

NAAG Gazette

A Newsletter of the National Association of Attorneys General

IN THIS ISSUE

February 2009

NAAG Offers Its Priority Issues for Federal Government



BLAIR TINKLE

BLAIR TINKLE, GENERAL COUNSEL TO THE ASSOCIATION AND CONGRESSIONAL LIAISON

With the Obama administration and the 111th Congress now underway, state Attorneys General are poised to present a clear agenda for state-federal work and cooperation. NAAG has given an Interim Briefing Paper to the Obama administration and Congress outlining the priority

issues of the states' chief legal officials. As an initial matter, NAAG is asking the new president and Congress to resist federal preemption of state laws, particularly in the enforcement of state banking and mortgage foreclosure laws.

The briefing paper states that, "In the current, failing economy, with housing prices plunging, and the number of foreclosures soaring, it is critical that the state Attorneys General continue to be the '56 cops on the beat' and be given the necessary regulatory authority to impose appropriate standards on lending institutions." The brief was the focus of a series of meetings between state Attorneys General and the Obama Transition Team in December 2008.

NAAG would like increased cooperation and coordination among local, state, and federal agencies. One solution is to make the Executive Working Group on Prosecutorial Relations (EWG) a greater priority and give it an enhanced and central role in the sharing of information between law enforcement agencies. EWG consists of representatives from the U.S. Department of Justice, National District Attorneys Association and NAAG. In an effort to build and strengthen relationships between state and federal law enforcement agencies, it would also be benefi-

cial to engage more frequently in employee-swapping programs among the various agencies.

The Association is calling for federal funding of the Edward Byrne Justice Assistance Grants (Byrne/JAG) to be restored, after a 67 percent cut. These grants to states fund multi-jurisdictional drug enforcement, treatment interventions, police training, technology improvements, crime prevention programs, and crime victims' assistance programs. The funding cut is forcing states to lay off police and prosecutors and shut down multi-jurisdictional drug and gang task forces.

Congress included nearly \$3 billion for the Byrne/JAG grant program and other law enforcement initiatives in the recently passed economic stimulus package. An additional \$1 billion is included for the Community Oriented Policy Services Office (COPS) hiring grant program. COPS offer grants to help law enforcement agencies hire more community policing officers, acquire new technologies and equipment, and promote innovative approaches to solving

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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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crime. At press time, President Obama was to sign the stimulus bill into law.

The NAAG briefing paper also addressed priorities pertaining to the environment, consumer protection, antitrust, cybercrime, world trade, Medicaid fraud and fighting Mexican drug cartels. To access the briefing paper, go to http://www.naag.org/policy_perspectives.php.

A New Legal Weapon in Combating Prescription Drug Diversion



JUDY MCKEE



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On Oct. 15, President Bush signed into law H.R. 6353, the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Public Law No. 110-425)¹. The legislation responds to the heightened concern regarding the ease of purchasing controlled drugs without a legitimate prescription over the Internet. The new law, which takes effect in April 2009, is named after an 18-year old California resident who died after taking Vicodin purchased from an online pharmacy without his ever seeing or talking with a doctor. By amending the federal Controlled Substances Act (21 U.S.C. § 801, et seq.),² Congress has given both federal and state law enforcement personnel additional tools with which to address prescription drug diversion and abuse.

The National Center on Addiction and Substance Abuse at Columbia University (CASA)³ has been chronicling the rise of Internet pharmacies since 2004 when it issued its first, report, “‘You’ve Got Drugs:’ Prescription Drug Pushers on the Internet.” Its latest report, issued in July 2008, identified 365 sites, 206 of which were advertising prescription drugs and 159 were offering these drugs for sale. Of the 159, only 2 were certified by the National Association of Boards of Pharmacy as legitimate Internet pharmacy sites. Several states have already passed their own legislation addressing the sales of prescription drugs on the Internet⁴, including Arkansas, Idaho, Indiana, Kentucky, Louisiana, Texas and Wisconsin. Many of these statutes require registration and specific disclosure requirements. Others require an in-person medical examination in order for a prescription to be valid or ban online consultations.

¹ <http://www.govtrack.us/congress/billtext.xpd?bill=h110-6353>.

² The Controlled Substances Act (CSA), Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, provides the legal foundation for federal efforts to stem the abuse of drugs and other substances. The statute places all substances regulated under existing federal law into one of five schedules, based on a substance’s potential for abuse and medical usefulness.

³ <http://www.casacolumbia.org/>

⁴ See “‘You’ve Got Drugs!’: Prescription Drug Pushers on the Internet,” A CASA White Paper (July 2008), available at <http://www.casacolumbia.org/ViewProduct.aspx?PRODUCTID=756e24b7-5db0-4433-acb2-115a59b78894>, nn. 31-39.

The primary requirement under the new statute is that no controlled substances may be sold over the Internet without a valid prescription. In order for a prescription to be valid, it must have been issued for a legitimate medical purpose in the usual course of professional practice after at least one face-to-face medical evaluation of the patient. A “covering practitioner” may also issue a prescription if the practitioner who has conducted the in-person physical exam is temporarily unavailable.

