

# National Association of Motor Vehicle Boards & Commissions

2009 Fall Workshop  
Charleston, SC

## MINUTES

Sunday, October 4

8:40

### Opening Comments and Introductions

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. Mr. Dockum gave a special thanks to Steve McKelvey and his staff for planning the meeting and activities.

9:00

### Welcome to Charleston

Steve McKelvey introduced Tommy Dew and stated that there is something sacrilegious about having this meeting without Lessie House from Louisiana present. Mr. Dew painted a colorful picture of the history of Charleston and the effect of the War Between the States on the culture and development of Charleston.

## SPEAKERS AND PRESENTATIONS

9:30

**"Chrysler, GM, and Bankruptcy: What happened? How did some of the NAMVBC members get directly involved? What lessons can be learned from all of this?"**

Molly Cost - Texas, Dave Cookson - Nebraska, Nancy Passehl - Wisconsin, Jim Moors - NADA

The panel discussed their individual involvement in the Chrysler and GM bankruptcies. Ms. Cost summarized the Chrysler bankruptcy filing, attempts to get the Texas Attorney General (AG) involved, and licensing issues that arose in Texas with regard to the replacement of Chrysler dealers rejected in the bankruptcy. She also discussed the participation and wind down letters that were sent by GM prior to their filing of bankruptcy, the efforts of the Texas AG in the GM bankruptcy, and the importance of getting to know the bankruptcy AGs in your state and educating them on the importance of dealer franchise laws.

Dave Cookson gave his perspective as an assistant AG in Nebraska working with the National Association of Attorneys General (NAAG) in both the Chrysler and General Motors bankruptcies. With Chrysler, issues regarding the various states' lemon laws, successor liability, and products liability were issues that NAAG was able to resolve. With General Motors, the main focus

became the participation and wind down letters sent to all dealers, with a lot of communication coming from the various states' dealer associations urging their AGs to intervene in the bankruptcy to protect the dealer franchise laws.

Nancy Passehl spoke of the emotional side of the bankruptcies for dealers in Wisconsin. She spoke of one Wisconsin dealer rejected in the bankruptcy who had been a Chrysler dealer for 75 years and that the dealership closure resulted in 150 people losing their jobs. She also stated that eight Wisconsin Chrysler dealers hired an attorney to fight the bankruptcy and were told last week that their case was over.

Jim Moors spoke about NADA's involvement before and after the bankruptcies, engaging with the Automotive Task Force before the filings to assert that dealers are not a cost to the manufacturer and with Chrysler and General Motors after the bankruptcies to find a non-legislative solution to allow rejected or wound down dealers to appeal and obtain compensation for the lost franchises.

1:30      **"From Old to New - Regulation in a Post-Economic Collapse World"**  
Kenneth Murphy and Aaron Jacoby - Venable LLP

Mr. Murphy and Mr. Jacoby discussed how the down-turn in the economy has led to new ideas about how manufacturers, dealers, and consumers interact in the marketplace. They discussed the forming of new sales channels (Amazon, Best Buy) and new partnerships, new arrivals in the market (Tesla, Fisker, Zero Motorcycles), new business models (factory stores, internet sales), new fuels (biodiesel, electric, hybrids), and new dealership designs, with less land used for vehicle storage and more for customer entertainment and convenience. The speakers noted that it was difficult for these new ideas to navigate the various state laws and asked for ideas about how to bridge this gap.

**Monday, October 5**

9:15      **"It's Gonna Happen - The Future of Paperless Titling"**  
Nancy Passehl, Wisconsin Department of Transportation

Ms. Passehl discussed the past and present efforts in Wisconsin with regard to electronic titling, and what the future will bring. She stated that in 2010, lenders will be required to process online and that currently 1500 dealers are processing through e-MV11, despite the steep learning curve that was encountered with some dealers with regard to computer use in general. According to Wisconsin law, the DMV record is considered the official title, so this will facilitate online titling in the future.

10:45      **“Electric Vehicles – How Government and Manufacturers are Working Together to Make These a Reality”**  
Cecil Davis, Managing Counsel at Nissan

Mr. Davis discussed Nissan’s new all electric vehicle, the Leaf. He discussed Nissan’s efforts with various states and cities to provide infrastructure for electric vehicles, promote awareness of the products, develop legislation and incentives for electric vehicles, and with utilities to expand renewable sources of electricity.

