

National Association of Motor Vehicle Boards & Commissions

2007 Fall Workshop
Portland, Maine

MINUTES

Sunday October 21, 2007

8:30 Call to Order and Welcome

Roy Dockum, President of NAMVBC and Executive Director of the Oklahoma Motor Vehicle Commission welcomed attendees to the workshop and facilitated introductions of those present

8:50 Speakers and Presentations

Tom Brown, President of the Maine Auto Dealers Association

Thanked regulators for doing a tough job that is necessary for viable auto industry. Work is important and ever changing. Industry is dynamic; new challenges almost daily. Discussed how the changing marketplace results in a variety of issues and differing perspectives among dealers. In late 1970s in Maine, franchise law was introduced affecting new car & truck dealers. Since that time, additional laws were passed for RV and motorsports dealers.

The laws were designed to address issues such as: inventory, termination of franchise, succession of family members, warranty reimbursement, etc.

In the 90's, conflicts in legal system resulted in dealer disputes going in front of judges. A need was identified for a better way to address conflict. A board was created consisting of a chairman, 3 dealers, 2 members of the public and a manufacturer representative. Goals are improvement in efficiency, cost, and timeliness.

9:15 Kenneth Murphy and Aaron Jacoby - Venable LLP
"Motor Vehicle Boards and Dealer Education Programs; How They Can Work Together"

Discussion of changes in the motor vehicle sales and the regulatory environment
Marriage of regulation/enforcement and effective business practices
Education is cheaper than enforcement; protects customers.
Discussion of the incentives for training and consequences for not training. Positive results are seen when training is given.

There is an ever increasing number of laws and regulations

CONSIDERATIONS:

Issues dealers must be aware of;
Government investigations
Consumer complaints, lawsuits
Class action litigation

BETTER EDUCATION = BETTER ENFORCEMENT

Top Ten Class Action Claims

1. Backdating contracts
2. Negative equity and over-allowance
3. Payment packing (also rate, term, and leg)
4. Overcharging of government fees
5. Deferred down payment
6. Foreign language translation
7. Prior vehicle history
8. Single document rule
9. Advertising regulations
10. Local state "Legal Remedies Act" (or "Consumer Protection Act")

10:00

Morgan Filbey, Senior Counsel, Nissan North America

Several states have enacted or are considering legislation regarding warranty or sales incentive audits/charge backs

EXAMPLES:

Florida HB815, effective 7/1/07
Virginia HB2409, effective 7/1/07

Changes to statutes were not triggered by any changes in manufacturer processes. Actual reasons not clear.

Historically, payments have been made solely based on self-reporting by Dealers; manufacturers relied on Dealers' internal practices. Manufacturers spend billions each year on incentives paid to

Dealers based on information provided by Dealers. Audit is the only time manufacturers verify claims and payments made.

Incentives: Average per new unit retail (PNUR) is \$3,165. GM, Chrysler, Ford, Toyota, Honda, Nissan, and VW, paid out over \$44 billion in 2006.

Example: a manufacturer may provide a \$1,500 customer cash incentive on a specific vehicle sold during a particular month, and several months later, provide a \$2,250 customer cash incentive on that same vehicle. The incentives are based solely on the date of sale as reported by the dealer. If dealer provides false info, inappropriate amounts may be paid out.

RESULTS/PROBLEMS:

Undermines Nissan's incentive objectives
Negatively impacts competition
Negatively impacts consumer

Incentives are optional, but the marketplace makes them "mandatory" (i.e., consumers expect/demand them)

Warranty reimbursement is mandated by statute.

Discussion: Lessie House pointed out that manufacturers are licensees of the state and are entitled to assistance and protection under regulatory protocol.

Ken Murphy stated in certain instances, regional management or upper management may subtly encourage this practice to meet sales goals.

Bruce Gould encouraged manufacturers to work with regulators to identify fraudulent practices on the part of dealers.

Bill Jackson gave example of Hummer dealer who sold many units to fictitious names and addresses, and GM asked state to NOT take the license from dealer because he moved many units.

1:15

Brett Richardson, Director of Legal and Regulatory Affairs, National RV Dealers Association
CAFÉ Standards – impact on RV industry; trucks and SUVs
Hill-Terry CAFÉ alternative bill HR2927
FEMA Trailers – 150,000 trailers were purchased (45,000 from dealer lots)

Now these trailers are being auctioned off; reintroduced into market.
Formaldehyde issues – RV trailers are unregulated on
Formaldehyde. FEMA interim directive that it will not use travel
trailers in future.

