A portrait of Mark Boniol, a middle-aged man with short dark hair, wearing a dark blue suit jacket over a white collared shirt. He is smiling slightly and looking directly at the camera. The background is a soft, out-of-focus yellow.

AUGUST 2020 | ISSUE #5

LADA 2020 DEALER OF THE YEAR

MARK BONIOL

MESSAGE FROM THE CHAIRMAN

JOHN T. "TOMMY" HARVEY

LEGAL CORNER

CLAUDE F. REYNAUD, JR.

THE LDS GROUP UPDATE

**F&I TRAINING AND INCOME
DEVELOPMENT DURING
COVID-19**

Up *to* Speed

LADA'S QUARTERLY NEWSLETTER

The LDS Group



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Contents

UP TO SPEED LADA'S QUARTERLY NEWSLETTER

04 LADA PRESIDENT'S MESSAGE

LADA President, Will Green, discusses the re-inforced appreciation of personal vehicles during the pandemic.

06 2020 LADA DEALER OF THE YEAR

**MARK BONIOL
MARK DODGE
LAKE CHARLES, LA**

07 MESSAGE FROM OUR LADA CHAIRMAN

LADA Chairman, John T. "Tommy" Harvey, provides insight into goals for his upcoming term.

10 OUR FRANCHISE LAW IS ALIVE AND WELL

Legal Counsel, Claude F. Reynaud, Jr., discusses how Franchise Laws are Constitutional and State Action Immunity

16 F&I TRAINING AND INCOME DEVELOPMENT DURING COVID-19

LDS President, J. Keith Decell, shares how their company has ramped up training during the pandemic and results that dealerships are seeing.

20 THIRD QUARTER THROWBACK

An LADA Annual Convention trip down memory lane.



06

***LADA 2020 Dealer of the year
Mark Boniol***



07

***LADA Chairman's
Message***



10

***Legal Corner with Claude
F. Reynaud, Jr.***



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A MESSAGE FROM THE PRESIDENT

WILL H. GREEN

LADA President

LADA-SIF Fund Administrator

Re-enforced Appreciation for Personal Vehicles

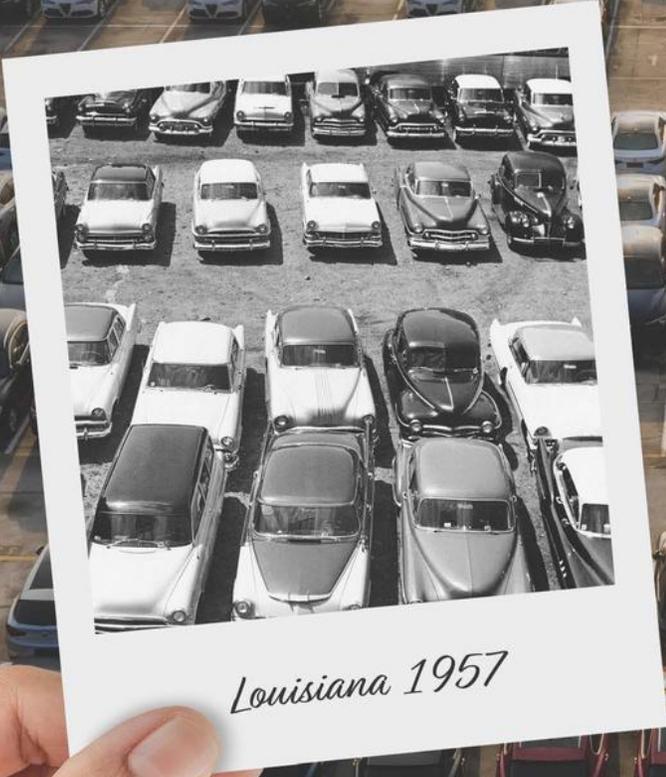
The COVID-19 era has brought about many challenges and changes to our daily lives. Stay at home orders are being relaxed and lifted, and offices, schools and restaurants are beginning to reopen in different capacities. A key element in helping the public get back out into the world has been a re-enforced appreciation for safe and reliable personal vehicles.

Rail-hailing services and public transportation, once hailed as the future and a must for local and state officials to pave the way for, have now been cautioned against by many public health officials, including the CDC who recommends against public transportation, in favor of private vehicles as the preferred means of travel.

Lyft and Uber along with other ride-sharing programs are struggling while many car owners are being reminded of the freedom and security that come along with personal ownership.