While the new law protects lawful retail drug chains that have online Web sites to fill customers’ request for refill on their legitimate prescriptions, there are stringent registration requirements. The act requires each pharmacy dispensing controlled substances via the Internet to be registered by each state in which it operates or sells controlled substances and to modify its existing Drug Enforcement Administration (DEA) registration to include the authority to dispense controlled substances in this manner. By requiring traditional pharmacies, often called “brick and mortar” pharmacies, to specifically require registration to dispense via the Internet, the DEA will be able to scrutinize each application to determine whether a rogue Internet site is involved in the operation. DEA has found that many of these rogue Internet pharmacies are supplied by traditional DEA-registered pharmacies. According to the agency, some enterprises have purchased brick and mortar pharmacies, operated them under the existing DEA registration as a supplier to a rogue Internet operation, and then walked away, beginning its operation in another location.

The Ryan Haight Act also requires specified information to be posted on the pharmacies’ Web sites, including the states in which they are authorized to sell medicines, where they are located, the pharmacists and prescribers they are associated with, and other identifiers. The act makes it a crime to use the Internet to advertise illegal sales of controlled substances on the Internet. The pharmacies also must report to the U.S. Attorney General the total quantity of each controlled substance it dispenses in a month if they have sold above a certain threshold.

To combat the increased illegal sales of Schedule III, IV, and V drugs over the Internet, the new law increases maximum sentences for the illegal sale of drugs in these schedules and increases the penalties further where death or serious bodily injury results. For instance, the penalty for illegally selling Schedule III drugs, including anabolic steroids which have been the subject of recent news reports and congressional investigations, has been increased to up to 10 years or up to 15 years where serious bodily injury or death has occurred.

Of particular interest to the states, the law gives the Attorney General of each state the ability to bring a civil action in federal district court, after notice to the U.S. Attorney General, to enjoin the actions of any Internet pharmacy that is violating the statute and to collect damages and other compensation, including civil penalties, where the actions have threatened or have adversely affected a state resident. This provision allows state Attorneys General to shut down rogue pharmacy operations nationally, not just within the borders of their own state. The law specifically states that each state’s Attorney General may exercise all powers conferred by their respective states regarding discovery and other investigatory techniques.

Exemptions

There are some exemptions found in the legislation. The new law specifically exempts telemedicine practitioners, licensed by the state in which the



Theresia Heller joined NAAG in August 2008 as the new director of finance/controller. She oversees the major financial needs of the Association and Mission Foundation including investment manage-

ment, financial reporting, long-range financial plans, and grant management. Her duties also include ensuring NAAG is in compliance with various regulatory practices and managing payroll and accounts payable.

Theresia draws upon her expertise in financial analysis and years of experience to make sound financial decisions on behalf of the association. Previously, Theresia worked at the World Bank Credit Union and most recently at Chevy Chase Bank. During her 15 years there, she rose through the ranks. Most recently, she served as vice president and division controller in the commercial and real estate division.

She has made the smooth transition in her position but recognizes the differences between the non-profit and for-profit sectors. “The non-profit world has different challenges than the for-profit world. One challenge for me is bringing all the areas of finance that I deal with under one umbrella,” Theresia said. She tackles these challenges with ease as she continues to monitor NAAG’s financial transactions.

When she is not crunching numbers or monitoring investments and statements, she enjoys walking her German shepherd Buck and reading biographies about historical figures and events. This Huettlingen, Germany (located in the Stuttgart area) native also travels frequently to Europe to visit her family.

Theresia holds her bachelor’s and master’s degrees in both organizational behavior and development from Catholic University in Germany. She also studied as a Fulbright scholar at Catholic University of America in Washington, D.C. She later obtained her MBA in finance and international business from the University of Maryland.

patient resides, when the patient is being treated by, and physically located in, a registered hospital or clinic and where the practitioner is acting in the usual course of professional, and in accordance with state practice. This exemption also generally applies to telemedicine practitioners acting under the auspices of the Department of Veterans Affairs or the Indian Health Services. Department of Defense hospitals and medical facilities and their agents and employees are also generally exempt from the statute's provisions. In addition, the act provides exemptions for public health and medical emergencies.

The CASA reports emphasize that legislation which affects only rogue sites operated from within the United States will address just a portion of the problem. CASA advocates that the State Department negotiate treaties with foreign governments to help shut down Internet trafficking of controlled prescription drugs internationally. While the new legislation does not include this requirement, it does mandate that the DEA report to Congress, after consultation with the State Department, regarding the foreign supply chains that are offering controlled substances for sale without a valid prescription. This report is also to detail the steps DEA is taking to address these sources and how the agency is working with domestic and multinational pharmaceutical companies to build cooperation in the effort to halt sales. The first report is due April 2009, the effective date of most of the provisions of the act.

