



**National Association of Motor Vehicle
Boards and Commissions
Scottsdale, AZ**

2015 Fall Workshop Minutes

Wednesday, September 9, 2015

5:30 p.m. - 7:30 p.m.

Welcome Reception
Firesky Resort

Thursday, September 10, 2015

9:00 a.m. – 9:30 a.m.

Welcome Remarks

Conference Attendee Introductions

9:30 a.m. – 10:45 a.m.

Dealer Ownership/Ramifications of Private Equity

- Steve Kelso, Esq. – Wheeler, Trigg, O'Donnell LLP
- Cecil Davis, Jr. – Senior Counsel, Nissan

Steve led things off by discussing Berkshire Hathaway's purchase of the Van Tuyl acquisition. Where Warren Buffet goes, others follow. Private Equity investing firms are likely to be smaller groups of dealerships.

Cecil discussed the traditional dealer ownership model. Individual entrepreneurs with multigenerational family businesses, also large private dealer group, and finally public automotive retailers. 18,000 dealerships, publics have 5% and top privates have 14%. Traditional ownership has already moved into modern business organization such as setting up as a business entity or trust. Public and large dealer groups have presented relationship challenges. The unifying factor though of traditional ownership is the fact they are specialized in automotive retailing.

Steve moved to non-traditional ownership. Examples are private equity firms, wealthy individuals or families not in the auto industry, non-automotive public companies. The key is that dealer ownership is an investment among many. Why is private equity different: PE purchases are about value, not income; typical PE investment buys undervalued businesses or assets – steers them through rapid performance improvement to grow value – then realize gains by going public or reselling. Avg time PE holds a business is about 9 years. 39% of the CEO's are replaced in first 100 days. PE benefits: they borrow industry expertise, they have a motivation to fix a broken business model, they have an ability to make decisive decisions, and a great incentive to succeed.

Cecil went over concerns with non-traditional ownership by the OEM's: Loss of entrepreneurial spirit, ownership and decision making is opaque, behind the scenes management without automotive experience, lack of continuity. Due diligence on all meaningful investors impractical. In terms of dealers, dealers are unlikely to have uniform concerns but include an erosion of influence, competing against deep pockets, disruptive behavior based on short-term concerns, lack of concern or reputation of brand

Steve moved to whether regulators should be concerned. He's not sure, but issues to consider are: will the regulator even know if PE is involved, responsiveness concerns, continuity of owner or operator, difficulty doing due diligence on vast pool of "owners", consequences on consumers of increased pressure on short-term value gain. Regulators cannot assume OEMs will ferret out PE and reject transfers.

Cecil discussed OEM's tools regarding PE Transfers: licensing statutes allow entity owners, statutes minimize ability of OEM's to terminate. Traditional review framework for transfer: qualifications of the dealer, adequate personnel, adequate location and facility, adequate capital and financing. He also talked about the right of first refusal being a tool to assist in the OEM managing the PE transfer.

Steve mentioned that terminations of a dealer are very difficult.

11:00 a.m. - 11:45 p.m.

FTC Auto Initiative – Operation Ruse Control

- Cindy Liebes – Regional Director, FTC
- Lauren Bailey – NADA

Cindy discussed the FTC's auto mission, and the fact that auto transactions are increasingly important to FTC's consumer protection efforts. She also provided a brief overview of the FTC's law enforcement tools including FTC Act, Truth in Lending Act, and Consumer Leasing Act. In terms of advertisements, the FTC looks at the advertisement from the perspective of a reasonable consumer. Disclosures must be clear and conspicuous, fine print and disclaimers won't cure the deception. Operation Ruse Control – nationwide and cross border crackdown on deception and fraud in the auto marketplace. Over 100 actions. Go to ftc.gov/cars for information graphics describing deceptive car ads. Cindy then went over a variety of advertisements as examples of fraud. Business blog

Lauren talked about the NADA Federal Advertising Guide, and recommended we go to the NADA website for a copy of the advertisement.

1:00 p.m. – 2:00 p.m.

Point/Counterpoint: Discussion on Various Subjects, Presenting Manufacturer and Dealer Points of View

- Aaron Jacoby, Esq. – Venable LLP
- Randall Oyler, Esq. – Barack, Ferrazzano, Kirschbaum & Nagelberg LLP

Aaron and Randy led a brief introduction on the dealer/manufacturer relationship. They then moved to this relationship in Non-Traditional Transactions with a discussion following up on the private equity presentation this morning.