Louisiana dealers have long known the value they play in providing safe and reliable transportation to the communities they serve. As a result, they have stepped up sanitation efforts in their show rooms and service departments. Louisiana dealers have implemented delivery and pick-up services in order to minimize contact as much as possible in order to better protect their customers, employees and those communities they hold dear.

We look forward to a time when COVID-19 is behind us. Until that day, Louisiana dealers are here to help provide freedom and security for a safer road trip, ride to work, school, drive-in movie or whatever destination puts a smile on your face and to help keep Louisiana's economy moving.



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LOUISIANA AUTOMOBILE
DEALERS ASSOCIATION

05
AUG 2020 | ISSUE # 5

MARK BONIOL

LOUISIANA 2020 DEALER OF THE YEAR

The Louisiana Automobile Dealers Association (LADA) honored Mark Boniol with the 2020 Louisiana Dealer of the Year Award. He was surprised with a special presentation at his dealership in Lake Charles, Louisiana, on August 6, 2020, surrounded by his family, friends and dealership team.

Boniol is the owner and Dealer Operator for Mark Dodge in Lake Charles, Louisiana. A graduate of Trinity University in San Antonio, TX, he began his automotive career in Nashville, Tennessee, in 1987 with the Jim Reed organization as a salesman. He moved to Shreveport in 1990 and became manager of Roundtree Mitsubishi and eventually partnered with Frank Stinson of Champion Ford in 1995. In 1997 he moved to Lake Charles and purchased Mark Dodge Chrysler Jeep. In 2004 he became sole owner of the dealership. Over the years, Mark Dodge has also had a presence in Mobile, AL, and Woodstock, GA. For the last 23 years he and his friendly staff have been serving Southwest Louisiana and surrounding areas.

“I was honored to present Mark with the 2020 Louisiana Dealer of the Year Award,” states LADA President, Will Green. “Mark has worked hard to achieve a high level of success in our industry, while at the same time remaining focused on giving back to his local community.”

Prior to COVID-19, Boniol began a campaign “shop from your home, sign on your phone, and we will deliver to you.” He did not realize how timely the beginning of his campaign was going to be as the pandemic struck just a few weeks after its launch. During his address to his team after the presentation of the award, he attributed his recognition and success to their hard work and stated how much of an honor it is to be associated with such a wonderful group of people.

