



***EXECUTIVE  
DIRECTOR'S  
REPORT***

***February 8, 2012***

A.

# ADMINISTRATIVE MATTERS

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>ADMINISTRATION COMMITTEE</b>			
<b>1. <u>Update Guide to the New Motor Vehicle Board</u></b> Robin Parker; Administration Committee	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	February 2012	In progress. The revised Guide will be presented at the February 8 2012, General Meeting.
<b>2. <u>Allocation of Court Reporter Fees in Merits Hearings</u></b> Dana Winterrowd; Administration Committee	Consider how best to allocate the court reporter fees in merits hearings in light of Section 551.7 of Title 13 of the California Code of Regulations.	February 2012	In progress. This matter will be considered at the February 8, 2012, General Meeting.
<b><u>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></b> 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	<b><u>Completed</u></b> A status report concerning manufacturer and distributor compliance was presented at the December 13, 2011, General Meeting.
<b>BOARD DEVELOPMENT COMMITTEE</b>			
<b>1. <u>Host Board Administrative Law Judge Roundtable</u></b> 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.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>2. <u>Solon C. Soteras Employee Recognition Award Recipient</u></b> Bill Brennan; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	May 2012	In progress. The Board Development Committee will select a nominee for the Board to consider at the May 22, 2012, General Meeting.
<b>FISCAL COMMITTEE</b>			
<b>1. <u>Quarterly Fiscal Reports</u></b> 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 <sup>st</sup> quarter report for fiscal year 2011-2012 was presented at the December 13, 2011, General Meeting. The remaining quarterly reports will be scheduled as follows: 2 <sup>nd</sup> quarter, March 20, 2012, 3 <sup>rd</sup> quarter, May 22, 2012, and 4 <sup>th</sup> quarter, November 2012.
<b>2. <u>Report Concerning Out-of-State Travel Plans</u></b> Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2012-2013.	February 2012	In progress. A report will be presented for consideration at the February 8, 2012, General Meeting.
<b>3. <u>Proposed Board Budget for the Next Fiscal Year</u></b> Dawn Kindel, Linda Lighter; Fiscal Committee	The staff in conjunction with the Fiscal Committee will discuss and consider the Board's proposed budget for fiscal year 2012-2013.	May 2012	In progress. The 2012-2013 budget will be presented at the May 22, 2012, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>4. <u>Status Report on the Collection of Fees for the Arbitration Certification Program</u></b> 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.	May 2012	In progress. A status report will be provided at the May 22, 2012, General Meeting.
<b>5. <u>Annual Discussion and Consideration of the Methods for Determining Board Fees</u></b> 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.	May 2012	In progress. A memorandum will be presented at the May 22, 2012, General Meeting.
<b><u>Status Report on the Board's Collection of its Annual Fee</u></b> Dawn Kindel, Linda Lighter; Fiscal Committee	The staff will provide a report concerning the annual fee collection.	December 2011	<b><u>Completed</u></b> At the December 13, 2011, General Meeting, in conjunction with the 1 <sup>st</sup> quarter financial condition report for fiscal year 2011-2012, a status report concerning the annual fee collection was presented.
<b>GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE</b>			
<b>1. <u>Host Industry/Attorney Roundtable</u></b> 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.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>2. <u>Participant Questionnaires for Industry/Attorney Roundtable</u></b> 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.
<b>POLICY AND PROCEDURE COMMITTEE</b>			
<b>1. <u>Update the Informational Guide for Manufacturers and Distributors</u></b> Robin Parker; Policy and Procedure Committee	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	February 2012	In progress. The updated Guide will be considered at the February 8, 2012, General Meeting.
<b>2. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u></b> Dana Winterrowd; Policy and Procedure Committee	Annual report on the assignment of cases to Board Administrative Law Judges ("ALJs").	February 2012	In progress. A report on the assignment of cases to Board ALJs will be presented at the February 8, 2012, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<p><b>3. <u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u></b> Robin Parker; Policy and Procedure Committee</p>	<p>Update the <i>New Motor Vehicle Board Administrative Law Judges Benchbook</i>.</p>	<p>March 2012</p>	<p>In progress. The revised ALJ Guide will be considered at the March 20, 2012, General Meeting.</p>
<p><b>4. <u>Promulgate Proposed Regulations that Pertain to the Board's Fee Collection and Arbitration Certification Program Fee Collection</u></b> 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>March 2012</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, and was approved on January 23, 2012. Business, Transportation &amp; Housing Agency will review the packet before it is forward to the Office of Administrative Law.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<p><b><u>5. Promulgate Proposed Regulations to Reinstate the Annual Board Fee</u></b> 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>March 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. The packet was approved by the Department of Finance on January 23, 2012. Business, Transportation and Housing Agency will review the packet before it is forward to the Office of Administrative Law.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<p><b><u>6. Draft New Regulations to Clarify and Improve the Board's Case Management Processes</u></b> 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>May 2012</p>	<p>In progress.</p>
<p><b><u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u></b> 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><u>Completed</u> At the December 13, 2011, General Meeting, the members adopted the revised Guide.</p>
<p><b><u>Annual Rulemaking Calendar</u></b> 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><u>Completed</u> The Board adopted the 2012 Rulemaking Calendar at the December 13, 2011, Meeting. The calendar was subsequently approved by Business, Transportation &amp; Housing Agency ("BT&amp;H") and will be published in the California Regulatory Notice Register.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<b>EXECUTIVE COMMITTEE</b>			
<p><b>1. <u>Sunset Review</u></b>            Bill Brennan,            Robin Parker,            Dana Winterrowd,            Dawn Kindel, and            Linda Lighter            Executive            Committee</p>	<p>In conjunction with the staff, work to complete the questionnaire requested by the Sunset Review Committee. Attend the Sunset Review Committee hearing on March 6, 2012.</p>	<p>March 2012</p>	<p>In progress.</p>

