

NATIONAL ASSOCIATION OF MOTOR VEHICLE BOARDS & COMMISSIONS

2006 Fall Workshop
Park City, Utah

MINUTES

September 14, 2006

CALL TO ORDER AND WELCOME ATTENDEES

Bruce Gould, President of NAMVBC and Executive Director of the Virginia Motor Vehicle Board, opened the meeting and welcomed the attendees to the conference.

ROLL CALL

Roy Dockum, Secretary of NAMVBC performed the Roll Call of members and attendees, and verified that a quorum was present. The list of attendees and organizations represented are attached to these minutes.

SPEAKERS AND PRESENTATIONS

Bruce Gould recognized and thanked **Kent Jorgensen, Kip Ingersoll, and Jenny Stanger**, who are with the Utah Motor Vehicle Enforcement Division, for hosting this NAMVBC workshop.

Kip Ingersoll introduced **Craig Bickmore**, Executive Director of the Utah Automobile Dealers Association and sponsor of the morning's breakfast. Craig introduced the first speaker, Larry Miller.

1. **Larry Miller**, *Owner of Larry Miller Auto Group and the Utah Jazz professional basketball team*

Mr. Miller has been an automobile dealer for over 27 years, and currently has dealerships in 6 states. He spoke about the need to keep the "triangular" relationship between dealers, regulators, and legislators working for the benefit of consumers and the industry.

2. **Michael Byrd**, *Executive Vice-President, ScreeningOne*

The Importance of Running Background Checks on Applicants

Mr. Byrd presented an overview of his company and how it can assist in background checks for licensing applicants. The post-9/11 environment has significantly ramped-up the need for screening, both for employers and for licensing entities. The motor vehicle industry is particularly at risk due to laws related to money laundering, identity theft, privacy laws, and the Fair Credit Reporting Act. He also stressed the need to know what information you need to search for, and to know the vendor's qualifications before contracting with them.

3. **Steve McKelvey and Chris Genovese**, Attorneys with Nelson Mullins Riley & Scarborough, LLP
Maurice(Mo) Sanchez and Elizabeth(Beth) McNellie, Attorneys with Baker & Hostetler LLP

Manufacturer-Dealer Relations: Recent Developments and Issues on the Horizon

The attorneys on this panel primarily represent manufacturers in disputes. The main topics of discussion were: 1) advantages of imposition of scheduling orders for hearings; 2) managing the discovery process with appropriate limitations; 3) qualifying “expert” witnesses as to the scope of their expertise and not allowing the expert to become an advocate for either side; 4) using downline counsel; 5) unauthorized relocations; and 6) termination and/or rescission of an agreement.

4. **Rob McBryde**, Corporate Counsel with eBay Motors

Mr. McBryde spoke about the continuing efforts to make eBay Motors a place which is safe for buyers and sellers of vehicles. He stated that there are between 30,000 and 40,000 vehicles listed on eBay at any given time. A majority of buyers prefer to do business with a licensed dealer, as cases of fraud are much more common with unlicensed sellers. Some of the efforts that eBay does to make the buy/sell environment safe are: 1) identifying buyers and sellers who frequent eBay; 2) provide the licensed seller a competitive advantage to the unlicensed seller; 3) detect and discourage fraud and crime by working with law enforcement; and 4) protect the buyers from unscrupulous sellers. Mr. McBryde answered questions about how eBay can work with law enforcement and/or regulators. Some in attendance expressed concern that eBay is not proactive enough in addressing the problem of unlicensed dealers (“curbstoners”) selling motor vehicles on eBay.

September 15, 2006

CALL TO ORDER

Bruce Gould, President of NAMVBC called to order the second day of the meeting.

SPEAKERS AND PRESENTATIONS

1. **Glen Hagood**, GCS Systems Inc.

Temporary Tags on Demand

Mr. Hagood’s company provides a web-based application which allows a dealer to print a computer generated temporary tag. The temp tags are durable, very difficult to counterfeit, and can be customized to meet the requirements of different state laws. Many dealers in Texas currently use these tags. More information can be found at www.tagsondemand.com or www.etemptags.com

2. **W. Scott Davis**, *Attorney for the Nebraska Motor Vehicle Industry Licensing Board*
Gale Frances, *Attorney with the Utah Attorney General's Office*
Spencer Robinson, *Administrative Law Judge, Utah*

Preparing for a Hearing

This panel focused on issues and techniques that can be used to help ensure a fair and efficient hearing for all parties involved in a hearing, whether before an Administrative Law Judge, a Hearing Officer, or a Board or Commission. They stressed the need to respect both the people and the law. Some of the points discussed were: 1) pre-hearing motions, discovery, and scheduling; 2) the hearing itself; and 3) balancing the time pressures of the parties and the hearing officers.