According to CASA and other experts, there are additional steps that could be taken. For instance, federal and state enforcement officials could work with credit card companies and financial institutions to encourage more strict scrutiny in processing payments. According to Philip Heymann, a deputy attorney general during the Clinton administration and currently professor at Harvard University Law School, Congress could create a private or government-run group responsible for identifying rogue pharmacies and, then, under current anti-money laundering statutes, domestic financial institutions could then decline U.S.-based transactions for rogue pharmacies overseas.⁵ Search engines, such as Google, Yahoo and MSN/Windows Live Search, now partially depend on a verification program called PharmacyChecker to screen out rogue pharmacies, but the system does not seem to be working very well. Cooperative agreements among the states, the federal government, and search engines that appear to be profiting from advertisements of controlled prescription drugs online could be crafted, similar to those that the state Attorneys General have negotiated recently with

Craigslist, Facebook and MySpace.

There are indications that the new law is already beginning to impact the Web. According to *USA Today*,⁶ the popular Web-hosting company GoDaddy.com has already shut down dozens of sites that sell anabolic steroids and human growth hormones. Other hosting and registrar companies, including Register.com and Hosting.com, are moving in the same direction. General counsels of these companies cite the new law as giving them the legal backing to take the sites down even though the law won't go into effect until April.

While there will always be those who object to any legislation which curtails the ability of consumers to purchase medications through the Internet, supporters of this new legislation argue that it attempts to strike a balance between ensuring that consumers can purchase needed and prescribed medication online and protecting others, particularly teenagers and young adults, from the seductive lure of purchasing controlled substances over the Internet.

Clearing the Road of Flood-Damaged Vehicles



ELLEN TAVERNA

ELLEN TAVERNA, PROJECT MANAGER AND COUNSEL, CONSUMER PROTECTION PROJECT

Severe weather such as hail, hurricanes, and thunderstorms can cause significant damage to homes, commercial property, and surrounding areas. A rising problem resulting from these natural disasters is the number of cars that are damaged by the floodwaters. After Hurricanes Katrina and Rita, an estimated 500,000 vehicles were damaged. In June 2008 in Missouri, Iowa, and Illinois, hundreds of thousands of vehicles were flooded after serious thunderstorms caused rivers to overflow. And Hurricanes Gustav, Hanna, and Ike have caused significant vehicle damage in the Gulf area and East Coast states. However, the vehicle damage is only part of the problem. Instead of junking damaged cars, some unscrupulous

Katrina and Rita, an estimated 500,000 vehicles were damaged. In June 2008 in Missouri, Iowa, and Illinois, hundreds of thousands of vehicles were flooded after serious thunderstorms caused rivers to overflow. And Hurricanes Gustav, Hanna, and Ike have caused significant vehicle damage in the Gulf area and East Coast states. However, the vehicle damage is only part of the problem. Instead of junking damaged cars, some unscrupulous

⁵ See Brian Krebs, "'Rogue' Internet Pharmacies Fueling Drug Abuse," available at <http://www.nascsa.org/News/roguepharmacies5.07.pdf>. See also Mathea Falco and Philip Heymann, *Fighting the Online Drug Cancer*, *Wash.Post*, Mar. 15, 2008, at A13.

⁶ A.J. Perez, *New Law Allows Website Hosts to Just Say No to Drugs*, *USA Today*, Oct. 25, 2008, available at http://www.usatoday.com/sports/2008-10-23-online-pharmacies-get-boot_N.htm.

sellers simply clean them up before putting them back on the market. How can consumers avoid buying a flood-damaged vehicle and what legal protections can Attorneys General enforce to help them?

Flood-Damaged Auto Fraud

According to the National Insurance Crime Bureau (“NICB”), a flood vehicle is defined as “being completely or partially submerged in water to the extent that the engine or other mechanical component parts have been damaged.” Some states have enacted laws with specific standards requiring that flood-damaged vehicles be titled as salvage, flood, water-damaged, and the like.⁷

Once a vehicle is flooded, the owner’s insurance company typically settles the claim by buying the vehicle and selling it at an auto auction. Flood-damaged vehicles that were part of vehicle fleets from companies that self-insure may also be sold at auction. Cars and trucks that have been under water for days can be made to look as if they are of good quality, even though the engine or electrical system has been permanently damaged.

Fraud occurs when auto sellers purchase vehicles at auctions, mask the water damage, and resell the vehicles to unsuspecting buyers, including individual consumers, companies, and even car dealers. These vehicles are often transported to states unaffected by the storm or natural disaster where potential buyers can be expected to be less wary of purchasing a flood-damaged vehicle. These dishonest sellers fail to disclose the damage, either directly to the buyer or on the vehicle’s title, and may “wash” any title notation of damage by obtaining a “clean title” in another state.

Consumers who unknowingly purchase a flood-damaged vehicle are harmed in several ways. First, flood damage generally diminishes a vehicle’s market value by 50 to 75 percent if, in fact, it has any value at all. Consumers who pay average retail prices for these vehicles suffer substantial monetary loss. In addition, because water damage tends to corrode electrical and mechanical components over time, this latent damage may not be noticed at first, resulting in future substantial repair costs. Finally, flood-damaged vehicles, by definition, are safety hazards. No one knows when the corrosion might cause a brake system or other safety component to fail.

