

IN-SITE

A publication of the California New Motor Vehicle Board

January 2001

Edition 01:1

NEWS AT THE BOARD



Robert T. (Tom) Flesh



Frederick E. (Fritz) Hitchcock

BOARD ELECTS OFFICERS FOR 2001

At the January 18, 2001, General Meeting, the members of the New Motor Vehicle Board unanimously voted to reaffirm Robert T. (Tom) Flesh and Frederick E. (Fritz) Hitchcock in their positions as President and Vice President, respectively.

Mr. Flesh, a Public member, has served on the Board since December 1996. In addition to serving last year as President of the Board, Mr. Flesh is Chair of the Executive Committee, and has served previously as Board Vice President and Chair of the Corrective Action Plan Committee. When he is not engaged in his Board responsibilities, Mr. Flesh is President of Safety Investment Company, a real estate development and property management company.

Mr. Hitchcock, a Dealer member, has served on the Board since December 1997. In addition to serving last year as Vice President of the Board, Mr. Hitchcock is a member of the Executive Committee and served previously as Chair of the Education Committee, and as a member of the Corrective Action Plan Committee. Mr.

Hitchcock is Chairman and CEO of Hitchcock Automotive Resources. Currently, Mr. Hitchcock owns and operates Puente Hills Toyota, Puente Hills Ford, Puente Hills Lincoln-Mercury, Puente Hills Nissan, Puente Hills Volkswagen, Northridge Toyota, Fullerton Toyota and South Bay BMW.



Tom Novi

NOVI APPOINTED BOARD EXECUTIVE DIRECTOR

The Board held a General Board Meeting on December 12, 2000, at the Sheraton Gateway Hotel, Los Angeles Airport, for purposes of reviewing the Civil Service candidates for the position of Board Executive Director. The members convened in Open Session and announced that Tom Novi had been selected as the Board's Executive Director.

Mr. Novi had been appointed Assistant Executive Secretary of the Board at its April 28, 2000, General Meeting. For four years prior to his appointment as Assistant Executive Secretary, Mr. Novi was the Department's liaison to the Board and served as Chief of the Department's Occupational Licensing program.

The Board and its staff extend a sincere welcome to Mr. Novi on his appointment as Executive Director.



AGENCY & NMVB SET 2001 FOCUS



Maria Contreras-Sweet
Agency Secretary

Many of In-Site's readers know from various New Motor Vehicle Board brochures and publications that we are a program within the Department of Motor Vehicles with oversight provided by Business, Transportation & Housing Agency. Under this structure, DMV provides administrative support; however, the Board renders independent judgments in adjudicating disputes.

BT&H Agency is part of the Executive Branch of California government and its Secretary, Maria Contreras-Sweet, is a member of Governor Davis' cabinet. Secretary Contreras-Sweet directs the administration of 13 departments (including the Board via the DMV) with a collective budget of \$12.4 billion and more than 47,000 employees.

The programs under Secretary Contreras-Sweet's direction are responsible for carrying out the Governor's vision for business, transportation and housing in California. These critical goals include responsibility to plan, build and maintain California's transportation systems, ensure efficient and fair markets for the real estate industry, and assist state and community efforts to expand the availability of affordable housing for a growing workforce. The Agency also regulates managed health care plans as well as the banking, and financial and securities industries, and contributes to public safety through the law enforcement activities of the California Highway Patrol and the Department of Alcoholic Beverage Control.

A key facet of Secretary Contreras-Sweet's leadership is strategic planning for the upcoming year. The Board has been working closely with Rick Vargas, Assistant Secretary for Rail and Transit, Business, Transportation & Housing Agency, in defining the Board's goals for 2001. The four key policy goals the Board will pursue in 2001 are:

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IN SITE

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State of California
Gray Davis, Governor



*Business, Transportation
and Housing Agency*
Maria Contreras-Sweet, Secretary

Department of Motor Vehicles
Steven Gourley, Director

New Motor Vehicle Board

Officers

Robert T. (Tom) Flesh,
President
Frederick E. (Fritz) Hitchcock,
Vice-President

Members

Wendy Brogin
Joseph D. Putnam
Solon C. Soteris
Glenn E. Stevens
David W. Wilson

Executive Director

Tom Novi

Staff Counsel

Robin P. Parker, Esq.
Michael Dingwell, Esq.

