

# SouthWestern Flash

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## Upcoming Events of Interest

### Dealers of Tomorrow Workshops:

- Oct. 14-15 - San Antonio, Tex.

### SouthWestern Association Convention

- Feb. 19-20, 2009  
Kansas City, Mo.

### Western Farm Show

- Feb. 20-22, 2009  
American Royal Complex -  
Kansas City, Mo.

*Mark your calendar and plan to attend!*

#### SouthWestern Association

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## Dealership Development

### Dealers of Tomorrow - Set For Oct. 14-15 in San Antonio

**M**ark your calendar and make plans now to attend the 2008 Dealers of Tomorrow Seminar scheduled for Tuesday-Wednesday, **October 14-15, in San Antonio, Texas.** These programs are planned by dealers for dealers with the goal of providing education today to prepare your key personnel for leadership tomorrow. This workshop is for owners, mid-level managers, department managers, and key dealership personnel, and will teach participants how a dealership's operating approach and employee attitudes can affect the dealership on a day-to-day basis and impact its future success. Consider bringing several staff members so they can share ideas and return to implement them at your dealership.

### Dealership and Department Development

This year's programs will focus on two distinct but related half-day programs presented by **John Spader**, of Spader Management Group. John Spader has worked closely with individual businesses in a variety of industries located in several countries as a small business management resource provider and Spader 20-Group facilitator. He is one of the primary instructors of the popular Total Management Workshop and also presents various other workshops and seminars related to business management.

The two programs will be *"Four Key Stages of Dealership and Department Development"* and *"Hiring, Managing and Developing People for High Performance."* "Four Key Stages" is a higher-level viewpoint of the dealership and its departments, designed to help people step back and look at the whole dealership or department from a strategic point of view. Its focus is on understanding where you are now, where you want to go and how to get from here to there.

One of the assessments in this session provides the key questions and benchmarks to evaluate when deciding if the dealership should focus on stability or growth, including the roadmap to growing a balanced and sustainable business. This program will include strategies to deal with communication issues in a multi-store structure to help employees provide a consistent level of service to customers.

### Focus On Your People

The second half of the training, "Hiring, Managing and Developing People for High Performance" will focus on the most important component of your dealership – your people. In this action-packed half-day, we will use case study employees to illustrate the powerful Hiring and Developing Winners (HDW) Process developed by Dr. Michael O'Connor.

We will review how dealerships have traditionally created job descriptions and conducted performance reviews. Then, we'll learn how to implement the Hiring and Developing Winners process by completing a HDW-based performance evaluation on the same case study employees.

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## Dealers of Tomorrow

Continued from page 1

The programs are presented by Federated Insurance; other sponsors are: High Plains Journal, NAEDA Financial, Ltd., Fastline Publications, Equipment Insurance International (EII), IRON Solutions, LLC, and DIS. Program details have been mailed and posted to the SWA web site – [www.swassn.com](http://www.swassn.com).

Plan to attend this informative program in either location. You'll learn the skills and concepts you'll need to take you to the next level. And, you'll have the opportunity to meet and network with other dealers/managers like you. "Dealers of Tomorrow" is a special initiative of SouthWestern Association. The mission of the Dealers of Tomorrow is to provide education for the next generation. Be a part of this exciting program. For more information, please call the Association office at 800-762-5616.



John Spader

## Just Say No To Employee Litigation and Yes to ADR

By Kelly C. Dykes, President Essential Corporate Solutions, Inc.

We are the most litigious society in the world. Americans will sue each other at the drop of a hat over just about anything.

This is certainly true in today's workplace. Every employer is a stationary target for a lawsuit and every employee has the potential for pulling the trigger. One well-aimed shot can bring a company to its knees. Many employers, of all sizes, have gone to great lengths to lessen the incidence of employee lawsuits.

They have sought counsel to craft hiring practices as well as implemented concisely written personnel guidelines. Also, employers are purchasing employment practices liability insurance at a growing rate to fund legal fees and settlement costs or jury awards.

Yet, even with these safeguards in place, the core problem remains – the employer is still susceptible to litigation. The symptoms have been addressed but the disease goes uncured.

*Continued on next page*



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- Toolchex can reduce payroll costs and premiums based on total payroll (workers' compensation, shop owners liability insurance, general liability insurance, etc.).



### Helping Dealers Succeed.

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"Thanks to my employer for providing Toolchex as an employee benefit. It has made a big impact on my take home pay this year."

