



Out of Trust and Workout Advice

By: John Pico*, BA, JD

"I am not concerned that you have fallen; I am concerned that you arise." - Abraham Lincoln

YOUR BEST BESTS IF YOU FIND YOURSELF IN TROUBLE

Rule Number 1: When the ship is sinking, don't pray. Act.

Action is what determines success. Either you are going to act and decide, or the bank will act and decide for you. In 40-years we never met a dealer that liked the decisions the bank made for him.

You will never know the problems you avoided by acting immediately. Winners act while losers sit and think about their fate.

Rule Number 2: Do not confuse motion and commotion.

Just because you spent 18 hours at work, does not mean you did something constructive. There is a vast difference between "motion" and "commotion." Generally, working harder at what you are doing will not help you because it is likely that what you are doing is what got you in trouble in the first place. You need something different. If you could of thought of the right thing to do without help, you would have done it and would not be in trouble today.

Therefore, the first thing you should do when you get in trouble is to realize that you got yourself there. That doesn't mean you are stupid, it means you made mistakes.

It is easy to blame those mistakes on someone or something else; but, if you are the captain of the ship, it was your responsibility to avoid them. – Many dealers do not understand that.

Remember: "Chaos isn't dangerous until it looks orderly." – A Zurich Axiom.

Rule Number 3: Get the best advice you can, as fast as you can, from the most experienced people you can find.

Many patients have died because they were going to wait for a cough or a lump to go away. Likewise, many a dealership died because the dealer was going to "weather the storm" alone.

When a dealer is in trouble, pleas such as the following are typical.

"I'm upside-down \$8 million dollars, but if you can just get me a loan of \$500,000, I can work my way out of it."

The reality of the situation is: If you are upside-down \$8 million dollars and get a loan of \$500,000, the odds are that you will spend it and be upside-down \$8.5 million.

Consequently, if you really want to help yourself, remember the operative words of rule number 2: "most," "experienced," and "fast".



You want an advisor that has traveled this road hundreds of times before, and you want him in the seat next to you – immediately.

Rule Number 4: Do not look for “yes-men.”

This rule is more of an adjunct to rule number 3. You are looking for looking for someone with vast experience, but you also have to be sure it is not a “yes-man.”

It is natural to feel more comfortable with someone who agrees with you, but you must remember: Your goal is not to feel good; your goal is to get well.

I am sure that there were people in Custer’s company that egged him on and told him “You can beat those Indians George.” “Yeah, you can do it George. Go get ‘em George. They are only Indians.” – We all know how that fight ended.

Rule Number 5: Stay focused.

It is easy to get distracted by do-gooders, sympathizers and emails.

Responding to a non-relevant emails or phone calls will not help you out of your situation. If you get to the end of the email you are reading and it says: “pass this on”, then it’s too late. You have already lost your focus and wasted your time.

Write your goals on a piece of paper and carry them with you. Look at them in your spare moments. The practice will help keep you focused. And keep in mind that great discipline generates great strength.

If you don’t want to follow this advice, don’t worry about it.

You are supposed to go broke. We couldn’t have a top half of the class unless some people flunked and the fact that you did it your way and went broke just emphasizes the fact that the successful guys did it right.

Side Bar

Most upside-down situations can be resolved without filing for bankruptcy, no matter how bad the situation appears. Many of the remedies a dealer seeks in Bankruptcy Court can be accomplished cheaper and faster outside of bankruptcy.

We worked through a \$30 million overdraft for a dealer who subsequently owned other stores and we completed a workout plan for a dealer \$2 million out of trust, who then went on to be one of the top 20 groups in the U.S.

As unlikely as it may seem, both were assignments were accomplished without the dealer having to file a bankruptcy.

We have faced issues of double-flooring and a plethora of more complicated fraud cases, both on the part of the dealers and on the part of the dealers' employees.

We have completed wind-downs of dealerships, have staffed stores with interim management and have guided turn-a-rounds when dealers have been willing to listen. Sometimes, however,



the dealers refuse to change and the same attitudes that created their problems, also buries them and, like the captain of the Titanic, they go down with the ship.

- [Automobile Dealerships - Out of Trust - Tips for Lenders](#)
- [Automobile Dealerships - Out of Trust - Keepers](#)

If your dealership is upside-down and you need advice on how to survive the situation, we would be happy to talk to you, your lender, your attorney and your accountant.

As no two transactions are exactly alike, our broad experience enables us to adapt to complex situations where great damage could be caused by unskilled and less experienced consultants.

John Pico has served as the "Court Appointed Consultant to Debtor" in bankruptcy cases, the "Court Appointed Mediator" in automotive disputes, the "Court Appointed Arbitrator / Appraiser" in partnership disputes, the "Court Approved Consultant to Receiver" in a check-kiting case, as a "Superior Court Mediator" in dealership/lender litigation and has been recognized as an expert witness on both State and Federal levels throughout the United States.

See: [John Pico Publications & Certifications](#)

Mr. Pico has consulted on upside-down positions of over \$50 Million, out of trust positions of over \$4 Million and a bank overdraft of \$30 Million.

Mr. Pico authored the nation's first book on [Buying and Selling Automobile Dealerships](#).

- See Buying and Selling Automobile Dealerships, Volume I, Chapter 22 Out of Trust and Workouts
- See Buying and Selling Automobile Dealerships, Volume I, Chap 23 Consequences Of Being Out of Trust
- See Buying and Selling Automobile Dealerships, Volume II, Form 312 Sample Collateral Protection and Set Aside Agreement

Other Out of Trust Articles Authored by John Pico:

- [Automobile Dealerships - Out of Trust - Tips for Dealers](#)
- [Automobile Dealerships - Creating a Workout Plan](#)
- [Death of an Automobile Dealership - Checklist](#)

See our website for a sample Forbearance and Workout Agreement and sample Loan Extension Agreement

Two other interesting articles are:

- [Car Title Disputes Arising Out of Sales Out of Trust](#), written by Richard Tomalinson and published in the Journal of Texas Consumer Law, at page 141; and
- [Out-of-trust dealership group can sue auditor](#), written by Eric Freedman, Automotive News, August 20, 2007.

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