Questions or comments: Michael Dingwell, Editor, nmvb@pacbell.net

DOCKET

PROTESTS

Vehicle Code Section	Active
3060	
Termination	7
Modification	29
3062	
Establishment	2
Relocation	2
Satellite Warranty Facility	0
3064	
Delivery&Preparation	0
3065	
Warranty Reimbursement	0
3065.1	
Incentive Compensation	1
TOTAL PROTESTS: 41	

PETITIONS

3050(c)	6
TOTAL PETITIONS: 6	

APPEALS

3050(b)	0
TOTAL APPEALS: 0	

MATTERS RECENTLY RESOLVED

Since the last edition of *In-Site*, a total of nine protests and one petition have been resolved and are not included in the above figures.

AGENCY

Continued from page 2

- Develop and implement a process for informal mediation of general disputes (petitions) between dealers and manufacturers/distributors.

- Analyze and advise the Administration via Agency

concerning the costs and benefits of amending the Vehicle Code to include Recreational Vehicles within the jurisdiction of the Board (as sponsored by the California Recreational Vehicle Dealers Association).

- Provide outreach education programs for manufacturers and distributors concerning statutorily required notices.

- In accordance with the Administration's "e-Government" Initiative, develop and implement methods that provide public notices in a fast, reliable and low-cost (electronic) e-mail format.

The Board and its staff appreciate the involvement of Agency, specifically, Mr. Vargas and Secretary Contreras-Sweet, in refining our goals for 2001. We look forward with excitement to working toward implementing the Administration's vision for California government in the coming year.



REVENUE

*Fiscal Year 2000-2001**

NEW MOTOR VEHICLE DEALER Annual Fee:	\$6,281.00
NEW MOTOR VEHICLE BOARD Filing fees:	16,200.00
NEW MOTOR VEHICLE BOARD Manufacturer/Distributor Annual fee:	848,869.20
NEW MOTOR VEHICLE BOARD Hearing Transcripts:	907.40
Arbitration Cert. Program Reimbursement	-0-
Total	\$ 875,721.10

*July 1, 2000 thru December 31, 2000

ON THE ROAD AGAIN...



In the last century, Americans transformed 2 percent of their country with pavement — an area the size of Georgia lies under asphalt.

UPDATE

SMOG FEE ATTORNEY PAYMENTS HALTED

On December 26, 2000, Governor Gray Davis halted the payment of attorney's fees awarded to five law firms that sued California over smog fees imposed on owners who registered out-of-state of vehicles during the 1990s.

Governor Davis asked the Director of the Department of Motor Vehicles and the Attorney General to seek reconsideration of the panel's decision. The Governor also asked State Controller Kathleen Connell to freeze payment of the funds until the reconsideration process is completed.

Payment of the attorney's fees was provided for in legislation approved in 1999. That legislation provided for the fee payment from the \$665 million earmarked for refunds to vehicle owners who paid the \$300 smog impact fee on some 1.7 million vehicles registered in

California.

The decision to award some \$88.5 million in fees - an amount equal to an effective billing rate of \$8,800 per hour - came from a three-judge panel of arbitrators and "constituted a windfall for the attorneys," according to the the Governor.

Governor Davis hopes that the court will revise the award which he called "excessive by any reasonable standard."



COURT CASES

The Board does not participate in any action unless a state interest is implicated. The Board, as represented by the Attorney General's Office, is participating in the following court cases marked by an asterisk (*):

Kennedy Cadillac, Inc. vs. New Motor Vehicle Board; General Motors Corporation, Cadillac Motor Division; Real Party in Interest

*Saba A. Saba, SBD Partners, Inc. and Honda Kawasaki Sportcenter vs. New Motor Vehicle Board; Kawasaki Motor Corp., U.S.A., Real Party in Interest

* Sterling Truck Corporation vs. New Motor Vehicle Board; Sacramento Valley Ford Truck Sales, Inc., Real Party in Interest

HITCHCOCK ADDRESSES AUTOMOTIVE NEWS WORLD CONGRESS

Fritz Hitchcock, Chairman and CEO of Hitchcock Automotive Resources, and Board Vice President, was one of five automotive retailing experts who participated in a January 16, 2001, Automotive News World Congress exploring the effectiveness of the franchise system in the Internet age. During his career, Mr. Hitchcock has served as president of the California Motor Car Dealers Association and the Southern California Toyota, Ford and Mazda Dealers Advertising Association, and served as Chairman of the American International Automobile Dealers Association. He currently owns eight dealerships in Southern California.

A summary version of Mr. Hitchcock's presentation appears below. The complete text may be found at www.autonews.com.

1. The retail automotive business will run best if we 'let dealers be dealers' and 'factories be factories.'

Until recently the controlling assumption by some manufacturers and the investment community seemed to be that dealers were not technologically sophisticated enough and were so set in their traditional ways that dealers would find it difficult, if not impossible, to effectively adopt Internet marketing and make the behavioral changes that would be required to be successful during the next several decades.