Florida RV legislation HB7205 – may be future model to follow

RV STATUTES

Very inconsistent between states
Motor homes are covered in 48 states
Travel trailers are covered in about 25 states
RV specific legislation is cleanest

RV Statutory Challenges

Out of state dealers, reciprocity, contiguous state

Relevant Market Areas – some dealers have entire state

Failure of RV manufacturers to provide “written dealer agreements

Indemnification between parties

Bill Garpow, Executive Director, Recreational Park Trailer Industry
Association (RPTIA)

What is the RPTIA? Very small trade organization that represents
95% of the industry

What is a Recreational Park Trailer? It's a vacation and/or seasonal
dwelling that looks like a cottage, has a hitch, is an RV, (AAMVA
says give it the same status as an RV) less than 8.5 feet wide and 40
feet long as it goes down the road (approx 320 sq ft). May expand
another 80 sq ft +/- (via slide outs) and still stay under 400 sq ft
(definition of manufactured home) and avoid scrutiny of HUD.
There is “some confusion out there” between federal, state, and local
regulatory agencies.

Discussion of the formaldehyde issue and how the FEMA use of park
trailers resulted in the creation of some misperceptions.

“The government has discovered a problem that doesn't exist, and
they are going to solve it with a solution that won't work.”

Park trailers are designed and built for temporary and/or seasonal
use. Other uses (office space, full time dwelling, etc) exceed the
design and intended use of the units.

Discussion of documents handed out to group: comparison sheet, sales data, RPTIA Web site info, "Hard Questions," RV Dealer/Manufacturer sales agreement, demographic data.

Discussion of "Katrina Cottages," "Mississippi Cottages," and "Storm Cottages."

Discussion of warranties and how the dealer network is set up.

Robert Byerts, Attorney with Myers & Fuller, PA
Manufacturer/Dealer Franchise Issues from the Dealer Perspective.
General Motors channeling resources and combining dealerships.
Buick is being left without a lot of product and will possibly dry up.
VW is withholding funds that may have originally been destined for the dealer. This results in possible price discrimination issues: Audi dealers must pay for the "right" to receive new R8 model.
Nissan is pushing "Nissan Retail Environmental Design Initiative" (NREDI) for modernizing outlets.
Toyota and Honda are expanding dealership network. Some lawsuits have been filed by existing dealers to protect sales territory.
Hyundai tiered-pricing program viewed as discriminatory toward lower performing dealerships; challenged in lawsuit.
Movement (Alpha program) by Chrysler to consolidate Jeep, Chrysler, and Dodge into one dealership in market areas where one brand is performing well and one or both of the others may not be.
Ford has "issues." Mercury has no new product in pipeline.
Navistar lawsuits over diesel engines.
Mercedes Benz has sent dealers facility and performance upgrade demands. This is an unusual and unprecedented move for Mercedes Benz. Dealers are pushing back.
New players: Chamco, China Car, Chery, and Mahindra. Questions have been coming up about ability of manufacturers to meet facilities, warranty cost reimbursement, etc. Past manufacturers have disappeared and left dealers abandoned. Dealers being advised to limit capital expenditures.
Discussion of Chinese motorcycles being sold at auto parts stores, pawnshops, street corners, etc and the lack of warranty/parts etc.
Sold as "throw-aways"

DAY TWO OCTOBER 23

8:30

Tim Buche, Motorcycle Industry Council and Motorcycle Safety Foundation

Discussion of factors surrounding growth in motorcycle and ATV sales. Unlicensed Chinese imports; Demographics of motorcycle owners;

CHALLENGES: industry growth, changes in the distribution channel, a focus on the end user is the best approach, the industry associations are anxious to help you and the other state agencies serve our customers, your constituents. Question came up about standardization of PINs. ANSI and other federal regulatory agencies are pressuring manufacturers to comply. Question about Wal-Mart and Costco selling ATVs. Discussion about how they are unable to meet the consumer expectation of knowledgeable sales staff and service availability.

Ed Lemco, National Council of Motorcycle Dealer Associations
Discussion of evolution of motorcycle dealerships; difference between motorcycle and automobile dealers. Need for regulation in the industry; motorcycles and ATVs should never be "off the shelf" items. Sold as "motorized toys." None of the mainstream manufacturers will allow dealers to sell a motorcycle in a crate. Each has to be set up by a dealer with the proper resources in order to facilitate proper operation. There is no regulation of "motorized toys." Legislation was introduced in Maryland to regulate these toys and it had the support of committee, but was opposed by DMV based on lack of funding component.

