

IN-SITE

A publication of the California New Motor Vehicle Board

November 2000

Edition 00:6



IT'S A WRAP!

The Board's Year in Review

Robert T. (Tom) Flesh
Board President



As this issue of *In-Site* goes to print, the holiday season quickly approaches. 2000 has been a year of growth and change, not only for our country and our world, but for the automotive industry and the New Motor Vehicle Board. With that in mind, it is a particularly appropriate time to reflect on some of the changes we have encountered, and to highlight some of our accomplishments.

In January, Board members Marie Brooks, Daniel Livingston, Lucille Mazeika and Michael Padilla ended their service on the Board. The combined time of service by these four outstanding individuals totaled *over 35 years*. Each was distinguished in numerous ways - at Board meetings and other industry gatherings, on committees, and in Board leadership positions. Their contributions to the industry and to the Board are greatly appreciated.

On March 13, 2000, our friend and long-time Board member, Manning J. Post, passed away. Manning was an active participant in State government and he capably served on the Board for over 10 years. In that time he served as Board President, Vice President, and held the honorary title of President Emeritus. Manning served as the Board's unofficial time-keeper during oral arguments and his vast industry experience provided the members

with invaluable information relating to matters brought before the Board. It was with great pride and pleasure that, at its July 2000, meeting, the Board was able to present a plaque commemorating Manning's years of service, to his wife Cheryl. At that same meeting, the Board also had the pleasure of honoring attorney Sid Pilot for his years of service in representing numerous clients before the Board.

The Board has welcomed several new members this year. Edward Bayuk, Wendy Brogin, Glenn Stevens and David Wilson have joined our ranks and, along with our continuing members, Fritz Hitchcock, Joseph Putnam and Solon Soteras, have taken active roles in serving on Board committees. The Board and staff have worked effectively and energetically in addressing this year's robust Board agenda.

At the April Board meeting, held in conjunction with the California Motor Car Dealers Association State Convention, the Board appointed Tom Novi to the position of Assistant Executive Secretary. Mr. Novi last served as DMV's Chief of Occupational Licensing and as Liaison to the Board and brings to the agency a wealth of administrative and industry knowledge. This action was taken following the departure of Michael Sieving, former Assistant Executive Secretary, and the extended medical leave of Executive Secretary Sam Jennings. Mr. Jennings was recently commended for his 30 years of State service. Both the Board and the industry have benefitted from Mr. Jennings' many years of leadership and counsel.

This year, with the hard work of our excellent staff, a number of significant changes in Board operations have been implemented or are in the planning stages. Those include: implementation of a comprehensive web site which provides detailed information on the Board's protest, petition and appeal functions; enhancement of the Consumer Mediation Services Program; installation

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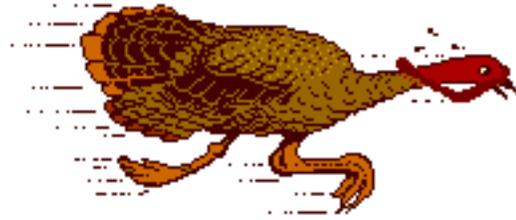
WRAPUP*Continued from page 1*

of an improved telecommunications system, including voice mail access to Board staff; reorganization of the Board committee structure; improvement of the Board's data system; analysis of the Board's fee structure; improved fee assessment and collection processes; an enhanced case assignment and processing system; an analysis and clarification of those manufacturer/distributor licensees which fall under the Board's jurisdiction; implementation of formal Board member orientation and employee recognition programs; an ongoing self-analysis of Board procedures to expedite and simplify dispute resolution procedures; and, a restructure of the job duties of the Executive Secretary and Assistant Executive Secretary positions in order to bring the Board in line with the guidelines of the Board's 1996 Performance Audit. Mr. Novi has proven to be an effective leader and has facilitated the Board's accomplishment of many of its goals. Mr. Novi and other staff members have ably represented the Board at numerous industry meetings and conferences including the California Motor Car Dealers Association Field and Roundtable meetings, the annual conference of the National Association of Motor Vehicle Boards and Commissions, and the Online Automotive Sales conference.

