

New Motor Vehicle Board

In-Site

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03.1 Edition



Board President Fritz Hitchcock

NEW MOTOR VEHICLE BOARD PRESIDENT FRITZ HITCHCOCK'S 2002 YEAR-END MESSAGE

As the year winds down, I have been pleased with the progress the Board and staff have made in furthering the Board's mission of resolving disputes between manufacturers and California new car dealers in an efficient, fair, and cost-effective manner. The Board has implemented many improvements that strengthen its overall operations, as well as the Board's ability to serve the public and the automotive industry. It has truly been a successful year.

This year the Board conducted its first industry roundtable. In April, many major manufacturers gathered in Indian Wells, California to discuss industry issues of interest to the Board. Due to its success, the Board will be holding the roundtable in Indian Wells again in April 2003.

Every year the Board reviews its statutes and regulations to determine whether any changes are needed. This year, however, the Board took the additional step of soliciting input from individuals practicing before the Board. As a result of this review, several regulatory changes are currently being developed.

The Board is also developing a service that will allow litigants to pay filing fees by credit card, and a system that will streamline the transcript ordering process. Other projects initiated by the Board and staff include upgrades to the Board's main hearing room, the development of a document retention policy, and revisions to the quarterly newsletter, *In-Site*, that will provide more information for those practicing and appearing before the Board.

This year the Board has also been faced with a number of difficult legal issues. The filing of *Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, dba David J. Phillips Mazda, Real Party In Interest* brought about the possibility of significant erosion to the Board's ability to hear petitions. In *Mazda Motors*, the Sacramento County Superior Court held that only a member of the public may file a petition, and that a dealer is not considered a member of the public for the purposes of filing a petition against a manufacturer or a distributor.

(See Hitchcock, page 2)



EBAY MOTORS GIVES PRESENTATION TO BOARD

Joseph E. Sullivan
Senior Counsel, Trust & Safety

At the October 29, 2002, General Meeting in San Francisco, Joseph E. Sullivan, Senior Counsel of Trust & Safety for eBay, treated the Board to an in-depth presentation on eBay Motors, the number one automotive site on the Internet. Launched on April 24, 2000, eBay Motors is a site specializing in the auction of new and used vehicles.

(See eBay Motors, page 3)

The Board is represented in this case by the Attorney General's office, and it is now before the Third District Court of Appeal. This issue is of particular importance given the Board's goal of providing a forum that allows dealers, manufacturers, and members of the public to resolve disputes in an expeditious and cost-effective manner.

Our ability to quickly resolve disputes continues to reflect well on the Board and the parties that utilize its services. As of December 31, 2002, the Board processed sixty-one protests and petitions, successfully resolving twenty-two without the necessity of a hearing on the merits. In addition, 4,487 calls from consumers were processed, with 424 formal requests for consumer mediation.

In February, the Board welcomed Public Member Angelo Quaranta to the Board, and in August, we filled all nine Board seats when we welcomed Dealer Member Robert Branzuela. We also added General Counsel Howard Weinberg and Staff Counsel Cara M. O'Neill-Stewart, and Robin Parker was promoted from Staff Counsel to Senior Staff Counsel, responsible for the Board's legal division.

While it has been a privilege to serve on the Board since December of 1997, this will be my last term. The Board has faced major challenges in recent

years, but it is now operating at a very high level, and I know that I am leaving the Board in good hands. I am very proud of all the Board has accomplished.

I want to thank my fellow Board members for all of the hard work and dedication they have demonstrated. I also want to express my deep gratification to the staff for all the support given me during my tenure, especially this year when I assumed the additional duties of Board President.

While I will miss my involvement with the New Motor Vehicle Board, I will still be active in the automotive community. Currently, I am the Southern California Director of the National Automobile Dealer's Association ("NADA"), and as such, I look forward to continuing to serve all of my NADA friends and colleagues in this wonderful industry.

