



*New Motor Vehicle Board*

# *In-Site*

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## **BOARD HOSTS 2010 INDUSTRY/ATTORNEY ROUNDTABLE**

The Board hosted an Industry/Attorney Roundtable on Wednesday, March 24, 2010, at the Ziggurat Building in West Sacramento. Historically the attorney roundtable and the industry roundtable are separate events, but in the interest of cost savings, it was decided to combine them. The purpose of the event is to educate the members of the Board on industry-related issues and to provide them with an opportunity to interface with dealer and factory personnel; to educate attorneys that regularly appear before the Board or who would like to appear before the Board on procedures and laws relating to the Board; and to educate manufacturer and distributor counsel or employees who appear before the board or prepare/review statutorily required notices sent to the Board and the impacted dealers.

The first topic on the agenda was a two-part panel discussion on how bankruptcy filings are dealt with by the Board and how they are affecting the entire industry. The first part was addressed by an attorney panel consisting of Donald Cram, Esq. of Severson & Werson, P.C., Michael J. Flanagan, Esq. of Law Offices of Michael J. Flanagan, Bert Rasmussen, Esq. of Manning, Leaver, Bruder & Berberich, and Allen Resnick, Esq. of Jeffer, Mangels, Butler & Marmaro LLP. The panel presented an informative PowerPoint presentation on the impact of bankruptcy filings on the industry and how the Board handles the protest filings in which bankruptcy protection is sought.

The second part of this topic was presented by Jon Corn, Esq. of Axelson Corn, Peter Kravitz, Esq. on behalf of the California Recreation Vehicle Dealers Association, Paul C. Vitrano Esq., General Counsel for the Motorcycle Industry Council, and Peter K. Welch, Esq. President, California New Car Dealers Association. The panel addressed the effect of bankruptcy filings on the public



ALJ Marilyn Wong, Deputy Attorney General, Jeffrey Schwarzschild, ALJ Jerry Prod, ALJ Diana Woodward-Hagle

perception of the vehicle industry and how the changed credit environment impacts rights and obligations for both franchisees and franchisors. Mr. Kravitz pointed out that 2008 and 2009 brought with it a "Perfect Storm" to the RV Industry. High unemployment, decreasing consumer confidence, reductions in consumer lending and numerous bankruptcy filings all lead to reduced output and reduced sales. Informative PowerPoint presentations were presented on the vehicle and recreational vehicle industries.

The second topic on the agenda was presented by Deborah Goldman, Managing Counsel for Toyota Motor Sales, U.S.A, and Debra Kingsbury, Assistant General Counsel, Sales & Marketing for Volkswagen of America. Ms. Goldman and Ms. Kingsbury gave a comprehensive report on what Toyota and Volkswagen are doing to be responsive to the changing economic times with regard to facility improvements, financial assistance for facility improvements, and assisting dealers in securing and maintaining flooring. Ms. Goldman spoke extensively on how Toyota is handling the recent recalls and how the company is reaching out to its dealer network to complete the needed repairs in a timely manner. The speakers also addressed a number of questions from the audience.

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## Roundtable, cont'd from page 1

Mary Garcia, Branch Chief, Occupational Licensing and Andrew Conway, Chief, Registration Policy and Automation Branch of the California Department of Motor Vehicles addressed Topic 3 by discussing what the Department is doing to be more industry accessible. Mr. Conway discussed the newly redesigned sales persons' license which is schedule to roll out in June 2010, as well as DMV's Business Service Centers throughout the state that are for industry transactions only. An informative exchange took place, and both speakers expressed the Department's willingness to assist the industry and also highlighted its accessibility.

Topic 4 was an update on alternative fuels and advanced propulsion systems by Tim Olson, 2<sup>nd</sup> Advisor to Commissioner James Boyd of the California Energy Commission. Mr. Olsen covered what new technologies were available to the automotive industry currently and what developments are being planned for the future. Mr. Olson discussed the Energy Commission's authority to develop and deploy alternative and renewable fuels and advanced transportation technologies to help attain the state's climate change policies. The discussion involved producing alternative fuels in California; improving vehicle technologies;

expanding alternative fueling stations; and retrofitting current vehicles to allow them to run on alternative fuels. Zero emission vehicles were also discussed as were the cost of home charging stations. Loans and grants to help the public and private sector afford these new technologies were also discussed.