In its regulatory agenda, the Board took action to reinstate the annual Board fee, update the format of papers filed with the Board, and in keeping with Governor Davis' challenge to establish California as a leader in e-government, request e-mail addresses from attorneys who file papers with the Board. The Board will also be considering regulatory changes in order to formalize a process for informal mediation of petition cases, clarify the notice requirements contained in Senate Bill 1819, and provide for facsimile filing of papers with the Board.

In the coming year, the Board will continue in its goal of taking a pro-active role in fostering its relationships with industry members and governmental agencies. The Board's goal of maintaining a close, positive

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*The Board's offices will close for the
Thanksgiving Holiday
November 23-24, 2000*

IN SITE

California NMVB Newsletter

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

Robert T. (Tom) Flesh, President

Frederick E. (Fritz) Hitchcock,
Vice-President

Members

Edward Bayuk

Wendy Brogin

Joseph D. Putnam

Solon C. Soteras

Glenn E. Stevens

David W. Wilson

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relationship with both the Department of Motor Vehicles (“DMV”) and Business, Transportation & Housing Agency (“BT&H”) has been a contributing factor in our operational success and in our ability to function as an effective industry dispute-resolution forum. The Board and staff will continue to attend meetings and educational gatherings of industry associations (both manufacturer/distributor and motor vehicle dealer related) and will be conducting regularly scheduled Board-member education seminars and programs in order to provide a balanced, knowledgeable, forum for resolving disputes in the automobile industry. Finally, the Board reaffirms its commitment to the Davis administration’s agenda and to the mission of the DMV and of BT&H.

To put it succinctly, this has been an exciting year of growth and accomplishment for the Board. On behalf of my fellow Board members and the staff, I would like to express our hope that you enjoy a happy, healthy, and prosperous holiday season.

DOCKET

PROTESTS

Vehicle Code Section	Active
3060	
Termination	7
Modification	28
3062	
Establishment	4
Relocation	1
Satellite Warranty Facility	0
3064	
Delivery&Preparation	0
3065	
Warranty Reimbursement	0
3065.1	
Incentive Compensation	0
TOTAL PROTESTS: 40	

PETITIONS

3050(c)	6
TOTAL PETITIONS: 6	

APPEALS

3050(b)	0
TOTAL APPEALS: 0	

MATTERS RECENTLY RESOLVED

Since the September 12, 2000, Board meeting, a total of six (6) protests and one (1) petition have been resolved and are not included in the above figures.

REVENUE

*Fiscal Year 2000-2001**



NEW MOTOR VEHICLE DEALER Annual Fee:	\$2,119.00
NEW MOTOR VEHICLE BOARD Filing fees:	12,800.00
NEW MOTOR VEHICLE BOARD Manufacturer/Distributor Annual fee:	834,786.20
NEW MOTOR VEHICLE BOARD Hearing Transcripts:	787.80
Arbitration Cert. Program Reimbursement	-0-
Total	\$ 850,493.00

*July 1, 2000 thru September 30, 2000



NEW ON BOARD

Edward W. Bayuk (pictured above) is the Board's newest Public Member.

Mr. Bayuk was appointed in August 2000 and serves as a member of the Board's Fiscal Committee.



Sam W. Jennings
Executive Secretary/
Chief Administrative Law Judge

30 Years of Service

Sam W. Jennings, Executive Secretary/Chief Administrative Law Judge of the New Motor Vehicle Board, celebrated 30 years of service with the State of California on September 1, 2000.

Mr. Jennings began his state career while attending McGeorge School of Law, serving as Assistant Executive Secretary of the State Board of Control. Upon graduation and admittance to the California State Bar in June 1973, he joined the Department of General Services as Legal Counsel to the State Office of Procurement, the Department of General Services and the Office of Electronic Data Processing Management and Control, Department of Finance.

In 1974, Mr. Jennings was appointed as Special Assistant to the Secretary for Legal Affairs, Agriculture and Services Agency. Then, in 1975, he assumed the position of Executive Secretary of the New Motor Vehicle Board, where he has remained ever since. The Board and its staff extend their most sincere congratulations in recognition of Mr. Jennings' achievement.