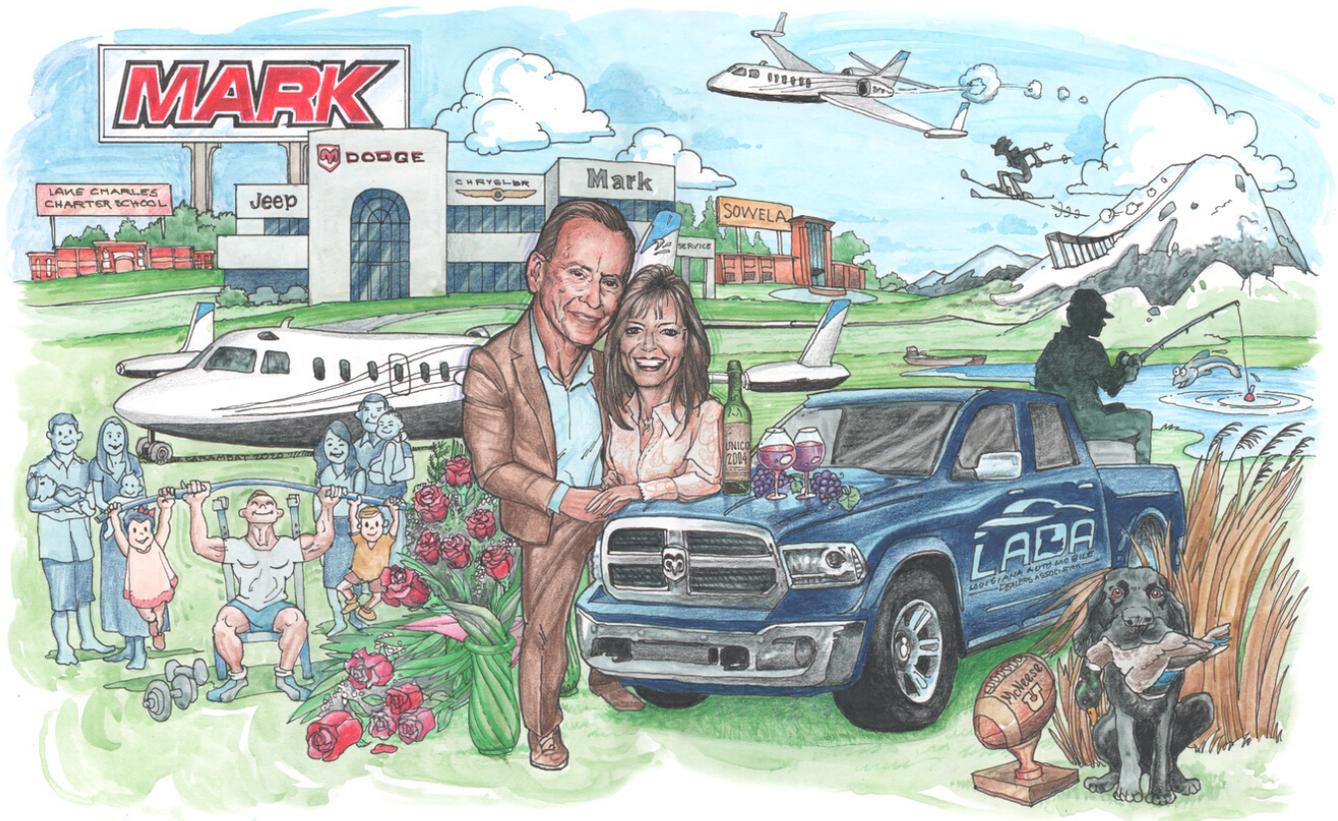


Continued on page 7.

Boniol has been a member of LADA for many years and is active in his community. He is passionate about giving back to the education of children and focuses their giving efforts to local organizations including the Lake Charles Charter Schools, SOWELA, and McNeese University. His wife, Rebecca Boniol, describes him as “an entrepreneur who has four drivers in life: freedom, giving, creating opportunity for others, and being a glory to God.”

Boniol and his wife Rebecca have been married 9 years and have five children and 5 grandchildren. Boniol enjoys spending time with his family, traveling on his plane, fine wine, skiing, duck hunting, fly fishing, and working out. He and his wife reside in Lake Charles, Louisiana.

The Louisiana Dealer of the Year is the most prestigious award LADA bestows because nominations come directly from the dealer body and is based on the dealer’s business success and civic involvement in the community. Boniol will represent Louisiana at the 2021 National Automobile Dealers Association Convention in New Orleans, Louisiana, as LADA’s nomination for TIME Dealer of the Year.





LADA CHAIRMAN'S MESSAGE

BY: JOHN T. "TOMMY" HARVEY

The opportunity to serve as Chairman of The Louisiana Automobile Dealers Association for the upcoming year is not only an honor, but very humbling. I am excited to work with a tremendous group of dealers that serve on the Louisiana Automobile Dealers Association Board of Directors along with our incredible staff: Will, Kathleen, Fermin, Krystal and Ginger.

I never imagined that when I walked into my first meeting several years ago with such an outstanding group of dealers I would have this opportunity to serve as your LADA Chairman of the Board. My goal this year is to let every dealer in the state of Louisiana know how important their support of this great organization is to our success. We as the Louisiana Automobile Dealers Association Board of Directors will

always strive to make our industry stronger. The most important asset we have is our great Louisiana dealer body. As one voice we will always be stronger.

In closing, I would be remiss if I did not thank my employees, along with the unwavering support of my family: my wife, Ann, and my daughters, Anna Katherine and Grace. They are what drives me to succeed and be the best I can be every day. Also, I want to thank my parents, Dotsy Peel and John Harvey for their guidance throughout my life.

I am looking forward to working with all of you.

Thank you!

Tommy Harvey



OUR NEW WEBSITE HAS LAUNCHED!

We are excited to announce that Risk Management Services, LLC has launched a new website at www.rmsla.com! Some of the great new features of this site include:

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If you have any questions or issues navigating the website, please let us know. You may contact Lexi St. Germain at (504) 837-3100 or (800) 351-7475 or by email astgermain@rmsla.com.

Risk Management Services, LLC (RMS) the Workers' Compensation Specialists for the LADA-SIF
Contact: Jean Robert, JRobert@RMSLA.com, 800-351-RISK

LEGAL CORNER

OUR FRANCHISE LAW IS ALIVE AND WELL



By: Claude F. Reynaud, Jr.