Tools to Determine Flood Damage

The NICB regularly maintains a Flood Vehicle Database that allows consumers to search, free of charge, for flood-damaged vehicles and watercrafts, as well as unrecovered stolen vehicles. According to the NICB, the information

in its database is gathered from a number of sources, including insurance companies, salvage yards, and state and local authorities. To search the database, consumers simply enter the vehicle identification number (“VIN”), which is a unique serial number used by the automotive industry to identify motor vehicles. The NICB cautions that the database does not determine the scope of the damage to any particular vehicle. Therefore, some listed vehicles may have had no damage or very minor damage, while others have had extensive damage and are no longer safe to operate. In addition, the database does not include all insurance providers and does not include fleets of vehicles owned and self-insured by large corporations or rental car fleets.

A consumer can also search a vehicle’s history through commercially available Web sites. One site offers a free resource that allows consumers to check vehicles by VIN to see if the vehicle was registered in any of the counties declared a federal emergency disaster area. Another site offers free storm-damage vehicle information to consumers through its “Storm Scan” feature. After entering a VIN, the service tells a consumer whether the vehicle was reported as storm damaged or if the vehicle was registered or titled within 12 months prior to a storm in counties affected by recent disasters. Since these sites get their information from different sources, it is important for consumers to run the VIN through several services for a more comprehensive search. Like the NICB database, the commercially available Web sites cannot claim to include 100 percent of vehicles that have incurred prior damage.

In addition to vehicle history checks, consumers are encouraged to have vehicles thoroughly inspected prior to purchase and to avoid purchasing vehicles from sellers who will not permit a pre-purchase inspection. The Better Business Bureau maintains a database of consumer complaints, which provides complaint information about auto dealers and others who engage in vehicle sales in each state. Although these resources are often helpful for consumers to check, they are not always complete since not all consumers report incidences of consumer fraud and the fraudulent sellers may be located in another state.

States’ Role Against Auto Fraud

Automobile-related complaints consistently lead state Attorneys General’s Top Ten List of Consumer Complaints. All states have some type of consumer protection statute prohibiting unfair and deceptive acts and practices, commonly referred to as the “UDAP” statute. These broad general statutes are supplemented in all jurisdictions by laws that target specific industries or practices found to be particularly problematic, such as auto fraud.

⁷ See e.g., Minn. Stat. Ann. § 325F.6642.

Some states have laws specifically requiring that sellers disclose salvage, flood, fire, and other damage history to prospective buyers prior to the sale, violations of which may be per se violations of the state UDAP statute.⁸ In addition, most states have laws requiring that the title be branded to show that a vehicle was previously titled as salvage, flood or rebuilt, or with equivalent terms indicating prior damage.⁹

Various states have also adopted laws requiring that buyers receive pre-purchase notice if a used vehicle was once repurchased by its manufacturer under a state lemon law.¹⁰ Although they vary in coverage, in general, state lemon laws contain eligibility requirements, notice requirements, and set out specific remedies that a consumer may recover in a legal action against the manufacturer if a vehicle cannot be fixed to conform to the warranty after a reasonable number of repair attempts. In most states, the lemon law applies only to new vehicles – those within, for example, the first 24,000 miles or 24 months of initial consumer use (whichever happens first).¹¹ However, a few states have extended similar rights to used vehicle purchasers. New Jersey’s lemon law¹² may cover a used vehicle if a consumer purchases the vehicle within two years and 18,000 miles of its original “new” delivery, but it does not require motor vehicle dealers to disclose if a vehicle incurred flood damage. Typically state lemon laws do not provide a means of redress for consumers who unknowingly purchase a flood-damaged vehicle.¹³

If a vehicle does not meet the terms of protection or other specifics of a state’s lemon law, it does not mean the consumer is out of luck. Consumers may be entitled to compensation for breach of warranty or due to a violation of the state’s UDAP statute or federal law.

When a state Attorney General brings a consumer protection action, he or she does so as counsel for the state, rather than as counsel for consumers individually affected by the alleged auto fraud. With the exception of the Utah Attorney General, who is specially authorized to

represent consumers in lemon law complaints,¹⁴ most Attorneys General do not have legal authority to litigate on behalf of individual consumers, but may obtain restitution for consumers through broad-based civil law enforcement actions. For example, Iowa Attorney General Tom Miller reached a settlement with Progressive Insurance Company of Ohio, resolving allegations that the company sold used cars to 45 Iowa consumers that should have been given a “salvage title” designation by the insurance company because of prior damage to the vehicles.

Generally, these automobile-related fraud cases are local in nature and rarely undertaken on a multistate basis, the Attorneys General do share information on a regular basis through the NAAG Auto Working Group. There are also some instances where the states work together to combat auto fraud. In January 2005, 49 state Attorneys General reached an agreement with State Farm Mutual Insurance Company that resulted in \$40 million in compensation to thousands of car, SUV, and truck owners nationwide. The agreement resulted after State Farm approached the states and indicated that it was unable to confirm in a small percentage of cases that it had properly titled vehicles it had taken ownership of from policyholders due to damage or theft. The states also have worked with several federal and local government agencies to fight against auto fraud. For example, this past June, the Consumer Fraud Task Force, a joint task force of the Illinois and Missouri Attorneys General, local and federal law enforcement agencies, and the Better Business Bureau, issued several consumer warnings to the thousands of citizens impacted by last year’s rains and rising waters in the Midwest.