COURT CASES

Note: 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

* Rolls-Royce Motor Cars Inc. vs. New Motor Vehicle Board; Robert Pond, Real Party in Interest

* Rolls-Royce Motor Cars Inc. vs. New Motor Vehicle Board and Sam W. Jennings; Robert Pond, 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

ELECTRONIC AUTO SALES:

Issues and Challenges

Over the last several years, the issue of automobile sales via the Internet has moved to the forefront of “hot topic” issues affecting the motor vehicle industry. Nearly every industry gathering, small or large, seems to feature at least some discussion regarding the verities and/or the precipitous expansion of Internet vehicle sales. Now, major auto manufacturers are entering the “e-marketplace” with ventures such as *FordDirect.com*, and *GMDirect*, as are industry associations. The National Automobile Dealers Association (NADA) recently launched its new site - *www.DriverSeat.com* designed to directly link Internet users to corresponding dealership sites.

In California, the public policy issue of vehicle franchise ownership has made its way into at least one piece of legislation which has been signed by Governor Davis - Senate Bill 1819, sponsored by State Senator Joseph Dunn. The legislation affirmed the intention of the Legislature to “ensure fair competition among” independently owned new motor vehicle dealerships versus those owned by franchisors, and clarified the existing prohibition under California law that franchisor ownership of a dealership within a 10 mile-radius of a non-franchisor owned dealership of the same line make is allowable only in certain limited circumstances. These concepts were predicated on the Legislature’s acknowledgment in SB 1819 that the motor vehicle sales and service industry “vitally affects” the economy of California and that the state’s regulatory scheme provides the consuming public with an “organized [sales] distribution system” in tandem with a “network of quality warranty [service] and repair facilities.”

The following comments were presented by Tom Novi, Assistant Executive Secretary, California New Motor Vehicle Board at the October 12-14, 2000, National Association of Motor Vehicle Boards and Commissions annual conference in Omaha, Nebraska.

Internet sales – can states regulate them?

Thank you for the opportunity to share with you my thoughts concerning the impact of the Internet on motor vehicle sales, and the changing consumer protection challenges that states face. My comments are specific to California, but are probably applicable in many respects to other states. As background, I administered the California Department of Motor Vehicles (“DMV or Department”) Occupational Licensing Program for a number of years before being appointed Assistant Executive Secretary of the New Motor Vehicle Board in May 2000. While in Occupational Licensing we wrestled with and resolved a number of issues related to Internet vehicle sales, but other issues remain. Summarized below is an overview of consumer protection issues related to Internet sales of automobiles and what is being done to deal with these issues.

It seems fair to say that with the advent of the Internet, e-commerce is revolutionizing the way consumers shop for and purchase a wide range of products, including automobiles. As far as automobiles are concerned the Internet is providing shoppers with a wealth of pricing and other information which has resulted in better informed customers. With car buyers using the Internet to compare vehicle prices from among dealers throughout a region or even statewide, the “local dealer/relevant market area” concept may become functionally obsolete, when customers are shopping for a new car. In 1998, 40% of new car purchasers utilized the Internet as part of the new car buying process. That number is projected to grow to 55% this year, 66% in 2001, 75% in 2002, and 80% in 2003. With the additional pricing information that is now available, consumers have also become smarter buyers, with the average new car sticker price discount increasing from 5.1% in 1985 to 11.3% in 1999.

A related new phenomenon is the “Internet dealer,” typically an on-line broker situated between the customer and the traditional “brick and mortar” dealer who actually sells the vehicle. The Internet dealer takes

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INTERNET*continued from page 5*

many forms, ranging from providing “leads” to subscriber dealers, to actually selling vehicles through wholly owned subsidiary dealerships. Most Internet dealers, however, are brokers that receive a commission for arranging deals between consumers and traditional dealers who actually sell and deliver vehicles to the purchaser. These Internet dealers are typically licensed by the California DMV as vehicle dealers, with a broker endorsement. Approximately 80% of California’s 1724 new car dealers are also “Internet dealers.” They operate their own web sites and are actively marketing their vehicles on the Internet. Not to be left out are vehicle manufacturers and distributors who have established web sites used for marketing and (in certain cases) ordering vehicles, although the ultimate sale and delivery is through a franchised dealer.

