

TAA QUARTERLY

Volume 1, Issue 2

November 2013

TENNESSEE AUCTIONEERS ASSOCIATION



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Upcoming Events

December 1
Board Meeting
Annual Meeting
Grand Champion Auction
Competition

December 2
6 Hours of CE

This newsletter is published by the Tennessee Auctioneers Association as a service to its members and supporters in the auctioneering industry. Suggestions are welcome for articles in future editions.

Message From The President...

Dear TAA Members,

Well 2013 is coming to a close. Hope it has been a great year for all. The end of the year is always a good time to reflect on the past year and set goals for the coming year. Decide on the things that work and continue them and let go of things that didn't work.

The board has been working on just that as we look forward to a new year. The board will propose a change in the way the bylaws address the election of the president position. This will require a bylaw change and will be discussed in more detail during the December Membership Meeting and voted on in June. If you have any questions, please contact me, Elaine or David Cole. The president has always rotated between the divisions of the state and the proposal will be that the president can come from any area of the state with vice chairmen representing the three divisions of the state.

Hope everyone has marked on their calendar Dec 1st & 2nd for the TAA Winter convention in Nashville. Please be sure to bring an item for the fun auction. Christmas items are always a good sell in December as well as advertisement from newspapers, magazines, etc. We all have to advertise those auctions to get the buyers there. Justin Ochs is working hard to make changes in our bid calling competition to make it similar to the NAA competition. Please be sure you sign up auctioneers in your firm to compete.

We will welcome new members into the TAA Hall of Fame on Sunday night as well. Always exciting to see who has been elected to join this group of dedicated auctioneers.

I want to personally thank all the board members for their hard work this year. Everyone has stepped up to the plate and done a great job to make our association the best it can be. It is great to work with such a great team. It has been an honor and a pleasure to serve as your TAA President again. See you in December.

Rick Hinson

TAA ANNUAL WINTER CONVENTION

WHEN: Sunday and Monday, December 1-2, 2013

WHERE: The Inn at Opryland Hotel, Nashville, TN

DETAILS: Please visit our website, www.tnauctioneers.org, for registration.

Travel Channel's "Baggage Battles"

Music City Auction and auctioneer David Allen has twice played host to the Travel Channel's nationally-televised auction-reality show, "Baggage Battles" over the last several months. Representatives of the TV show searched the internet for various locations throughout the country to film an episode and came across his company while considering Nashville as a potential location. They contacted him in mid-June, and after several discussions, sent a repre-

sentative to observe one of his live auctions. The decision was then made to return in July to film at MCA's 3rd Friday of the Month Absolute Auction.

Representatives from the show, which began airing their third season in October on the Travel Channel, began arriving several days before the auction date of Friday, July 19. The cast consisted of 4 different "auction specialists"- Mark Meyer, Billy Leroy, Traci Lombardo and Sally and Laurence Martin. The auction hall, located in downtown Nashville, was "standing room only" as the cast and other Music City Auction attendees bid on everything from a vintage front end of a Pink Cadillac to an African Bridal Mask of the Bwoom Tribe to 1930s porcelain Coca-Cola signs. The "hook" of the show is that cast members also bid on several sealed boxes, not knowing their contents, and basing their bids on the appearance of the box (writing and other markings on the box, weight, shape, etc.). The absolute auction lasted about 3 hours, with approximately 300 lots being sold to highest bidder.

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The cast and crew returned and on October 18, filmed another 3rd Friday of the Month Absolute Auction, this time with the intent of editing the production into two episodes. Highlights of this sale were a "Mr. Peanut" costume and a "Carter the Great" 3-sheet magic poster. The "Mr. Peanut" costume sold for what is believed to be a record amount of \$2800 (plus the 10% Buyer's Premium).