Steve McKelvey and Ronnie McMahan, Nelson Mullins Riley & Scarborough, LLP

Generally speaking, manufacturers want dealers to be successful, and dealers want manufacturers to be successful. Litigation does occur, but it is in a small percentage of relationships. Discussion of dealer/manufacturer relationships and how it differs from other retail businesses.

Evolution of what dealerships look like – Traditional family owned is evolving to other "non-traditional" scenarios: public ownership, investor groups, multiple ownership

("Wards" website has info on dealer size and sales production)

The pros and cons of this trend were discussed – facilities, internal accountability, brand loyalty, resource allocation, etc

Discussion of what makes auto dealerships an attractive business for non-traditional private investor groups. Advantages and drawbacks.

Manufacturers have placed limitations on who may own or control a dealership. They have a vital interest in maintaining engaged and qualified dealers to sell and service their products. Courts have allowed manufacturers to retain significant discretion regarding who takes over dealerships.

TEXAS code is well written TEX, OCC CODE 2301.359 *Transfer of Ownership by Dealer*
FLORIDA 320.643 is also good

Mary Jane South and Carl Compton, Ontario Motor Vehicle Industry Council

Overview of the Ontario consumer protection laws.

Specific to motor vehicle sales: Motor Vehicle Dealers Act

Registration criteria – honesty, integrity, financial responsibility, and conduct business in accordance with the law.

OMVIC's Role –

Administer Motor Vehicle Dealers Act

Enhance consumer protection through: registration, mediation, inspection, investigation, enforcement and discipline

Consumer and Dealer Education

Propose alternatives to litigation

Curbstoning (or Curbsiding, eh?) estimates are that 60-90 % of vehicles listed in classified ads are curbstoners

Curbsiding business model: Supplier - Consumer - Curber
Website curbers can go to for tips: www.dealerlicense.com

Ontario has up to \$10,000 fine for a dealer that knowingly sells to a curbsider; dealers get around this by creating paperwork that stipulates the vehicles are for "parts only."

DAY THREE – October 23, 2007

Charles Pearce, Credit Acceptance

Consumer complaints – submitted to company from various sources (attorney generals, BBB, consumers, attorneys, etc)

Goal is to respond in timely, efficient and professional manner.

Common issues: piece of junk, credit reporting (not my debt), repossession (wrongful), debt collection issues.

Credit Acceptance is proactive, providing training to dealers and facilitating/encouraging negotiations

10,000 disputes per year over ID theft; require a police report (litmus test), 3 copies of signature; then an investigation; if not the same person, it comes off the record.

"Buy here/pay here" is huge, growing market

ROUNDTABLE DISCUSSION

Chuck Supple - Wisconsin DOT

Electronic processing - "coolest thing since canned beer."

Consumers get their plates and titles much quicker; Law enforcement has access to info quicker (including temporary plates); getting to point where the DMV electronic is the "ACTUAL" record, not the paper title that is floating out there somewhere.. Auto auctions print titles. Dealers are agents for licensing and titling. Also, vehicles can be "junked" on line (VINs killed) Rule change for RV shows - out of state dealers can come in once every four years

Mary Jane South - Ontario Motor Vehicle Industry Council

Ability to deny licensing when under certain discipline or tax problems. Ontario has option to provide training via distance learning. Dealers can take test by a proctor at a local community college.

Lessie House - Louisiana Motor Vehicle Commission

Motor Vehicle Commission fined a marketing company for illegal practices. Some dealers are out of trust with their lending institutions (interestingly, up north, not in the hurricane area). Problem with wording in the document fees proposal in LA. The fees are allowed within guidelines. Possible class action suit if not fixed. Two school bus dealers in state. Warranty work is performed by local municipalities. Are there exemptions for warranty work in this type of case?

Julie Comer – Florida DMV

Scooters under 50cc continue to be problems. RV legislation regarding off-site sales. Electronic lien transfer is growing and changing the way business is conducted. Titles to be printed at auctions. Every dealer in state will be required to issue online temps. Exploring online renewal for dealer licenses.