When you ask the question, “can states regulate Internet vehicle sales?” it seems clear that they can. A key point in understanding Internet vehicle sales is that regulatory problems with Internet dealers are comparable to the problems associated with traditional dealers, except that the communication power of the Internet magnifies the impact. For example, an unlicensed dealer “curbstoning” vehicles at a local street corner is comparable to an unlicensed dealer selling vehicles over the Internet except that far more people see the vehicles on the Internet. Likewise, advertising violations in a local newspaper are comparable to advertising violations on the Internet, except the magnitude of the violations may be far greater. Recognizing this, the California state legislature recently passed Senate Bill 2060 (Speier), which would expand to the Internet certain newspaper price advertising requirements. Regulating vehicle marketing and sales activity, regardless of the medium used, has been and will continue to be an ongoing process of investigation and prosecution of illegal activity.

Manufacturers have also explored new ways to use the Internet to better market and sell vehicles. At one point it was thought that manufacturers might want to own dealerships directly, (which is actually authorized by the California Vehicle Code in certain circumstances), and use “captive” dealerships to retail vehicles directly to

consumers via the Internet. This resulted in strained dealer/manufacturer relations since a manufacturer controls product development, distribution, pricing and financial incentives, and is privy to the financials of each of its franchised dealers. Clearly, from a dealer perspective for a manufacturer to compete directly with its franchised dealers in retailing vehicles raises a host of “conflict of interest” issues and is certainly not conducive to a cooperative relationship.

Because of these concerns, the California Motor Car Dealers Association was successful this year in sponsoring legislation that increased dealer protections from manufacturers through Senate Bill 1819 (Dunn). Key changes include increased restrictions on manufacturers owning dealerships within the statutory 10-mile relevant market area of a related line make dealer, and prohibitions to unfair discrimination in favor of a dealership owned or controlled by a manufacturer or distributor. On another front, *Carsdirect.com* was not successful in sponsoring legislation, Senate Bill 1624 (Murray), that would have created an “online vehicle dealer” license that would eliminate the autobroker endorsement and allow such a dealer to sell automobiles as new, which only franchised dealers are currently allowed to do. Most new vehicle dealers saw this as an unreasonable concept and opposed the measure. Bottom line, the proposal did not pass the legislature. The *Carsdirect.com* initiative may be a product of general investor concern with the viability of many Internet vehicle sales business models. As reflected in their recent stock valuations, investors seem to be growing wary of Internet vehicle dealers and the likelihood that they can be profitable, at least in the near term. For example, *Autoweb* and *Autobytel* have seen their valuations plunge 70% from their market highs in the last year.

The DMV through its Occupational Licensing Program is responsible for licensing and regulating California vehicle dealers and salespersons. The Department also has responsibility for registering and titling vehicles purchased by California residents, and collecting related fees. The existing licensing and regulation statutes have been predicated on traditional vehicle sales business

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INTERNET*continued from page 6*

models, but seem to have adapted well to Internet sales. The advent of the Internet has, however, highlighted a number of consumer protection issues. For example, the Department does not have regulatory control over out of state Internet dealers that market and sell vehicles to California consumers. This has obvious consumer protection and tax revenue implications. However, as I mentioned earlier, this has always been an issue with out-of-state dealers who advertise in magazines and newspapers read by California consumers. The Internet simply magnifies the issue. The real world question though, is how many California consumers will feel comfortable buying cars from dealers in Utah or Arizona. Additionally, under what circumstances will such a purchase be economically attractive. Currently, approximately 95% of all new cars are purchased from local dealers.

Recent actions taken by the Department in response to these and related challenges include:

- Making clear that under current law Internet dealers doing business in California must be licensed as vehicle dealers (typically with an autobroker endorsement), and that the actual vehicle sales must take place at licensed dealerships.

- Working closely with Internet dealers to ensure that they meet all of California's licensing requirements, including having an established place of business.

- Meeting with representatives of the new and used vehicle dealers associations to discuss the impact and consequence of Internet sales on California consumers, and the Department.

- At the request of the New Motor Vehicle Board, complaints by a number of San Fernando valley General Motors ("GM") dealers that GM was illegally retailing vehicles through a "front" dealership, Rydell Motors, were investigated. In a report to the Board, DMV concluded that the allegations of illegal activity were not supported by the findings of the investigation.

