



***EXECUTIVE
DIRECTOR'S
REPORT***

December 13, 2011

A.

ADMINISTRATIVE
MATTERS

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
<u>1. Status Report Concerning Manufacturer and Distributor Compliance with Vehicle Code Sections 3064/3074, and 3065/3075 (the Filing of Statutorily Required Schedules and Formulas)</u> Dana Winterrowd, Kathy Tomono; Administration Committee	In December 2010 and February 2011, letters were sent to all licensed manufacturers and distributors requesting copies of their current delivery and inspection obligations (“PDI”), PDI schedule of compensation, and warranty reimbursement schedule or formula. Follow-up letters have been sent as well.	December 2011	In progress. A status report concerning manufacturer and distributor compliance will be presented at the December 13, 2011, General Meeting.
<u>2. Update Guide to the New Motor Vehicle Board</u> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	January 2012	In progress. The revised Guide will be presented at the January 2012, General Meeting.
<u>Update Guide to the New Motor Vehicle Board</u> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	September 2011	<u>Completed</u> At the September 27, 2011, General Meeting, the members adopted the revised Guide.
<u>Administrative Law Judge Applicants</u> Bill Brennan, Dawn Kindel; Administrative Committee	In compliance with the Board adopted policy and the 1996 Performance Audit conducted by Business, Transportation & Housing Agency, the Board members will consider the Administrative Law Judge (“ALJ”)	September 2011	<u>Completed</u> At the September 27, 2011, General Meeting, the members appointed the following ALJs:

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
	applicants to fill the vacancies created by the resignations of ALJs Archibald and Waits.		Lonnie M. Carlson, Kymberly M. Pipkin and Victor D. Ryerson
BOARD DEVELOPMENT COMMITTEE			
1. <u>Host Board Administrative Law Judge Roundtable</u> Bill Brennan, Robin Parker; Board Development Committee	Host a Board Administrative Law Judge (“ALJ”) Roundtable for purposes of education and training. Provide an opportunity for the ALJs to meet in an informal setting, exchange ideas, and offer suggestions to improve the case management hearing process.	May or June 2012	In progress. An ALJ Roundtable will be scheduled for May or June 2012.
2. <u>Solon C. Soteras Employee Recognition Award Recipient</u> Bill Brennan; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	June 2012	In progress. The Board Development Committee will select a nominee for the Board to consider at the June 2012, General Meeting.
<u>Schedule Board Member Education Presentations</u> Robin Parker; Board Development Committee	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	September 2011	<u>Completed</u> At the September 27, 2011, General Meeting, the Board members were provided with a memorandum concerning upcoming topics for educational presentations in 2012.
FISCAL COMMITTEE			
1. <u>Quarterly Fiscal Reports</u> Dawn Kindel, Linda Lighter; Fiscal Committee	Quarterly fiscal reports will be provided to the Committee and scheduled for upcoming Board meetings.	Ongoing	In progress. The 1 st , 2 nd , and 3 rd quarter reports for fiscal year 2010-2011 were presented at the

