



## CMCDCA and NADC California Chapter

### Legal Conference

June 14th, 2007

Burbank, CA

#### 10:00 am to noon — Litigation Panel: Current Litigation Issues

Presenters: **Bob Daniels**, Manning, Leaver, Bruder & Berberich; **Kurt Hendershott**, Chapman & Intriери, LLP; **Aaron Jacoby**, Venable, LLP; **Houston Tuel**, Tuel & Garman, LLP

Introduction (Tuel)

California Litigation Hot Spots

- 10-Day Right of Rescission (Daniels)
- Backdating Contracts (Daniels)
- Over-allowance on Trades/Negative Equity (Hendershott & Jacoby)
- Deferred Downpayments (Tuel)
- Overcharging Government Fees (Tuel)
- Taking Hold Checks without Department of Finance License (Tuel)
- Foreign Language Issues (Daniels)
- Selling a Vehicle for greater than Advertised Price (Hendershott)
- Obtaining Customer Signatures on Worksheets (Jacoby)
- Concealing Material Facts (Hendershott)
- Payment Packing (Jacoby)

Litigation Strategies

- Class Actions (Jacoby)
- Insurance Coverage (Daniels)
- Dispute Resolution
  - Settlement Strategies (Tuel)
  - Arbitration (Tuel)
  - Mediation (Tuel)
- Discovery
  - Class Actions (Jacoby)
  - Requests for Documents under the Consumer Legal

Remedies Act (Daniels)

#### noon to 1:00 pm — Lunch

#### 1:00 to 2:30 pm — Franchise Law Panel: Franchise Issues

Presenters: **Michael Flanagan**, Law Offices of Michael J. Flanagan; **Bert Rasmussen**, Manning, Leaver, Bruder & Berberich; **Michael Sieving**, The Law Offices of Michael M. Sieving; **Robert Wolfe**, Engstrom, Lipscomb & Lack

Introduction (Rasmussen)

The State of California Franchise Laws (Flanagan and Sieving)

- Overview of California franchise law

Franchise Manipulation by the Factories (Rasmussen and Sieving)

- Cure letters
- Franchise agreement stipulations
- Downsizing
- Pressure to sell
- Waivers
- Incentive Programs

Experiences from Person Ford v. Ford Motor Company (Wolfe)

- Overview of litigation
- Ford litigation tactics
- Franchise agreements and the implied covenant of good faith and fair dealing

#### 2:30 to 4:00 pm — Compliance Panel: Hot Compliance Topics from the Trenches

Presenters: **Rob Cohen**, Auto Advisory Services, Inc.; **Rob Robards**, Auto Systems Analysis

Introduction

Vehicle Registration Printouts (KSR) Liability Permissible purposes, access, security documentation and restricted distribution. (Cohen)

DMV Task Forces Investigations, occupational licensing and field audits. (Robards)

## Compliance Panel, cont'd

### Disclosures

- "To whom paid" Truth in Lending Act disclosures vis-à-vis surface protection products and theft deterrent devices. (Cohen)
- Prior history disclosures (advertising and point of sale). (Robards)
- Warranty v. service contracts v. insurance. Definitions and disclosures. (Cohen)

Foreign Language Transactions Documentation and representations (Robards)

Laundry List of Miscellaneous Compliance Issues (Cohen & Robards)

## Litigation Panel

### • Robert D. Daniels

Manning, Leaver, Bruder & Berberich

Robert D. Daniels is a partner in the Los Angeles-based law firm of Manning, Leaver, Bruder & Berberich. Mr. Daniels is a 1976 graduate of State University of New York at Binghamton, and received his law degree from UCLA in 1979, at which time he joined the Manning Leaver firm. His practice areas include Consumer and Commercial Litigation, Automotive Dealer Law, Commercial Law and Secured Transactions, and Bankruptcy Law. Mr. Daniels has written extensively in various legal newsletters for his firm on topics related to the automotive industry, and frequently delivers seminars to automobile dealers throughout California on F&I practices and litigation. Mr. Daniels is admitted to the bar in California and in the United States District Court for the Central, Eastern, Southern and Northern Districts, and is a member of the Los Angeles County Bar and American Bar Association.