This year has been a unique one for LADA, as it has for all of you. However, regardless of the challenges, LADA continues to work hard to protect dealers who find themselves in onerous contractual relationships with sole source providers called

automobile manufacturers. We have the safety of our Franchise Law, the purpose of which is to do as follows:

...avoid undue control of the independent motor vehicle dealer and recreational products by their motor vehicle manufacturing and distributive organizations and foster and keep alive vigorous and healthy competition, by prohibiting unfair practices by which fair and honest competition is destroyed or prevented...and prevent disruption of the system of distribution of motor vehicles. (emphasis added).

The franchise system has, however, been under attack by the Manufacturers' Alliance and others.

A. Franchise Laws are Constitutional

In the past, I have reported on significant Federal cases upholding the sanctity of state franchise laws from attacks by the Alliance of Automobile Manufacturers, Inc. Two recent favorable cases are *Alliance of Automobile Manufacturers, Inc. v. Julie L. Jones and Florida Automobile Dealers Association*[1] and *Alliance of Automobile Manufacturers, Inc. v. Currey and Connecticut Automobile Retailers Association, Intervenor* [2]. The first case was dismissed, with prejudice, on a stipulation by the Alliance that they would never raise the same issues attacking the franchise laws in Florida again. In the second case, which is of much greater precedential value, the district court and the Second Circuit Court of Appeals protected the franchise laws from attacks by the Alliance based upon the dormant Commerce and Due Process Clauses of the U.S. Constitution. The net effect of both cases is a victory for protection of the franchise laws of each state as an appropriate means consistent with the U.S. Constitution to regulate the relationship between manufacturers and dealers.

The issue in both Florida and Connecticut was the Alliance's reaction to legislation being passed prohibiting surcharges on vehicles in retaliation for each state's respective enforcement of payment by the manufacturer at retail prices for labor and parts on warranty work. The sequence was, once the respective states started enforcing the retail provision in their franchise law, the manufacturers retaliated with the surcharges on vehicles. The respective states then enacted anti-surcharge legislation. That is when the Alliance sued.

Perhaps the single most important pronouncement of the efficacy of the franchise laws was by the U.S. Supreme Court in the case of *New Motor Vehicle Board of California v. Orrin W. Fox Co., et al* [3]. The decision, upholding California's franchise law, was written by Justice Brennan. Justice Marshall concurred and wrote his own important concurring opinion. Justice Brennan stated as follows:

The dispositive answer is that the automobile franchise acts regulatory scheme is a system of regulation, clearly articulated and affirmatively expressed, designed to displace unfettered business freedom in the matter of the establishment and relocation of automobile dealerships. The regulation is therefore outside the reach of the antitrust laws under the state action exemption. Parker v. Brown, 371 U.S. 241, 63 S.Ct. 307, 87 L.Ed. 315 (1943).

Importantly, the Supreme Court recognized that the system in California gave dealers notice and an opportunity to be heard before an adjudicatory body and then have appeals to the court system. Thus, the complaining party was afforded due process. There is a method of protest, a method of hearing, and a method of adjudication, as we have here in Louisiana. This is sufficient, the Court ruled, to avoid any imposition of federal antitrust liability.

Justice Marshall, concurring, said as follows:
Although I join the opinion of the Court, I write separately to emphasize why, in my view, the California Automobile Franchise Act is not violative of the due process clause. As the Court observes, the California statute, like its state and federal counterparts, seeks to redress the disparity in economic power between automobile manufacturers and their franchisees.

This pronouncement should be music to our ears.

The sanctity of the franchise laws and the substantive and jurisdictional authority of those empowered to enforce those franchise laws was more recently put to the test in *Tesla, Inc. v. Ruth Johnson, et al.*, in Federal District Court in Michigan [4]. In that instance, Tesla sued the Secretary of State of Michigan as the “chief motor vehicle administrator,” the Governor (Gretchen Whitmer of pandemic fame), the Attorney General (Dana Nessel), Midwest Strategy Group of Michigan, LLC, a group of lobbyists, the Michigan Automobile Dealers Association (MADA), and the Detroit Automobile Dealers Association, among others. There were also numerous amicus briefs. At issue was the Secretary of State’s and Attorney General’s enforcement of a new law [5] that Tesla feared would prohibit it from selling, or otherwise distributing, its vehicles in Michigan through its preferred business model, which avoids the franchise laws completely and uses direct sales or leases. Tesla attacked the amendment to Section 445.1574 of the Michigan Franchise Law and did so under 42 U.S.C. §1983 claiming a violation of constitutional due process, equal protection, and the dormant Commerce Clause. The latter was the same issue presented in the aforementioned Florida and Connecticut cases. Tesla alleged that the various administrative authorities in the State of Michigan, along with lobbyists and the MADA, conspired to violate constitutional protection by enacting the amendment to Sec. 445.1574 to the prejudice of Tesla. In my view, the Noerr-Pennington doctrine [6] should protect all lobbying activities in furtherance of the passage of legislation.