Bruce Gould – Virginia Motor Vehicle Board

Investigators are working out of home offices. Getting them air cards that will allow them to get access to internet when in dealerships and print out the necessary documents. Exploring continuing education for independent auto dealers. How delivered and how tracked? Discussion of anti curbing legislation in Georgia, may be useful for models for other states. Requirement in some states for all dealers to have access to internet. VA newsletter sent out every two months. Can sign up to receive it electronically. Recovery fund. Asked group if any pressure has been brought to bear to provide training in languages other than English.

Jerry Auch – North Dakota Motor Vehicle Division

ND passed legislation requiring license to sell all motor powered equipment (scooters, golf carts, etc) bond, repair facility, parts, inspected by DMV, have a business location. Observed "Scooter Coupe" on streets of Portland; it was bearing a Maine license plate.

Lorrie Pavlicek – ND Motor Vehicle Division

Invited all to come to ND for the Midwest Odometer and Title Fraud Enforcement Association meeting in Bismarck April 13-17. Contact is Jerry Auch @ 701-328-4866

Carole Kent – TX

Wants to update survey of all states. Asked each attendee to take a copy and update info, then fax to her. Discussion of Blue Law.

Rob McBryde – eBay

Katrina cars and title washing. Mississippi does not have rebuilt title so is a common area for title washing. eBay working with floor planners to be proactive for financial trouble.

John Mahal – Oklahoma used car commission

Discussed time delay in Electronic Title program coming to OK. Now have ability to fine dealers (last 4 or 5 years). New temp tags law.

Bill Jackson -- Nebraska Motor Vehicle Industry Licensing Board
Bond has gone from \$25,000 to \$50,000. Advertising laws have been improved and have been effective into neighboring states.

Greg Kirkpatrick -- Arkansas Motor Vehicle Commission
Busy year; Document fee -- about half the dealers charge it and half do not. There has been some litigation on behalf of consumers. Now called "dealer service and handling fee." Capped at \$129. Contract includes a disclosure. Part of "consumer protection act of 2007." New appeal process for warranty and service work. Partnership with other state agencies to connect industry with schools.

Bill Brennan -- CA New Motor Vehicle Board
Striving to be more business friendly. CA car dealer bill of rights. Sponsored industry roundtable last spring -- looked at impact of "auto malls." Attendance at roundtable is increasing, including numerous attorneys. Decided to have "attorney roundtable." Would like to compare notes on issues surrounding Smart and Tesla vehicles -- how are jurisdictions handling these issues? Exclusive distributor for Smart is Penske group. Currently taking reservations and looking for data on how to place their vehicles. Is this a sale? Advertising legal under these circumstances?

Berta Phelps -- Manheim
Lots of sales are now simulcast over web. Electronic participation. Can view vehicle, and hear auction, use multiple screens, etc. Is a struggle to determine various states regulations on how foreign dealers do business. Manheim requires verification via an embassy that entities are in business of car sales since other countries do not regulate dealers like we do. Discussion of "Online Vehicle Exchange" (OVE). This is the equivalent of "Auto Trader" but is wholesale only. NICB has a data base that allows parties to verify VINS for stolen or destroyed.

Mary Garcia -- CA DMV
Trying to expand programs that are friendly to dealers. Dealers are not required to participate in electronic transactions. Expanding to dismantlers. 15 different on line processes. Have always had pre-licensing education and continuing education requirements. 23 point inspection process. We discovered 50% of dealers were not compliant with car buyers bill of rights, so had an intervention; now about 16% are not in compliance. Have been working aggressively on increasing compliance and fine collection. Passage of consumer

recovery fund. \$1 fee that will go into a fund for consumers. Dealer in Fresno was a terrorist affiliate. Had installed a kill switch device on a vehicle sold so if payment was not received in timely manner, he could disable it until payment received.

Brett Bray — TX Dept. of Transportation

Importance of interaction between attendees. Sharing of ideas. TX began using a roundtable meeting format for industry stakeholders. TX legislature met last spring. Now has transitioned from "plates to vehicles" to a "plates to owners" state. Will be rolling out an "e-tag" system soon. Agency is now a "hearing agency." Continuing education bill died this session.

Jay Rose — New England Independent Auto Dealers Association

Here to share issues that we all have in common. "Starter interrupts" being used to enforce collection support. GPS used for recovery support. Will be encouraging dealers to work with regulators and other industry associations to address common issues rather than assume adversarial posture. Used car lemon law is going to happen. Will force dealers to do the right thing which they should be doing already. Pushing for pre-licensing and continuing education requirements. Will be putting training on line to make more available to those who cannot get out of the office to attend.