With the Internet's widespread availability as a medium

for marketing vehicles, a number of policy issues have emerged, including the following:

- Should a manufacturer market vehicles directly to consumers, in direct competition with its franchised dealers?
- Should consumers be able to bypass traditional dealers by completing transactions over the Internet with Internet dealers?
- To what extent can California consumers be protected from unethical Internet dealers located outside of California who market to California consumers?
 - Should dealers be able to routinely complete a transaction via the Internet and then register the vehicle electronically with DMV?
 - To what extent will state and local government tax revenues be negatively affected by out-of-state Internet sales?
 - Should there be greater financial protection for the consumer and the state than is provided by the current \$10,000 dealer bond?

These and other related issues will likely be considered by the Legislature in the coming years.

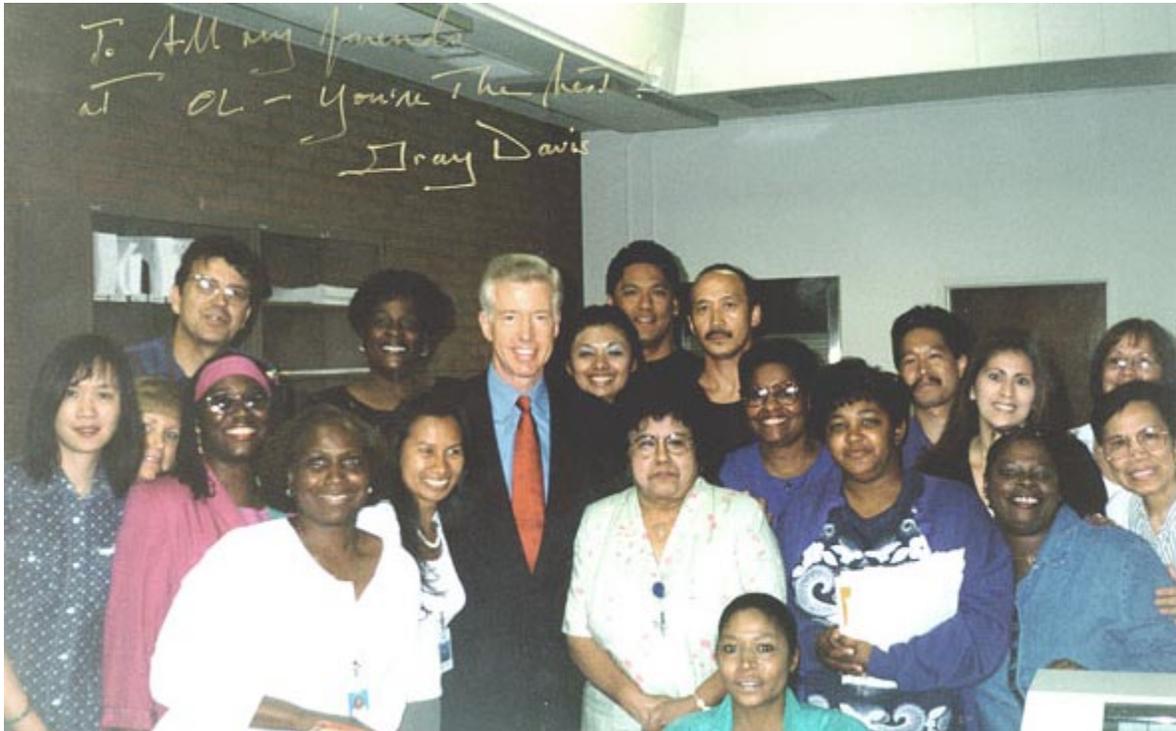
In summary, providing vehicle pricing and marketing information to consumers over the Internet offers attractive benefits along with potential pitfalls for California vehicle owners. While current statutes have been adapted to regulate Internet sales, they may need revision if the full value of the Internet is to be realized while maintaining appropriate consumer protections.

Questions or comments?



E-mail the Board at...

nmvb@pacbell.net



The staff at DMV's Occupational Licensing Branch (OL) recently had a surprise visit from Governor Gray Davis. OL, the DMV unit responsible for licensing, monitoring and controlling motor vehicle businesses throughout California, maintains the files for approximately 15,000 firm licenses, 60,000 vehicle salesperson licenses, 500 driving schools, and 450 traffic violator schools.