Said Mr. Allen, "It's certainly an honor to be involved with something that puts a national spotlight on your business. I know my staff and I work incredibly hard to represent our consigners to the best of our ability, but I also take great pride in representing the auction industry as well. I believe that a good "live" auction is one of the best forms of entertainment going. Hopefully, that will come across in the show." Music City Auction is located at 114 George L. Davis Blvd. in Nashville and on the web at musiccityauction.net. Mr. Allen can be reached at 615-335-6261. (NOTE-The July taping debuted on Tuesday, October 28, 2013. The episodes from the October taping are scheduled to air sometime in 2014.) *Additional Picture on Page 6*

STATEMENT OF PUBLISHER

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FEBRUARY 1 APRIL 1
AUGUST 1 NOV. 1

Any and all TAA members are encouraged to send information on past or coming events they have conducted or news articles that would be of interest to other members. Please send profiles of members that you feel deserve to be highlighted in our publication.

RISK MANAGEMENT AND YOU

Some auctioneers believe they are next to immune to claims and liability. Considering the state of our society, I cannot imagine a thinking person having such a view. We live in an era when many people refuse to accept responsibility for their own conduct, while demanding strict accountability from everyone else. If this seems to be a ridiculous contradiction, welcome to the U.S.A. today.

When traversing dangerous territory, nothing is more important than exercising caution. Today, business is a danger zone that requires care at every turn. Those who enter had better know it and act accordingly. Those who do not might end up as another snack for the snake called "claims" and the beast known as "litigation." If you are one of those people who thinks you can skip past the cemetery without a worry, consider this.

An example.

A few years ago, a lawsuit was filed as a result of the auction sale of a number of paintings. The art had been sold by a decedent's estate. A collector purchased one of the paintings for \$1,200. The man believed the piece had been done by a nineteenth century artist whose work is now highly regarded. Following the auction, the buyer offered the painting for resale at \$385,000.

When the heirs of the estate learned that the painting may be quite valuable, they were very unhappy. Money, or the lack thereof, does that to many folks. The heirs sued the buyer claiming that the law required him to notify the estate, before the auction, of his belief that the painting was valuable. No, you did not misread read. That was the basis for their lawsuit.

So sayeth the court ...

Dismissing the heirs' suit against the buyer, the trial judge wrote:

"It is almost laughable to have expected (the buyer) to come forward at the auction begging to pay more for the painting."

Praise the lord for common sense and a reasonable decision. For auction buyers, this ruling was certainly good news. Innocent buyers should not have to fear legal liability because they were fortunate to buy what could be a treasure for a bargain price. That would be no deal at

all. While the judge dispensed with this suit, there was still more heat in that hot pot.

Auctioneer sued.

According to the news account, the heirs also sued the auction company alleging that it mishandled the sale of the paintings. This is called the "shotgun approach" to litigation. The plaintiffs sue everyone in sight in hope that some "pellet" hits and fells at least one of the defendants.

The heirs' action against the auction company was founded on different legal principles than the suit against the buyer. I did not see the pleadings, but it is safe to assume they alleged negligence, breach of fiduciary duty, and breach of contract – at a minimum. The auctioneer denied the allegations and the outcome was never reported. That points to a possible out-of-court settlement.

Three points.

This case stands for three very important points that I emphasize to every group of auctioneers and auctioneering students that I address on the issue of risk management:

1. The risk of claims against auctioneers is real.
2. Auctioneers need to work diligently to minimize their risk.
3. The amount of money involved in a transaction is an excellent barometer for the likelihood of a claim being asserted by one party against another.

Real Risk.

We live in a litigious society. Like former New York Yankee skipper, Casey Stengel, once mused to reporters (about some baseball point), "It's a fact and you can look it up."

Look anywhere in our legal system and you will find a lot of claimants, a lot of claims, a lot of litigation, and a lot of lawyers driving this litigation forward – and just as many lawyers on the other side defending against those claims. Claims and litigation are a big industry in modern America.

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Unfortunately, many auctioneers are in denial when it comes to their exposure. They seem to think claims are limited to other businesses and not theirs. The truth is that the risk of claims is every bit as real for auctioneers as for every other business.

Times change.

People are creatures of habit – auctioneers included. All of us establish a pattern within which we commonly operate and most of us are uncomfortable with change and resist it. So when business conditions change, many businesspeople do not – or at least not fast enough – and that can put them into the crosshairs.

