



***EXECUTIVE
DIRECTOR'S
REPORT***

May 22, 2012

A.
ADMINISTRATIVE
MATTERS

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
<p><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> Kathy Tomono; Administration Committee</p>	<p>In December 2011 and March 2012, 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.</p>	<p>December 2012</p>	<p>In progress. A status report concerning manufacturer and distributor compliance will be presented at the December 2012, General Meeting.</p>
<p><u>Update Guide to the New Motor Vehicle Board</u> Robin Parker; Administration Committee</p>	<p>Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.</p>	<p>March 2012</p>	<p><u>Completed</u> The revised Guide was adopted at the March 20, 2012, General Meeting. A memorandum announcing the availability of the Guide on the Board’s website was sent to the Board’s Public Mailing List March 22, 2012.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Allocation of Court Reporter Fees in Merits Hearings</u> 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.	March 2012	<u>Completed</u> The Board adopted the staff recommendation that allocates court reporter costs for merits hearings and dispositive motions to the parties after the first day of hearing.
BOARD DEVELOPMENT COMMITTEE			
1. <u>Solon C. Soteris Employee Recognition Award Recipient</u> Bill Brennan; Board Development Committee	Compile the nominations provided by staff and select a nominee for the Solon C. Soteris 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.
2. <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 2012	In progress. An ALJ Roundtable will be held May 24, 2012.
3. <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.	August 2012	In progress. A schedule of topics and speakers for Board member education will be presented for discussion at the August 2012, General Meeting.
FISCAL COMMITTEE			

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
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 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 nd and 3 rd quarter, May 22, 2012, and 4 th quarter, December 2012.
2. <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.	May 2012	In progress. A status report will be provided at the May 22, 2012, General Meeting.
3. <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.	May 2012	In progress. A memorandum will be presented at the May 22, 2012, General Meeting.
4. <u>Proposed Board Budget for the Next Fiscal Year</u> Dawn Kindel, Linda Lighter;	The staff in conjunction with the Fiscal Committee will discuss and consider the Board's proposed budget for fiscal year 2012-2013.	August 2012	In progress. The 2012-2013 budget will be presented at the August 2012, General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Report Concerning Out-of-State Travel Plans</u> Dawn Kindel; Fiscal Committee	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2012-2013.	March 2012	<u>Completed</u> At the March 20, 2012, General Meeting, the members approved the five out-of-state trips.
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			
<u>1 Participant Questionnaires for Industry Roundtable</u> Robin Parker; Government and Industry Affairs Committee	Based upon the feedback provided at the Industry Roundtable in the questionnaires, highlight areas for improvement and develop a preliminary list of suggested topics for a future event.	May 2012	In progress. The questionnaires were e-mailed after the Roundtable. A memorandum summarizing the feedback will be presented for information at the May 22, 2012, General Meeting.
<u>Host Industry Roundtable</u> Bill Brennan; Dawn Kindel; Kathy Tomono; Government and Industry Affairs Committee	Host the traditional Industry Roundtable with representatives from car, truck, motorcycle and recreational vehicle manufacturers/distributors.	March 2012	<u>Completed</u> The Industry Roundtable was held on March 21, 2012.
POLICY AND PROCEDURE COMMITTEE			
<u>1. Annual Rulemaking Calendar</u> Robin Parker; Policy & Procedure Committee	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.	December 2012	In progress. The 2013 Rulemaking Calendar will be considered at the December General Meeting.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<p><u>2. 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>December 2012</p>	<p>In progress.</p>
<p><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>March 2012</p>	<p><u>Completed</u> The revised Guide was adopted at the March 20, 2012, General Meeting. A memorandum announcing the availability of the Guide on the Board's website was sent to the Board's Public Mailing List in March 2012.</p>
<p><u>Report on the Assignment of Cases to Board Administrative Law Judges</u> Dana Winterrowd; Policy and Procedure Committee</p>	<p>Annual report on the assignment of cases to Board Administrative Law Judges ("ALJs").</p>	<p>March 2012</p>	<p><u>Completed</u> A report on the assignment of cases to Board ALJs was presented at the March 20, 2012, General Meeting.</p>