Other Regulations Preventing Auto Fraud

Congress enacted the Anti-Car Theft Act of 1992 to deter trafficking in stolen vehicles by strengthening law enforcement efforts against auto theft and fraud.¹⁵ Originally the Act required the U.S. Department of Transportation to develop a National Motor Vehicle Title Information System (NMVTIS), but responsibility was later given to the U.S. Department of Justice (DOJ) by language in the Anti-Car Theft Improvements Act of 1996.¹⁶ The NMVTIS database is intended to provide states with the ability to reliably verify the titling, theft, and damage history of a motor vehicle before a new title is issued. One goal of the database is to control title laundering and to provide businesses and consumers with accurate information about a vehicle’s history. Under this law,

8 See e.g., Colo. Rev. Stat. § 6-1-708; Haw. Rev. Stat. § 481J-4; Iowa Code § 321.69; Me. Rev. Stat. Ann. Tit. 10, § 1475(2-A); Mass. Gen. Laws Ch. 90, § 7N1/4(8); N.C. Gen. Stat. § 20-71.4; and S.D. Codified Laws §§ 32-3-51.5 to 32-3-51.9, 32-3-51.18.

9 See e.g., Minn. Stat. Ann. § 325F.6642 (5).

10 See e.g., Ala. Code § 8-20A-3, 8-20A-4, 8-20A-5; Alaska Stat. § 45.45.335; Ark. Code Ann. § 4-90-412; Colo. Rev. Stat. §§ 6-1-708(1)(b), 6-1-105(1)(x); Iowa Code §§ 321G.11, 321G.12; N.M. Stat. § 57-16A-7; N.C.G.S. § 20-351.3(d); and Tex. Occ. Code Ann. § 2301.610 (Vernon).

11 A newer used vehicle might be covered by the state lemon law if the first owner, for example, drove it only for a year and for less than the mileage limit before selling or trading it. Under those circumstances, the second buyer would receive the remainder of the lemon law protection until the vehicle met the 24 month, 24,000 mile, or other, limit. See e.g., Iowa Code §322G.2 (8).

12 N.J.S.A. 56:12-30.

13 State lemon laws, generally, focus on defects in original vehicle manufacture and design. Thus, unless post-manufacture defects such as those caused by flood damage are specifically covered in the law, the state lemon law may not apply.

14 Utah Code Ann. §70A-2-807.

15 Pub. L. 102-519, §§ 202-04 106 Stat. 3390-93 (1992).

16 Pub. L. 104-152, § 2-3, 110 Stat. 1384 (1996).

junk and salvage yard operators and insurance carriers are required to file monthly reports with the database operator. Each report is supposed to contain a list of the VINs of all junk and salvage vehicles obtained during the previous month. The DOJ maintains that 25 states are currently involved in the NMVTIS as “participating” or “data only” states, which represent about 60 percent of the total U.S. vehicle population. “Participating” states provide files of all active titles and brands to the NMVTIS, make inquiries into NMVTIS prior to issuing a new title, and provide updates as necessary to the NMVTIS files. “Data only” states provide files of all active titles and brands to the NMVTIS and brand files in real time or at least once every 24 hours.

The DOJ sought public comments on the proposed rule to implement provisions of the NMVTIS.¹⁷ In November 2008, Attorney General Miller submitted comments in support of achieving Congress’ intent in fully establishing NMVTIS “to provide an electronic means for verifying and exchanging motor vehicle title, brand, and theft data among motor vehicle administrators, law enforcement officials, prospective purchasers and insurance carriers.” Attorney General Miller stated that insurance companies and states have not been supplying information about damaged vehicles. While NMVTIS is a considerable benefit to law enforcement, it has not reached its full potential until insurance data is being routinely supplied, more states are supplying data, and consumers have access to the data at little or no cost.

The Federal Trade Commission’s (FTC) Used Motor Vehicle Trade Regulation Rule (“Rule”),¹⁸ was implemented in 1984 and updated in 1995, to prevent and discourage oral misrepresentations and unfair omissions of material facts by used motor vehicle dealers concerning warranty coverage. Dealerships are required to post a Buyers Guide (“Guide”) on every used vehicle before it is offered for sale. The main purpose of the Guide is to provide important information to consumers about used vehicles they are considering purchasing and to ensure that consumers get basic information in writing about any warranty protection they have if there is a problem with the vehicle. Dealers who violate the Rule are subject to penalties of up to \$11,000 per violation. Many states have laws or regulations that are similar to the Used Car Rule while other states incorporate the Rule by reference in their state laws. Others simply pursue violations as per se violations of state consumer fraud laws. The FTC sought public comments on the effectiveness and impact of the Rule in 2008.¹⁹ On November 19, 2008, 42 state Attor-

neys General and the International Association of Lemon Law Administrators submitted joint comments to the FTC to strengthen Buyer’s Guide notices to indicate if used cars, trucks, or SUVs that are for sale have been assigned titles indicating past flood or collision damage. These Attorneys General believe that the current Used Car Rule needs to go further and require disclosure of a vehicle’s damage history and prior use because consumers may not know the true value of the vehicle they are buying. Withholding information that is readily available can lead to deceptive sales practices by unscrupulous dealers and may pose safety hazards to consumers. They noted that Wisconsin already requires prior-damage information to be disclosed on their Buyer’s Guide, and that the FTC approved the Wisconsin regulation.