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<p>1. <u>Quarterly Fiscal Reports</u> -continued</p>			<p>December 3, 2010, March 29, 2011, and May 26, 2011, General Meetings, respectively. The 4th quarter report is scheduled for December 13. The first quarter report for fiscal year 2011-2012 will be presented at the December 13 meeting.</p>
<p>2. <u>Status Report on the Board's Collection of its Annual Fee</u> Dawn Kindel, Linda Lighter; Fiscal Committee</p>	<p>The staff will provide a report concerning the annual fee collection.</p>	<p>December 2011</p>	<p>In progress. A status report will be presented at the December 13, 2011, General Meeting.</p>
<p>3. <u>Report Concerning Out-of-State Travel Plans</u> Dawn Kindel; Fiscal Committee</p>	<p>The staff will provide a report concerning the out-of-state travel plans for fiscal year 2012-2013.</p>	<p>January 2012</p>	<p>In progress. A report will be presented for consideration at the January 2012, General Meeting.</p>
<p>4. <u>Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel, Linda Lighter; Fiscal Committee</p>	<p>The staff in conjunction with the Fiscal Committee will discuss and consider the Board's proposed budget for fiscal year 2012-2013.</p>	<p>June 2012</p>	<p>In progress. The 2012-2013 budget will be presented at the June 2012, General Meeting.</p>
<p>5. <u>Status Report on the Collection of Fees for the Arbitration Certification Program</u> Dawn Kindel, Linda Lighter; Fiscal Committee</p>	<p>The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.</p>	<p>June 2012</p>	<p>In progress. A status report will be provided at the June 2012 General Meeting.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
6. <u>Annual Discussion and Consideration of the Methods for Determining Board Fees</u> Bill Brennan; Fiscal Committee	In response to Board Member Brooks' request, a memorandum outlining how the Board fees are calculated every year to ensure the fees are not a tax and are cost-justified, will be presented for Board consideration.	June 2012	In progress. A memorandum will be presented at the June 2012, General Meeting.
<u>Status Report on the Collection of Fees for the Arbitration Certification Program</u> Dawn Kindel, Linda Lighter; Fiscal Committee	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program ("ACP").	September 2011	Completed At the September 27, 2011, General Meeting, the members were provided with a memorandum concerning the collection of the ACP fees.
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			
1. <u>Host Industry/Attorney Roundtable</u> Robin Parker; Government and Industry Affairs Committee	Host the traditional Industry Roundtable with representatives from car, truck, motorcycle and recreational vehicle manufacturers/distributors.	March 2012	In progress. The tentative date for the next Roundtable is March 21, 2012.
2. <u>Participant Questionnaires for Industry/Attorney Roundtable</u> Robin Parker; Government and Industry Affairs Committee	Based upon the feedback provided at the Industry/Attorney Roundtable in the questionnaires, highlight areas for improvement and develop a preliminary list of suggested topics for a future event.	June 2012	In progress. The questionnaires will be handed out at the Roundtable. A memorandum summarizing the feedback will be presented for information at the June 2012 General Meeting.

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POLICY AND PROCEDURE COMMITTEE			
<p>1. <u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u> ALJ Skrocki, Robin Parker; Policy and Procedure Committee</p>	<p>Update the <i>New Motor Vehicle Board Administrative Law Judges Benchbook</i>.</p>	<p>December 2011</p>	<p>In progress. The revised ALJ Guide will be considered at the December 13, 2011, General Meeting.</p>
<p>2. <u>Promulgate Proposed Regulations that Pertain to the Board's Fee Collection and Arbitration Certification Program Fee Collection</u> Robin Parker; Policy and Procedure Committee</p>	<p>In compliance with the Administrative Procedure Act, amend Sections 553.20, 553.30, 553.50, 553.70, and 553.72 of Title 13 of the California Code of Regulations.</p>	<p>December 2011</p>	<p>In progress. The proposed text was approved at the December 3, 2010, General Meeting. Section 553.20 was amended at the February 4, 2011, meeting to reflect the reinstatement of the Board Fee. The notice was published on July 22, 2011. Public comment closed on September 6, 2011. The final rulemaking packet was sent to Finance on September 7, where it is still pending.</p>
<p>3. <u>Annual Rulemaking Calendar</u> Robin Parker; Policy and Procedure Committee</p>	<p>Consideration of the annual rulemaking calendar if the Board decides to go forward with any new proposed regulatory changes or has outstanding proposed regulatory changes that have not been promulgated.</p>	<p>December 2011</p>	<p>In progress. The 2012 Rulemaking Calendar will be considered at the December 13, 2011, General Meeting.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<p>4. <u>Draft New Regulations to Clarify and Improve the Board's Case Management Processes</u> Robin Parker; Policy and Procedure Committee</p>	<p>In an effort to continue to improve and clarify the Board's case management processes, the Board staff has proposed amending four existing regulations and adding one new regulation. The topics encompass definitions, subpoenas, peremptory challenges, sanctions, and adoption and objection to proposed stipulated decision and orders. If the Board approves the draft regulations, the legal staff will proceed with rulemaking through the Office of Administrative Law.</p>	<p>January 2012</p>	<p>In progress.</p>
<p>5. <u>Promulgate Proposed Regulations to Reinstate the Annual Board Fee</u> Robin Parker, Randi Calkins, DMV Legal; Policy and Procedure Committee</p>	<p>In compliance with the Administrative Procedure Act, amend Section 553. The Annual Board Fee per manufacturer or distributor was reinstated to \$.45 per vehicle with a minimum of \$300.00 and the dealer fee was reinstated to \$300.00</p>	<p>January 2012</p>	<p>In progress. The proposed text was approved at the February 4, 2011, meeting to reflect the reinstatement of the Annual Board Fee. The DMV is promulgating this regulation on the Board's behalf. The notice was published on September 16, and the public comment period closed on October 31.</p>
<p>6. <u>Update the Informational Guide for Manufacturers and Distributors</u> Robin Parker; Policy and Procedure Committee</p>	<p>Update the <i>Informational Guide for Manufacturers and Distributors</i>.</p>	<p>January 2012</p>	<p>In progress. The updated Guide will be considered at the January 2012, General Meeting.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>7. Report on the Assignment of Cases to Board Administrative Law Judges</u> Dana Winterrowd; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges ("ALJs").	January 2012	In progress. A report on the assignment of cases to Board ALJs will be presented at the January 2012, General Meeting.
<u>Revised Parliamentary Procedures Concerning Debate and Voting</u> Robin Parker; Policy and Procedure Committee	At the request of Member Hoffman, the Board will consider revising its Parliamentary Procedures concerning debate and voting to accurately reflect the Board's current practice.	September 2011	<u>Completed</u> At the September 27, 2011, General Meeting, the members revised the Parliamentary Procedures concerning debate and voting.
EXECUTIVE COMMITTEE			

