

National Association of Motor Vehicle Boards & Commissions

2008 Fall Workshop
Seattle, WA

MINUTES

Sunday, September 21

- 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

Liz Luce, Director, WA State Department of Licensing

Thanked regulators for doing a tough job that is necessary for viable auto industry. Talked about Seattle and some of the local attractions and features. Thanked everyone for coming to the workshop and wished them a good time and much success.
- 9:15 Aaron Jacoby – Venable LLP
 Kevin Colton – Baker Hostetler

Good natured jibes were traded back and forth during introductions.

Discussion of both sides of manufacturer/dealer issues.

Manufacturers want control over who represents them, sales, service all consistent. Want facilities maintained. Want sales goals reached. Want to have some control over the legal and political environment.

Relationship has a large measure of trust involved.

New manufacturers (Tesla, Smart, others) have a different approach. Doing business a little differently requires regulators to be flexible

Dealer territory - Some dealer concerns exist; some seem reasonable, some less so. May be dependent on the population

density. Old laws were crafted in a simpler time and things have changed. Example: 10 mile rule. Similar to what is happening currently in the banking industry and stock market where some of the laws covering the transactions were written in the 1930's.

Issues affecting territory may be: driving time, density, shopping patterns, and other. 10 miles in Los Angeles is much different than 10 miles in a less populated area.

Kevin mentioned that in some cases dealers placed in closer proximity, actually tend to do better, based on "intra-brand" competition.

Dealers often feel as though splitting up a territory will result in less business. Hummer used as an example. Issues surrounding "cyclical" economy, cost of oil, etc

Possibility of designing and planning a dealership in bad times, and by the time it's completed, times are good, or the opposite scenario.

Dealers and manufacturers both rely on some level of trust and mutual benefit. Manufacturers want dealers to be successful and sell lots of cars.

Discussion of regulatory issues when a dealer sells a car which is exported.

Issues on internet sales: Where is the contract formed? Is it a passive or interactive website? Etc

Discussion of vehicle sales that cross state lines; how is the transaction handled, where is the vehicle delivered, who regulates the sale

Facilities -- occasionally, dealers may disagree with manufacturers over facility requirements. This may be over a requirement for "brand identity" issues. Dealer may expend significant funds to remodel, then find in a few years the manufacturer requires a change based on a new brand image campaign.

From consumer's perspective, the dealer IS the manufacturer. The face of the dealership is the only interaction for the consumer with

the manufacturer. That is why manufacturers may pressure dealers to comply with the manufacturer brand image initiatives.

Areas for potential disagreement of Dealers with Manufacturers over facilities issues:
Taste in design
Architect firms
Timing for expenditure of funds

Exclusivity

In normal times, this is usually not a big issue. In hard economic times (like now) a dealer like Hummer may not be able to meet their overhead requirements with the slow sales, so may want to add a line of vehicles to the dealership. Manufacturers may have issues over the way such an arrangement may affect the brand image agreed to.

Transfer of Franchise

Manufacturers want to control who represents brand, how it is done, where, etc.

1:15

NADA Update – James Moors and Tim Brown

Franchise and Other Issues Impacting New Motor Vehicle Dealers

Facility upgrades – pros and cons
Dealer Relocation and Relevant Market Area Protests
Warranty Reimbursement
Audits for Warranty and Incentive Payments
Vehicle Export Audits/Chargebacks
Termination Procedures
Training Requirements
Franchise Agreement Modifications – Right to Protest
Incentive Programs

Other Issues:

Sale of Chrysler to Cerberus
Ford Sale of Jaguar and Land Rover to Tata
Isuzu Market Withdrawal
Lincoln-Mercury
GM's Efforts to Sell its Medium Duty Truck Business to Navistar

Hummer issues – Division possibly up for sale

NADA's position is that individual dealers rather than the manufacturers should decide whether to sell a dealership or whether to leave the business.

Warranty extension cards being mailed out to consumers and phone solicitations being made. Consumers are angry. Dealers being blamed. Consumers believe their personal information is being sold.