**B.**

**CASE  
MANAGEMENT**

# CASE VOLUME

NOVEMBER 29, 2011, THROUGH JANUARY 24, 2012

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	0	1	12
3060	Modification	2	0	7
3062	Establishment	0	3	0
3062	Relocation	0	0	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	1	0
3065.1	Incentive Program Reimbursement	0	0	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	0	0
3050(b)	Appeal	0	0	0
TOTAL CASES:		2	5	31

# PENDING CASES

## BY CASE NUMBER

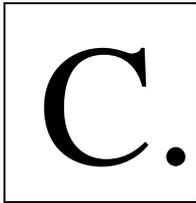
### PROTESTS

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
1.	PR-2138-08 12-5-08	Bankruptcy Stay; Resumed Status Conference: 3-12-12	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	Merits Hearing: 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	Merits Hearing: 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	Merits Hearing: 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	Merits Hearing: 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	Merits Hearing: 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
7.	*PR-2208-10 2-18-10	Merits Hearing: 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	Merits Hearing: 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	Merits Hearing: 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	Merits Hearing: 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

	<b>CASE NUMBER/ DATE FILED</b>	<b>STATUS</b>	<b>PROTEST</b>	<b>COUNSEL</b>	<b>CASE TYPE</b>
11.	PR-2227-10 4-7-10	Hearing Readiness Conference: 8-15-12 Merits Hearing: 9-5-12 (8 days)	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	Merits Hearing: 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	Merits Hearing: 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	Merits Hearing: 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-2294-11 4-7-11	Settled in Principle Continued Status Conference: 2-2-12	Ashley Imports, LLC dba Merced Kia v. Kia Motors America, Inc.	P: Larry Miles Brady McLeod R: Colm Moran David Skaar	Termination
16.	PR-2298-11 5-12-11	Settled in principle; Resumed Status Conference: 2-16-12	RRG, Inc. dba El Monte Kia v. Kia Motors America, Inc.	P: Andrew Ritholz Mike Sieving R: Colm A. Moran David W. Skaar	Termination
17.	PR-2299-11 5-12-11	Merits Hearing concluded; opening briefs due 3-9-12; reply briefs due 4-9-12	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
18.	PR-2305-11 6-7-11	Resumed Pre- Hearing Conference: 2-7-12	Ankar Cycles, Inc., dba Oakland Harley-Davidson v. Harley-Davidson Motor Company	P: Mike Flanagan Gavin Hughes R: Bob Ebe Brett Waxdeck	Termination