The *Tesla* case, however, was settled before it went to a circuit Court of Appeal and is of little precedential value. Ultimately, the Attorney General, unbeknownst to MADA or the Governor, entered into a joint stipulation of dismissal, settling the entire action on January 22, 2020. A January 27, 2020 Automotive News article described the settlement of the Michigan case as a huge win for Tesla and a huge loss for the dealer network system in the United States. After reading the order of dismissal itself, however, the impact of the settlement is not nearly so draconian. Basically, Tesla will be allowed to use its Tesla service subsidiary to operate one or more service and repair facilities in the state of Michigan so long as the parent, Tesla, does not itself own the facility. Finally, Tesla will be permitted to operate one or more “galleries” to educate customers and facilitate transactions out of state, so long as Tesla does not transfer legal title to the vehicle within the State of Michigan.

B. State Action Immunity

There is another set of cases which, while not directly assailing franchise laws, does contest the authority of industry regulators like our Louisiana Motor Vehicle Commission on the issues of due process and if the decisions of the regulators are protected by what is called the State Action doctrine first recognized by the U.S. Supreme Court in *Parker v. Brown* [7].

Louisiana is within the geographic area of the United States Fifth Circuit Court of Appeals. There is an important Fifth Circuit case on the issue of regulation by a board or commission. *St. Joseph Abbey v. Paul West Castille, et al, in Their Official Capacities as Members of the Louisiana State Board of Embalmers and Funeral Directors* [8]. St. Joseph Abbey (Abbey) is a historic abbey on the northshore of Lake Pontchartrain. To raise money for the Abbey, the monks have for years been making wooden caskets. The Abbey is not a licensed funeral home or embalmer, but desired to sell its caskets within the State of Louisiana. The Louisiana State Board of Embalmers and Funeral Directors (LSBEFD), made up exclusively of embalmers and funeral directors, voted to deny a license to the Abbey. So, the courts were presented with a remarkable situation where the Abbey could sell its caskets in Mississippi, Texas, Arkansas and any other state, but not in Louisiana. The Fifth Circuit, in an opinion written by Judge Higginbotham, who is considered somewhat of an antitrust scholar, held that the decision of the LSBEFD violated the Abbey’s 14th Amendment due process and equal protection rights and was not afforded State Action immunity.

Importantly, the Federal Trade Commission (FTC) intervened in the case on the side of the Abbey, contending specifically that the regulation of the Abbey by its competitors (funeral homes) and, in general, the prohibition against anyone but funeral homes selling caskets was protectionist. The FTC has historically been interested in funeral homes in particular, because they offer, and sometimes mandate, bundling of services, which the FTC found troubling as an illegal tie under the antitrust laws. There is a long history of disputes between the FTC and funeral homes initially commenced by the FTC’s “Funeral Rule,” which ordered all funeral homes to itemize each and every service or product produced in connection with a funeral, thereby revealing to consumers the inordinately high markup of the caskets. Funeral

Continued on page 13.

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directors responded to this growing competition by refusing to use caskets sold by third parties unless consumers paid large casket handling fees. The FTC responded by amending the Funeral Rule to ban casket handling fees.

In this instance, the funeral directors on the LSBEFD acted collectively to vote against authorizing the Abbey to sell its handmade wooden caskets at substantially reduced prices from those offered to consumers by funeral homes. The funeral directors voted in their self-interest in the FTC's view and were not, therefore, granted immunity from anticompetitive conduct by the State Action doctrine. The LSBEFD, in defense, took the position that the FTC rules only apply to interstate commerce, and the FTC could only regulate the bundling of services to residents outside the State of Louisiana. In other words, the Abbey could not sell a casket in Louisiana to a Louisiana resident, because it was not licensed by the LSBEFD. The court ultimately ruled that, without immunity, the actions of the LSBEFD were protectionist and violated both the due process and equal protection clauses of the U.S. Constitution.