B.

CASE

MANAGEMENT

CASE VOLUME

SEPTEMBER 13, 2011, THROUGH NOVEMBER 18, 2011

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	3	8	14
3060	Modification	5	0	5
3062	Establishment	4	5	3
3062	Relocation	0	0	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	0	1
3065.1	Incentive Program Reimbursement	0	1	0
3070	Termination	0	0	2
3070	Modification	0	0	3
3072	Establishment	0	0	1
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	0	3
3076	Incentive Program Reimbursement	0	0	3
3050(c)	Petition	0	1	0
3050(b)	Appeal	0	0	0
TOTAL CASES:		12	15	35

PENDING CASES

BY CASE NUMBER

ABBREVIATIONS			
ALJ	Administrative Law Judge	Bd Mtg	Board Meeting
HRC	Hearing Readiness Conference	IFU	Informal Follow-Up
MH	Merits Hearing	MSC	Mandatory Settlement Conference
MTCP	Motion to Compel	MTCN	Motion to Continue
MTD	Motion to Dismiss	PD	Proposed Decision
PHC	Pre-Hearing Conference	POS	Proof of Service
PSDO	Proposed Stipulated Decision and Order	RFD	Request for Dismissal
RMH	Resumed Merits Hearing	ROB	Ruling on Objections
RSC	Resumed Status Conference	SC	Status Conference

* Consolidated, non-lead case

Protests

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1.	PR-2138-08 12-5-08	Bankruptcy Stay RSC: 12-8-11	T/C Motorsports, Inc., dba Norco Mitsubishi v. Mitsubishi Motors North America, Inc.	P: Mike Flanagan Bob Wolf R: Mo Sanchez	Termination (Defacto)
2.	PR-2198-10 1-29-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (5060 Scotts Valley Drive)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Modification
3.	*PR-2199-10 1-29-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (1313 RV Center Drive, Colton)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Modification
4.	*PR-2201-10 1-29-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (6441 Burt Road, Irvine)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Modification
5.	*PR-2205-10 2-9-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (1312 RV Center Drive, Colton)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Franchisor Incentive Program
6.	*PR-2206-10 2-9-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (1312 RV Center Drive, Colton)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Warranty Reimbursement