As times change so do customs, rules, laws, and risks. Auctioneers must change, too. What auctioneers safely did 30, or 20, or maybe even ten years ago without a second thought might now be a substantial risk that should be avoided. Auctioneers have got to learn this concept of evolution

and remain vigilant and flexible. If they do not, it is open season on them.

Practice pointer.

From time to time, an auctioneer will describe a scenario and ask me if he does it and gets sued whether he will win in court. That is crazy talk. You might as well ask if a black mamba strikes will you beat the snake. Once struck with the claim, or bitten by the snake, the issue is not about winning – it is about survival. Even if you survive, think about the agony and damage you are going to suffer. Then you will see the importance of avoiding the bite altogether.

Here is a practice pointer that is money in the bank: Smart auctioneers do not attempt to beat claims and win lawsuits. Smart auctioneers run responsible businesses that emphasize legal compliance, ethical conduct, and risk management procedures which focus on claims avoidance. This is how to succeed in modern commerce.

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**John Stephen Proffitt III
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February 5, 2013**

Photos From the Past: Do You Know Who They Are?

Photos Submitted by Neil Trice



Auctioneers Attending Other Auctioneers' Auctions

Mike Brandly, Auctioneer, CAI, AARE

In the live auction business, do auctioneers attend other auctioneers' auctions?

They sure do.

I have traveled all over the United States as an auctioneer, and seen *all of the below* motivations to attend both our auctions and other auctions:

1. To assess prices and/or demand for the property offered.
2. To see how this other auctioneer operates.
3. To bid and buy like anyone else at the auction.
4. To offer the auction's auctioneer help if needed.
5. To talk with the other attendees or staff at the auction.
6. To be available for questions about his services or his upcoming auctions.
7. To actively solicit other bidders to hire him and/or attend his auctions.

It would seem to most auctioneers that:

- Reasons #1, #2, #3 and #4 are certainly acceptable.
- Reason #5 may or may not be acceptable.
- Reasons #6 and #7 are generally very inappropriate.

Let's take a closer look at reasons #6 and #7:

If an auctioneer is attending another auctioneer's auction to either "be available for questions ..." or "actively solicit business," then without the express permission of the auction's auctioneer, this is aberrant behavior.

For that matter, any material distraction from the auction at hand — and the property contained within — is detrimental to the seller's position. It would be a breach of fiduciary duty on the part of the auction's auctioneer to not put a stop to any actions causing injury to his client's position.

But, does this type of conduct take place? All the time, unfortunately. Here's some samples I've seen or overheard myself:

- An auctioneer interrupting the auction's auctioneer's opening announcements to announce to the crowd about *his* upcoming auction
- An auctioneer passing out business cards and/or fliers about *his* upcoming auctions
- An auctioneer telling bidders to "not buy that here" as he has one coming up at *his* auction
- An auctioneer openly discussing *his* upcoming auctions, and thus distracting bidders from the property at hand
- An auctioneer placing fliers on cars and trucks in the parking area, or parking *his* own lettered-vehicle nearby for viewing
- An auctioneer wearing promotional clothing, hat or other apparel to advertise *his* auction or *his* auction services

The clear common concept here is his actions are all about *his* auction, *his* property, *his* company ... and putting that in conflict with the auction's auctioneer's/seller's auction, property and company.

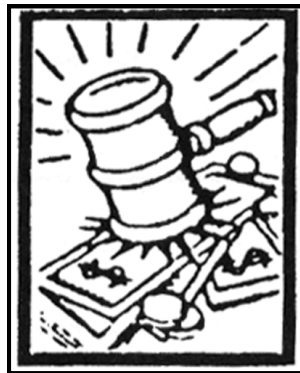
Certainly there are instances where an auctioneer will introduce another auctioneer in attendance, and invite him to announce about his upcoming auctions — or even ask him to bid call some. However, without this express invitation, such should be absolutely avoided.

For auctioneers attending other auctioneers' auctions — it is essential to remember who's auction that is — and who's auction it is not.