Another case that could tangentially be construed to threaten the regulation of the franchise system is the U.S. Supreme Court case of *North Carolina State Board of Dental Examiners v. The Federal Trade Commission* [9].

In this case, the Supreme Court held that efforts by the North Carolina Board of Dental Examiners to prevent dental hygienists from engaging in the practice of teeth whitening when not affiliated with a dental office were not immune from antitrust attack by the FTC under the State Action Doctrine.

The Board of Dental Examiners in North Carolina is a state agency created by statute. Six members are dentists elected by fellow dentists, one member is a hygienist elected by other hygienists, and the final member is a consumer appointed by the governor. North Carolina state law appropriately makes it unlawful to practice dentistry without a license, but there is no explicit definition of "teeth whitening" as the practice of dentistry. Because dental hygienists were offering teeth whitening services in malls and other shopping areas at significantly lower prices, the Board of Dental Examiners issued a cease and desist letter. The FTC filed an administrative complaint charging the Board with violating Section 5 of the FTC Act. The FTC and then, later, the Fourth Circuit Court of Appeals found that the conduct of the Board was not immune under the State Action Doctrine. The United States Supreme Court affirmed that decision in a 4-3 vote [10].

First, let me say that I agree with the three dissenting justices in the opinion, and believe that the Dental Board should be seen as a state actor, as opposed to a non-sovereign entity only entitled to State Action immunity in limited circumstances. Moreover, there are some important factual differences between the Dental Board and our LMVC. Notably, our Governor appoints our Commissioners, as opposed to the majority of Dental Board members being chosen by fellow dentists/members (fellow market participants). In Louisiana, there are procedures for legislative review and approval of any rule or regulation adopted by a commission, including a hearing before a legislative committee as needed. This would likely satisfy the active state supervision requirement to protect allegedly anticompetitive acts of non-sovereign entities. The LMVC also has contradictory hearings to enforce the Franchise Law and Commission regulations or to handle disputes between its licensees. Decisions can be appealed to the 24th Judicial District Court and higher courts.

As a sovereign state actor, one is clothed with the full protection of State Action immunity without the necessity of showing active state supervision. It was the absence of that state supervision that proved fatal to the Dental Board. The same "active state supervision" analysis could apply to the LMVC to trigger State Action immunity.

The most interesting thing about the *North Carolina Dental Board* case is an article written right after the decision was released on February 25, 2015 by a Commissioner of the FTC, Maureen K. Olhausen:

*It is worth considering that, in a real sense, the North Carolina Dental case **did not have to happen**. The Board could have proceeded against the non-dentist teeth whiteners by seeking injunctions from the North Carolina courts, rather than issuing cease-and-desist letters directly to those parties. If the Board had chosen that path, it would have been shielded from antitrust liability under the Noerr-Pennington doctrine. Alternatively, the Board could have promulgated a rule defining the practice of dentistry to include teeth whitening. Under North Carolina law, that rule would have been subject to review and approval by the Rules Review Commission, which could very well have constituted sufficient supervision under the state action doctrine. Thus, the Board was subject to antitrust scrutiny because it opted to bypass its statutorily provided powers in favor of coercive measures that were not authorized under state law. (emphasis added and internal footnotes omitted)*

The Commissioner's comments are a roadmap to avoid the plight of the North Carolina Dental Board. For
Continued on page 15.

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example, this regulating entity could petition the courts (injunction, declaratory judgment), the legislature (clarifying legislation), or the Attorney General (clarifying opinion), as these actions would be fully protected by the *Noerr-Pennington* Doctrine. The Doctrine is based on an actor's first amendment right to association and the right to petition one's government. Absolute petitioning immunity is afforded private actors [11] who use valid efforts to urge favorable government action, even when anticompetitive effects are intended or are a direct or indirect result of the efforts to influence the government. These protected efforts include lawsuits, lobbying, publicity campaigns to support or defeat legislation, the development of close relationships with public officials, and even false statements made to influence legislation or other governmental actions, such as licensure and permitting. The second point made by Commissioner Olhausen is that the Dental Board could have passed a regulation that was subject to review by the Rules Review Commission in North Carolina. That review may have constituted sufficient supervision to qualify for State Action immunity.