Future Solutions

Whether by flood, hail, or other natural disaster, damaged vehicles continue to hit the marketplace and consumers’ pocketbooks, and state, federal, and local authorities continue to develop more effective legislative, enforcement, and educational tools to help consumers who unknowingly purchased flood-damaged vehicles. Additional states may continue to enact laws requiring that flood-damaged vehicles be titled as salvage or water-damaged, or states may expand lemon laws to include used vehicles. As more resources become available, additional states may also soon participate in NMVTIS or work with their state colleagues and federal enforcers to effectively deter fraudulent vehicle sales practices and improve the safety of consumers.



17 73 Fed.Reg.54544-54553 (2008).

18 16 C.F.R. Part 455.

19 FTC Used Car Rule Regulatory Review, Matter No. P087604.



ERIC HOLDER

NAAG Supports Holder for U.S. Attorney General

NAAG sent a letter to the U.S. Senate Committee on the Judiciary Jan. 14 supporting the nomination of Eric H. Holder, Jr. as U.S. Attorney General. Holder was confirmed Feb. 2.

“As our nation’s economy suffers, we are deeply concerned that, along with unemployment, crime will rise as well. We fully appreciate that funds are limited, but we know that Mr. Holder will work, as he did as Deputy Attorney General, to provide funding for state and local law enforcement so that we and our colleagues at the state and local level can be effective in our mission,” the NAAG letter states.

Holder is a former judge of the Superior Court of the District of Columbia, former U.S. attorney and former U.S. deputy attorney general. He most recently worked as a senior legal advisor to President Obama.

Holder attended Columbia University and earned a Bachelor of Arts degree in American history in 1973. He received his Juris Doctor from Columbia Law School, graduating in 1976.

He is the first African-American to serve as U.S. Attorney General.

Former Arizona Attorney General Confirmed as Homeland Security Secretary



JANET NAPOLITANO

Janet Napolitano, Arizona governor and former Arizona Attorney General, has been confirmed as secretary of the U.S. Department of Homeland Security. Thirty-one state Attorneys General, led by Arizona Attorney General Terry Goodard, Georgia Attorney General Thurbert Baker and Utah Attorney General Mark Shurtleff, sent a Jan. 13 letter to the U.S. Senate Committee

on Homeland Security and Government Affairs supporting Napolitano’s nomination.

As the secretary leading the Homeland Security Department, created in November 2002, Napolitano will be responsible for protecting the territory of the United States from terrorist attacks and responding to natural disasters. She has promised to create better relationships with state and local governments, more specifically with help funding federally mandated security requirements. During her Jan. 15 confirmation hearing, she suggested the important role that states play in the protection of the homeland, “The federal government cannot do the homeland security function alone,” she said. “That is something that I hope to spend a great deal of effort on.” As secretary, Napolitano will make it a priority to increase funding for radios for states and federal governments, which would

aid communication during a disaster. She will also reconvene governors to review the Real ID law, which requires states to issue new secure driver’s licenses to their citizens. Napolitano has also called for an improvement in rail and public transit security as well as increased border security.

Napolitano talked about her accomplishments as an Attorney General during her confirmation hearing. “Cyber security and the protection of the technology critical infrastructure have been a top priority in Arizona. As Attorney General, I created the Computer Crimes Unit to train law enforcement in the identification and investigation of cybercrimes; the Unit successfully prosecuted some of the first cybercrime cases in Arizona,” she said.

Napolitano was born in New York City and raised in Pittsburgh and Albuquerque, New Mexico. She graduated from Santa Clara University in California and University of Virginia law school. She has lived in Arizona since 1983, when she moved to Phoenix to practice law. Prior to her position as Arizona’s twenty-first governor, which she held since January 2003, Napolitano was appointed by President Bill Clinton and served as U.S. attorney for Arizona from 1993 to 1997 and as Arizona Attorney General from 1999 to 2002. She is the first woman in the nation’s history to serve as U.S. attorney, state Attorney General and governor in immediate succession.

In Arizona, Napolitano set her priorities as enhancing statewide responses to emergencies, securing Arizona’s border, and combating crime. During her tenure as

governor, Napolitano successfully pushed for a voluntary full-day kindergarten, available for all Arizona children, and provided major financial support for Arizona's universities and community colleges. Napolitano has been outspoken against illegal immigration. She was the first governor to call for the National Guard at the border at the expense of the federal government. She also created the first state cabinet-level Department of Homeland Security and the first state-level homeland security strategy in the country. Through her efforts, Arizona built the nationally-recognized Arizona Counter-Terrorism Information Center (ACTIC).