	<b>CASE NUMBER/ DATE FILED</b>	<b>STATUS</b>	<b>PROTEST</b>	<b>COUNSEL</b>	<b>CASE TYPE</b>
19.	PR-2306-11 6-7-11	Mandatory Settlement Conference: 1-26-12 Status Conference: 2-6-12	Mother Lode Motors dba Mother Lode Motors Kia v. Kia Motors America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran David Skaar	Termination
20.	PR-2308-11 7-13-11	Bankruptcy Stay Resumed Status Conference: 5-7-12	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
21.	PR-2310-11 7-20-11	Hearing Readiness Conference: 1-27-12 Merits Hearing: 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
22.	PR-2314-11 9-14-11	Informal Follow-Up: 1-30-12	First United, Inc., dba De La Fuente Cadillac v. General Motors LLC (Cadillac Division)	P: Bradley Jacobs R: Greg Oxford	Modification
23.	PR-2315-11 9-30-11	Dismissal expected: 2-15-12	Depot Garage, Inc. v. General Motors	P: Jose Reynoso R: Greg Oxford	Termination
24.	PR-2316-11 11-4-11	Hearing Readiness Conference: 2-27-12 Merits Hearing: 3-26-12 (3 days)	Myrick's Motorcycle, Inc. dba San Luis Motorsports v. Yamaha Motor Corporation, USA	P: Andrew Hays R: Armen Hairapetian	Termination
25.	PR-2317-11 10-31-11	Stay re Ford Internal Appeal; Resumed Status Conference: 2-23-12	Cevera Automotive Group, LLC dba Veracom Ford v. Ford Motor Company	P: Robert Branzuela R: Mark Kenney Duane Geck Donald Cram	Termination
26.	PR-2322-11 11-23-11	Continued Pre-Hearing Conference: 2-9-12	GPI CA-DMII, Inc., dba Mercedes-Benz of Escondido, a corporation v. Mercedes-Benz USA, LLC (Light Truck)	P: Bert Rasmussen R: Mark Kelly	Modification

	<b>CASE NUMBER/ DATE FILED</b>	<b>STATUS</b>	<b>PROTEST</b>	<b>COUNSEL</b>	<b>CASE TYPE</b>
27.	*PR-2323-11 11-23-11	Continued Pre-Hearing Conference: 2-9-12	GPI CA-DMII, Inc., dba Mercedes-Benz of Escondido, a corporation v. Mercedes-Benz USA, LLC (Passenger Car)	P: Bert Rasmussen R: Mark Kelly	Modification
28.	PR-2324-11 11-23-11	Continued Pre-Hearing Conference: 2-9-12	Miller-DM, Inc., dba Mercedes-Benz of Beverly Hills, a corporation v. Mercedes-Benz USA, LLC (Passenger Car)	P: Bert Rasmussen R: Mark Kelly	Modification
29.	*PR-2325-11 11-23-11	Continued Pre-Hearing Conference: 2-9-12	Miller-DM, Inc., dba Mercedes-Benz of Beverly Hills, a corporation v. Mercedes-Benz USA, LLC (Light Truck)	P: Bert Rasmussen R: Mark Kelly	Modification
30.	PR-2326-11 12-8-11	Hearing of Motion to Dismiss: 2-14-12	Stahl Motor Company, Inc. dba Mercedes-Benz of Monterey, a California Limited Liability Company v. Mercedes-Benz USA, LLC, a California Corporation (Passenger Car)	P: Alton Burkhalter Ros Lockwood R: Gwen J. Young Steven M. Kelso	Modification
31.	*PR-2327-11 12-8-11	Pre-Hearing Conference: 2-14-12	Stahl Motor Company, Inc. dba Mercedes-Benz of Monterey, a California Limited Liability Company v. Mercedes-Benz USA, LLC, a California Corporation (Light Truck)	P: Alton Burkhalter Ros Lockwood R: Gwen J. Young Steven M. Kelso	Modification



# 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) The writ of mandamus may be denominated a writ of mandate. (Code of Civil Procedure, § 1084.)**

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.

Current (Writ) Action: 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. *On January 11, 2012, the Board received Hanlees' opening brief in support of its petition. The Superior Court has scheduled a hearing on Hanlees' petition, to begin at 1:30 p.m., on Friday, February 24, 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.