Based on this assumption, a number of well-financed dot-com's began selling new and used vehicles over the Internet, and several factories opened up channels for the direct sale of vehicles to retail customers via the

Internet. These new players filed legal challenges to existing adverse franchise laws. However, dealers and their associations responded and were successful in closing loopholes in state franchise laws.

But now, in January 2001, the brick-and-mortar dealers do not look quite so antiquated as they were originally presumed to be. Many dealers have established very effective Internet sales systems of their own. For example, at my own automotive group, in January 2001, 8% of our retail vehicle sales were from e-commerce, compared to 1% two years ago. I am told by my Director of E-Commerce that roughly 7% to 8% of retail sales through the Internet has become common for larger dealer groups.

The major challenge the manufacturers face with their primary customers, the dealers, is how to provide an ever-improving product, defined both in terms of reliability and technological sophistication. Those qualities will make it easier for dealers to satisfy their customers, the retail buyers. Dealers want to be sure that, as manufacturers look to their suppliers to help them cut costs, vehicle quality does not suffer in the process.

Most dealers are highly entrepreneurial and have shown the ability to adapt to the arrival of the Internet. They will make the other technological and organizational changes needed to be successful during the first decades of the 21st Century if they are properly incentivized by their factories, and if the factories avoid the imposition of central plans that are inappropriate for local conditions. For those dealers who prove unable or unwilling to adapt to and meet factory standards, they need to be counseled and if necessary, bought out.

2. The Internet-revolution will be a major driver in the ongoing consolidation of the retail automotive industry

It is my belief that the Internet will be a major contributor to the ongoing consolidation of the retail automobile industry. There is no doubt in my mind that

see HITCHCOCK, page 6

HITCHCOCK*Continued from page 5*

the bricks-and-mortar franchise holders left standing a decade from now will be those who mastered the Internet as a way to market vehicles.

While it may be a long time, if ever, before most people take ownership without actually having seen and test-driven their purchase, more and more customers are now deciding which dealership to visit via the Internet and doing all of their purchase research over the Internet. Already, 60% of all retail automobile customers have consulted the Internet at some point before they come into my dealerships to buy. And that percentage of Internet users will continue to grow, giving a clear advantage to those dealers who have a major presence and brand on the Internet and who provide superior Internet service.

The growing importance of the Internet in determining showroom traffic will favor those dealers who: (1) have fast, reliable, real-time, 24-hour Internet service; (2) have an easy-to-navigate website; (3) have salespersons with both good Internet and sales skills; (4) have multilingual Internet capability; (5) have integrated the Internet with their other customer-relationship systems; and (6) supplement e-commerce with extensive personal contact with the customer.

The Internet is already a force in determining dealership sales, but more so as a method for steering customers to the showroom floor rather than as a method for completing vehicle sales. A successful Internet strategy will be absolutely essential for future survival in the retail automotive industry.

3. Brick-and-mortar success will contribute to Internet success

Brick-and-mortar success will heavily influence who is left standing on the Internet a few years from now. Dealers must continue successfully executing traditional marketing methods - newspaper, radio, television, signage, license plate frames, and community service - because these are the things that

make most customers think of us when they want to buy a car and lead customers to our websites.

Traditional marketing not only brings in most of the customers but it also influences a dealer's success in establishing a brand name on the Internet. There is a symbiotic relationship between traditional marketing success and Internet success.

Editor's note: As we went to press, Automotive News (January 22, 2001) reported that before his presentation, Fritz observed that the sign advertising the event was placed where it might not readily be noticed. Ever the sales professional, Fritz informed a staff member, "If you move it to the other side of the door, you'll get more ups." Congratulations, Fritz!



NMVB SENIOR MANAGEMENT RESTRUCTURED

In our July 2000 edition we reported that the Board had adopted a committee report concerning the restructuring of senior management job duties. That process was completed in December 2000 with the creation of two new positions - Executive Director and General Counsel. At its December 12, 2000, meeting, the Board appointed Tom Novi to the position of Executive Director (*see companion article, "News at the Board" on page 1*).

At its January 18, 2001, meeting, the Board members considered the Civil Service examination options for the General Counsel position. After consideration, the Board determined that the final filing date for applications for General Counsel would be no later than April 2, 2001. The duties of the Board's General Counsel will include: analyzing proposed decisions and rulings, and advising the Board thereon; and, advising the Executive Director and the Board on all other legal matters of interest to the Board.