They discussed the results of a transfer of stock with the manufacturer being concerned about poorly performing buyers continuing to buy. Also a discussion on the difficulty of reviewing the documents of larger purchases in order for the manufacturer determining whether to approve the deal.

Moved into a discussion of Right of First Refusal and a hypothetical of how the ROFR apply in context of larger deals. Particularly where one manufacturer among multiple brands wants to exercise the right.

Manufacturer Dealer relationships buying cars online. Industry needs an integrated online solution to purchasing or leasing a new or used vehicle. Aaron posed the concept of an Amazon for car dealers and referenced AutoNation and eCommerce. Randy advised that manufacturers, dealers and regulators must work together.

2:00 p.m. – 3:00 p.m.

Panel Discussion of Supreme Court Ruling in North Carolina State Board of Dental Examiners vs. FTC

- Andrew Bigart, Esq. – Venable LLP
- Mary William – Arizona Deputy Attorney General and Unit Chief of Licensing and Enforcement
- Roy Dockum – Executive Director, OK Motor Vehicle Association

Andrew gave an overview on the state action doctrine and the basics of anti-trust laws. The anti-trust issue most relevant to the North Carolina case is group boycoting. The state action doctrine provides immunity for Boards and Commissions.

Mary discussed the North Carolina case. It started with the FTC filing an administrative complaint against the Dental Examiners board for violation anti-trust laws related to its decision to prohibit teeth whitening businesses. The North Carolina Dental Board was comprised with 6 of the 8 members being licensed dentists. In order for a board or commission that has private members on it to qualify for state-action immunity the Supreme Court said there needs to be state supervision of the decision.

Roy updated the efforts to respond to this decision in Oklahoma where the Governor issued an Executive Order that identifies the AG as the state agency responsible for reviewing state boards. This was one of many back and forth exchanges between the Governor and the AG with the current status requiring all agency actions to being submitted to the AG for approval.

3:15 p.m. – 4:15 p.m.

AutoNation Digital Storefront

- Famous Rhodes – Vice President eCommerce, AutoNation

Mobile traffic to AutoNation has grown to 40.5% with spending of \$100 million dollars. Examples of other companies are Carvana, beepi, Roadster, Automatic, Tred. The AutoNation requires an Integrated Solution from Online to Store. They have implemented a flip feature. AutoNation allows you to reserve the vehicle. They also offer to buy your trade sight unseen following a review of the vehicle. Everything is geared toward the mobile buyer because of the growth in this market.

Friday, September 11, 2015

9:00 a.m. – 10:00 a.m.

NHTSA Recall Challenges

- David Strickland – Venable LLP
- Doug Greenhaus – Chief Counsel, NADA; and/or Lauren Bailey – State Franchise Laws and Regulatory Affairs, NADA

Doug led off giving a brief description of the National Traffic and Motor Vehicle Safety Act. And offered a number of statistics regarding the growth in recalls. When a recall is issued, New motor vehicles subject to recall are held in dealership inventory until remedy is completed. Federal law requires OEMs to compensate dealerships for remedying recalls and for holding new vehicles in inventory. Dealerships remedy the used vehicles they are authorized to repair once a remedy and/or parts are available. It is learned that 25% of owners of a vehicle being recalled are not corrected. There is a concerted effort to get to these individuals. Efforts include automated and batch VIN lookup, New communications strategies, Not all recalls are created equal, Need for NHTSA outreach campaign.

David discussed the policy behind NHTSA recalls. He discussed different options for NHTSA, including one similar to Germany where annual inspections are required giving them 100% correction. The US law is in place to give consumers information to make their own decision on whether to drive the car or not. David disagreed with NADA's desire to tier recalls with the problem from NHTSA being that even a low risk recall could have devastating results.

10:00 a.m. – 10:30 a.m.

Sub-Prime Financing: Are We Headed for Another Bubble?

- Dennis Carlson – Deputy Chief Economist, Equifax, Inc.