BOARD MEMBER TOM FLESH APPOINTED TO BOARD OF COUNCILORS

Congratulations are in order for Public Board Member Robert T. (Tom) Flesh who was recently appointed to the Board of Councilors of the University of Southern California Ethel Percy Andrus Gerontology Center.

IN-SITE



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Gray Davis, Governor

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Vice-President

Robert Branzuela
Robert T. (Tom) Flesh
David C. Lizarraga
Angelo Quaranta
Alan J. Skobin

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Questions or comments: Editor, nmvp@pacbell.net

The growth of eBay Motors in the last few years is impressive with site users currently selling almost as many cars per year as Auto Nation. Per eBay Motors, this equates to one billion dollars in sales in 2001, with over two-and-one-half billion in vehicle sales projected for 2002. Interestingly enough, over sixty-five percent of all vehicles listed with eBay Motors are listed by automotive dealers; however, automobile dealers represent only thirty percent of eBay Motors' sellers.

In order to assuage consumer fears naturally associated with purchasing big ticket items over the Internet, eBay Motors provides a variety of consumer confidence features to enhance the eBay Motors experience. A potential purchaser has access to seller reliability information such as prior customer feedback regarding a particular seller. A potential purchaser can access information regarding how many times the seller has successfully completed an auction. Other quality control checks include an automatic daily VIN number check which alerts eBay Motors to junk, salvage, or flood damaged title problems.

Buyers are further protected through a one month or 1000 miles powertrain coverage, protection against fraud or material misrepresentation up to \$20,000, a Carfax Lemon Check service, and several payment options. For a fee, buyers may have the vehicle inspected at their home within two days, and a vehicle shipping service is also available.

The presentation was informative, and the Board Members and Staff were greatly appreciative of the time spent by Mr. Sullivan to prepare and present this Board Development program.

The following list of questions frequently asked by dealers was provided courtesy of eBay Motors:

Isn't eBay Motors in competition with dealerships?

eBay Motors is not a dealership - it is a marketplace that brings sellers together with buyers in a cost-effective and secure environment. It provides a valuable, low cost sales channel for exposing your inventory to a vast number of potential buyers while saving money.

By auctioning off my vehicles, aren't I running the risk of selling them for less money than I would on the lot?

Vehicles on eBay Motors receive an average of eight bids apiece, which is more than a dealer would normally see on a lot. In addition, eBay helps dealers increase their profit margin on cars by decreasing the amount of overhead required to sell a vehicle. Finally, dealers can set a minimum reserve price for their vehicles, ensuring that any sale covers their costs and whatever amount of profit they wish.

Can I still sell extended warranties, provide financing or do other such value-added transactions with buyers?

Yes. You can alert buyers to the availability of warranty, finance or other value-added products or services in your listing, and complete that transaction as you would normally.

If I'm listing a vehicle on eBay, does that mean I can't have it on my lot?

You can still sell the car off your lot, but if you cancel the auction in midstream, you would forfeit the listing fee and any other fees associated with your auction. Also, remember that on eBay, reputation matters. A seller with a reputation for canceling auctions is one who won't receive as many bids the next time they list a car.

eBay Motors Facts

- A vehicle sells every 1.7 minutes**
- A GM car sells every 7 minutes**
- A Mustang sells every 61 minutes**
- A motorcycle sells every 9 minutes**
- A Harley-Davidson bike is listed every 12 minutes**
- An SUV sells every 15 minutes**
- A part or accessory sells every 4.3 seconds**
- More cars are sold on eBay Motors in 1 day than the average dealer sells in 1 year**

Courtesy of eBay Motors

BOARD MEETING RECAP

October 29, 2002

Willie Brown, Mayor of San Francisco -
General welcome to San Francisco.

Joseph E. Sullivan, Director of Compliance
and Law Enforcement Relations, Senior
Counsel, Trust and Safety, eBay -
Discussion of eBay business model and
vehicle auctions.