NMVB e-mail: nmvb@pacbell.net



Consumer Mediation Case Spotlight

The New Motor Vehicle Board (“Board”), pursuant to Vehicle Code § 3050(c)(2), has authority to mediate disputes of all types between members of the public and new car dealers and/or manufacturers. The Board’s goal is to amicably reach a mutually acceptable settlement by acting as a liaison between the parties to a dispute. The Board’s Consumer Mediation Services program offers free assistance to consumers involved in a dispute with a new car dealership and/or manufacturer or distributor. In this and future editions of In-Site, we will be highlighting some of the types of disputes that are typically handled and how they are resolved.

On December 21, 2000, the Mediation Services Program received a request for assistance from a consumer who was experiencing a problem with a 2000 Dodge Durango leased in August, 2000. The consumer was encountering a potentially dangerous stalling condition in her new vehicle and, despite six trips to a dealership between October 13, and December 15, 2000, for diagnosis and repair, the problem persisted.

The dealership diligently attempted to diagnose the reason for the stalling by connecting a “Co-Pilot” to the vehicle. The results of the “Co-Pilot” recording indicated that the problem was with the 4.7 liter engine in the vehicle. The dealership contacted DaimlerChrysler (“Chrysler”) for assistance and was informed that Chrysler was in the process of designing a computer chip that would resolve the problem, but that it was not yet approved for use.

When the Board received the complaint, mediator Jackie Grassinger immediately contacted Chrysler and requested a response from them on what steps they were willing to take to satisfy the consumer. In mid-January the consumer was contacted by a representative of Chrysler and offered a 2001 replacement vehicle. In addition, Chrysler offered the consumer a break on “use charge” on the defective vehicle and waived the cost increase between the 2000 and 2001 model of the vehicle. The only additional cost to the consumer was a minimal charge for a larger 5.2 liter engine. The consumer is eagerly anticipating delivery of her new vehicle and is very satisfied with the outcome of her case.

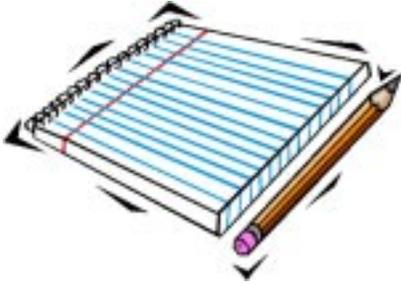


Mediation Statistics

July 2000 to date

Mediation Phone Calls Received	4,936
Mediation Request Forms Sent to Consumers	1,204
Cases Filed	358

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



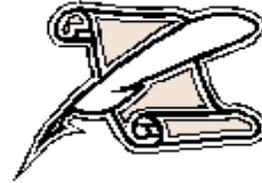
MANUFACTURERS, DISTRIBUTORS FACE *NEW* NOTICE REQUIREMENTS

Due to legislation which took effect January 2001, there are several new instances in which a manufacturer or distributor may be required to file a statutory notice with the Board.

- Under Part A of Vehicle Code section 11713.3(o), every manufacturer or distributor that temporarily owns or operates a dealership is required to give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires or divests itself of an ownership interest.
- Under Part B of Vehicle Code section 11713.3(o), every manufacturer or distributor that owns an interest in a dealer as part of a bona fide dealer development program is required to give written notice to the Board, annually, of the name and location of each dealer in which it has an ownership interest.

Questions concerning the new requirements may be directed to Board legal staff at (916) 445-2080.

NMVB PLANS 2001 RULEMAKING



The Board is planning to promulgate a number of new regulations this year. If you are interested in commenting on the proposed rulemaking or would like to be added to the Board's mailing list, please contact the staff at (916) 445-2080 or e-mail the Board at [nmvb@pacbell.net](mailto:nm vb@pacbell.net). The Board will accept comments via mail, facsimile [(916) 323-1632] or e-mail, and can send notices of proposed rulemaking via electronic communication if you provide Board staff with your e-mail address.

Informal Mediation for Petitions

Vehicle Code section 3050(c)(2) provides the statutory authority for the Board to engage in informal mediation in petitions. It provides that the Board can "undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, [or] distributor . . ." Since 1991, the Board has received fourteen requests for informal mediation. The procedures for requesting informal mediation are ad hoc as there are no regulations which explain the process. The Board is in the process of promulgating rulemaking which outlines the procedure for requesting informal mediation prior to filing a formal petition with the Board. Additionally, a mechanism for converting an informal mediation to a petition is being created. One of the benefits in formalizing this process is that it will be made available to more parties, and offer an additional mechanism for dispute resolution.