Dennis indicated there is currently a leveling off of subprime financing numbers. YTD 23% of loans originated to individuals with a Credit score less than 620. 55% of loans in the subprime space are for greater than 5 years. Subprime performance today: Delinquencies continue to fall from the height of the recession years of 2009 which indicates there are not that many bad loans. Impact of subprime auto loans: Individuals with a deep subprime loan (550 or less) that took an auto loan had a median increase on credit score of 20 points over a three year period. Dennis then showed statistics on the first quarter of 2015: Geographically the south has the highest numbers, and APR correlates with this chart. The 72 month loan is gaining popularity. Dennis recommended going to Equifax website for additional information. Dennis discussed the possible consequences of longer term loans and possible issues down the road related to negative

equity. Used vehicle values should continue to be strong which will assist. Interestingly, during the recession the last thing to go delinquent were auto loans.

10:45 a.m. – 12:00 p.m.

Autonomous Vehicle Update

- Tim Corcoran – Chief, Occupational Licensing, California DMV
- Jonathan Chang, Esq. – Tesla Deputy General Counsel
- Ron Medford – Director of Safety, Self-Driving Car, Google Inc.

Tim discussed the existing California regulations including a \$5 million insurance policy, Test driver requirements meaning a human must be behind the wheel. 10 approved permits have been issued in California. Nine accidents since testing permits: 5 accidents while AV stopped at red light, AV waiting to turn and vehicle struck, AV hit by cross traffic running stop sign, two AV rear ended. No draft regulations to share yet.

Ron went through the three central components for Google self-driving car: Maps, Sensors, Onboard Software. Google cannot drive where they haven't mapped. Sensors see up to two football fields 360 degrees. Ron went through the vehicle response to anomalies on the road. 16 google AV crashes since beginning of the program in 2009 with over 2 million miles driven.

Jonathan discussed the new Tesla auto pilot initiative. Focus is on safety and convenience so Tesla is taking a step approach. Auto pilot is different than a full autonomous vehicle meaning it's more about freeing the driver to avoid distractions. The next generation

12:45 p.m. – 1:45 p.m.

**Used Motor Vehicle Sales and Auction Issues:
Including Title Branding/Disclosures, financing
regulatory challenges, recall issues, etc.**

- Jon Ehlinger – General Counsel, DriveTime Automotive
- Jerry Sullivan – VP, Copart
- Karyn Wrye – Cox Auto Inc.
- Tim Corcoran – Chief, Occupational Licensing, California DMV
- Melissa Reynolds – Director Auto Dealer Services, Indiana Secretary of State

Jon updated on the CFPB rulings and whether CFPB will go deeper on ancillary products.

Melissa spoke on the Indiana wholesale dealer license. The requirements for this license is minimal and was in response to the weakness of the Indiana licensing of used dealers.

Karyn with National Auto Auction Association. These auctions sell about 8 million cars a year. Concerns for this group include the inconsistency and non-uniformity of state laws. She discussed an issue related to flood damage vehicles being approved. Wants to see a faster move

to eTitling. She also warned against leaving out the term 'retail' sales in order to avoid an unintended consequence of including dealer auction sales in these statutes.

Jerry discussed the salvage market is selling 4 million cars a year. When NMVTAS was created it was purposed to find stolen vehicles, but has transitioned to consumer protection. There is a problem with the NMVTAS definition of salvage vehicles.

1:45 p.m. – 2:30 p.m.

Autonomous Vehicle Ethics and Pitfalls

- Bryant Walker Smith – Assistant Professor of the School of Law and the School of Engineering at the University of South Carolina

Bryant discussed 5 (five) key ethical questions: 1) Who should be harmed when harm is unavoidable? 2) What is the relevant analytical system? 3) Which values countervail safety? 4) How certain is certain enough? 5) Who decides (and how)?

He first considered the trolley problem and the philosophical question of which person does the trolley driver kill in a dilemma. His premise is an effort to avoid the dilemma in the first place

2:45 p.m. – 4:00 p.m.

Board and Commission Governance

- Thom Reilly – Director of the Morrison Institute of Public Policy at Arizona State University

Appointed boards:

Good Governance – 1) Strategic Planning; 2) Making decisions at a policy or direction-setting level; 3) Monitoring the progress of Board-approved decisions. Time should be set aside at each meeting for a larger policy and planning discussion.

Board governance should have a strategic intent with a focus on the mission of the board. Policy and decision-making should be group based. Transparency is a key part of the regulatory responsibility. It is key for a communication and accountability message to be uniform and clear to staff – even in conflict.

