that the product or service you're paying for is what's actually listed on the invoice. This exercise might seem time-consuming, but you may uncover some surprises — and subsequent savings.

## Who's in Charge? Oversight Is Key

Depending on the size of your dealership, you may have different managers determining what the

essential expenses are for their departments, while someone else is responsible for writing the checks and balancing the books.

The table-top exercise of reviewing all your bills may involve several staffers, but oversight is key. You know where the buck stops and someone who understands the big picture has to make difficult choices, prioritize expenses and identify savings.

## Don't Pay Twice for the Same Service

You might be surprised to find you're paying two vendors for the same service. Ask your trusted vendors about their full range of services and consider streamlining suppliers and



bundling services for a lower price. Simple things to manage include software programs, dealer management systems, and memberships. When was the last time you renegotiated these contracts? While reviewing contracts, it's good to check cancellation policies in case you need to make changes quickly.

### Adapt for the Times

As you scan your invoices, you may also find that you're paying for services that you don't currently need while facing new pandemic-related costs — like enhanced cleaning. One way to combat this is by pulling the cost from areas of your business that might not be as critical. For example, food and beverage in your waiting room may have been important in the past, but a better investment today may be the trust that comes with a clean dealership.

### Restart the Engines and Look to the Future

After having a better understanding of the current state of your finances, develop a plan that can continue to grow with you well beyond the pandemic. Reviewing your expenses at a set time every year — or even every month — can help you continue to build strong financial habits for your dealership and keep your budget from slipping through the cracks.

When your dealership is making money, it's easy to get too comfortable. The current economic environment should remind everyone that effective expense management might



The table-top exercise of reviewing all your bills may involve several staffers, but oversight is key. You know where the buck stops and someone who understands the big picture has to make difficult choices, prioritize expenses and identify savings.



seem like a simple task during the good times — but can be crucial to how a business survives a difficult stretch. Use the next few months to establish strong expense management practices to help protect your business be ready for any opportunities that may lie ahead. ◀

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# Business Interruption and Related Insurance Considerations During the Coronavirus Pandemic

Julie A. Cardosi, President, Julie A. Cardosi, P.C.

**M**any business owners have become increasingly frustrated by disputes during the coronavirus pandemic with their insurance companies over whether their commercial insurance policies and business interruption insurance coverage extend to certain business losses. As a result, there is a significant uptick in litigation against insurance carriers by businesses whose claims include that their insurance policies cover losses sustained from state and local closure orders (“shut-down” or “stay-at-home”) during the pandemic.

Generally, businesses assert that their policies should cover their business losses from pandemic-related closures. Insurers disputing coverage, however, assert that the policies only cover losses sustained due to direct physical damage to property and not to losses incurred from business disruption due to the public health crisis brought on by the pandemic. Additionally, some policies contain exclusions for losses resulting from viruses or pathogens, emboldening insurers to argue the general commercial property terms were not meant to cover these losses.

In some cases, businesses have attempted to argue that the presence of COVID-19 on their properties caused them to close to sanitize and disinfect, resulting in direct physical harm to their properties. Others have asserted that government-mandated

shutdowns have directly and negatively impacted their use of their properties. These claims, however, have resulted in varying outcomes at procedural stages, with few dispositive rulings on the merits. How courts will ultimately rule in these cases remains uncertain.

Dealerships should thoroughly review their insurance policies and related coverages. Many dealerships may find that their commercial property insurance policy provides coverage to offset their lost income and extra expense under certain coverages, such as business interruption, civil authority or extra expense.

Business interruption coverage generally covers a company’s lost profits and certain continuing expenses following a covered loss (e.g., fire causing business to be closed for repairs). Such coverage might pay for the company’s loss of earnings or certain continuing expenses until the business reopens. However, as noted above, coverage issues for this type of insurance arise because many policies cover lost profits and continuing expenses attributable, for example, to “direct physical loss or damage” to “insured property” at the “insured premises” caused by a “covered cause of loss.” These terms should be defined in the policy. If the policy contains a requirement that the loss is due to a “covered cause of loss,” some specific covered causes of loss may be listed (e.g., lightning, fire, etc.). Other policies may





cover “all risks” of loss. As relates to COVID-19, it may be easier to obtain coverage under an “all risks” policy than one that covers specified causes of loss.

If the dealership’s policy includes civil authority coverage, it may extend to loss of earnings and certain continuing expenses when a civil authority prohibits access to, ingress to or egress from the place of business because of a covered cause of loss, within a certain distance of the place of business and subject to certain time limits for when the coverage begins and ends. The policy may include extra expense coverage which generally covers extra expenses (e.g., cleaning/disinfecting expenses). Extra expense coverage may depend on whether the expenses result from direct loss or damage to covered property.

Many policies include exclusions for viruses, pathogens, etc. Whether such exclusions apply, however, will depend on the precise policy language. Such exclusions may be the subject of legal challenge. Some argue that exclusions that do not explicitly refer to viruses should not be used to exclude or deny coverage. In a related challenge, a virus is also not a “pollutant,” “bacterium” or “fungi” for purposes of excluding coverage, and businesses might consider challenging exclusions or coverage denials under policies that do not specifically exclude “viruses” or “pathogens.”

Whether the dealership is able to fully decipher the parameters of its coverages, policy provisions and exclusions, if the business reasonably believes it has a claim for coverage for losses sustained as a result of forced closure during the pandemic, it is important to provide prompt written notice of such claim to the insurer to avoid denial of coverage based on lack of timely notice. Businesses should consult with their agents and counsel regarding questions of coverage.

More needs to be done in this area to protect businesses. Lawmakers in several states are considering requiring insurers to cover business interruption losses related to COVID-19 regardless of policy exclusions or physical loss requirements, including relief for businesses that had policies in place at the onset of the pandemic, with reimbursement incentives for insurance companies. ◀

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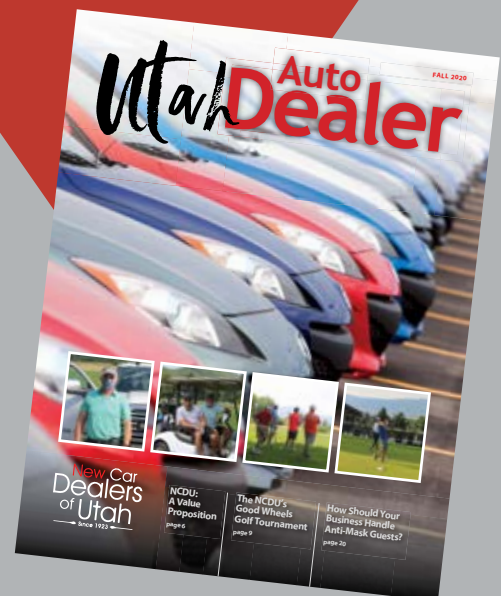
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