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
7.	*PR-2208-10 2-18-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (6441 Burt Road, Irvine)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Warranty Reimbursement
8.	*PR-2209-10 2-18-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (5060 Scotts Valley Drive)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Warranty Reimbursement
9.	*PR-2211-10 2-18-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (5060 Scotts Valley Drive)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Franchisor Incentive Program
10.	*PR-2212-10 2-18-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc. (6441 Burt Road, Irvine)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Franchisor Incentive Program
11.	PR-2227-10 4-7-10	Protestant trying to acquire site (for new dealership), which is the subject of third- party litigation. IFU: 11-30-11	Michael Cadillac, Inc. dba Michael Porsche v. Porsche Cars of North America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran	Termination
12.	*PR-2233-10 5-11-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (1313 RV Center Drive, Colton)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Establishment
13.	*PR-2244-10 7-13-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (1312 RV Center Drive, Colton and 6441 Burt Road, Irvine)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Termination
14.	*PR-2245-10 7-13-10	MH: ongoing Judge Hagle	Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc. (5060 Scotts Valley Drive, Scotts Valley)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Termination
15.	PR-2265-10 8-13-10	Protest Sustained; Board decision: 12-13-11	Shayco, Inc. dba Ontario Volkswagen v. Volkswagen of America, Inc.	P: Mike Flanagan Gavin Hughes R: Allen Resnick	Establishment
16.	PR-2294-11 4-7-11	Parties near settlement CSC: 12-5-11	Ashley Imports, LLC dba Merced Kia v. Kia Motors America, Inc.	P: Larry Miles Brady McLeod R: Colm Moran David Skaar	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
17.	PR-2298-11 5-12-11	Settled in principle RSC: 12-20-11	RRG, Inc. dba El Monte Kia v. Kia Motors America, Inc.	P: Andrew Ritholz Mike Sieving R: Colm A. Moran David W. Skaar	Termination
18.	PR-2299-11 5-12-11	MH: 11-30-11 (15 days)	Laidlaw's Harley-Davidson Sales, Inc. dba Laidlaw's Harley-Davidson v. Harley-Davidson Motor Company, a Corporation	P: Bert Rasmussen Crystal Yagoobian R: Bob Ebe Brett Waxdeck	Termination
19.	PR-2305-11 6-7-11	HRC: 12-9-11 MH: 1-9-12 (10 days)	Ankar Cycles, Inc., dba Oakland Harley-Davidson v. Harley-Davidson Motor Company	P: Mike Flanagan Gavin Hughes R: Bob Ebe Brett Waxdeck	Termination
20.	PR-2306-11 6-7-11	HRC: 1-20-12 MH: 2-27-12 (10 days)	Mother Lode Motors dba Mother Lode Motors Kia v. Kia Motors America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran David Skaar	Termination
21.	PR-2308-11 7-13-11	Bankruptcy Stay SC: 1-5-12	Townsend Corporation, dba Land Rover Jaguar of Anaheim Hills v. Jaguar Land Rover North America, LLC	P: Bert Rasmussen Arjun Rao Franjo Dolenac R: Colm Moran David Skaar	Termination
22.	PR-2309-11 7-21-11	MH: 12-7-11 (3 days) Judge Prod	Bob Baker Automotive, Inc. dba Bob Baker Chrysler, Jeep, Dodge v. Chrysler Group LLC	P: Wade Poulson R: Thomas Bishoff Philip Hamilton	Warranty Reimbursement
23.	PR-2310-11 7-20-11	HRC: 1-27-12 MH: 2-27-12 (10 days)	Riverside Motorcycle, Inc. dba Skip Fordyce Harley-Davidson v. Harley-Davidson Motor Company, a Corporation	P: Bert Rasmussen Franjo Dolenac R: Bob Ebe Brett Waxdeck	Termination
24.	PR-2311-11 8-4-11	HRC: 12-5-11 MH: 1-9-12 (5 days)	Veracom Automotive Group, LLC dba Veracom Mitsubishi v. Mitsubishi Motors North America, Inc.	P: Alton Burkhalter Ros Lockwood R: Mo Sanchez Kevin Colton	Termination
25.	PR-2314-11 9-14-11	CPHC:11-29-11	First United, Inc., dba De La Fuente Cadillac v. General Motors LLC (Cadillac Division)	P: Bradley Jacobs R: Greg Oxford	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
26.	PR-2315-11 9-30-11	RPHC:12-6-11	Depot Garage, Inc. v. General Motors	P: Jose Reynoso R: Greg Oxford	Termination
27.	PR-2316-11 11-4-11	ROB 1-12-12 HRC 2-27-12 MH 3-26-12	Myrick's Motorcycle, Inc. dba San Luis Motorsports v. Yamaha Motor Corporation, USA	P: Andrew Hays R: Armen Hairapetian	Termination
28.	PR-2317-11 10-31-11	Stay re Ford Internal Appeal SC: 1-19-12	Cevera Automotive Group, LLC dba Veracom Ford v. Ford Motor Company	P: Robert Branzuela R: Mark Kenney Duane Geck Donald Cram	Termination
29.	PR-2318-11 11-3-11	IFU: 12-5-11	Moore Buick Corporation dba Moore Buick-GMC v. General Motors LLC (Buick)	P: Mike Flanagan Gavin Hughes R: Greg Oxford	Establishment
30.	*PR-2319-11 11-3-11	IFU: 12-5-11	Moore Buick Corporation dba Moore Buick-GMC v. General Motors LLC (GMC)	P: Mike Flanagan Gavin Hughes R: Greg Oxford	Establishment
31.	PR-2322-11 11-23-11	PHC: 12-15-11	GPI CA-DMII, Inc., dba Mercedes-Benz of Escondido v. Mercedes-Benz USA, LLC (Light Truck)	P: Bert Rasmussen R:	Modification
32.	PR-2323-11 11-23-11	PHC: 12-15-11	GPI CA-DMII, Inc., dba Mercedes-Benz of Escondido v. Mercedes-Benz USA, LLC (Passenger Car)	P: Bert Rasmussen R:	Modification
33.	PR-2324-11 11-23-11	PHC: 12-15-11	Miller-DM, Inc., dba Mercedes-Benz of Beverly Hills v. Mercedes-Benz USA, LLC (Light Truck)	P: Bert Rasmussen R:	Modification
34.	PR-2325-11 11-23-11	PHC: 12-15-11	Miller-DM, Inc., dba Mercedes-Benz of Beverly v. Mercedes-Benz USA, LLC Hills (Passenger Car)	P: Bert Rasmussen R:	Modification