3. **A. Morgan Filbey**, *Senior Counsel, Nissan North America*

What's New at Nissan?

Ms. Filbey gave a PowerPoint presentation which featured some of the new products coming soon. She also reported that the move of Nissan's USA headquarters from California to Nashville, TN was accomplished. Nissan continues to work with its dealer body to upgrade facilities which are geared towards enhancing curb appeal, traffic flow, customer waiting areas, and improving access to the service department. Nissan also believes the upgraded facilities benefit the dealer by improving operational control. Finally, Ms. Filbey emphasized the belief that a strong dealer body is good for everyone, the customer, the dealer, and the manufacturer.

4. **Molly Cost**, *Licensing Director, Texas Department of Transportation, Motor Vehicle Division*

Automating the Dealer Licensing and Regulatory Processes

Texas is in the process of developing and implementing a major automation project which they call LACE (Licensing, Administration, Consumer Affairs, and Enforcement). They are moving from multiple out-dated databases to a single comprehensive database based on an SQL software platform. Several of the challenges that they have had to deal with are: coordination of several regulatory areas, allowing for over 17,000 licensees, translating legal and regulatory language into computer language, training of employees, moving information from the legacy systems to the new system, and time pressures for design.

5. **Ken Murphy**, *Attorney, Venable LLP*

Update on Motor Vehicle Issues in California

Mr. Murphy addressed the group regarding several issues that are active in California such as:

- Update on the Car Buyer's Bill of Rights which went into effect July 1, 2006,
- The Trygar case, involving allegations of violation of the "single document rule",
- Challenges raised by "negative equity" situations and how they related to disclosure.

September 16, 2006

CALL TO ORDER

Bruce Gould, President of NAMVBC called to order the third day of the meeting.

SPEAKERS AND PRESENTATIONS

1. John McCurry, Chairman, Maine Motor Vehicle Franchise Board

Maine Statutes and Litigation regarding Warranty Reimbursement to Dealers

John briefed the group on ongoing litigation and statute changes involving warranty reimbursement to dealers. In 1993 Ford instituted a “warranty parity surcharge” on each vehicle sold by Maine dealers as a move to compensate for the additional amount Ford felt was needed to reimburse warranty at retail rates. There has been litigation ever since, and the Maine legislature has also passed laws as an attempt to resolve some of the issues.

2. Round-Table Discussion of Issues in Individual States

Summary of topics, issues, and/or comments:

Texas

- 1) A recent court case involving a Dealer Development store decided that since the dealership entity was the licensee (and not the dealer principal), the person could not protest a termination.
- 2) Temp tags are still a problem in Texas.
- 3) A recent dispute between 2 dealers over deceptive advertising involving registering trade names, tying up phone numbers, etc.
- 4) Motor Vehicle Division may be getting repo agent licensing.
- 5) A felony within the past 3 years keeps a dealer applicant from getting licensed in Texas; felonies older than 3 years are not considered unless it is motor vehicle related.

Louisiana

- 1) Report about dealings with sales promotion companies that have been in trouble with some of their advertising and sales tactics; they operate under the names of *Smart Automotive* and/or *Sales360*.
- 2) “Stealing” internet domain names of other dealers
- 3) LMVC is currently having legislatively mandated regional meetings for input from dealers pertaining to enforcement and rulemaking of the Commission
- 4) LMVC now has jurisdiction over GAP administrators
- 5) Post-Katrina problems with dealerships hiring enough personnel due to so many people leaving the New Orleans area and not coming back; also discussed the temporary licenses and emergency rules issued due to Katrina.

California

In addition to the issues brought up in the earlier presentation by Ken Murphy, it was noted that most of the issues brought before the CA Board deal with protests, both establishments and terminations.

Nebraska

Biggest consumer complaint is late delivery of title; seems to be a problem everywhere.