1:45      **“Emerging Issues in Online Retailing”**  
Rob McBryde, eBay Motors

Mr. McBryde explained how vehicles are listed online, usually by dealerships using third parties to take pictures and write descriptions and ad text. eBay makes the dealers responsible for the content posted on the site; eBay is just the service provider. However, eBay has a repurchase policy for transactions completed through the site. Mr. McBryde also discussed a recent partnership with General Motors where GM gathered all the information – pictures, description, etc. – to be posted for the dealers’ inventory.

**Jay Landers**, with the Recreational Vehicle Industry Association, provided a quick update of the RV industry before he had to leave the meeting. Mr. Landers stated that a dozen RV manufacturers have gone out of business along with at least several hundred dealers, most of whom won’t be coming back. Both Monaco and Fleetwood have emerged from bankruptcy. He stated that the biggest problem right now is credit, both on dealer floorplan and consumer purchases.

Tuesday, October 6

9:15

**“How Factory/Dealer/Government Relations Have Been Impacted  
Due to the Changed Economic Environment”**

Elizabeth McNellie and Kevin Colton, Baker & Hostetler LLP

Ms. McNellie and Mr. Colton started out by saying that this industry is special because it has people on different sides of the table who have very strong opinions but are still friends at the end of the day. They noted that the US market looks very different today than five years ago, with a lot more people in the market trying to sell cars and trucks. They also see more diversity among manufacturers and dealers than ever before, with older, established mom and pop stores to public companies. They also stated that the nature of disputes has changed from add point challenges to terminations and buy back disputes.

**ROUNDTABLE DISCUSSION OF ISSUES IN INDIVIDUAL STATES**

***Summary of topics, issues, and/or comments:***

**British Columbia:** The province does not have franchise laws, so they don't have a lot of the issues faced by jurisdictions that do. Their latest issues are regarding documentary fees, with some dealers charging \$95 to \$1400 in doc fees, but reducing the sales price and undercutting other dealers, and with salvage vehicles that are being rebuilt but should be dismantled. General Motors Canada had announced the closure of 7 dealers, but it was anticipated so the dealers had already started consolidations. Also, Kia is coming on very strong in BC.

**North Dakota:** Has tried to put a limit on dealer plates based on their sales.

**West Virginia:** Twenty-one out of twenty-eight Chrysler dealers in the state were rejected in the bankruptcy. West Virginia now has a dealer recovery fund, modeled after Virginia's, instead of the \$25,000 bond they used to have. West Virginia licenses salespeople and they are starting a pilot program on e-Tags tomorrow. The documentary fee is set by the commissioner at \$150.

**Texas:** Recently completed the implementation of a 2-year license term. Effective November 1, 2009, the Motor Vehicle Division, Vehicle Titles and Registration Division, the Automobile Burglary and Theft Prevention Authority, and portions of the Motor Carrier Division transferred to the new Texas Department of Motor Vehicles. e-Tag is mandatory as of today (October 6, 2010). Enforcement has closed over 6200 cases, leaving investigators with 50-60 cases each with a 6-month backlog and the ability to do more

proactive inspections. The documentary fee is now required to be a "reasonable" fee, instead of \$50.

**South Carolina:** There is a lot of interaction in South Carolina between dealer licensing and title and registration, especially on unusual vehicles. The legislature recently passed a law that anyone who gets a state benefit, including dealers, has to prove that they are legally in the US, including 10% or more owners.

**Oklahoma:** Low speed vehicles (LSVs) are an issue. There's a federal tax credit and Oklahoma has a state tax credit on the purchase of LSVs, so they are licensing dealers and manufacturers like crazy for these vehicles. An affidavit of legal citizenship is required only for individuals. In Oklahoma, anyone that receives a professional license cannot have that license renewed if they have outstanding income tax issues. About 20% of the licensed salespeople were delinquent on income taxes. Oklahoma Motor Vehicle Commission is self-funded through licensing fees, which have to be adjusted by statute. The Oklahoma Auto Dealers sponsored a bill to increase fees voluntarily.

**NADA:** Their top priority is floorplan, with meetings set up with GMAC. Most of the NADA legal department is training dealers to comply with new federal requirements, especially privacy laws. Some dealers rejected in the bankruptcy proceeding were left with LIFO problems, so NADA is seeking federal relief. Also noted that the federal used car rule has been opened for some limited public comment on the issue of how to disclose warranty on a certified used car and the Spanish language guide.

**Washington:** Comments about how helpful NAMVBC membership was during the Chrysler and General Motors bankruptcies, especially conversations with Lessie House from Louisiana. e-Permitting is officially up and running, but not mandatory yet. Washington is seeing a new business model where large multi-line franchised dealers are hauling lots of cars to other parts of the state and setting up in vacant lots across from like-line dealers. Sometimes they have offsite sales permits, but it's been hard to enforce so far.