CASE REGARDING BREACH OF PROPOSED STIPULATED DECISION AND ORDER

1.	PR-2272-10 Breach Case 11-18-11 PSDO dispute	HRC: 12-1-11	Kimball Motor Company, dba Kimball Volkswagen v. Volkswagen of America, Inc.	P: Bert Rasmussen R: Allen Resnick	Termination
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Petitions

	CASE NUMBER/ DATE FILED	STATUS	PETITION	COUNSEL
1.			-----None Pending-----	

Appeals

	CASE NUMBER/ DATE FILED	STATUS	APPEAL	COUNSEL
1.			-----None Pending-----	

C.

JUDICIAL
REVIEW

Judicial Review

Either the Protestant/Petitioner/Appellant or Respondent seeks judicial review of the Board's Decision or Final Order by way of a petition for writ of administrative mandamus (Code of Civil Procedure § 1094.5)

1. LEEHAN, INC. HANLEES HILLTOP NISSAN, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, NISSAN NORTH AMERICA, INC., Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2011-80000987; New Motor Vehicle Board Case No. CRT-254-11, Protest No. PR-2307-11

Background: This case relates closely to NNVB Case No. CRT-253-11, discussed below as topic number 2.

Protestant Leehan, Inc. Hanlees Hilltop Nissan (Hanlees) filed a protest with the Board on June 21, 2011, alleging that Respondent Nissan North America, Inc. (Nissan) untimely and improperly charged back incentive monies in the amount of \$64,350.00. On July 15, 2011, Nissan filed a motion seeking dismissal of Hanlees' protest based on Nissan's contention that Hanlees' protest was untimely, in that Hanlees allegedly failed to file the protest within one year after Nissan's December 9, 2009, written report of disapproved incentive claims.

Nissan's motion was heard by Administrative Law Judge Jerold A. Prod, and on September 12, 2011, Judge Prod issued his ruling on the motion, entitled "Amended Proposed Order Granting Respondent's Motion to Dismiss Second Protest." By order dated September 27, 2011, the Board adopted Judge Prod's ruling as the Board's final decision in the matter.