Mike Brandly, Auctioneer, CAI, AARE has been an auctioneer and certified appraiser for over 30 years. His company's auctions are located at: [Mike Brandly, Auctioneer](#), [Keller Williams Auctions](#) and [Goodwill Columbus Car Auction](#). His Facebook page is: www.facebook.com/mbauctioneer. He serves as Adjunct Faculty at [Columbus State Community College](#) and is Executive Director of [The Ohio Auction School](#).

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Reserve Auction vs. Absolute

I recently posed the following question to fellow auctioneers: “Has the *reserve* confirmation system of auctions decreased our buyer pool?”

The overwhelming response is that, yes, in fact it has. Why? You might ask, would the type of *auction* conducted effect the number of buyers that are interested in bidding on a given item.

Although several industries were effected by the economic downturn, we will use an example from the real estate auction industry. Leading up to the period before the market bust, 2006 to early 2007, *reserve* confirmation style auctions were being conducted successfully. Prices were soaring, and while evaluating real property by sales within a six month period, it was fairly reasonable to expect to exceed those values on *auction* day. Buyers had money to spend, or were dealing with financial institutions eager to lend the necessary funds.

We have all witnessed the aftermath of the market crash. Prices plummeted, lending tightened, and buyer spending froze. Tax appraisals once thought to be a fraction of what a property was worth, now were proving higher than current market value. During the market fall, *auction* agents were still booking real estate auctions under current price evaluations, not realizing that prices would fall further before the *auction* date would occur. Thus, resulting in “No Sales”, and reducing buyer confidence when buying at *auction*.

Put yourself in the position of the buyer, especially one who is deciding to spend a large amount as would be the case with a real estate investment. They spend weeks before the *auction* researching the property, perhaps talking with lenders and filing

loan applications, touring the property with family and friends and connecting emotionally to the home/land/business. On *auction* day they meet all of the terms and conditions and when the dust settles they are the final and high bidder! The next thing they hear is, “No sale. The *reserve* was not met.” This leaves a bad taste in the mouth of the buyer. Why take the time to invest physically, mentally, and emotionally in a transaction if I will be denied the right to own the property even if I am the high bidder? Thus, we are finding buyer pools are shrinking for *reserve* confirmation *auction* platforms.

Why would I choose an *absolute auction*? Isn't that the sale of my property regardless of price? Yes, you would be correct! *Absolute auctions* confirm to potential buyers that when all is said and done, if I am the final and high bidder, ownership of the property will transfer to me. There are no secrets, this is a transparent transaction that levels the playing field for buyers and increases competitive bidding. How can you be sure that you will achieve true market value for your property at an *absolute auction*? Take a look at the two largest, and most successful *auction* firms in the nation that adhere to the absolute auction platform.

Ritchie Brothers Auctioneers, the world's leading industrial equipment *auction* firm, has been conducting unreserved auctions since 1958. The company reports \$851 million in gross *auction* revenues during the first three months of 2011, 10% higher than the same period in 2010. Barrett-Jackson, The World's Greatest Collector Car Event, surpassed it's 2010 Scottsdale event with nearly \$70 million in total sales at the same event this year. In addition, 50% of the buyers who bought during the event were new buyers, and 45% of the consignments were received from new sellers. Barrett-

Jackson boasts that it sold more cars for more money than any other collector car event in the world.

I recently spoke with a buyer at a Ritchie Brothers *auction* in Nashville, TN. He stated, “You can buy something worth the money at these auctions, but you're not going to get a deal”. This lends itself to the fact that *absolute auctions* increase buyer interest, therefore generating greater competition for the item up for sale and increasing revenues for the seller.

Justin Ochs, CEO
Diamond Ochs Enterprises
Original Text:
<http://tennesseeauctioneer.com/blog/2011/reserve-auction-vs-absolute>

“Baggage Battles” Additional Photo



For the full article, return to page 2.

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Dates to Remember
Summer Convention
June 8-9, 2014

Plan to join us June 8-9, 2014 in Chattanooga. This is one week later than we normally have our event, but it will be the week of Chattanooga's Riverbend Festival. Come early and spend time at the festival, then join us for the convention. There are lots of things that you and your family can enjoy and participate in at the TAA Summer Convention at the same time. For photos and information from 2013 events, go to <http://www.riverbendfestival.com/>.

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