The Board took the following actions:

Adopted a ten-year document retention
policy.

Approved suggested regulatory changes.

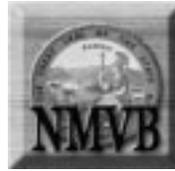
December 5, 2002

The Board took the following actions:

Robert T. (Tom) Flesh was appointed Chair
of the newly created Government and
Industry Affairs Committee.

Revisions to the Guide to the New Motor
Vehicle Board were approved.

A proposed regulation allowing parties to a
petition, appeal, or protest to pay filing fees
with a credit card was approved.



RECENT BOARD DECISIONS AND RULINGS

The Board considered the following Proposed Rulings and Orders at the December 5, 2002, Board Meeting:

Cars Dawydiak, Inc. v. Piaggio USA, Inc. **Protest No. PR-1817-02**

Respondent filed a Motion to Dismiss the protest in the above-entitled case. The Board adopted the Administrative Law Judge's Proposed Ruling and the protest was dismissed.

Victory Auto Plaza, Inc. v. Nissan Diesel America, Inc. **Protest No. PR-1826-02**

Respondent filed a Motion to Dismiss the protest in the above-entitled case. The Board adopted the Administrative Law Judge's Proposed Order and the protest was dismissed.

The Board considered the following petitions and requests:

Ray Fladeboe Lincoln Mercury, Inc. a California Corporation v. American Isuzu Motors, Inc. **Petition No. P-449-02**

The Board accepted jurisdiction of the Petition and assigned it to an Administrative Law Judge for hearing.

Ray Fladeboe Lincoln Mercury, Inc. a California Corporation v. American Isuzu Motors, Inc. **Petition No. P-449-02**

Upon Petitioner's request that the Board order Respondent to issue Fladeboe Automotive, Inc. an OL-124, the Board continued the case to January 8, 2003.

PENDING COURT CASES



Duarte & Witting Inc., dba Nader Chrysler-Plymouth v. New Motor Vehicle Board; DaimlerChrysler Motors Corporation, Real Party in Interest

Third District Court of Appeal, January 4, 2002

The legal issue is whether the Board has the statutory authority to grant a motion to dismiss a protest. On December 18, 2002, the Third Circuit Court of Appeal issued its opinion wherein it affirmed the Superior Court's judgment and held that the Board has implied authority to dismiss a protest where, as in this case, the undisputed facts show good cause for termination of a franchise.

Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, dba David J. Phillips Mazda, Real Party in Interest

Third District Court of Appeal, December 7, 2001

The legal issue is whether the Board has the statutory authority under Vehicle Code section 3050(c) to adjudicate petition disputes when both parties are licensees, i.e., new motor vehicle dealers, manufacturers, and distributors. Briefing was completed when the Board's Response Brief was filed on October 29, 2002. As no date has been set for oral argument, the Board is currently awaiting a decision from the court.

Freightliner, LLC v. New Motor Vehicle Board; Foothill International, Inc., dba Foothill Freightliner Los Angeles, Real Party in Interest

Sacramento County Sup. Ct., June 24, 2002.

The legal issue is whether arbitration provisions pursuant to the Federal Arbitration Act (9 USC § 1 et seq.) were controlling and preempted California state law. Freightliner's Petition to Compel Arbitration was heard in Federal court in Oregon on October 28, 2002, and granted in favor of Freightliner. Upon issuance of a judgment based on the order of the federal court, it is possible this matter will be dismissed before the Superior Court.

International Truck and Engine Corporation v. New Motor Vehicle Board; Dow Hammond Trucks Company, Real Party in Interest

Sacramento County Sup. Ct., September 26, 2002

The legal issue is whether the Board has the statutory authority to hear the underlying petition, and as in Mazda, above, and whether the Board can adjudicate petitions involving disputes between licensees. At an October 2, 2002, hearing on the writ petition and motion for temporary stay order, the Sacramento Superior Court set October 29, 2002 as the hearing date for deciding both matters. On October 11, 2002, the petitioner, International, requested the court take the writ petition and motion for temporary stay order off calendar.