I think the most important part about this is that the LMVC and similarly situated regulatory authorities in other states really do not prevent competition. New points of sale are welcome, absent protest from an adversely impacted dealer. The standard of reasonableness appears throughout our statute with full due process. Based on this jurisprudence, our Franchise Laws, and the regulation thereof, are clearly distinguishable from the protectionist behavior of the funeral directors and the dentists.

[1] *Case No. 4:08-cv-0555-MCR-CAS, U.S. District Court, N.D. of Florida (Tallahassee Division).*

[2] *984 F.Supp.2d 32, Civil Action No. 3:13-cv-398(JCH); and Case No. 134890, [Doc 108-1] 04/07/2015, 1478169 Summary Order of the Second Circuit Court of Appeals.*

[3] *99 S.Ct 403, 58 L.Ed. 2d 361, 439 U.S. 96 (1978).*

[4] *Case No. 1:16-cv-01158.*

[5] *Sec. 445.1574 of the Michigan Franchise Law prohibits direct sales by a manufacturer of new vehicles to consumers.*

[6] *First Amendment rights include the right to assemble and the right to petition the government for relief. See E. R.R. Presidents' Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961), and United Mine Workers of America v. Pennington, 381 U.S. 657 (1965).*

[7] *317 U.S. 341 (1943).*

[8] *700 F.3d 154, (5th Cir. 2012).*

[9] *2/25/2015, available at www.supremecourt.gov/opinions/14pdf/13-534_19m2.pdf.*

[10] *Some believe the North Carolina Dental Board case addressed the potential for individual liability of the members of that dental board. It really did not. That was a minor issue discussed in dicta without such a ruling. It was at best an observation by the Court.*

[11] *Should the LMVC be deemed a non-sovereign actor, it would be classified as a private actor who is entitled to Noerr-Pennington protection. See FN 6, supra.*



F&I TRAINING AND INCOME DEVELOPMENT DURING COVID-19



BY: J. KEITH DECELL, PRESIDENT, LOUISIANA DEALER SERVICES

While it seems like a long time ago, it has only been a few months since most of us in Louisiana were in a state of euphoria and hope. LSU had just won the National Championship in football, the economy was great, unemployment was low, the stock market was at a record high, and all of us in the car business were looking forward to a great 2020!

Then, it all changed! COVID-19! On March 22nd Governor John Bel Edwards issued a “Stay at Home Order” which remained in place through May 15th, at which time our state moved to Phase One of reopening businesses. The virus has touched the lives of every Louisiana resident, either directly or indirectly, including those in the automobile industry.

There is an old saying that “Adversity Builds Character”. Well, the automobile dealers of Louisiana have shown their unbelievable character and resiliency during this pandemic. The LDS Group mandated its Territory Managers to work from home for the safety and security of our dealership’s employees as well as our team members.

INCOME DEVELOPMENT

With the continued sales, especially during the last four months, the need for ‘virtual’ F&I training and income development became a priority.

Under the direction of Jason Rasti, our twelve Territory Managers quickly became Zoom Masters! They began scheduling Zoom meetings with their respective dealerships and dealer groups every day. These meetings were using the same format as our pre-COVID monthly F&I meetings, but with added benefits. We were able to have our trainer of the past 32 years, Cole Miller, join as many as four or five meetings per day. We were also able to have our Territory Managers join each other’s meetings to provide additional input and training. This could never physically happen with our previous “in-person” meetings. The responses from our F&I managers and dealers has been extremely positive!

TRAINING

“SOME PEOPLE SAY TRAINING DOESN’T LAST. I SAY NEITHER DOES BATHING. SO, BOTH ARE RECOMMENDED DAILY.” ~ZIG ZIGLAR

Continued on page 18.



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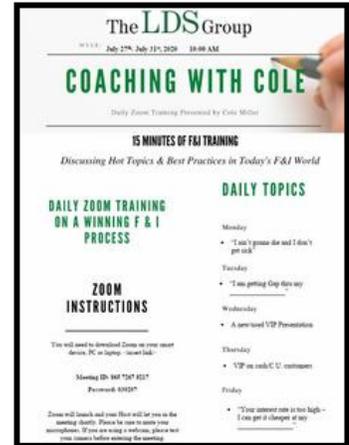
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Continued from page 15.

"COACHING WITH COLE"

Effective Monday, April 13th, The LDS Group launched its "Coaching with Cole" virtual training initiative via Zoom. These 15-20-minute training sessions happen every Monday through Friday morning at 10am. Cole focuses on one topic per day and delivers specific training. These impactful sessions typically have close to 100 attendees per day. Again, the response has been great from our F&I managers. This training will remain an important piece of our training going forward.