Luis Navarro Technician

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## Just Say No to Employee Litigation

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### Time and Cost

The average time to settle a suit in the state court is 2 ½ years and legal fees average about \$70,000 per side. If action is brought in federal court, the average time to settle is four to five years with a cost of \$100,000 to \$150,000 per side. These fees are over and above any settlement or jury award.

When a defendant in a lawsuit is an individual, the phrase “jury of one’s peers” is often an accurate description. However, when the defendant is an employer, the jury is best described as a “jury of employees.”

### According to the Council on Education in Management:

- In 2007 the EEOC collected over \$300 million in monetary benefits for employees.
- The average jury award for wrongful termination lawsuits has risen to \$1.8 million.
- The average cost to settle an employment lawsuit is now \$300,000.
- The average cost of one hour of legal advice on employment issues is \$300.
- Plaintiffs are winning over 70% of employment lawsuits.
- Employment litigation makes up 30% of all civil litigation.

### Solution

Employers can help eliminate employee lawsuits by establishing an alternative dispute resolution (ADR) program. With ADR in place, the employer is insulated from court action involving, but not limited to: Title VII, wrongful termination, sexual harassment, American with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act and employer negligence. Any and all disputes are settled via mediation and arbitration not litigation.

The advantages of an ADR program, directed by a third party entity (ensuring fairness), are numerous. Disputes are settled in months, not years; deposition and interrogatories are strictly limited; settlement is usually reached in-house prior to outside mediation or arbitration; settlements can be deemed confidential thus negating adverse publicity; legal fees are drastically reduced, if not eliminated entirely; and costly, time consuming appeals are eradicated.

### Employee Rights

An ADR program often begs the question, “Am I asking my employees to give up their rights because they cannot go to the courthouse?” and “Is this legal?” The answers are: No employee is giving up any substantive right he or she would have in a courtroom, and ADR has been upheld in courts

across the country, up to and including the U.S. Supreme Court.

The Federal Arbitration Act of 1925 is the cornerstone of ADR, superseding arbitration law in every state. A well-designed ADR program not only makes sense for the employer, it is also an employee benefit. Would a person want to work for a company where the only resolution to a problem is quitting and/or suing? Wouldn't that person rather work for a forward-thinking company that has a program in place designed specifically to quickly and fairly resolve the problem in-house?

Many Fortune 500 companies have chosen ADR to help control employee disputes and reduce their exposure to costly litigation. ADR brings common sense, fairness, economy and communication to bear in settling a dispute. What company would not want to embrace ADR?

SouthWestern Association recommends Essential Corporate Solutions and Dispute Solutions, Inc. for ADR Services. You can contact Kelly Dykes at 800-880-1722 or 972-485-5135. Their web site address is “<http://www.dsi-adr.com>”

## Disaster Relief Assistance Needed

### Contributions to Disaster Relief Fund Requested

SouthWestern Association is joining the North American Equipment Dealers Association to request contributions for the Equipment Dealers Foundation (EDF) Disaster Relief Fund.

Contributions to the fund are desperately needed to meet some of the immediate financial needs of dealers and their employees in areas on the Gulf Coast recently affected by devastating hurricanes and the widespread flooding caused by torrential rains in the Midwest. The SouthWestern Association, NAEDA and its other 17 affiliated dealer associations created the EDF Disaster Relief Fund to provide grants to dealers and their employees who suffer losses from weather-related or natural disasters. Since the fund was established in 2005, dealership employees in seven states have received EDF grants. Please make a generous contribution to the EDF. If paying by check, please make your check payable to EDF Disaster Relief Fund and mail to:

**EDF Disaster Relief Fund**

**1195 Smizer Mill Road**

**Fenton, MO 63026-3480**

**Phone: 636-349-5000 - Fax: 636-349-5443**

*If you'd like to pay by credit card, call NAEDA at 636-349-5000.*

## Farmtrac Receivership and Failing Manufacturers: Lessons Learned – Part 1

In February of this year, the General Court of Justice, Superior Court Division in Edgecombe County, North Carolina placed tractor distributor Farmtrac North America, LLC in the hands of a receiver for the purpose of liquidating the company and paying its creditors. That appointment immediately diminished the value of inventory held by 285 Farmtrac dealers and, at least temporarily, made selling Farmtrac equipment illegal in many states because dealers could not provide warranties. Some dealers have been forced out of business; many others are just barely holding on.

It does not appear that Farmtrac is going to be an isolated situation. We are fielding more calls regarding other manufacturers who leverage dealer creditworthiness to obtain funding from their lenders and even entice dealers to prepay for equipment as a way to offset current shortfalls in revenue. With a lagging economy and continued drought conditions in large portions of the country, these schemes are likely to be repeated in any number of variations. This article discusses some of the warning signs that are common for fiscally distressed companies.