Utah

Having a problem with getting District Attorneys to prosecute violators of the unlicensed dealer laws

Virginia

- 1) Currently dealing with an issue involving a dealer who was dually at his prior facility; when he built a new facility and remained dually, one of the manufacturers did not approve
- 2) "Cashable Voucher" programs, which we discussed a couple of years ago, are now beginning to come due, and some dealers may find themselves with problems
- 3) Recently looked at definition of a broker in regards to whether an internet referral company who charged by the "clicks" would be considered a broker; Board found that it would not violate the broker law

Ontario

The OMVIC does not handle dealer-manufacturer disputes; they only handle licensing issues

Florida

- 1) Recently re-designed their licensing system; currently phasing-in dealers onto the new system; should be completed by Nov 1st
- 2) Scooters continue to be a licensing and regulation problem
- 3) Issues related to lapses in garage liability insurance

Washington

Washington is more frequently using the "BAP" (Brief Adjudicated Proceeding) for disputes

Oklahoma

- 1) The OMVC is entering into Consent Agreements more often for resolving disputes rather than having a full hearing, especially when the licensee does not challenge the allegation
- 2) In advertising issues, Oklahoma no longer "pre-approves" ads for dealers; it has actually resulted in dealers being better at staying in compliance because the responsibility is put on them and not the OMVC for staying within the Rules
- 3) The OMVC no longer licenses ATV and off-road cycle dealers and manufacturers; they were given to the OMVC by the legislature in 2005, and subsequently repealed in 2006
- 4) The OMVC has been getting a significant number of inquiries from dealers about the "arbitrary" nature of certain manufacturer chargebacks on incentive programs; so far none has been willing to challenge their manufacturer in a hearing
- 5) The large number of imported scooters is still causing headaches for licensing and regulation

California RV Dealers Association

Skip Daum reported that there are 120 California RV dealers who sell approximately 12% of the total RVs sold in the U.S. CRVDA was established to educate dealers and to assist in their selling efforts. They have been effective in getting legislation which places restrictions on off-premise shows and sales; for example, any sale must include at least 9 local dealers.

BUSINESS MEETING

1. Treasurer's Report

Bill Brennan, Treasurer of NAMVBC, presented the Financial Report for the period ending September 7, 2006 for review. Bill Jackson, made a MOTION that the Treasurer's Report be approved, seconded by Lessie House. MOTION carried by unanimous voice vote

2. Approval of Minutes from Previous Meetings

Roy Dockum, Secretary of NAMVBC, presented the Minutes from the 2005 Fall Workshop in San Diego and from the 2006 Winter Workshop in Orlando. MOTION for approval of both sets of Minutes was made by Lessie House, seconded by Bill Brennan. MOTION carried by unanimous voice vote.

3. Election of Officers, Committee Reports, and Items of Information

- **Nominating Committee Report: Bill Jackson** reported that he was nominating the following for officers of NAMVBC for the year beginning January 1, 2007:

President: Roy Dockum, Oklahoma
Vice-President: John McCurry, Maine
Secretary: Dan Devoe, Washington
Treasurer: Bill Brennan, California

MOTION was made by Carol Kent, seconded by Lessie House to approve the nominees submitted. MOTION carried by unanimous voice vote.

- Participants were reminded that the next meeting will be held in Las Vegas, NV in conjunction with the NADA convention, February 3-5, 2007. Bruce will be contacting the Alexis Park Hotel in Las Vegas to reserve a block of rooms for NAMVBC.
- The site for the 2007 Annual Fall Workshop will be in Maine. Dates to be determined, however, an October date is anticipated. It was also discussed that the state of Washington may host the Fall 2008 Workshop.

- Bruce Gould reported that Dave Garnett has offered to work for NAMVBC, helping with logistics and speakers for workshops. It was decided that an hourly rate proposed by Dave would not work for the group. However, it was agreed that Bill Jackson would speak to Dave about possibilities and costs, and will report any progress to the Board.

ADJOURNMENT

There being no further business, the meeting was adjourned.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Roy Dockum". The signature is written in black ink and is positioned above a horizontal line.

Roy Dockum, Secretary

ATTENDEES - NAMVBC WORKSHOP - PARK CITY, UTAH - SEPT 13 - 16, 2006

NAME	ORGANIZATION	FULL MEMBER	ASSOC. MEMBER	E-Mail Address
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Robinson, Spencer	Utah Administrative Law Judge		
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