On October 27, 2011, Hanlees filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Sacramento County. The petition seeks a judgment (i.e., writ of mandate), that would, (a) direct the Board to both vacate the Board's decision of September 27, 2011, and deny Nissan's motion of July 15, 2011, and (b) award Hanlees its costs in the writ proceeding. The Superior Court has scheduled a hearing on Hanlees' petition, to begin at 9:00 a.m., on Friday, February 3, 2012, in Department 33 of the Court, in conjunction with the hearing of Hanlees' petition, designated as NMVB case No. CRT-253-11 and discussed below.

It has been determined that there is no substantial state interest at issue, and the parties have been informed of that determination. Thus, the Board will not be participating in this action.

2. LEEHAN, INC. dba HANLEES HILLTOP NISSAN, Petitioner v. CALIFORNIA NEW MOTOR VEHICLE BOARD, Respondent, NISSAN NORTH AMERICA, INC., Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2011-80000897;
New Motor Vehicle Board Case No. CRT-253-11, Protest No. PR-2291-11

Background: Protestant Hanlees Hilltop Nissan (Hanlees) filed a protest with the Board on February 25, 2011, alleging that Respondent Nissan North America, Inc. (Nissan) improperly charged back and refused to pay incentive monies to Hanlees in the amount of approximately \$60,000.00. On April 1, 2011, Nissan filed a motion seeking dismissal of Hanlees' protest based on Nissan's contention that Hanlees' protest was untimely, in that Hanlees allegedly failed to file the protest within one year after receiving notice of Nissan's disapproval of Hanlees' incentive claims. Nissan's motion was heard by Administrative Law Judge Diana Woodward Hagle, and on May 4, 2011, Judge Woodward Hagle issued a Proposed Order granting Nissan's motion. At its regularly scheduled meeting on May 26, 2011, the Board modified the Proposed Order (without changing the result) and adopted the Proposed Order as modified as the Board's final Decision in the matter.

On June 24, 2011, Hanlees (acting in its corporate name, Leehan, Inc.) filed a Petition for Writ of Administrative Mandamus, in the California Superior Court for Sacramento County. The petition seeks a judgment (i.e., writ of mandate) that would (a) set aside and vacate the Board's decision and order of May 26, 2011, and (b) deny Nissan's motion of April 1, 2011 (discussed above). *A hearing on the petition has been scheduled to begin at 9:00 a.m., on Friday, February 3, 2012, in Department 33 of the Superior Court, in conjunction with the hearing of NMVB case No. CRT-254-11, discussed above.*

It has been determined that there is no substantial state interest at issue, thus the Board will not be participating in this action.

3. POWERHOUSE MOTORSPORTS GROUP, INC. and TIMOTHY L. PILG v. YAMAHA MOTOR CORP, INC.; POWERHOUSE MOTORSPORTS, Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent, YAMAHA MOTOR CORP INC., Real Party in Interest.

*California Court of Appeal, Second District, Ventura Division, Case No. B230699
San Luis Obispo Superior Court No. CV09-8090
New Motor Vehicle Board Case No. CRT-249-09, Protest No. PR-2122-08*

On June 5, 2009, the Board upheld a May 22, 2009, proposed Order granting Yamaha's Motion to Dismiss Powerhouse's Protest against termination of its franchise. The Order found that Powerhouse had failed to timely file its Protest and Powerhouse failed to establish that Yamaha was estopped from terminating the dealership.

The original complaint, filed March 6, 2009, alleges Yamaha unreasonably withheld its consent for Powerhouse to transfer its dealership in violation of Vehicle Code section 11713.3, intentionally interfered with Powerhouse's contractual relations, intentionally interfered with Powerhouse's business advantage, and breached its contract with Powerhouse. Identical causes of

action were alleged in behalf of dealer principal Timothy L. Pilg. In its First Amended Complaint, filed July 7, 2009, Powerhouse added a Petition for a Writ of Administrative Mandamus challenging the Board's June 5, 2009, Final Decision Dismissing Protest No. PR-2122-08. The Petition seeks to reverse the Board's Final Decision alleging the Board prejudicially abused its discretion and exceeded its jurisdiction.