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
<u>Update New Motor Vehicle Board Administrative Law Judges Benchbook</u> Robin Parker; Policy and Procedure Committee	Update the <i>New Motor Vehicle Board Administrative Law Judges Benchbook</i> .	March 2012	<u>Completed</u> At the March 20, 2012, General Meeting, the members adopted the revised Benchbook.
<u>Promulgate Proposed Regulations to Reinstate the Annual Board Fee</u> Robin Parker, Randi Calkins, DMV Legal; Policy and Procedure Committee	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	March 2012	<u>Completed</u> The proposed regulations were approved by the Office of Administrative Law (“OAL”) and were effective March 30, 2012.
<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	In compliance with the Administrative Procedure Act, amend Sections 553, 553.10, 553.20, 553.30, 553.50, 553.70, and 553.72 of Title 13 of the California Code of Regulations.	May 2012	<u>Completed</u> The final rulemaking packet was approved by OAL and filed with the Secretary of State. The regulations are effective May 10, 2012.

Project Title/ Manager; Board Committee	Project Goal (Description)	Estimated Completion Date	Status
EXECUTIVE COMMITTEE			
1. <u>Sunset Review</u> Bill Brennan, Robin Parker, Dana Winterrowd, Dawn Kindel, and Linda Lighter; Executive Committee	In conjunction with the staff, work to complete the questionnaire requested by the Sunset Review Committee. Staff attended the Sunset Review Committee hearing on March 14, 2012 and continues to work with Sunset Review Committee staff to address questions.	May 2012	In progress. A hearing was held on May 1, 2012.
2. <u>Revised Vision Statement</u> Bill Brennan; Executive Committee	At the June 5, 2009, General meeting, the Board approved its present mission and vision statements. At the March 20, 2012, General Meeting, Board Member Ryan Brooks requested that the staff revise the Vision Statement to reflect the cost savings to tax payers.	May 2012	In progress. A memo revising the Vision Statement will be considered by the May 22, 2012, General Meeting.

B.
CASE
MANAGEMENT

CASE VOLUME

MARCH 7, 2012, THROUGH MAY 8, 2012

VEHICLE CODE SECTION	DESCRIPTION	NEW CASES	RESOLVED CASES	PENDING CASES
3060	Termination	0	0	12
3060	Modification	1	2	5
3062	Establishment	2	0	2
3062	Relocation	0	0	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	0	0
3065.1	Incentive Program Reimbursement	0	0	0
3070	Termination	0	0	2
3070	Modification	0	0	2
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:		3	2	30

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: 7-24-12	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-2199-10 1-29-10	Proposed Decision: 7-2-12 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
3.	*PR-2201-10 1-29-10	Proposed Decision: 7-2-12 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
4.	*PR-2205-10 2-9-10	Proposed Decision: 7-2-12 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
5.	*PR-2206-10 2-9-10	Proposed Decision: 7-2-12 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
6.	*PR-2208-10 2-18-10	Proposed Decision: 7-2-12 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
7.	*PR-2209-10 2-18-10	Proposed Decision: 7-2-12 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

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
8.	*PR-2211-10 2-18-10	Proposed Decision: 7-2-12 Judge Hagle	Mega RV Corp. dba McMahon's RV v. Roadtrek Motorhomes, Inc. (5060 Scotts Valley Drive)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Franchisor Incentive Program
9.	*PR-2212-10 2-18-10	Proposed Decision: 7-2-12 Judge Hagle	Mega RV Corp. dba McMahon's RV v. Roadtrek Motorhomes, Inc. (6441 Burt Road, Irvine)	P: Mike Flanagan Gavin Hughes R: Lou Chronowski	RV Franchisor Incentive Program
10.	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
11.	*PR-2233-10 5-11-10	Proposed Decision: 7-2-12 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
12.	*PR-2244-10 7-13-10	Proposed Decision: 7-2-12 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
13.	*PR-2245-10 7-13-10	Proposed Decision: 7-2-12 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
14.	PR-2299-11 5-12-11	Board to consider Proposed Decision: 5-22-12	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