HEARINGS

January 6, 2003 - PR-1798-02, P-442-02
Daugherty Lincoln-Mercury v. Ford and Winter Volvo

January 21, 2003 - PR-1819-02
Michael Volkswagen v. Volkswagen

March 3, 2003 - PR-1818-02
Nader Amirvand v. Lotus

March 17, 2003 - P-450-02
University Ford, dba Bob Baker Ford v. Ford Motor Company

March 19, 2003 - PR-1822-02, PR-1823-02
The California Automotive Group, Inc. dba Anaheim Mitsubishi, TMG, Inc. dba Whittier Mitsubishi v. Mitsubishi Motor Sales of America, Inc.

April 7, 2003 - PR-1772-01
Melrose Ford v. Ford Motor Company

Dates are subject to change and cases may settle prior to hearing

REVENUE

NEW MOTOR VEHICLE DEALER Annual Fee:	\$	289,856.00
NEW MOTOR VEHICLE BOARD Filing fees:		11,600.00
NEW MOTOR VEHICLE BOARD Manufacturer/Distributor Annual fee:		740,519.40
Document Requests:		1,828.85
Arbitration Cert. Program Reimbursement		2,584.81
As of December 31, 2002	\$	1,046,389.06



Post Remodel

NEW MOTOR VEHICLE BOARD HEARING ROOM REMODELED

The Board's main hearing room now sports a fresh, new look after recently being remodeled. Often the site for Board meetings, the remodel was prompted by the need for additional seating space for the Board Members and staff, which is comprised of nine Board members, the Executive Director, three Board attorneys and a court reporter.

To aid litigants, audience members, and the court reporter, a sound system was added to ensure that all Board discussions would be clearly heard by all in attendance. Finally, litigants and their attorneys will be pleased to discover that two counsel tables will soon

stand where there once stood one, so attorneys from opposing sides will no longer have to share space during exhibit-intensive hearings or while arguing their cases.



During Remodel

2003 NMVB OFFICERS

The annual election of officers for the New Motor Vehicle Board was held at the January 8, 2003, General Board meeting. Public Member Glenn E. Stevens was elected President, and Dealer Member David E. Wilson was elected Vice President.

ACTIVE NMVB CASES

<u>Vehicle Code Section</u>	<u>Active</u>
3060 Termination/Modification	16
3062 Establishment/Relocation	7
3064 Delivery and Preparation	0
3065 Warranty Reimbursement	1
3065.1 Franchisor Incentive	0
TOTAL PROTESTS:	24
3050(c) PETITIONS	8
3050(b) APPEALS	0
TOTAL CASES:	32

MEDIATION STATISTICS

Mediation Phone Calls Received	2,142
Mediation Request Forms Sent to Consumers	773
Cases Filed	226

July 2002 through December 2002

You can reach Mediation Services Staff at
(916) 445-1888



On October 26, 2001, the New Motor Vehicle Board Consumer Mediation Services Program received a mediation request from a consumer regarding her 2001 Ford Mustang. Mediation Services Representative, Jackie Grassinger, was assigned to the case.

Ms. Grassinger directed a letter of inquiry to Ford Motor Company, Customer Service Division, asking for a response to the consumer's concerns of a rattling noise in the engine, starting problems and irregular acceleration. Ford failed to respond to the Board's first and second letters of inquiry, so Ms. Grassinger placed a call to Ford Motor Company to discuss the case and determine if Ford was going to participate in mediation. Ford's representative stated that the repairs, which included installing a new engine, had been made and that a Ford Field Service Engineer found the vehicle was working within normal operating characteristics. In addition, Ford stated they had offered to *assist* the consumer in trading her into another Ford product as a "goodwill gesture," but the consumer declined the offer of assistance. This response was relayed to the consumer.