RULEMAKING*Continued from page 8*

VC § 11713.3(o) Request for Extension of Time
Effective January 1, 2001, California Vehicle Code § 11713.3(o) was amended to further clarify the limited circumstances in which a manufacturer or distributor may operate or control a dealership within ten miles of an independent, franchised dealer. Specifically, a manufacturer or distributor is not deemed to be competing with an independent, franchised dealer when: (1) owning or operating a dealership for a temporary period, not to exceed one year [Part A]; and, (2) owning an interest in a dealer as part of a bona fide dealer development program that satisfies certain requirements [Part B].

Under Part A, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the Board may extend (beyond one year) the time period. The Board is in the process of promulgating rulemaking which would establish a mechanism and time-frame for forwarding the request for extension of time to all Board members for their consideration and would maintain the status quo while it considers a request for extension.

Until the rulemaking process is completed, each request for an extension of time will be considered by the Board at a noticed meeting. Board meetings are scheduled approximately every other month. Please allow sufficient time for Board member consideration when submitting requests.

Why not visit us*on the web...*...at www.nmvb.ca.gov**JUDICIAL
UPDATES***SABA vs. KAWASAKI*

On or about February 18, 2000, counsel for Kawasaki filed a Verified Petition for Writ of Mandate, Prohibition, or Other Appropriate Relief in the Fourth District Court of Appeal. Kawasaki contends that the Superior Court exceeded its jurisdiction by rendering a judgment that seeks to control the discretion legally vested in the Board and utilized an erroneous standard of review in reaching its decision to grant the writ petition. Kawasaki filed a Notice of Appeal on April 17, 2000. On or about May 22, 2000, the Appellate Court Ordered the Superior Court and *Saba A. Saba et al.* to show cause on November 17, 2000, why a peremptory writ of mandate should not issue. On November 30, 2000, the Fourth Appellate District Court, issued a writ of mandate directing the trial court to reverse its decision in *Saba A. Saba et al. vs. New Motor Vehicle Board; Kawasaki Motors Corp., U.S.A., Real Party in Interest*. The court indicated that “where an automotive dealer protests the termination of its franchise to the [Board] and the Board overrules the protest, judicial review should be conducted under the substantial evidence test, not the independent judgment test.” In reversing, the court found that the trial court applied the wrong standard. On or about January 9, 2001, Saba filed a Petition for Review in the Supreme Court of California. Saba seeks review from the Appellate Court’s Decision.

*ROLLS-ROYCE vs. NEW MOTOR VEHICLE
BOARD*

Robert Pond, an individual, filed a petition with the Board seeking repurchase of a Rolls-Royce vehicle he contends met the requirements of the Lemon Law. A Motion to Dismiss the Petition for Lack of

see JUDICIAL, page 10

UPCOMING BOARD MEETINGS

General Board Meeting
March 6, 2001
Sacramento*



General Board Meeting
April 27, 2001
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.)

JUDICIAL

Continued from page 9

BOARD SEEKS RESPONSES TO FEE QUESTIONNAIRE

Effective December 31, 2000, the annual Board fee (13 CCR § 553) paid by new motor vehicle dealers, manufacturers, and distributors was reinstated. When dealers renew their license with DMV, they will be charged a New Motor Vehicle Board fee of \$300.00. In January 2001, the staff sent a detailed questionnaire to a number of auto commercial and motorcycle manufacturers licensed in California whose product line is not well-known. The purpose of the questionnaire was to ascertain which of these licensees fall within the Board's jurisdiction. In March 2001, data summaries will be sent to all manufacturers and distributors requesting the number of new motor vehicles distributed by each which were sold, leased, or otherwise distributed in California to a consumer during 2000. Based upon the 2000 sales data, an invoice will be generated in July 2001. Manufacturers and distributors are charged \$.45 per vehicle sold, with a minimum fee of \$300.00. As you may recall, the fees were eliminated in 2000, for 1999 sales, in order to reduce the Board's account surplus.

Jurisdiction filed by Rolls-Royce was denied.

The issue presented by the writ was whether the Board has subject matter jurisdiction over a claim by a car owner against a motor vehicle distributor in which the owner seeks to have the distributor repurchase the vehicle pursuant to Civil Code section 1793.2.

Oral arguments were presented on April 19, 2000. The Court denied Respondent's Petition for Writ of Mandate or Prohibition. The Court determined that it was within the Board's jurisdiction to hear a Lemon Law dispute. The fact that Mr. Pond had participated in a third party dispute resolution process did not preclude him from proceeding before the Board.

On or about July 21, 2000, Rolls-Royce filed a Notice of Appeal. The underlying petition before the Board was dismissed on November 9, 2000. On January 4, 2001, Rolls-Royce filed a Notice of Abandonment of Appeal. This matter is now closed.