Topic 5 was presented by Robin Parker, Senior Staff Counsel for the Board. She provided an introduction and overview of the Board and addressed the trends in case management. Ms. Parker indicated that an unprecedented number of notices of termination were filed in 2009; there were 110 compared to 52 in 2008 and 34 in 2007. Additionally, she stated that so far for 2010 there were fewer notices of termination and more establishment and relocation notices. Case management has been extremely busy for 2010, having had 27 protests filed as of mid-March. During the same time in 2009, there were only 11 protests.

Topic 6 focused on the filing of statutorily required notices. Ms. Parker outlined the various statutorily required notices and the procedural requirements a manufacturer or distributor must meet to ensure the notice is properly issued and effective. She also touched on who is responsible for the content of the notice, what the best method of transmission

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David W. Wilson

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Roundtable, cont'd from page 2

is, and the difference between the franchise terms and the statutory requirements. Additionally, Ms. Parker pointed out common mistakes that are made by the manufacturer or distributor when issuing notices.

Topic 7 pertained to law and motion practice before the Board. Ms. Parker explained the various motions that are filed. A motion to dismiss is always dispositive, whereas motions to compel, quash or continue are not. She discussed the differences between a franchisee, a dealer principal, and a dealer, and what a typical briefing schedule is, when a motion goes to the Board for its consideration, and common mistakes encountered in law and motion.

The Roundtable was well-received by those in attendance as well as by the Board members.

## FEBRUARY 4, 2010 GENERAL MEETING

The New Motor Vehicle Board held a General meeting on February 4, 2010, in Los Angeles, California. There were no case management matters to consider so the members addressed a number of administrative matters including, in part, the following:

Since this was the first General Meeting of 2010, the election of officers took place. Robert T. (Tom) Flesh was nominated President for a second term, and Ramon Alvarez C. was nominated Vice President for a second term. President Flesh appointed the members to the various Board committees (see page 6).

Mr. Flesh thanked the staff for keeping up with the workload in light of the Governor's Executive Orders.

The members revised the Board policy on public comments in compliance with the Bagley-Keene Open Meeting Act during the consideration of Proposed Decisions, Orders or Rulings conducted pursuant to the Administrative Procedure Act. The revised policy provides that:

"In compliance with section 11125.7, each agenda item other than an item that requires Board consideration of a proposed decision, ruling, or order, the President or presiding officer shall invite public comment after the item has been presented by staff. The President or presiding officer of the meeting may limit the number and/or the duration of the public comment or comments depending on the time constraints and size of the agenda."

In addition, the following language is to be inserted into the President's or presiding officer's introductory

statement prior to Board consideration of a proposed decision, ruling or order, as follows:

"Comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board. Members of the public may not comment on such matters."

The members approved a revised version of the *Guide to the New Motor Vehicle Board and Informational Guide for Manufacturers and Distributors* that are both available on the Board's website at [www.nmvb.ca.gov](http://www.nmvb.ca.gov).

An annual report on the number of mediation cases for fiscal year 2008-2009 was presented. The Consumer Mediation Services Program continues to be successful with 407 cases and 795 telephone calls. Out of the 407 cases, 316 cases were mediated with over 69% of those cases being successfully mediated.

The members approved six out-of-state trips requested for fiscal year 2010-2011. The trips are to the National Association of Motor Vehicle Boards and Commissions Fall Workshop in September 2010, and the Recreational Vehicle Industry Association's 48<sup>th</sup> National Trade Show in December 2010.

The members reviewed the Board adopted policies including those new policies approved in 2009.

After many months of internal review by the staff and Ad Hoc Rulemaking Committee, the Board adopted a number of regulatory revisions including 21 amendments, six new regulations, and deleted one existing regulation. The draft regulations are consistent with the Administrative Procedure Act and the Office of Administrative Hearings regulations. The staff will commence the rulemaking process shortly.

The Board also approved the 2010 Rulemaking Calendar that was ultimately published by the Office of Administrative Law in the California Regulatory Notice Register.

Mr. Flesh noted the passing of Jim Ryan, a long-time employee of BMW who recently provided the members and staff with a tour of the BMW Hydrogen 7 Series vehicle.

In a closed Executive Session discussion, the Public Members of the Board decided to hire the Attorney General's Office to represent it in the writ in *Calabasas Euro Auto Group LLC v. New Motor Vehicle Board of California*.

## MARCH 9, 2010 SPECIAL MEETING

The New Motor Vehicle Board (“Board”) held a Special meeting on March 9, 2010, in Commerce, California. At that meeting, the members considered one case management matter.