NADA – Tim Brown
Unconventional Vehicles

Must meet NHTSA standards; FMVSS
Current economic concerns
Environmental concerns
Low Speed Vehicles (LSV) regulated by NHTSA; 40+ states have laws in place regulating LSVs
4 wheeled vehicles, 20-25 mph, must have lighting and equipment to operate on public streets

Medium Speed Vehicles (MSV)
4 wheeled vehicle, capable of speeds over 25 mph
Not regulated by NHTSA
5-6 states have regulations
States can regulate, but there is a possibility that selling or offering to sell a MSV may violate federal law
NHTSA does not recognize MSVs as a unique class of vehicles
Smart Car is an example of MSV

Texas Motor Vehicle Division – Bret Bray, Molly Cost
Temporary eTags
New system; came on line this year. Works really well (when it's working).
Real time data update
Tags must be displayed in License holder, not in back window
"Internet Down" tag available for 24 hr use
"Emergency State Tag" good for 7 days
Had some great successes and some great failures when implementing the new system
Contact Molly or Bret if have need for more info

MONDAY, SEPTEMBER 22

ARKANSAS MOTOR VEHICLE COMMISSION – Greg Kirkpatrick

Gave overview of how the Arkansas investigative unit and how it was formed.
Key points: advertising, consumer complaints, dealer inspections, dealer "courtesy review," internet and website

LOUISIANA MOTOR VEHICLE COMMISSION -- Mike Laviolette

Gave overview of Louisiana MVC and the state MV sales environment. Talked about the source of complaints which includes disgruntled ex-employees. Fraudulent tax forms and paperwork. Shared example of case where a franchise dealer consigned 10 vehicles to an independent dealer and was not compensated. Discussed independent marketing companies and problems with sales staff who may have criminal records and use fraudulent IDs. Discussion of dealer bonding requirements in various jurisdictions and how insolvency is investigated; late lien pay-offs etc Both VA and CA have laws in effect that create a consumer recovery fund that is funded by vehicle sales and provides a safety net for situations where dealers go out of business and leave consumers without clear title.

TEXAS DOT MOTOR VEHICLE DIVISION ENFORCEMENT -- David George

Discussion of complaint investigative process. Complaints and dealer history are reviewed by investigative staff. Some of the resources available: NICB, motor vehicle records, CarFax, AutoCheck, Accurint, Title History, dealer sales records, auction records, internet searches, interviews. Steps in investigative process: office conference with MVD attorney (merits & evidence; elements of violation met). Conduct investigation, finalize case report, forward to MVD attorney for action.

Types of Fraud:

- Title and Odometer
- Failure to disclose (misrepresentation)
- Fraudulent tax & title documents
- Dehorsing/spot delivery
- Curbstoning (unlicensed vehicle sales)
- False mechanic and storage liens

Discussion of title alterations and fraud
Review of several actual cases

WASHINGTON STATE PATROL & WASHINGTON DEPARTMENT of LICENSING PARTNERSHIP - WSP Sgt Luke Zebley, WSP Trooper Troy Giddings, DOL Investigator Gail Saul, Seattle PD Officer Christine Fenkner

Issue is curbstoners are buying salvage vehicles, then rebuilding them and selling them illegally. WA state law requires rebuilt vehicles to be inspected by the WSP prior to being titled. Curbstoners have been bringing vehicle to WSP for VIN inspections which frustrated WSP staff. WSP contacted the

DOL to discuss options and a partnership was created. A spreadsheet is maintained at each VIN inspection station (VIN lane) and shared with the other VIN lanes across the state. When a person brings a vehicle in, the name is checked against the spreadsheet to determine if they are "frequent flyers" or potential curberstoners.

WSP staff have experienced frustration with the lack of prosecutorial interest and have difficulty getting criminal cases prosecuted. By partnering with DOL, the curbers are being issued administrative penalties and, in many cases, cease & desist orders. Penalties issued to violators are approaching \$300k. Cease & Desist orders currently total _____.

TUESDAY, SEPTEMBER 23, 2008

MAIER & SEVERANCE - Peter Maier

Discussion of consumer issues surrounding vehicle sales, service contracts, dealer out of business, bonding,

Under federal law (and many states) when a dealer arranges the financing for the consumer with a lender, the lender is on the hook. If the dealer disappears, the lender must provide the title. The FTC "holder" rule. Lenders resist this but it is the law. Important for consumers (and regulators) to know that they have a legal recourse to obtain the title.

Discussion of consumer recovery fund (or "security fund") such as the one in VA and CA. Mr. Maier suggested that the bond could be rolled into such a fund.

Mentioned the resources of the National Consumer Law Center (NCLC) and the upcoming conference in Portland, OR, beginning October 34.

Also the National Association of Consumer Advocates (NACA) which may be worth looking into. They can be a resource

AUTOMOTIVE NEWS - Edward Lapham

Status of the industry players

Big problem for "BIG 3" is corporate culture (sometimes seen as arrogance). They are not inclusive or reflective of the culture currently in society. There is a sense of entitlement.

Chrysler is a "goner" in its current state

Toyota has learned some lessons in

Honda doing well,

VW is coming back to US market

Hyundai and Kia are doing remarkably well

Mazda doing very well

General Motors believes the current credit crunch is costing them 10,000-12,000 sales per month.