### • Kurt T. Hendershott

Chapman & Intrieri, LLP

#### Education:

Mr. Hendershott received his Juris Doctor from Hastings College of the Law in 1987, and was admitted that year to practice before all courts in the State of California, including the Northern District Federal Courts, the Eastern District Federal Courts, and the United States Court of Appeals for the Ninth Circuit. While at Hastings College of the Law, Mr. Hendershott was a contributing member of the Constitutional Law Quarterly, and a student instructor in Torts. Mr. Hendershott had previously graduated cum laude from the University of Oregon in 1984, where he was elected to membership in Beta Gamma Sigma, the national honor society for students in business and management.

#### Practice Areas and Work Experience:

Since 1987, Mr. Hendershott has specialized in civil litigation, with an emphasis in insurance defense. Mr. Hendershott has defended a significant number of cases in the areas of products liability, personal injury (including wrongful death cases) and employment litigation (including wrongful termination, harassment and discrimination cases). Mr. Hendershott has defended commercial class action and unfair business practices cases, pursued on behalf of significant numbers of

California consumers. In regard to each of the above areas, Mr. Hendershott has significant experience and expertise in representing automobile dealerships and related entities.

Mr. Hendershott has submitted appellate briefs and has argued before the First District Court of Appeals, and the Sixth District Court of Appeals. His successes include two published opinions.

Mr. Hendershott has represented clients in trial, binding arbitration, and mediation. Mr. Hendershott has also represented clients before the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the Worker's Compensation Appeals Board (with a focus on discrimination cases), and the Department of Labor, Fair Labor Standards Enforcement Division.

Mr. Hendershott is regarded by his peers as being accomplished in managing cases from inception to resolution, whether by trial or informal resolution. Mr. Hendershott has a strong track record of effective case management to resolution, and he is known for immediate response to the needs of his clients, regardless of the size of the case.

#### Accomplishments and Significant Cases:

Mr. Hendershott has vigorously defended his clients, including defending numerous cases with multi-million dollar damages claims, and trying cases to favorable jury verdicts where trial is necessary.

Successfully resolved representative cases include a number of consumer unfair business practices actions against automobile dealership groups, and products liability actions against companies including a national tire retailer, and domestic motorcycle franchises. Additional cases which he has brought to successful resolution include employment harassment/discrimination actions against a retail grocery chain, and several such cases against automobile dealership franchises.

### • Aaron Jacoby

Venable, LLP

Aaron Jacoby is Chair of Venable's Automotive Industry Group. He focuses his practice on federal and state regulatory matters, unfair competition, class action and consumer litigation and government investigations affecting the automotive industry. Mr. Jacoby's representation of California's largest dealership groups in a wide variety of both business and liti-

## Biographies

gation matters over the past eighteen years provides the foundation for counseling clients in strategic planning, business practices, regulatory compliance and litigation avoidance. He has taken the lead role in significant class action and other complex litigation matters affecting retail auto dealers, including the Trygar matter filed against every dealer in the State of California.

Education:

J.D., University of San Francisco School of Law, 1988

B.A., University of California at Santa Cruz, 1983

• **Houston N. Tuel, Jr.**

Tuel & Garman, LLP

B.A., Sacramento State College, 1967; J.D., Stanford University, 1973.

Admitted to the California Bar, June 1974.

Employment History:

Staff Attorney, California DMV, 1974-1977

Partner, Britton, Coder & Tuel, 1977

Partner, Wright, Britton, Coder, & Tuel, 1977-1980

Partner, Coder & Tuel, 1980-1988

Partner, Coder, Tuel & Flanagan, 1988-1994

Partner, Tuel & Flanagan, 1995-1998

Managing Partner, Tuel & Garman, LLP, 1998 to present

While at DMV, Mr. Tuel co-authored DMV's advertising regulations, now codified in Title 13 of the California Code of Regulations. He also prosecuted numerous administrative actions against licensees for alleged violations of the California dealer licensing laws. He has been representing dealers and their associations since leaving DMV in 1977. Prior to the 1991 consolidation of the Northern California and Southern California Motor Car Dealer's Associations, Mr. Tuel served as General Counsel to the NCMCDA, a trade association for all new car dealers in Northern California. He and his firm, Tuel & Garman, LLP of West Sacramento, California, now represent some 50 individual automobile dealerships, as well as the advertising associations for all the Ford, Toyota, and Honda dealers in Northern California. In the course of his private law practice, Mr. Tuel has handled numerous buy/sells of franchised businesses, has reviewed hundreds of proposed dealership and association advertisements, and has defended scores of dealers in actions brought by consumers and various governmental agencies. He is primarily responsible for his firm's transactional, corporate, advertising, and DMV-related work. Mr. Tuel is a member of the National Association of Dealer Counsel. His other interests include participating in Vietnam War veteran's organizations.