Current (Writ) Action: 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). *On January 11, 2012, the Board received Hanlees' opening brief in support of its petition. A hearing on the petition has been scheduled to begin at 1:30 p.m., on Friday, February 24, 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, and the parties have been informed of that determination. 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. B236705  
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. Under the Court's ruling of July 2, 2010, Yamaha prevailed on the Writ action. Based on that ruling, the court entered judgment in the writ action, in favor of Yamaha, on August 9, 2010. 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 District Court of Appeal a "Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief", Second District case number B230699. 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.4<sup>th</sup> 1068, 1079-1080. Yamaha re-filed the writ with the above references and arguments on February 14 along with the Board's declaration; Second District case number B230830. 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, case number S190950, seeking review of the denial, by the Second District Court of Appeal, of Yamaha's writ petition and request for stay. 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.

Current Appeal: On October 6, 2011, Yamaha filed a Notice of Appeal. On November 7, 2011, Plaintiffs filed a Notice of Cross-Appeal, *in which plaintiffs appeal from, among other matters, "The judgment entered on August 9, 2011, to the extent that it incorporates the trial court's ruling of July 2, 2010, denying Powerhouse's eighth cause of action under Code of Civil Procedure Section 1094.5 for Petition for Administrative Writ of Mandate."*

*The Second District of the California Court of Appeal has established case number B236705 for the appeal and cross-appeal, and has ordered the filing, on or before March 6, 2012, of the record on appeal.*

4. SERPA AUTOMOTIVE GROUP, INC., Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent, VOLKSWAGEN OF AMERICA, INC., Real Party in Interest.

California Superior Court, Tulare County (Visalia Division) No. 06-221437;  
Board Case No. CRT-241-06, Protest No. PR-1977-05

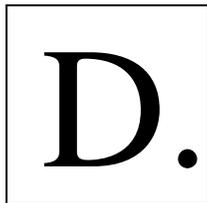
Background: The Board issued its Final Decision on September 28, 2006, overruling Protest No. PR-1977-05, thereby allowing termination of the franchise granted to Serpa Automotive Group, Inc. (Serpa) by Volkswagen of America, Inc. (VWoA).

Current (Writ) Action: On November 13, 2006, Serpa filed a petition for writ of administrative mandamus in the California Superior Court in Tulare County. The petition alleges the Board committed a prejudicial abuse of discretion and failed to proceed in a manner required by law in that the Final Decision is not supported by the findings, and the findings are not supported by the facts. (Code Civ. Proc. §1094.5) However, Serpa contends, incorrectly, that the Court should review the Board's decision under the independent judgment standard of review. It is well established that the Court should, instead, apply the substantial evidence standard.

On November 21, 2006, in the writ action, Serpa filed a request to stay the Board's Final Decision pending the outcome of the writ action. On December 21, 2006, VWoA filed an Answer to the petition. On January 3, 2007, Serpa filed a record of the administrative proceedings.

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

*On January 23, 2012, Board counsel contacted the Clerk's office for the Superior Court in Tulare County and confirmed that, (a) the case remains pending, (b) there has been no activity in the case since January 3, 2007, and (c) no activity is scheduled in the case. Also on January 23, 2012, Board counsel attempted without success to contact Philip Bourdette, counsel for Serpa.*



# NOTICES FILED

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

## NOTICES FILED

---

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

NOVEMBER 30, 2011, THROUGH JANUARY 25, 2012

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		ACURA	
AUDI		AUDI	

FEBRUARY 2012 EXECUTIVE DIRECTOR'S REPORT

BMW		BMW	
CHRYSLER		CHRYSLER	
DAIHATSU		DAIHATSU	
FERRARI		FERRARI	
FORD		FORD	
GOSHEN		GOSHEN	
GM		GM	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	
HONDA		HONDA	
HYUNDAI		HYUNDAI	
INFINITI		INFINITI	1
ISUZU		ISUZU	
JAGUAR		JAGUAR	
KAWASAKI	1	KAWASAKI	
KTM		KTM	
KIA		KIA	
LEXUS		LEXUS	
MAZDA		MAZDA	
MERCEDES		MERCEDES	
MITSUBISHI		MITSUBISHI	
NISSAN		NISSAN	
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SATURN		SATURN	
SUBARU		SUBARU	
SUZUKI		SUZUKI	
TOYOTA		TOYOTA	
VOLKSWAGEN		VOLKSWAGEN	
VOLVO		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	2	MISCELLANEOUS	
TOTAL	3	TOTAL	1

## FEBRUARY 2012 EXECUTIVE DIRECTOR'S REPORT