Former Attorney General Ken Salazar Confirmed as Secretary of the Interior



KEN SALAZAR

Senator Ken Salazar (D-CO), a former Colorado Attorney General from 1999 to 2004, has been confirmed as secretary of the U.S. Department of the Interior. Salazar is a Colorado native, where he worked as a rancher and businessman, and practiced law. He also served as director of the state Department of Natural Resources.

During his tenure as Attorney General, Salazar was chair of the Conference of Western Attorneys General and co-chair of NAAG's Environment Committee. He instituted Colorado's environmental crimes unit and was deeply involved in matters related to state regulation of federal facilities. His office negotiated the cleanup of Rocky Flats, a large contaminated Department of Energy site that had been used for manufacturing plutonium pits that are part of nuclear warheads. The state's oversight of the cleanup culminated in creation of the Rocky Flats National Wildlife Refuge, which surrounds a Department of Energy area that is still subject to environmental monitoring. The Refuge preserves Colorado flora and wildlife. Salazar also worked to clean up two other large federal sites in Colorado, Lowry Air Force base and the Rocky Mountain Arsenal.

In the Senate, Salazar served on the Committee on Energy and Natural Resources and on the Committee on Agriculture, Nutrition and Forestry, as well the Finance Committee. One area he focused on particularly is carbon sequestration and capture. Salazar worked on the Renewable Fuels, Consumer Protection, and Energy Efficiency Act of 2007, which was ultimately folded into omnibus energy legislation. The law requires the United States Geological Service (USGS), which is a part of the Department of the Interior, to study options for capture of carbon dioxide.

A great challenge for Salazar may be the fact that the Department of Interior includes eight disparate missions, incorporated in its eight bureaus and offices: the Bureau of Indian Affairs, the Bureau of Reclamation, the National Park Service, the Bureau of Land Management, the U.S. Geological Survey, Minerals Management Service, the U.S. Fish and Wildlife Service, and the Office of Surface Mining. States – and Attorneys General – interact with every branch of the Department of the Interior, sometimes as legal allies, sometimes in opposition. Salazar believes that his background as a westerner and especially his experience as an official of state government will be useful to him in his new position.

NAAG Welcomes Supreme Court Fellows

The NAAG Supreme Court Fellows program gives state lawyers an opportunity to obtain direct and intensive hands-on exposure to Supreme Court practice. The Fellows come to D.C. for three- to four-month periods during the Court's argument session. They watch oral arguments, participate in moot courts, prepare an amicus brief in a Supreme Court case, and draft the Report. The following fellows joined NAAG for the winter term:

Craig Feiser is the solicitor general in the Florida Office of the Attorney General. In that capacity, he handles civil appeals involving the state of Florida, the Florida Supreme Court, the 11th Circuit Court of Appeals and the U.S. Supreme Court. He has held a variety of positions over the years that include serving as a law clerk to a circuit court judge and writing/editing for a daily newspaper. He holds a BA in journalism from Michigan State University. He also completed a law and mass communications dual program at the University of Florida College of Law/ College of Journalism where he received his JD and master's in mass communications.

Corey Maze is the solicitor general in the Alabama Office of the Attorney General. Previously, he was an assistant attorney general for five years from 2003-2008. During his tenure with the Alabama Office of Attorney General, he has presented arguments for appellate cases in the Court of Appeals for the 11th Circuit, the Supreme Court of Alabama and the Alabama Court of Appeals. He was recognized for his outstanding work as the recipient of the Attorney General Award of Excellence in both 2005 and 2008. He is a graduate of Auburn University with a BA in criminal justice and he holds a JD from Georgetown University Law Center.

NAGTRI Welcomes Consumer Protection Fellow

The National Attorney General Training and Research Institute (NAGTRI) and the Center for the State Enforcement of Antitrust and Consumer Protection Laws (State Center) are pleased to welcome Olivia “Libby” DeBlasio from the Colorado Attorney General’s Office as the first NAGTRI/State Center Consumer Protection Fellow. Funded by the State Center, the Consumer Protection Fellowship program is designed to provide consumer protection assistant attorneys general an extraordinary opportunity to develop expertise in a specific discipline in consumer protection, which would in turn provide tangible and meaningful assistance to his or her colleagues around the country. The work of the Fellow can be divided into two major areas: research/publication and information sharing/liaison work. Grant funds will be used to cover housing and related costs for a three-month period for two Fellows. Libby will be working as a Fellow in the NAAG office until mid-April.

Libby has been an assistant attorney general since 2006. She investigates and litigates in a variety of consumer areas, including charitable fraud, unauthorized practice of law, mortgage fraud, door-to-door sales, and auto repair pricing. Prior to working for the Colorado Attorney General’s Office, Libby worked for a private law firm in Denver where she focused on complex commercial litigation. In 2004, after graduating from the University of Denver College of Law, she clerked for the Honorable Alan Loeb in the Colorado Court of Appeals.