### Platinum Motors v. Lamborghini:

The Public Members considered the Administrative Law Judge’s Proposed Decision.

Oral comments were presented before the Public Members of the Board. Carlos F. Negrete, Esq. of the Law Offices of Carlos F. Negrete and Arnold Sklar of Ropers, Majeski, Kohn & Bentley represented Protestant. Allen S. Resnick, Esq. of Jeffer, Mangels, Butler & Marmaro, LLP and Randall L. Oyler, Esq. of Barack Ferrazzano represented Respondent. Nora Keuylian, a principal of Platinum Motors LLC, presented comments to the Board.

Respondent sought to terminate the Lamborghini franchise of Platinum Motors. Protestant filed a timely protest and a merits hearing was held before Administrative Law Judge (“ALJ”) Linda S. Waits on November 16 and 18, 2009. The Proposed Decision overrules the protest and allows Lamborghini to terminate Protestant’s franchise agreement.

By a two-to-one vote, the Public Members of the Board moved to conditionally reject the Administrative Law Judge’s Proposed Decision and remand the matter to the ALJ to reopen discovery. Within 30 days of March 9, 2010, Protestant was to produce 100% of all of the documents requested by Respondent. If there is a dispute concerning the production of documents, it will be handled telephonically by ALJ Skrocki during the normal law and motion procedures by way of a motion. If Protestant fails to produce the documents within 30 days, then the Public Members of the Board will adopt the ALJ’s Proposed Decision. If Protestant does produce the documents, then this matter will go to hearing within 45 days of full compliance of the production of documents only on the issue of Protestant’s case. Respondent will have an opportunity for cross-examination and rebuttal. (A subsequent, more detailed order was issued to the parties).

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## MARCH 23, 2010 GENERAL MEETING

The New Motor Vehicle Board held a General meeting on March 23, 2010, in Sacramento in conjunction with the California New Car Dealers Association “Dealer Day”.

George Valverde, Director of the Department of Motor Vehicles (DMV), spoke at length about the efforts and achievements DMV has made despite the harsh economic climate. Director Valverde reflected that in 2006, nine major IT projects were initiated and that six have been completed thus far. Three are still in progress. One is the new driver’s license ID that will go into effect later this year. It will have a new look and feel and will comply with the Federal Real ID program once it goes into effect. He also discussed DMV’s internet. When he was first appointed, DMV had less than half a million online transactions. Last year there were eight million; much of this being attributed to how easy it is to complete the transactions through the internet. He talked about the affect of the furloughs, budget reductions and the increase in wait times at their field offices. Director Valverde pointed out that DMV is one of the few agencies not laying people off. In fact, they are hiring 100-200 people a month. Twenty percent of these hires are from other departments experiencing layoffs, like the Department of Corrections, Health Services and other general fund departments. He noted the DMV has seen a reduction in the number of vehicles registered in California even though the revenue from registrations remains relatively stable; more used cars are being registered. With regard to senior staffing, Director Valverde has lost every member of the executive staff due to retirement since he was appointed. He indicated that they are working through this transition and loss of institutional knowledge. Lastly, Director Valverde mentioned that a new Business Service Center was opening in Bakersfield on March 24 to expedite processing for all DMV business customers, industry, dealers, and commercial. Two additional centers will be opening up in Los Angeles and San Bernardino in the near future.

Craig Stevenson, Acting Deputy Director/Chief Counsel for the DMV Legal Affairs Division explained that they have a staff of approximately 25 attorneys and about 35 support personnel. They are primarily located in Sacramento, but have a small office in Los Angeles. They serve as the legal advisor to the Department and to the Director, and are the liaison to the Attorney General’s Office. The most important thing, according to Mr. Stevenson, is

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that they are the Departmental representative for administrative law cases that are presented to the Office of Administrative Hearings. The Legal Affairs Division also responds to Public Records Act requests, handles Occupational License cases, analyzes legislative bills, and writes formal opinions.

The Board is always pleased to have speakers, especially from DMV, to provide Board member education in keeping with its Mission and Vision Statements.

The remainder of the meeting consisted of administrative matters as there were no case management matters.