**AutoTec:** Discussed a system called Auction Access that keeps track of rules, licenses, etc. for all states because auctions use this system to confirm a dealer's information at an auction. They are currently getting electronic information from 21 states, and they send the dealer an e-mail 30 days before their license expiration and when their license expires.

**Ontario:** There is a big overhaul occurring right now that has been eight years in the making, as a result of legislation passed in 2002. It requires the dealers to disclose a lot to the consumer, including whether the vehicle has been out of the province in the last seven years, accidents, brands, anything material in the mind of the consumer, at the retail and wholesale transaction. Title washing is a big enforcement issue, as are issues with documentary and administrative fees.

**California:** Emergency legislation signed by the Governor in mid-July in response to the economy that makes it illegal for a manufacturer to prevent a dealer from dualling as long as reasonable facilities are in place. State employees are on furloughs the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Friday of each month, except for law enforcement activities. There has been an over 100% increase in terminations on 10-day notices, where dealerships have closed, with many being motorcycle dealerships.

**Mississippi:** Has instituted background checks on sales people coming in for special sales. Has required specialty vehicles, where someone buys a chassis and puts a body on it and then tries to sell it directly into the state, to be sold by franchised dealers.

**Arkansas:** The change in Cadillac dealers was the most dramatic in Arkansas with 10 of the 16 dealers being send wind down letters, with the biggest impact being to warranty service. Many wind down dealers are calling the Commission asking why they can't order new vehicles.

**Nebraska:** The Nebraska Motor Vehicle Industry Licensing Board is totally funded by license fees. They have experiences some decrease in licensees, so they have had come cutbacks and increased fees to offset the reduction in licensees. They have been very active with advertising violations and recently got new legislation to regulate engine, axle, and differential manufacturers, requiring them to have a license in order to enter into a franchise with a Nebraska dealer. There have also been problems with banking issues and floorplans being revoked.

**Virginia:** Licensing fees for new and used car dealer licensing stay with the agency in Virginia. Dealers will soon be able to print temporary tags at the dealership. Virginia has experienced problems with a dealer having lots of metal dealer tags but very little inventory, and inspectors are calling insurance companies to make sure the number of metal tags matches the number of vehicles on the insurance policy. Virginia requires a two day training and exam in order to open a used car dealership, with continuing education every three years. It is not required for new car dealers, but some take it voluntarily. They also license sales people for event sales. There is no maximum to what a dealer can charge for a processing (documentary) fee.

**Wisconsin:** Furlough days have been implemented for all agencies. They are seeing dealers lose their bonds because of credit problems.

**Georgia:** They are seeing a trend in deceptive sales practices, including franchised dealers with finance arm getting a substantial down payment from a consumer with a balloon payment due in 10 days. When the customer can't make the balloon payment, the car is taken back with the loss of the down payment. Also seeing vehicles that have been in major accidents being sold with clear CarFax reports and dealers still checking "exempt" on odometer statements with discrepancies.

## **BUSINESS MEETING**

### **1. Approval of Minutes from Previous Meeting.**

Minutes from October 2008 were presented. Kelvin Zimmer made a MOTION to approve the Minutes, which was seconded by Bill Jackson. MOTION approved unanimously.

### **2. Treasurer's Report**

**Bill Brennan**, Treasurer of NAMVBC, presented the Financial Report for the period ending September 25, 2009. A MOTION was made by Bill Jackson to approve the Treasurer's Report, which was seconded by Lotte Devlin. MOTION approved unanimously.

### **3. Election of Officers**

The co-chairs of the Nominating Committee, Bill Jackson and Bruce Gould, put forth the following slate of officers for the year beginning January 1, 2010:

President:	Dan Devoe, Washington
Vice-President:	Nancy Passehl, Wisconsin
Secretary:	Molly Cost, Texas
Treasurer:	Bill Brennan, California

MOTION was made by Carol Kent, seconded by Kelvin Zimmer to approve the nominees submitted. MOTION carried unanimously.

### **4. Upcoming Meetings**

A winter meeting in conjunction with the NADA convention in Orlando, Florida from February 13-15, 2010 was discussed.

Wisconsin offered to host the 2010 Fall Workshop, and to explore a joint conference with the International Association of Lemon Law Administrators (IALLA).

ADJOURNMENT

There being no further business, the meeting was adjourned.

Respectfully submitted,

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Molly Cost, Secretary