### Warning Signs

While the Farmtrac receivership was a surprise development, there were warning signs at least two years prior to the receiver's appointment. For instance, Farmtrac changed its system for reimbursing dealers for warranty work. Payments were slower, some warranty work became a credit on dealer parts accounts and some were never accounted for. Further, Farmtrac started delivering equipment that had not been

ordered. One dealer ordered a single tractor and seven were delivered. Other times, equipment was delivered so it could be taken to a show, but the equipment was never retrieved. Farmtrac used a variety of stories to get equipment on dealers' lots including the brutally honest statement that equipment needed to be moved to allow Farmtrac to make payroll.

*Continued on next page*



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## Farmtrac Receivership

*Continued from page 4*

We have seen a number of tactics used by cash-strapped manufacturers to try to raise money at the expense of dealers. For instance, Farmtrac promised dealers that equipment delivered would be free of interest charges and would never become due. Farmtrac would then be paid the full invoice price by the floor-planning company. Another company offered significant discounts for pre-paid inventory to be delivered months later. Yet another tactic involved moving unsold equipment onto dealers' lots as "distribution" points to other dealers. In all of these instances, manufacturers were able to obtain funds that would not have been available if the dealers simply ordered based upon their inventory needs. Now, some dealers who prepaid inventory purchases have not received the promised equipment and other dealers who were not supposed to be responsible for interest and other charges are being pursued by the floor-plan providers.

There is a particular problem for dealers when the floor-planning companies pay full invoice price for equipment sent to a dealer. The manufacturer's primary incentive is to place equipment on dealers' lots. Once that happens, the cash-strapped manufacturer is paid in full and has no real incentive to get the equipment in consumers' hands. Floor-planning companies benefit from collecting interest on equipment on dealers' lots, so they too have little incentive to attract consumers. In the end, when a floor-planning company pays the full invoice price to the manufacturer, the only party whose primary goal is to sell to consumers is the dealer.

Dealers are also harmed by a floor planner's payment of the full invoice price, because the invoice price does not reflect the true value of the equipment. Indeed, almost all equipment is sold based upon manufacturer/distributor incentives. For instance if a piece of equipment is invoiced for \$40,000 but there is a \$4,000 manufacturer's incentive with that equipment, a dealer is upside down in its floor plan account the very minute that equipment is delivered. The "true" price is \$36,000 but the floor plan account statement reads \$40,000. This automatic negative equity is magnified when a manufacturer goes out of business because equipment is devalued further with no manufacturer to stand behind the equipment.

When floor-plan financiers pay 100 percent of the invoice price, dealers are billed over and above what the true value of the equipment is at the time of sale. Floor-plan companies know this and are willing to force dealers to accept the unnecessary risk that comes with it. This allows financing companies to charge additional interest while they have mitigated their own risk by placing these charges on dealer accounts to spread the risk. In essence, floor planners who pay manufacturers

based upon invoice price rather than actual price increase profits and diversify their risk to the detriment of dealers.

Dealers also need to pay specific attention to how charges are placed on dealers' accounts because dealers can be harmed if they do not control their own borrowings. Some loan programs allow manufacturers to place equipment on a dealer's account even though the equipment was never intended to be part of the dealer's inventory. For instance, sometimes dealers are asked to repair equipment that has been on other dealers' lots as a service to the manufacturer. Those dealers' accounts are later changed to include the equipment that was being

***We have seen a number of tactics used by cash-strapped manufacturers to try to raise money at the expense of dealers.***

repaired. At other times, equipment is delivered to a dealer for use in a show or as a staging area before being shipped to a final destination. Even though this dealer may not have intended to sell this equipment or accept it in inventory, the dealer's account is changed to

include this equipment. As a result, many dealers end up with accounts that do not reflect the dealers' true inventory and are more representative of a manufacturer's decision than a dealer's decision.

## Relationships

Knowing how dealers have been harmed in such instances is instructive for other dealers to avoid a similar fate. The level of risk to dealers is often related to the relationship between the manufacturer, its lender and the floor plan provider. The least risky arrangement is when a manufacturer actually provides the floor plan to dealers. In this scenario, manufacturers have an incentive to help dealers sell equipment to free up capital involved in the floor planning. More importantly, dealers are protected by buy-back statutes to a far greater degree. Floor planning from manufacturers is not, however, without its own set of issues. Many manufacturers who provide floor planning may also require reserve accounts that limit dealers' access to funds. Further, the standards for obtaining a dealership may be higher than the standards for third-party floor planning.