State Employee's Campaign

...Another Successful Year



Rosemarie Smith, UCSEC Loaned Executive, addresses Board staff

The Board launched its "kickoff" week for the United California State Employee's Campaign on Monday October 16, 2000, with two speakers representing non-profit organizations. Doug Johnson from *Saddle Pals*, explained how his organization provides therapeutic horsemanship services to physically, mentally, and emotionally challenged individuals.

This therapy uses the relationship of horse and rider as a rehabilitative tool. *Big Brothers/Big Sisters* was represented by Gale Pearson. Ms. Pearson detailed the organization's goal of providing one-on-one relationships designed to enhance a child's life by providing self-confidence, motivation, improvement in academics, and better relationships with family and peers.

The week's other activities included a 'cubicle garage sale,' a drawing for a collector's edition San Francisco Giant's t-shirt, and the annual Dollar-A-Dip Potluck. Due to the outstanding effort of all who participated, the Board's contributions realized an increase of approximately 45% over last year's.



"Cubicle" Garage Sale: Michael Dingwell, NMVB Staff Counsel, considers a purchase from Jackie Grassinger, Mediation Services Representative



Consumer Mediation Program Statistics

Fiscal Year 2000-2001*

Mediation Calls Received	2,253
Complaint Forms Mailed to Consumers	657
Cases Filed	158

* July 1, 2000 to date

BMW, GM MODIFY FRANCHISE AGREEMENT

In late summer, both BMW and GM notified all of their California dealers that they intended to modify or replace their respective dealer agreements. As a result of those notices, a number of protests and petitions were filed with the Board. The following is a brief summary of those matters.

BMW

The existing BMW agreement is referred to as a “Dealer Agreement” and the modified agreement is referred to as a “Car Center Agreement.” Under the new agreement, a dealer or dealership is referred to as a “Center.” The new agreement pertains to passenger vehicles only and not BMW Sports Activity Vehicles,

such as the X5. As a result of the modification, 6 protests and 5 petitions have been filed. All of the BMW matters have been consolidated and stayed pending the BMW Alternative Dispute Resolution process. A telephonic Status Conference is scheduled for December 14, 2000.

GM

In the past, each of GM’s divisions had a separate Dealer Sales and Service Agreement. The modified agreement applies to all of GM’s divisions including Buick, Cadillac, Chevrolet, GMC Truck, Oldsmobile, and Pontiac. As a result of the modification, 11

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UPCOMING HEARINGS**



December 5, 2000 10:00 a.m.
Martin Cadillac vs. General Motors
PR1746-00
Hearing on the merits

December 13, 2000 10:00 a.m.
Dow Hammond vs. International Truck
PR-1747, 1748-00
Motion to Dismiss (telephonic)

**Dates subject to change



UPCOMING BOARD MEETINGS

Special and General Board Meetings

November 28, 2000
Sacramento*

Special Board Meeting

December 12, 2000
Los Angeles*

Special and General Board Meetings

January 18, 2001
Los Angeles*



General Board Meeting

March 6, 2001
Sacramento*

General Board Meeting

April 27, 2001
Palm Desert*

Special and General Board Meetings

June 2001
Sacramento*

(*Board Meeting dates are subject to change. A meeting agenda with time and location details is mailed 10 days prior to the meeting.)

MODIFICATION

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protests were filed. Nine of the protesting dealers also filed modification protests concerning GM's Vehicle Terms of Sale Bulletin No. 00-1. All 20 of the GM protests have been consolidated. An in-person Pre-Hearing Conference was held on October 11, 2000, for purposes of narrowing the issues, and resumed on November 9, 2000. A telephonic Status Conference is scheduled for December 6, 2000.

The threshold inquiry in a modification protest is whether the modification or replacement would substantially affect the franchisee's sales or service obligations or investments. At the hearing, this is the dealer's burden. If the modification is substantial, the next inquiry is whether there was good cause for the modification or replacement of the franchise. This is the manufacturer's or distributor's burden at the hearing.

Future updates concerning the status of these cases will be provided in the *In-Site*.

BOARD WEB "HITS" CLIMB

The number of web users visiting the Board's web site continues to climb. Since we went on-line, the following numbers of "hits" to the site have been recorded:

September - 15,458
October - 26,339

Have you visited us yet?

nmvb.ca.gov