THE BOTTOM LINE

The past 5 months has allowed The LDS Group to provide more training than ever before. The results have certainly shown up in the F&I production of our dealerships. Collectively, our dealerships are producing higher product penetrations and enjoying more F&I income than any time in history. Our goal at The LDS Group has always been to provide the very best in F&I products, training and income development to dealers in Louisiana. We are still committed every day to achieving that goal!

The LDS Group

F&I TRAINING & INCOME DEVELOPMENT TEAM





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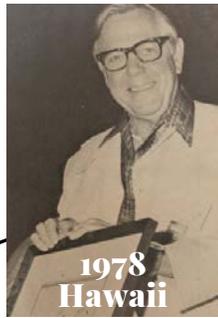
3rd Quarter Throwback

A TRIP DOWN LADA ANNUAL CONVENTION MEMORY LANE

While we may have not been able to gather during our favorite and most anticipated time of year, the LADA Annual Convention, we thought it would be fun to dust off those old photo albums and take a trip down memory lane as we reminisce about the good ol' times and look forward to when we can be together again next year at The Cloister in Sea Island, Georgia. Enjoy!



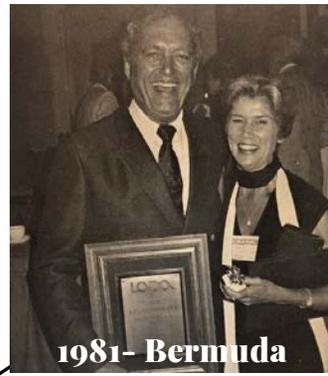
1977 - San Diego



1978
Hawaii



1980 - Lake Tahoe



1981- Bermuda



1986



1985
Stateline, NV



1984
Orlando



1982 - Destin



1983 - Quebec



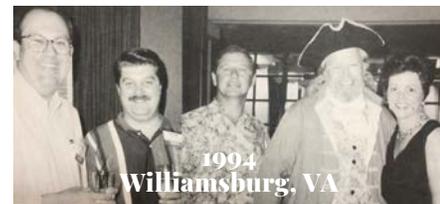
1987



1988
Monterey, CA



1991
Vail, CO



1994
Williamsburg, VA



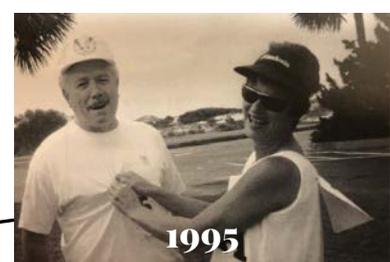
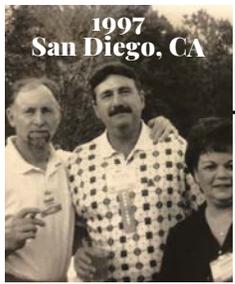
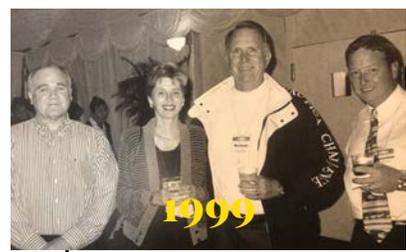
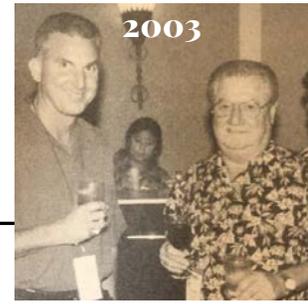
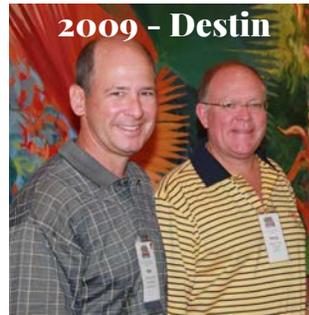
1989 Destin



1990
Rockport, ME



1992



Advertiser Index

- 14 Blue Cross Blue Shield of Louisiana
- 24 Breazeale, Sachse & Wilson, L.L.P.
- 12 Cox Automotive
- 05 Dealertrack Registration & Title
- 17 Fisher & Phillips
- 19 Hannis T. Bourgeois, LLP
- 14 HUB International
- 23 KPA
- 02 Louisiana Dealer Services
- 19 Reynolds & Reynolds
- 09 Risk Management Services



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