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
15.	PR-2305-11 6-7-11	Parties finalizing settlement; Resumed Pre-Hearing Conference: 5-10-12	Ankar Cycles, Inc., dba Oakland Harley-Davidson v. Harley-Davidson Motor Company	P: Mike Flanagan Gavin Hughes R: Bob Ebe Brett Waxdeck	Termination
16.	PR-2306-11 6-7-11	Parties working on settlement. Informal follow-up: 5-25-12	Mother Lode Motors dba Mother Lode Motors Kia v. Kia Motors America, Inc.	P: Mike Flanagan Gavin Hughes R: Colm Moran David Skaar	Termination
17.	PR-2308-11 7-13-11	Bankruptcy Stay; Parties working on Dismissal; Informal Follow-Up: 6-5-12	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
18.	PR-2310-11 7-20-11	Merits Hearing concluded; opening briefs due 6-8-12; reply briefs due 7-18-12; Proposed Decision: 8-27-12	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
19.	PR-2315-11 9-30-11	Board to consider Proposed Order Granting Respondent's Motion To Dismiss For Lack Of Jurisdiction: 5-22-12	Depot Garage, Inc. v. General Motors	P: Jose Reynoso R: Greg Oxford	Termination

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
20.	PR-2316-11 11-4-11	Hearing Readiness Conference: 5-29-12 Merits Hearing: 6-25-12 (3 days)	Myrick's Motorcycle, Inc. dba San Luis Motorsports v. Yamaha Motor Corporation, USA	P: Andrew Hays R: Armen Hairapetian	Termination
21.	PR-2322-11 11-23-11	Resumed Status Conference: 5-15-12	GPI CA-DMII, Inc., dba Mercedes-Benz of Escondido, a corporation v. Mercedes-Benz USA, LLC (Light Truck)	P: Bert Rasmussen Timothy Robinett R: Mark Kelly	Modification
22.	*PR-2323-11 11-23-11	Resumed Status Conference: 5-15-12	GPI CA-DMII, Inc., dba Mercedes-Benz of Escondido, a corporation v. Mercedes-Benz USA, LLC (Passenger Car)	P: Bert Rasmussen Timothy Robinett R: Mark Kelly	Modification
23.	PR-2324-11 11-23-11	Resumed Status Conference: 5-15-12	Miller-DM, Inc., dba Mercedes- Benz of Beverly Hills, a corporation v. Mercedes-Benz USA, LLC (Passenger Car)	P: Bert Rasmussen Timothy Robinett R: Mark Kelly	Modification
24.	*PR-2325-11 11-23-11	Resumed Status Conference: 5-15-12	Miller-DM, Inc., dba Mercedes- Benz of Beverly Hills, a corporation v. Mercedes-Benz USA, LLC (Light Truck)	P: Bert Rasmussen Timothy Robinett R: Mark Kelly	Modification
25.	PR-2328-12 2-23-12	Parties exploring settlement. Informal follow-up: 5-25-12	Burbank Kawasaki Inc. v. Kawasaki Motors Corp., U.S.A., a Corporation	P: Leon Bellissimo R: Mo Sanchez Kevin Colton	Termination

PENDING CASES

BY CASE NUMBER

	CASE NUMBER/ DATE FILED	STATUS	PROTEST	COUNSEL	CASE TYPE
26.	PR-2329-12 3-2-12	Ruling on Objections: 5-22-12; Hearing Readiness Conference 6-11-12; Merits Hearing 7-9-12 (5 days)	Tim DeMartini dba DeMartini RV Sales v. Fleetwood RV, Inc.	P: Susan McGuire R: Mo Sanchez Kevin Colton	Termination
27.	PR-2330-12 3-29-12	Hearing of Respondent's Motion to Dismiss: 6-6-12	Santa Monica Auto Group, dba Santa Monica Infiniti v. Infiniti West, a Division of Nissan North America, Inc.	P: Mike Sieving Tina Hopper R: Mo Sanchez Kevin Colton	Establishment
28.	PR-2331-12 4-13-12	Resumed Prehearing Conference: 5-30-12	Glendale Nissan/Infiniti, Inc. dba Glendale Infiniti v. Nissan North America	P: Ken Murphy Aaron Jacoby R: Mo Sanchez Kevin Colton	Establishment
29.	PR-2332-12 4-18-12	Prehearing Conference: 5-11-10	Diablo Auto, Inc., dba Diablo Mazda v. Mazda North American Operations	P: Mike Flanagan Gavin Hughes R:	Modification