On March 13, 2002, the consumer contacted Ms. Grassinger, to notify her that the vehicle's engine was not repaired and the rattling noise and irregular acceleration still existed. Ford was again contacted and provided with information on the consumer's continuing problems with the vehicle.

Ford Motor Company stated that the last engine replacement/repair is warranted for 2 years/24,000 miles from the replacement date and any concerns with the engine should be directed to an authorized Ford dealership. Furthermore, Ford stated that they would

not be able to offer any other assistance to the consumer. Ford's response was relayed to the consumer, and the consumer scheduled another service appointment for her vehicle.

Ms. Grassinger contacted the consumer after the last repair to receive an update on the case. The consumer reported that the vehicle was still exhibiting the noise in the engine; however, after the last repair the noise seemed to have been suppressed somewhat. Ms. Grassinger offered to contact Ford Motor Company to discuss the issue with a representative to see if Ford would be willing to do anything more for the consumer.

On June 3, 2002, Ms. Grassinger spoke with a representative from Ford to discuss the previous repairs on the consumer's vehicle and the continuous problem with the engine rattling. Ms. Grassinger explained that the consumer already had four repairs on the engine and that one of the repair orders stated that the lifters were hard to move and the pivots and rockers were scarred, yet the Field Service Engineer had stated that the sound that the vehicle was making was normal. The Ford representative stated she would call the service manager at Walnut Creek Ford and have the vehicle inspected again.

On July 2, 2002, the consumer called to inform Ms. Grassinger that the vehicle was inspected and test driven with her, and the mechanic stated that he "did hear the noise and it was unusual." Ms. Grassinger contacted Ford regarding the "unusual" noise that the mechanic had heard. Ford stated that this sound is consistent with all new Mustangs, but they would review the case, including all work orders, one more time. On July 11, 2002, Ford's representative contacted Ms. Grassinger and stated that after looking at the work orders and days out of service that Ford would be willing to replace or repurchase the consumer's Mustang.

On August 19, 2002, Ms. Grassinger contacted the consumer to receive an update on the case. The consumer stated that she had accepted the offer and the repurchase had been completed. The consumer thanked Ms. Grassinger for all her assistance and exclaimed, "Thank goodness for your organization!"



UPCOMING BOARD MEETINGS

General Board Meeting
March 11, 2003
Sacramento



Special Board Meeting
April 23, 2003
Indian Wells

General Board Meeting
April 24, 2003
Indian Wells

Board Meeting dates are subject to change. A meeting agenda with time and location details is mailed 10 days prior to the meeting to all interested parties.

NEW AND IMPROVED TRANSCRIPT PROCEDURES

The Board has revised its transcript procedures effective January 2, 2003. Instead of contacting the Board to request a copy of a transcript, the parties will now be able to request transcripts directly from the reporting service, Vine, McKinnon and Hall (VMH). The new procedure is as follows:

At the beginning of a recorded proceeding, the Judge will inform the parties that they can request a copy of the transcript directly from the court reporter. Any parties requesting transcripts will be contacted by the reporter when the transcripts are ready. The parties will be given the exact cost and asked to send a check. Once the check is received, the transcripts will be sent.

This new procedure only applies to proceeding recorded by VMH in Sacramento. Parties to proceedings outside of Sacramento will need to request copies directly from Board Staff.

10 YEARS OF CLEANING SERVICE



Sara Alexander diligently arrives at the Board's offices every Tuesday and Thursday at 9:00 am sharp to empty trash, vacuum, dust and perform various housekeeping duties. In October, 2002, Sara celebrated her ten year anniversary with the Board staff. The Board staff commemorated this event by surprising her with a "free" day where the staff emptied the trash, postponed vacuuming for that day, and had a chocolate cake (her favorite) for her. Thanks Sara.

Why not visit us

on the web at:

www.nmvb.ca.gov

Or e-mail us at:

nmvb@pacbell.net