What makes a powerful board: 1) Duty of care – preparedness and meeting attendance; 2) Duty of Loyalty – recognition of conflicts of interest; 3) Duty of obedience – ensuring the organization complies with regulations and policies. Expectations of regulatory board: Independent mindedness, ethos of transparency, sustaining resources, continuous learning, revitalization

Flaws of Board Governance: 1) Time on the trivial; 2) Short-term bias; 3) Reactive stance (reacting to staff initiatives rather than acting proactively); 4) Reviewing, rehashing, redoing; 5) Diffuse authority

Key question: Ask your board what information they need and how it needs to be delivered.

Saturday, September 20, 2014

8:00 a.m. - 10:00 a.m.

Breakfast / Roundtable Discussion

Bill Brennan (California): California sold 2.1 million vehicles last year. Protests and administrative actions are down. The budget situation has improved and they are no longer running a deficit. California state law changed to allow an association to bring an action in front of the California New Motor Vehicle Board – primarily in response to the problem of export and resale to a foreign country.

Tim Corcoran (California): California is involved with IT project to allow an online format for consumers to do registrations.

Marilyn Maxwell spoke for John Maile (Oklahoma):

Mary Jane South (OMVIC): Ontario is implementing an online renewal and licensing process. Commissioned a study focusing on consumers in the subprime market and are using this as a starting point for discussions on this experience.

Lessie House (Louisiana): Lessie updated that Louisiana has been relatively quiet. A number of dealers that are somewhat challenging have moved to other states. Updated on an action relating to a lessor selling vehicles under their lessor license.

Bruce Zulauf (Colorado): They issued 19,950 licenses last year. Investigated 1200 consumer complaints, 150 went to the Board for review. Colorado has a sunset review every 10 years that requires them to look at whether they continue to operate. A result of this review may be a restructuring of the Board to comply with the NC case. They want to review the licensing process for sales people and consider moving towards licensing a salesperson before they get a job.

Chris Rouze (Colorado): Chris is on investigation side. They investigate the consumer complaints as well as dealer vs dealer complaints.

Ian Christman (BC): 1100 actions against dealer in the last year. Working to expand the Registrar's power to all that position to issue cease and desist orders.

Bruce Gould (Virginia): Virginia has a very strong field representative automated system that allows reports to be filed by representatives from home offices. Virginia now submits an invoice with their renewal notice so a dealer knows how much they owe. They are also looking at changing the process that temporary tags are issued due to abuse.

John Bachinski (Alberta): Discussed the Alberta criminal record check process. AMVIC is funded by industry and a levy on every retail car sold in the province.

Jerry Sullivan (Copart): Talked about offering to assist in providing information to states regarding problem dealers.

Wyoming representatives: Updated on the structure of their state government.

Tammi McCoy (Colorado): Discussed having the Colorado board possibly implement a formal consumer complaint and mediation program.

Jim Taylor (Florida): Updated on a contentious dealer bill in Florida, SB 1048, that did not pass. He walked through the titling and licensing process.

Paula Shaw (Tennessee): Discussed a case in which a dealer's business was cloned. Recently passed curbstoning legislation. Seeing an increase in protests related to the motorcycle industry related to RMA's.

Andy Lewis (Iowa): Iowa doesn't have a board. Andy went over a variety of investigative related topics.

Roy Dockum (Oklahoma): Oklahoma's board in the last year instructed staff to place a higher priority on advertising. Roy sent out two warning letters and OK fined a dealer \$350,000. Roy also mentioned the OK motorcycle dealership and powersports entities wanted to amend their statutes.

Bill Jackson (Nebraska): Discussed advertising review efforts in Nebraska nauseous

10:00 a.m. - 12:00 p.m. **Business Meeting**

The business meeting was called to order by Chairman Bill Brennan. The 2014 Fall Workshop meeting minutes from San Diego were approved as written following a proper motion and second. The 2015 Winter meeting minutes from San Francisco were approved as written following a proper motion and second.

The annual budget was presented by Roy Dockum and approved following a proper motion and second.

The committee then discussed 2016 Fall meeting locations and approved Denver, CO, following a proper motion and second.

The committee then elected officers, and following a proper motion and second, reelected the same slate of officers.

12:00 p.m. **Adjournment**

Following a proper motion and second the committee adjourned.