The mid-level for dealer risk is when floor planning is offered by a third-party but the floor-plan company does not provide any lending to the manufacturer. This independent floor planner does not have the same incentive to transfer debt owed from a failing manufacturer onto the backs of dealers. Because the floor plan is the only focus of the lender, there is also less risk that a manufacturer will be given more control over the account than the actual dealer. The down side is that most state buy-back laws do not apply to a third-party floor planner absent some unusual circumstances involving fraud or where a floor planner extends actual or apparent authority

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## SouthWestern Association Online Campus

**S**outhWestern Association has introduced a new program, The SouthWestern Association Online Campus. This program makes it possible for dealers to train their entire staff quickly and efficiently without ever leaving the dealership.

Programs can be used for training, coaching, refreshing learning, performance support, promotion paths and meetings. These courses are available on your computer 24 hours a day, seven days a week. Members purchase a subscription to the SouthWestern Association Online Campus. (Pricing is based on the number of employees at all your locations.) Then, all your employees will have access to the campus materials. We'll issue a unique password to each staff member. SouthWestern Association will help you set up a curriculum for new hires or specific positions.

### Proven Results

Real companies similar to yours have shown outstanding results by using online campus technology. One company with 175 employees got these results over an 18-month period:

- Increased sales and profits
- Reduced product returns by 10%
- Improved customer and employee satisfaction
- Reduced employee turnover by 33%
- Reduced training costs
- Compliance with state and federal law

For more information about the Online Campus and other workforce development opportunities through SouthWestern Association contact Nikki Bloemendaal, SouthWestern Association Director of Education at 1-800-762-5616 or e-mail at [nicole@swassn.com](mailto:nicole@swassn.com).

## Technician Training Program

SouthWestern Association has partnered with the OSU Institute of Technology in Okmulgee to establish a technician training program for equipment dealership technicians. Students enrolled in the program are sponsored by equipment dealers in the SouthWestern Association territory. For more information on the program contact: Nikki Bloemendaal 1-800-762-5616; Tag Webb, SouthWestern Association Regional Manager - 918-232-2830; Steve Doede, OSU Institute of Technology Dept. Chairman - 918-293-5392 or Jeff Flora, CEO, SouthWestern Association, 800-762-5616.

## Farmtrac Receivership

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to the manufacturer to make promises on the floor planner's behalf. Then, a dealer may be stuck with equipment that has lost value because of the demise of the manufacturer and still owe full invoice price to the floor-planning company.

The most risky alternative involves the same lender financing a manufacturer and floor-plan programs, particularly if it is a captive program. Any lender that is unwilling to compete for your business is not worthy of your business. Further, in this scenario, only dealers have any real incentive to sell equipment to consumers. Any program where the lender has an incentive to move debt onto dealer accounts as a way to minimize the risk of loss because of a financially troubled manufacturer poses a risk that many find unacceptable. Some dealers are better served to reject the captive floor-plan program and terminate the dealer relationship. The simple fact is that too many dealers do not appreciate the power they have to simply say, "No." Sometimes, better terms are offered; sometimes, better terms are not forthcoming, but the dealer is still better off by avoiding a bad deal.

*This article was written by David E. Shay, attorney in the firm of Seigfreid, Bingham, Levy, Selzer & Gee.*

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# Overhaul your dealership's freight expenses

Reduce fuel surcharges and save on LTL shipments

BY KEITH KORHELY



Simply, a freight shipment that normally costs \$1,380, would cost \$496.80 through the NAEDA Discount Freight Program.

**D**EALERS, like most consumers, are continually looking for ways to stretch their dollars a little further, including spending less for services that are subject to spiraling costs.

Enrolling in and using the money-saving benefit programs offered by NAEDA and its affiliated associations is one way to immediately help your bottom line.

The NAEDA Discount Freight Program is one of NAEDA's benefit programs that can really make a difference. This member benefit – which offers free enrollment, and features no minimums, no obligations, and no catches – is a simple program that can save you real money and add dollars directly to your bottom line. How much? **Dealers have saved more than \$5.4 million dollars since NAEDA rolled out the program at the end of 2003.**

By using the NAEDA Discount Freight Program, dealers not only save on their shipment charges, but also on skyrocketing fuel surcharges, which have been increasing month over month. The average fuel surcharge today is 38 percent and there is no apparent end in sight.



## How you save

How can you save on fuel surcharges using the NAEDA Discount Freight Program? Assume your base LTL (less than truckload) shipment costs \$1,000. Factoring in the program's discount of at least 64 percent, the adjusted shipment price becomes \$360.