CASES REGARDING BREACH OF PROPOSED STIPULATED DECISION AND ORDER

1.	PR-2213-10 Breach Case 4-2-12 PSDO dispute	Hearing: 5-17-12	West Covina Motors, Inc., dba Clippinger Chevrolet v. General Motors, LLC	P: Mike Flanagan R: Greg Oxford	Termination
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PENDING CASES

BY CASE NUMBER

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

1. VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey corporation, Petitioner v. NEW MOTOR VEHICLE BOARD, an administrative agency of the State of California, Respondent, SHAYCO, INC., dba ONTARIO VOLKSWAGEN, Real Party in Interest.

California Superior Court, Sacramento County Case No. 34-2012-80001045;
New Motor Vehicle Board Case No. CRT-255-12, Protest No. PR-2265-10.

Background: At the Board's regularly scheduled meeting on September 27, 2011, the Board's public members, meeting in executive session, decided to sustain the protest filed by Protestant Shayco, Inc., dba Ontario Volkswagen (Ontario VW) on August 13, 2010. At the Board's regularly scheduled meeting on December 13, 2011, the Board adopted its written Order Confirming Decision to Sustain Protest, confirming the decision of September 27, 2011. The Board found that Ontario VW had met its burden of proof under Vehicle Code section 3066(b) that there is good cause not to establish a Volkswagen dealership in Montclair and ruled that respondent would not be permitted to proceed with the establishment of the new franchise at the proposed location in Montclair.

Current (Writ) Action: On January 24, 2012, Volkswagen Group of America, Inc. (VWoA) filed a Verified Petition for Writ of Administrative Mandamus, in the California Superior Court for Sacramento County. The petition seeks a judgment (i.e., writ of mandate), (1) directing the Board to set aside its decision, (2) directing the Board to issue a decision overruling Ontario VW's Protest, thus allowing the establishment of a new Volkswagen dealership in Montclair, (3) awarding VWoA costs of suit and attorney fees, and (4) awarding VWoA such other relief as the Court deems just and proper.

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.

On February 23, 2012, Ontario VW filed its Answer to VWoA's writ petition. On March 2, 2012, Ontario VW filed its Amended Answer to VWoA's writ petition.

2. 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 item number 3.

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 10, 2012, Hanlees filed its opening brief in support of its petition. On January 30, 2012, Hanlees lodged, with the Superior Court, the record of documents generated by the protest proceeding. On January 27, 2012, Nissan filed its brief in opposition to Hanlees' petition. On February 9, 2012, Hanlees filed its reply to Nissan's opposition brief.

Following a hearing on Friday, February 24, 2012, before Superior Court Judge Lloyd G. Connelly, Judge Connelly denied the petition in this case and in case No. CRT-253-11, discussed below. Judge Connelly indicated that his ruling would be finalized in a written decision that would be filed and provided to the parties in the near future. *On March 19, 2012, Judge Connelly filed a written judgment denying Hanlees' writ petition and entering judgment against Hanlees. On April 16, 2012, the Board received a cover-letter from Nissan's counsel over a copy of the Court's judgment of March 19, 2012, and indicating copies sent to Hanlees' counsel.*

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. 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 modified Proposed Order 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 10, 2012, Hanlees filed its opening brief in support of its petition. On January 30, 2012, Hanlees lodged, with the Superior Court, the record of documents created during the protest proceeding. On January 27, 2012, Nissan filed its brief in opposition to Hanlees' petition. On February 9, 2012, Hanlees filed its reply to Nissan's opposition brief.