On July 23, 2009, Board President Flesh determined the Board would not participate in the action by means of the Attorney General's Office. The matters before the court: a Motion to Strike, a Motion to Bifurcate, and a Demurrer to the First Amended Complaint were heard November 17, 2009, resulting in a Final Ruling denying the Demurrer and the Motion to Strike. The Motion to Bifurcate was granted, the court ruled that the Writ Petition would be tried by the court separately prior to the other causes of action and further stayed all discovery until the conclusion of the Writ action. At a December 23, 2009, trial setting conference the Writ was set for hearing on April 15, 2010, at 9:00 a.m. in Department P-2. On the Court's own motion the hearing on the Writ was continued until June 11, 2010. Yamaha prevailed on the Writ action. Mediation on December 2, 2010, was unsuccessful.

A Hearing on a Motion for Summary Judgment was held on January 4, 2011. The court initially took the matter under submission and on January 31, 2011, entered a ruling denying Yamaha's motion for summary judgment and in the alternative summary adjudication. The ruling is adverse to the Board's jurisdiction and the Judge indicated that the Board does not have jurisdiction over protests and "...invocation of the Board's limited authority [is] optional..."

A jury trial scheduled for February 7, 2011, on the remaining causes of action, was continued to February 14, 2011, and then continued to May 31, 2011. On February 7, 2011, Yamaha filed in the Second Appellate District Court a "Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief". The Board in consultation with Jeffrey Schwarzschild, Deputy Attorney General and Augustin Jimenez, General Counsel, Business, Transportation & Housing Agency ("Agency") filed a declaration containing statistical information on the types of actions filed with the Board, i.e., protests, petitions, and appeals. On February 10, 2011, the court denied the writ because "...petitioner neglected to cite or argue the application of Vehicle Code section 3050, subdivision (e), and South Bay Creditors Trust v. General Motors Acceptance Corp. (1999) 69 Cal.App.4th 1068, 1079-1080. Yamaha re-filed the writ with the above references and arguments on February 14 along with the Board's declaration. On February 17, 2011, the court denied the writ and request for stay.

On February 28, 2011, Yamaha filed a Petition for Review in the California Supreme Court. The Board received the necessary approvals from Glenn Stevens, the Public Members of the Board, Agency, and the Governor's Office to file an amicus curiae letter in support of Yamaha's petition for review on the jurisdictional issue of whether final Board decisions are binding with regard to other legal proceedings when the underlying writ concerning the final Board

decision is denied, or whether these decisions are subject to re-litigation in a subsequent court action. The amicus curiae letter was filed on March 9, 2011. On April 13, 2011, the California Supreme Court denied Yamaha's Petition for Review and Application for Stay. In a letter dated May 5, Yamaha requested that the superior court review the Board's amicus curiae letter. Counsel for Yamaha indicated that it will subpoena Robin Parker to testify concerning the content of the amicus curiae letter around May 31 or June 1. Agency has been apprised of this.

A multi-day jury trial began on May 31, 2011. After being subpoenaed by Yamaha, Robin Parker testified on June 13. The jury awarded Powerhouse and Mr. Pilg \$1,136,000 in compensatory damages and \$200,000 in punitive damages. During the course of the trial, the bankruptcy trustee (Namba) was substituted for Mr. Pilg.

A briefing schedule was set on Yamaha's judgment notwithstanding the verdict and motion for new trial. An in-person hearing was held on August 2, 2011. Both motions were denied. Counsel for Yamaha indicated that a notice of appeal would be filed.

Plaintiffs filed a "Motion for Prejudgment Interest under Civil Code section 3287(a), or in the Alternative, Civil Code section 3287(b)." A hearing was held on August 9, 2011. The tentative order concluded that attorneys' fees are allowed under Vehicle Code section 11726(a) but not under the contract. Plaintiffs requested \$703,000 adjusted upward by a 1.7 multiplier. The court indicated this amount will be reduced by the fees incurred in connection with the protest and petition for writ of administrative mandate.

Yamaha filed a "Motion to Tax Costs Requested by Plaintiff's". This matter was resolved by counsel based on the court's ruling on the attorney's fees.