Your discount also includes 64 percent off the fuel surcharge. This means the fuel surcharge would be calculated on the \$360 discounted association shipping rate rather than the \$1,000 undiscounted price. As noted earlier, fuel surcharges currently average 38 percent. Calculating the fuel surcharge on the discounted rate brings down the fuel costs to \$136.80 instead of the base rate fuel surcharge of \$380 normally assessed on a \$1,000 base shipping rate.

Simply, a freight shipment that would normally cost \$1,380 (\$1,000 base shipping rate plus the 38 percent fuel charge at \$380), would cost \$496.80 through the NAEDA Discount Freight Program. ■

## To enroll in the NAEDA Discount Freight Program and start saving today:

- Log on to [www.partnership.com/24naeda](http://www.partnership.com/24naeda), or
- Visit [www.naeda.com](http://www.naeda.com) and click on Discount Freight Program under Partner Programs on the main menu.

The NAEDA Discount Freight Program is administered by PartnerShip LLC, in Oberlin, Ohio. PartnerShip is an endorsed provider of NAEDA.

KEITH KORHELY is program manager for PartnerShip LLC, and the sales and marketing coordinator of the NAEDA Discount Freight Program.

# Answers From AgCareers.com

*Using the AgCareers.com and SouthWestern Association Partnership for Recruitment*  
*AgCareers.com is the leading online job board for agriculture, food, natural resources and biotechnology.*

## What's Included:

- Free online job postings – 41 association members are currently using AgCareers.com and receiving an average of 231 views per job
- Search AgCareers.com resume database – more than 450 new resumes added each month.

**Recognition is the number one way to motivate staff and has long-lasting power on employee engagement.**

## Simple Ideas for Recognition:

- Say “Thank You”
- Praise and identify specific actions that you appreciate
- Recognize an employee for a job well done in front of co-workers
- Take an interest in your co-workers interests outside of work – family, hobbies, weekend plans

## Make the most of performance reviews.

### Tips to Motivate Employees through Performance Reviews

- Don't use the review to shock your employee – the review should be used to reiterate the positives and constructive criticism discussed throughout the evaluation period.
- Prepare – Review past reviews, collect thoughts, and gather feedback from others (if necessary).
- Keep an open dialogue throughout the discussion and outline next steps.
- Ask for feedback from your employee.

For more information contact your AgCareers.com rep, Beth Hales, by email: [beth.hales@agcareers.com](mailto:beth.hales@agcareers.com) or phone: 800-929-8975 and mention you are a SouthWestern Association member dealer.

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## Equipment Industry Associations Urge Congress to Extend Capital Investment Incentives

The North American Equipment Dealers Association (NAEDA) is one of five equipment industry associations urging Congress to approve an extension of the capital investment incentives in the Economic Stimulus Act (ESA) of 2008.

In a letter to congressional leaders, NAEDA is calling for a one-year extension of the 50 percent bonus depreciation and increased expensing levels in Sec. 179, which are included in the ESA, before they expire on Dec. 31, 2008.

The letter to Reps. Charles Rangel (D-NY) and James McCrery (R-LA) and Sens. Max Baucus (D-MT) and Charles Grassley (R-IA) was cosigned by NAEDA and the other organizations following a meeting in St. Louis where they discussed the need to push for an extension of ESA business incentives to stimulate economic activity.

“One association study found that one-third of its members used ESA incentives to purchase equipment in

2008,” said Paul Kindinger, president and CEO, NAEDA. “Others, however, who have been holding off on making purchases because of downturns in housing and higher energy prices, indicated they would be more open to investing in equipment next year if the ESA were extended.”

The American Rental Association (ARA), Associated Equipment Distributors (AED), Association of Equipment Manufacturers (AEM), and the Farm Equipment Manufacturers Association (FEMA) cosigned the letter.

“We believe a coordinated push to extend the capital investment incentives speaks to the commitment of leading industry associations to ensure that American businesses – their members – don’t lose confidence in the economy,” added Kindinger. “Congress has extended needed relief to deal with mortgage issues. We are asking for an extension of benefits already in place.”

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Helping Dealers Succeed

It's our business to protect yours.®



*"The morning after the storm hit, our Federated representative was there, right by our side. From the ground up, Federated is a professional organization, and when you experience a claim like this, it's important to have the right people doing business with you. Federated stands behind the clients they sell to."*

*Kelly Estes  
Bucklin Tractor Implement  
Greensburg, Kansas*

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