Although born in Washington D.C., she grew up in Colorado and attended the University of Colorado at Boulder, earning a bachelor’s degree in news-editorial journalism. After college she worked for three years in San Francisco

as a content editor for Law.com and did some freelance writing.

For more information on the NAGTRI/State Center Consumer Protection Fellow program, please contact Dennis Cuevas, NAAG project director and chief counsel, Consumer Protection Project, at dcuevas@naag.org.



A Free, Online Recruiting Resource for the Public Service Legal Community

STEVE GRUMM, DIRECTOR OF PUBLIC SERVICE INITIATIVES, NATIONAL ASSOCIATION FOR LAW PLACEMENT (NALP)

Post your job listings for attorneys and law students on PSLawNet, a legal public service job database, at no charge. Over 90% of the nation’s ABA-accredited law schools subscribe to PSLawNet, giving all of their students and alumni (nearly 100,000 registered users) free access to public service employer profiles and job listings.

PSLawNet is a free resource for public interest and government organizations to spread the word about your missions and attract ideal job candidates. A new-and-improved version of the site was launched in 2008 with the following features:

- Elect to accept applications directly through PSLawNet. Applications will be conveniently stored on your personal homepage when you log in.
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- Search PSLawNet to view other employers’ profiles and job listings.

Getting started is easy. Please contact us at pslawnet@nalp.org or at 202-296-0076 to see if your office already has a PSLawNet profile. It is likely that your office already has a profile, even if you are not using the Web site. From there, we can help you to set up a user account, create a profile if necessary, and post job opportunities for law students, fellows, and attorneys. We can

also post job listings for you.

Our sole mission is to create a free, central meeting place for public interest employers to connect with public interest-minded attorneys and law students. Visit us today at www.pslawnet.org and contact us at pslawnet@nalp.org.

NAAG's Community Outreach in DC

In the spirit of giving back to the community in which it



Ellen Taverna, NAAG; Keziah Kelsey, art teacher and Maurice Kennard, principal, Francis-Stevens Elementary School.

works, NAAG donated school supplies to the Francis-Stevens Education Campus as part of a new community outreach program. Francis-Stevens is a local elementary school located on 24th and N Street, only a few blocks away from the NAAG office. The supplies included art utensils such as paint rollers, sculpting clay, and markers as well as clothing, writing materials, handy wipes, and bookends.

Principal Maurice Kennard said, "Giving everyday items, such as Clorox wipes and bookends frees up money in the school's budget for extra activities and materials." NAAG Executive Director Jim McPherson helped deliver the items along with NAAG's Charities Committee Co-Chairs Ellen Taverna and Erjona Fatusha, and NAAG's Andrew Giessel and William Malloy.

Keziah Kelsey, the school's art teacher said, "The donated supplies have made a tremendous difference in our classroom. My students can create without restrictions or limits. Their creativity is unbound." In addition to the supplies, NAAG donated over \$500 to the school for use by the students.

NAAG staff raised the funds after holding an office-wide raffle of a donated TV. NAAG's Judy McKee and its finance department helped organize the raffle and collect donations. The raffle was conducted with the intention of giving the winnings to a local elementary school. NAAG is looking forward to partnering with Francis-Stevens in spring 2009 for Law Day programs, test monitoring, and tutoring projects with seventh and eighth grade students.

This year, NAAG's Charities Committee will also coordinate NAAG's participation in Virginia Attorney General Bob McDonnell's 3rd "Legal Food Frenzy." The Frenzy is a philanthropic competition among Virginia's legal community to donate food for local food banks. NAAG hopes to top the 745 pounds of food raised for last year's event.



Calendar



NAAG Spring Meeting

March 2 - 4, 2009
Washington, DC
Contact: Jeffrey Hunter
jhunter@naag.org



Appellate Practice Conference

March 4 - 5, 2009
Washington, DC
Contact: Dan Schweitzer
dschweitzer@naag.org



Trial Advocacy I - Eastern Region

March 8 -13, 2009
Williamsburg, VA
Contact: Dennis Cuevas
dcuevas@naag.org



Computer Forensics for Attorneys

March 17 -18, 2009
Las Vegas, NV
Contact: Hedda Litwin
hlitwin@naag.org



Follow the Money

March 23 -24, 2009
Austin, TX
Contact: Patricia Molteni
pmolteni@naag.org



Internet Crimes Against Children

April 7 - 8, 2009
Oxford, Mississippi
Contact: Hedda Litwin
hlitwin@naag.org

NAGTRI Remote Trainings



Management Training

February 17-18, 2009
Salt Lake City, UT
Contact: Mary Winzenburg
mwinzenburg@naag.org



Trial Advocacy

March 23-27, 2009
Phoenix, AZ
Contact: Mary Winzenburg
mwinzenburg@naag.org

SAVE THE DATE PRESIDENTIAL INITIATIVE



**“THE YEAR OF THE CHILD: PROTECTING AND EMPOWERING
OUR NEXT GENERATION”**

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