Jill Jarreau — LA Office of Motor Vehicles

Re-engineering computer systems from many angles. Huge project and a lot of resources. Still dealing with Katrina vehicles on back end. Certificates of destruction vehicles are for parts only.

Steve Hymel — LA Office of Motor Vehicles

Discussion of Katrina lessons. Encouraged states to become part of NMVITIS. The sharing of info is essential to eliminate the improper licensing of destroyed vehicles in other states.

Tom Fullington — AZ New Motor Vehicle Board

The association has been working on forms and electronic enhancements for transactions. Worked with state to develop electronic temporary tags. Now have 9 applications that are used at dealer level. Monthly meeting with DMV director to share issues. Works with DMV on committees to share resources reference to legislation. ELT not mandatory, but is available in AZ. Considering making it mandatory.

Lois Hemphill -- LA Recreational and Used Motor Vehicle
Commission

Rent to own is a problem. Insurance issues have surfaced. Big issue is loss of buyer ID card which allowed dealers to go to salvage auctions. Now anyone can go to auctions. Education requirements are in place. Katrina resulted in loss of approximately 400 dealers. \$20,000 bond should be at least \$50,000.

Dan Devoe -- WA Dealer and Manufacturer Service

Synopsis of a odometer rollback case being worked on with NHTSA, and a title fraud case involving an independent licensing contractor. WA looking at electronic dealer temporary tags.

John McCurry -- Maine Motor Vehicle Franchise Board

Other than preparing for the NAMVBC meeting, John didn't do a lick of work in his real job.

Charles Pearce -- Credit Acceptance Corporation

Fair and Accurate Consumer Trade Act (FACTA) provisions are now in effect

Invitation to contact him as a sounding board on credit issues

Kenneth Murphy -- Venable

Trend seems to be developing around niche cars (Smart and Tesla, etc). Will see manufacturers becoming dealers in states that allow that. Good times bring bad times -- cyclical. Lots of liquidity in consumers via mortgage equity. It appears signs are gathering that would indicate a pending downturn in industry.

Roy Dockum -- OK

Temp tags are evolving and OK is joining the 20th century. Becoming concerned about privacy of records balanced with open records requirements. OK has been culling the non-essential information off the forms. Doc fees, processing fees, add'l dealer profit, etc is becoming a possible problem in OK, and Roy has been warning the dealer body to careful. Not currently regulated, but may become an issue if abused.

BUSINESS MEETING

1. Approval of Minutes from Previous Meeting.

Minutes from September 2006 and from February 2007 meetings were presented. Motion was made by Lessie House to accept. Seconded by Bruce Gould. Approved by unanimous verbal vote.

2. Treasurer's Report

Bill Brennan, Treasurer of NAMVBC presented the Financial Report for the period ending September 30, 2007. We have a significant positive balance at this time. Current balance \$77,162.36. Motion made by Bruce Gould to accept the report; seconded by Lessie House. Vote was unanimous in the affirmative.

3. Election of Officers

Moved by Lessie, 2nd by Brett Bray to accept officers as currently constituted. Vote was unanimous in the affirmative

4. Upcoming Meetings

Feb 9-11 Winter Workshop in San Francisco, Holiday Inn at Fisherman's Wharf

September 2008 — Seattle, WA; Tentatively scheduled for Renaissance Inn

5. Business/Discussion

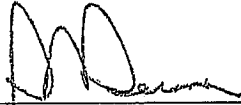
Suggestion to front travel money and/or waive membership fees for new members in the interest of recruitment. Also floated the idea of having conference in states where we have no members to stimulate interest. Suggestion to waive fee for Winter meeting for those who attend the fall meeting. Perhaps invite non-member states to come and present. Other suggestion to make a personal invitation rather than email or mail. Discussion also of members contacting neighboring states to make overture. From a budget perspective, suggestion that agenda be condensed down and there be fewer activities. Discussion on the value of networking and establishing personal rapport.

Proposal to group to use funds to improve and update the NAMVBC website. Discussion on what format and how much information should be included. Suggestion from Roy to ponder recommendations between now and February, and bring ideas to meeting for further discussion. Proposed idea to get information on next fall meeting onto website. Include thanks to sponsors.

Adjournment

There being no further business, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Dan Devoe', written over a horizontal line.

Dan Devoe, Secretary