Dealers are hurting. Looking at options for financing vehicle purchases for consumers.

The auto industry is cyclical. There have been economic down-turns in the past followed by great success, but this time it is different: the big 3 don't need a new car, they need an entire new line-up of cars.

Currently some good things happening in GM design studios. Concern is what will happen when Lutz leaves. GM has been doing business a certain way for 95 years. Historically, "corporate culture will eat strategy for lunch." There has been no sense of urgency at GM until recently. Now there is a hint of urgency.

ROUNDTABLE

Roy Dockum – Oklahoma

Recognized the participation of the Canadian agencies. Seen a rise in the number of dealers going out of business and the accompanying problems.

Lessie House – Louisiana Motor Vehicle Commission

Tent sales/off-site sales. All licensed dealers in the area must be invited; if less than 50% want to participate, a permit will not be granted.

(Phil Nowicki GA stated having a sale without a permit is a criminal offense and law enforcement is brought in to cite the dealers)

Mike Laviolette – Louisiana

Marketing company problems. It helps tremendously that LA requires licenses for sales people. They have seen a lot of sales people screened out due to criminal background check.

Bruce Gould – VA

Consumer recovery fund. \$20k cap.

Special marketing – sales people are licensed, must be trained, must be employees of dealership, pass background. Dealer is held responsible and license can be suspended.

New law for curbstoning – allows agency to work with law enforcement. Can tow vehicles which are displayed for sale under certain circumstances.

Continuing education – looking at requiring additional training every two years. Moving that direction.

Problem with rebates that are overly cumbersome.

Programs that promise \$2.99 gas have been determined to be bogus (not the Chrysler program which is legitimate).

Nancy Passehl – Wisconsin

Enjoyed conference very much. First one. Have had problems with marketing companies like many other jurisdictions. Have been involved involved mandatory dealer processing of title transactions and licensing. Cost savings have saved 25 positions in motor vehicle division.

Gone electronic with all newsletters and bulletins which cuts costs.

Jerry Auch – North Dakota

Want to limit # of dealer plates based on the number of sales. This is Jerry's last conference since is retiring in January.

Dan Devoe – Washington State Department of Licensing

Mentioned desire to research the Consumer Recovery Program, similar to what British Columbia, Virginia, and California have in place. Seeing an increase in dealers going out of business and resultant consumer harm.

Bill Wright – Washington

Marketing company issues.

Looking at budget issues. Will be looking at options on how we do business.

Hiring freeze.

Dealers out of business. Holder rule being enforced by the consumer protection AG.

Off-site sales are being an issue between dealers.

Brett Bray – Texas

Talking about mandatory dealer education – will be proposed to legislature.

There is talk about creating a new state agency for motor vehicles. Could result in a lot of changes.

There is a proposal to create a dealer board. Wants all attendees to send scathing letters to Texas expressing outrage that Texas does not license sales people.

Hoping that legislature will put teeth into advertising laws.

Molly Cost – Texas

Texas is implementing a two-year licensing term for dealers. Was a workload-driven issue.

Greg Kirkpatrick – Arkansas

Loved having a variety of topics. Enjoyed having Harley Davidson people here. Would like to see more motorcycle folks. Developing a consumer protection initiative. Will be 25-30 pages. Will address young consumers

(teenagers – possibly through driver's education programs) and senior citizen info.

John McCurry – Maine

Not a lot of new issues going on. Maine has a law that says a dealer cannot sell a part or offer to sell a part at a price less than what other dealers can offer it for.

Bill Jackson – Nebraska

Being aggressive with advertising violations. Fined a dealer \$100k recently. Has seen a decline in the number of dealers. Seeing problems with dealers going out of business.

Charles Nelms, Jr – Mississippi

Learning some new things about problems so is glad to be here. Problems with marketing events. Wants to implement some of the tips that have been discussed here at the workshop. Interested to hear what is being done in Canada to license sales people. Eyes have been opened to some of the problems that are out there that may cause problems in Mississippi.

Charles Redden – Auction Access

Considering using technology to offer updates on license status to member dealers. Would like to have notifications from states when laws or requirements change. This could be in email to Mr. Redden. They try to keep data base updated on all 50 states' requirements.

Bill Brennan – California

Wanted input from other states regarding lien pay-off requirements. Mary Garcia wants input on "red flag" rules. Group said NADA has put out a very good publication on this. State ADAs should also have info.