Powerhouse sought to enforce the \$2,175,000 judgment against Yamaha prior to the time period for Yamaha to file an appeal, i.e., October 17, 2011. On September 7, 2011, Yamaha filed an Ex Parte Application for an Order Staying Enforcement of Judgment. A hearing was held on September 8, 2011. The motion was granted and enforcement of the judgment was stayed until October 17.

On October 6, 2011, the law firm of Gibson, Dunn & Crutcher LLP was associated in as counsel for Yamaha. Also, on October 6, 2011, Yamaha filed a Notice of Appeal in the Second District Court of Appeal. On November 7, 2011, Plaintiffs filed a Notice of Cross-Appeal.

4. SERPA AUTOMOTIVE GROUP, INC., Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent; VOLKSWAGEN OF AMERICA, INC., Real Party in Interest. Tulare Co. Sup. Court (Visalia Division) No. 06-221437, New Motor Vehicle Board Case No. CRT-241-06, Protest No. PR-1977-05

This writ petition was filed on November 13, 2006. It challenges the Board's Final Decision, of September 28, 2006, which overruled Protest No. PR-1977-05, thereby allowing the termination of Petitioner's Volkswagen franchise.

The writ petition alleges the Board committed a prejudicial abuse of discretion and failed to proceed in a manner required by law in that the Decision is not supported by the findings, and the findings are not supported by the facts (Code Civ. Proc. §1094.5). Petitioner bases its arguments on an incorrect independent judgment standard of review, rather than the substantial evidence standard. It has been determined that there is no substantial state interest at issue, thus the Board will not be participating in this action via the Attorney General.

On November 21, 2006, Petitioner filed a request to stay the Board's Decision pending the outcome of the Writ Petition. On December 21, 2006, Volkswagen filed its Answer to the Writ. The Clerk's office at the Tulare County Superior Court, states that there has been no activity in the case since January 2007, and there are no future dates set in the matter. *Board counsel contacted the Court on November 23, 2011, and learned that the matter remains pending, but with no activity scheduled. On November 23, 2011, Board counsel attempted without success to contact Philip Bourdette, counsel for Petitioner.*

D.

NOTICES FILED

PURSUANT TO
VEHICLE CODE SECTIONS
3060/3070 AND 3062/3072

NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS

3060/3070 AND 3062/3072

SEPTEMBER 13, 2011, THROUGH NOVEMBER 29, 2011

These are generally notices relating to termination or modification (sections 3060 and 3070) and establishment, relocation, or off-site sales (sections 3062 and 3072).

SECTION 3060/3070	No.	SECTION 3062/3072	No.
ACURA	0	ACURA	0
AUDI	0	AUDI	0
BMW	0	BMW	0
CHRYSLER	0	CHRYSLER	1
DAIHATSU	0	DAIHATSU	0
FERRARI	0	FERRARI	0
FORD	1	FORD	1
GOSHEN	0	GOSHEN	0
GM	58	GM	4
HARLEY-DAVIDSON	0	HARLEY-DAVIDSON	0
HONDA	0	HONDA	0
HYUNDAI	0	HYUNDAI	0
INFINITI	0	INFINITI	0
ISUZU	0	ISUZU	0
JAGUAR	0	JAGUAR	0
KAWASAKI	0	KAWASAKI	0
KTM	0	KTM	0
KIA	0	KIA	0
LEXUS	0	LEXUS	0
MAZDA	0	MAZDA	0
MERCEDES	108	MERCEDES	0
MINI	0	MINI	0
mitsubishi	0	MITSUBISHI	1
NISSAN	0	NISSAN	2
PORSCHE	0	PORSCHE	0
SAAB-SCANIA	0	SAAB-SCANIA	0
SATURN	0	SATURN	0
SUBARU	0	SUBARU	0
SUZUKI	1	SUZUKI	0
TOYOTA	0	TOYOTA	0
VOLKSWAGEN	0	VOLKSWAGEN	0
VOLVO	0	VOLVO	0
YAMAHA	1	YAMAHA	0
MISCELLANEOUS	3	MISCELLANEOUS	2
TOTAL	172	TOTAL	11