### Franchise Law Panel

• **Michael J. Flanagan**

The Law Offices of Michael J. Flanagan

B.A., University of Michigan, 1972; J.D., McGeorge School of Law, 1980. Admitted to California Bar, December 1980.

Employment History:

Assistant to the Executive Secretary, California New Motor Vehicle Board, 1978-1980

Associate, Pilot & Spar, 1980-1988

Partner in Coder, Tuel & Flanagan, 1988-1994

Partner in Tuel & Flanagan, 1995-1998

Owner of the Law Offices of Michael J. Flanagan, Present

The bulk of Mr. Flanagan's practice has been devoted to the representation of automobile dealers in Protests and Petitions before the California New Motor Vehicle Board pursuant to the Automobile Franchising Act. In addition, he has represented dealers in the Municipal and Superior Courts of California, as well as in cases before the California Courts of Appeal on numerous occasions, several of which have resulted in published opinions [BMW of North America, Inc. v New Motor Vehicle Board (1984) 162 C.A.3 980; America Isuzu Motors, Inc. v New Motor Vehicle Board (1986) 186 C.A.3 464; Champion Motorcycles, Inc. v New Motor Vehicle Board (1988) 200 C.A.3 819]. Mr. Flanagan also has extensive experience representing dealer advertising associations. While employed at Pilot & Spar in Los Angeles, he represented the Southern California Honda Dealers association, the Southern California Toyota Dealers Association, the Southern California Mitsubishi Dealers Association, the Nissan Dealers Association of Southern California, the Southern California Volvo Dealers Association, and the Orange County Nissan Dealers Association. Mr. Flanagan is primarily responsible for the firm's New Motor Vehicle Board and automotive franchise relations work.

• **Bert Rasmussen**

Manning, Leaver, Bruder & Berberich

Bert Rasmussen is a partner in the Los Angeles law firm of Manning, Leaver, Bruder & Berberich. Bert represents new automobile, motorcycle, and truck dealers throughout California. His practice focuses on franchise issues between dealers and manufacturers and includes representation of dealers before the California New Motor Vehicle Board. He also regularly presents educational seminars for automotive and motorcycle dealers on legal compliance issues and is one of the authors of the Dealer Management Guide and F & I Compliance Manual, publications of the California Motor Car Dealers Association. He is a 1982 cum laude graduate of Loyola Law School, Los Angeles, California, and received his BA degree in 1980 from UCLA. His professional memberships include the Beverly Hills, Los Angeles County and American (Antitrust and Business Law Sections and Forum of Franchising) Bar Associations; State Bar of California.

• **Michael M. Sieving**

The Law Offices of Michael M. Sieving

Michael M. Sieving is currently the owner and principal attorney of the Law Offices of Michael M. Sieving in Sacramento, California. His office primarily represents automobile and recreational vehicle dealers in litigation with manufacturers and distributors involving proposed franchise terminations, establishments and relocations, warranty reimbursement and incentive disputes, buy-sell turn downs (including unreason-

able restrictions imposed as a condition of approval), and vehicle allocation issues. In addition, Mr. Sieving represents both buying and selling dealers in asset and stock purchase negotiations and agreements, through the process of factory approval. Mr. Sieving is counsel to the California Recreation Vehicle Dealers Association, and is actively involved in the Association's legislative activities, including the recent amendments which brought RV industry disputes under the jurisdiction of the California New Motor Vehicle Board.

Prior to establishing his firm in 2000, Mr. Sieving spent over 16 years as an Administrative Law Judge and the Assistant Executive Secretary of the California New Motor Vehicle Board, presiding over hearings and settlement conferences in dealer protests and petitions. In this position, Mr. Sieving also drafted many of the amendments to the statutes and regulations under which the Board currently operates.