Berta Phelps – Manheim

Mentioned that Manheim is fortunate to have "Auction Access" onboard which allows dealers to access more than one auction site without having to fill out redundant forms at each site. The dealer files are shared electronically. Also helps with on-line sales which are growing by leaps and bounds. Dealer wholesale transaction (example: Online Vehicle Exchange) "on-line authentication" is a current challenge. Cloned vehicles and NICB efforts.

Chuck Stepter – Fishback Dominick & NAAA

Issues for upcoming Auto Auction legislative committee:
Are auctioneers independent contractors?

Ritchie Brothers had a lawsuit in OH to allow it to sell cars in addition to trucks and heavy equipment;
NMVTIS rules published and in 60 day comment period;
NICB has entered into agreements with CarFax, Experion, and others to allow it to more easily detect stolen vehicles;

John Maile – Oklahoma Used Motor Vehicle Commission
Like to see problem with scrap processors addressed. Potentially a black hole for stolen vehicles.
Issues with mobile homes

Tim Brown – NADA
Warranty mailings that consumers are receiving – investigation continues into how the personal info is getting out there.
Supporting SB545 which involves disclosure of total loss vehicles by insurance companies.

Ian Christman – British Columbia
Vehicles in BC are insured AND registered by ICBC. Marketing companies must use licensed sales people who complete required training and be attached to dealer. Inspector is required to be at one day of the sale. Sales people are issued photo ID. Dealers are being held accountable and large penalties have been assessed.
Consumer recovery system is in place (been in effect since about 1978). Dealers must pay into it for the first 3 years of license. Can be required to pay additional if claims are made.

Chuck Coach – Washington State Department of Licensing
First time attendee. Enjoyed the info sharing. WA is experiencing a serious revenue shortfall. Interested in hearing what other states are doing to meet required duties with declining resources.

Bob Hamilton – Alberta
Funding comes from industry, not government. Regulates all the motor vehicle industry – even repair shops. Investigators are peace officers and can lay charges. Most of their time is spend mediating issues between complainants and respondents. Do not have titles for vehicles in Canada. Pros and cons. Vehicle history reports are used frequently when a vehicle is sold.

Phil Nowicki – Georgia

Seeing falsification of credit apps. Also seeing questionable payment amounts being advertised that are subsidized by dealer for 6 months, then require refinancing.

Have seen rollbacks where parties are using the "exempt" status to argue that it does not matter because of the age of the vehicle.

Consumer information on advertising available at: www.consumer.ga.gov

Mentioned that the Nat'l Assoc of Attorneys General (NAAG) likes the Wisconsin buyers' guide; pushing FTC to make a similar disclosure mandatory for all dealers.

Susan Case – Kia Motors

Enjoyed first meeting. Lots of good info. Mentioned the problems dealers are experiencing with trucks and SUVs the value of which has plummeted

Liz Boughey – Copart

First NAMVBC meeting; glad to be here.

Copart expanded to UK – 12 sites. More expansion to come in Europe.

Rob McBryde – eBay

Two updates: 1) estimate 100,000 cars destroyed by hurricane Ike; eBay will be reviewing VINs against data bases for affected zip codes

2) eBay will be monitoring dealers using eBay who have financial problems which may impact consumers

BUSINESS MEETING

1. Approval of Minutes from Previous Meeting.

Minutes from October 2007 were presented. Motion was made by Bill Jackson to accept as amended by removing comment made by John McCurry about work volume at 2007 workshop. 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, 2008. We have a significant positive balance at this time. Current balance \$71,895.42. Motion made by Lessie House to accept the report; seconded by John McCurry. Vote was unanimous in the affirmative.

Discussion on how fees are collected and due dates. Motion by Bill Brennan that the date of collection be moved from July to February to accommodate state budget cycles. Seconded by John McCurry.

3. Election of Officers

Nomination of Roy Dockum as president, Dan Devoe as vice president, Molly Cost as secretary, and Bill Brennan as treasurer. Brief discussion ensued regarding the by-laws allowing "non-department heads" to serve in elected positions. Moved by Bruce Gould, 2nd by Lessie House to accept officers as proposed. Vote was unanimous in the affirmative

4. Upcoming Meetings

January 23-27, 2009. Winter Workshop in New Orleans at Maison Dupuy hotel. Discussion of an honorarium for possible speakers.

September 2009 -- Proposal that we meet in conjunction with the Lemon Law administrators annual meeting and possible even overlap.

Charleston SC was discussed as a possibility. Steve McKelvey offered to help make arrangements and host it. Phil Nowicki mentioned will discuss with his Society of Consumer Advocate Professionals (SOCAP) group to ascertain if possible to hold it in Detroit.

Adjournment

There being no further business, the meeting was adjourned.

Respectfully submitted,

Dan Devoe, Secretary