Following a hearing on Friday, February 24, 2012, before Superior Court Judge Lloyd G. Connelly, Judge Connelly denied the petition in this case and in case No. CRT-254-11, discussed above. Judge Connelly indicated that his ruling would be finalized in a written decision that would be filed and provided to the parties in the near future. *On March 19, 2012, Judge Connelly filed a written judgment denying Hanlees' writ petition and entering judgment against Hanlees. On April 16, 2012, the Board received a cover-letter from Nissan's counsel over a copy of the Court's judgment of March 19, 2012, and indicating copies sent to Hanlees' counsel.*

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.

4. 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 Case No. CV09-8090;
New Motor Vehicle Board Case No. CRT-249-09, Protest No. PR-2122-08.

Background: 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 in Superior Court on 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 reversal of the Board's Final Decision, based on allegations that 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, including 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, but granting the Motion to Bifurcate. The court further ruled that the Writ Petition would be tried by the court separately prior to the other causes of action, and the court stayed all discovery until the conclusion of the Writ action. Following the hearing of the writ action, the Court ruled on July 2, 2010, that Yamaha prevailed on the Writ action. Based on that ruling, the court entered judgment in the writ action, on August 9, 2010, in favor of Yamaha.

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, the court 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, on the remaining causes of action and scheduled for February 7, 2011, was continued to February 14, 2011, and continued again to May 31, 2011.

On February 7, 2011, Yamaha filed a "Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief [stay of trial proceedings]," in the Second District of the California Court of Appeal, 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.4th 1068, 1079-1080."

On February 14, 2011, Yamaha re-filed the petition in the Second District, case number B230830. This petition included the Board's declaration and the citations and arguments previously noted by the court. 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 asked the superior court to review the Board's amicus curiae letter. Counsel for Yamaha indicated that it would subpoena Robin Parker to testify concerning the content of the amicus curiae letter around May 31 or June 1. Agency was 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 motion for a 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 deadline 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. On February 24, 2012, the record of important documents accumulated during the administrative and trial proceedings, was filed in the Court of Appeal.

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.

The Court of Appeal ordered the following briefing schedule: (1) by April 4, Yamaha may file its opening brief; (2) within the following 30 days, Powerhouse may file a brief in opposition to Yamaha's opening brief, and may file an opening brief on cross-appeal; (3) within the following 30 days Yamaha may file a brief in reply to Powerhouse's brief opposing Yamaha's appeal, and may file a brief in opposition to Powerhouse's opening brief on cross-appeal; (4) within the following 20 days Powerhouse may file a brief in reply to Yamaha's brief in opposition to Powerhouse's opening brief on cross-appeal. On April 20, 2012, the Court of Appeal noted that on April 10, 2012, appellant had provided that court with a notice (also served and filed in superior court) specifying a portion of the record that the clerk or reporter had omitted and requested that the clerk or reporter prepare, certify, and send that supplemental record to the Court of Appeal. The Court of Appeal expects that it will receive the supplemental record by May 10, 2012. These events have delayed the due date for the filing of Appellant's opening brief, until 30 days after the filing of the supplemental record.

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

MARCH 7, 2012, THROUGH MAY 8, 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	
BMW		BMW	
CHRYSLER		CHRYSLER	16
DAIHATSU		DAIHATSU	
FERRARI		FERRARI	
FORD	1	FORD	
GOSHEN		GOSHEN	
GM		GM	
HARLEY-DAVIDSON		HARLEY-DAVIDSON	1
HONDA		HONDA	1
HYUNDAI		HYUNDAI	
INFINITI		INFINITI	3
ISUZU		ISUZU	
JAGUAR		JAGUAR	
KAWASAKI		KAWASAKI	1
KTM		KTM	
KIA		KIA	
LEXUS		LEXUS	
MAZDA	56	MAZDA	
MERCEDES		MERCEDES	
MITSUBISHI		MITSUBISHI	
NISSAN		NISSAN	1
PORSCHE		PORSCHE	
SAAB-SCANIA		SAAB-SCANIA	
SATURN		SATURN	
SUBARU		SUBARU	
SUZUKI		SUZUKI	
TOYOTA		TOYOTA	
VOLKSWAGEN		VOLKSWAGEN	
VOLVO		VOLVO	
YAMAHA		YAMAHA	
MISCELLANEOUS	3	MISCELLANEOUS	
TOTAL	60	TOTAL	23