**Education:**

B. S. - Finance, University of Missouri, Columbia, MO.

J. D. - University of the Pacific - McGeorge School of Law, Sacramento, CA.

Member - State Bar of California

Federal District Court - Eastern District of California.

Federal District Court - Central District of California.

Ninth Circuit Court of Appeals.

• **Robert Wolfe**

Engstrom, Lipscomb & Lack

Robert J. Wolfe is a partner in the law firm of Engstrom, Lipscomb & Lack wherein he specializes in complex business litigation matters. Mr. Wolfe graduated from Southwestern University Law School (1987); member of the California State Bar, U.S. District Courts, Southern, Northern, and Central Districts; Sustaining Member of the Consumer Attorneys of California wherein he has authored articles for CAOC's Forum Magazine; Southern California Super Lawyer 2003, 2004, 2005, 2006 by Law & Politics Magazine as well as Los Angeles Magazine; Top California Lawyers, Lawdragon Magazine 2005, 2006; National and International Speaker; and has verdicts and settlements totaling over \$100 million.

**Compliance Panel**

• **Rob Cohen, Esq.**

Auto Advisory Services, Inc.

Rob Cohen started with Auto Advisory Services in 1994, was made Managing Partner in 2001, and he became President in 2006. Prior to becoming partner, Rob represented dealers in litigation for four years. Rob specialized in the defense of consumer claims and represented licensees before DMV administrative hearings.

He developed a strong background inside dealerships by working as a car salesman and doing F&I during law school. Rob has also served as General Counsel for a large automotive group in Los Angeles. Rob received his B.A. and M.B.A. from the University of California, Irvine and then went on to earn his J.D. from Whittier College, School of Law.

Rob currently serves as Vice President of the National

Association of Dealer Counsel (NADC), is editor of Transmission (Auto Advisory Services' monthly newsletter) and The Defender (the NADC newsletter), and has been published in Ward's Dealer Business, Orange County Business Journal and F&I Management and Technology. He is a frequent speaker and trainer on a wide range of subjects pertaining to dealership sales and finance compliance. Rob co-authored the top-selling Automotive Dealership Information Safeguards Manual, the Automotive Dealership Identity Theft Guide, as well as the recently published Vehicle Finance and Compliance Documents Guide.

Recent Seminars: Common But Potentially Dangerous F&I Practices, NADC F&I Workshop, Baltimore, MD, November, 2006; Changes for 2007, Reynolds and Reynolds University Online, November, 2006; F&I Matters, NADC Member Conference, Chicago, IL, April, 2006; Car Buyer's Bill of Rights Training, California (multiple sessions), May-June, 2005; Negative Equity Disclosure, NADC Member Conference, Atlanta, GA, April, 2005

Auto Advisory Services is a leading compliance consulting company. With a client base of nearly 600 dealerships, Auto Advisory Services offers comprehensive sales, finance, advertising, and DMV compliance services. Auto Advisory Services performs over 140 on-site compliance audits each month and the compliance hotline receives approximately 200 calls per week. Auto Advisory Services conducts industry workshops, publishes informative compliance publications and is a contracted second line partner in conjunction with the California DMV's Business Partner Automation program.

• **Robert B. Robards**

Bustamante, O'Hara & Gagliasso

Robert B. Robards' practice focuses on complex construction litigation as well as other construction related matters including contract, real estate and business litigation. In addition, Mr. Robards handles administrative claims in the automotive industry including but not limited to claims by the Department of Motor Vehicles and other administrative agencies against new and used automobile franchises, sales personnel and other occupational licensees.

Mr. Robards is very familiar with the special master process as well as other ADR methods in resolving complex construction litigation matters. In addition, he is versed in the administrative hearing process and currently consults and represents over 250 new vehicle dealers in the State of California.

Mr. Robards was born and raised in Sacramento. He received his Bachelor's Degree in Criminal Justice from California State University Sacramento in 1989. He graduated from the University of Pacific, McGeorge School of Law in 1993. Mr. Robards has been with Bustamante, O'Hara & Gagliasso since its inception in 1994.

Mr. Robards is a member of The State Bar of California and The Sacramento County Bar Association. He is admitted to practice law in California and the Northern and Eastern District Courts. Mr. Robards is an associate member of the California Motor Car Dealer's Association.