Roadtrek Motorhomes, Inc. submitted a request pursuant to Vehicle Code section 3076(b) to audit for 36 months the franchisor incentive program claims for Mega RV Corp dba McMahan's RV's three locations in Colton, Scotts Valley, and Irvine. Not since 2001 has the Board been asked to extend the period of time that a franchisor has to audit a franchisee's warranty or incentive program claims. The Board attempted to promulgate regulations in 1997, but the Office of Administrative Law rejected the proposed regulatory text. Therefore each such request must be presented to the Board for its consideration.

Audits of franchisee claims may be conducted by the franchisor on a reasonable basis and for a period of 18 months after a claim is paid or credit issued. If the franchisor contends that false claim was submitted by the franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board. In this case, Roadtrek contends there were fraudulent claims submitted and requested an additional 18 months for a total of 36 months to audit McMahan's RV. After consideration of pleadings and arguments from both sides, this matter was tabled until the May 5 meeting with the understanding that McMahan's is going to cooperate and provide the 26 deal jackets requested by Roadtrek within two weeks. Roadtrek is to provide a list of the deal jackets within a week. These deal jackets are within the initial 18 month period authorized by the statute. Counsel can notify the Board's legal staff that McMahan's provided all of the information within 30 days. If the information has been provided, then the matter will be taken off the Board's calendar for its May 5 meeting. If it has not been provided, then the Board would appoint an administrative law judge to make specific findings as to fraud. This matter is scheduled for Board consideration on May 5,

2010, in Riverside.

The Board adopted a revised policy concerning gifts and honoraria as follows: State board members and designated staff may not accept gifts aggregating more than \$420 from any other single source if that gift would have to be reported on the recipient's Statement of Economic Interest (Form 700). Gifts received from a single source, totaling \$50 or more in a calendar year generally must be reported. The definition of "single source" is set forth in the NMVB Conflict-of-Interest, Appendix B – Disclosure Category which was approved by the Fair Political Practices Commission June 26, 2009 and the Secretary of State on July 29, 2009.

The Board unanimously voted to request that DMV take licensing action against Vicoo Industry Inc. for failure to file the statutorily required schedules and formulas pursuant to Vehicle Code sections 3064 and 3065. The Board exercised its authority under Vehicle Code section 3050(c)(3) to order DMV to withhold the renewal of and/or suspend the existing Occupational License for Vicoo until the required information has been filed with the Board.

In an effort to provide continuing education while being mindful of the current economic environment, the Board's administrative law judges and legal staff have been provided training through the National Judicial College webcasts.

The Board financial condition report for the 2<sup>nd</sup> quarter of fiscal year 2009-2010 was presented. While it appears that the Board has expended 53% of its appropriated budget, Bill Brennan, Executive Director, explained that funds encumbered but not yet expended are treated as expenditures, thus inflating this percentage. (Encumbrance balances are held in abeyance for two years after the fiscal year's end, and any balance remaining after

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## **FURLOUGH DAYS**

The Board's offices will be closed on the  
1st, 2nd and 3rd Fridays  
of each month.

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two years is released and returned to the Board's fund.) Mr. Brennan further indicated that the Board is monitoring its expenditures closely; payroll expenses are on target at 48% and the Board has only spent 28% of its allocated operating budget.

With regard to judicial matters, Mr. Brennan reported that in the *Calabasas Euro Auto Group LLC* writ, the case was referred to the Attorney General's Office to represent the Board. In *Carlsen Subaru, Inc.*, counsel for Protestant did not file its opening brief and was given until March 26, 2009 to file it. If the brief is not timely filed, the matter will be dismissed. There being no further business, the meeting was adjourned.



Meg Whitman, Gubernatorial Candidate, and Tom Flesh, Board President

**CNCDA 2010 DEALER DAY**

The California New Car Dealers Association ("CNCDA") held their 2010 Dealer Day on March 23, 2010, in Sacramento. Members of the CNCDA, sponsors, and guests attended the luncheon, where gubernatorial candidate Meg Whitman was a guest speaker. Senator Abel Maldonado, who has been nominated (and was confirmed on April 26) to Lieutenant Governor by Governor Schwarznegger, also addressed the crowd and spoke on key legislative issues.

Attendees were briefed on legislation that will have an impact on the vehicle industry. Three bills of particular interest are AB 1981 (Hill) Tire Fee Reform and AB 2118 (Hernandez) Credit Score Disclosure Simplification, which are supported by CNCDA, and AB 2113 (Evans) Local Income Tax & VLF Authorization is opposed. Following the legislative briefing, CNCDA members met with legislators to discuss the various legislative bills of interest.

Several Board members and staff attended the luncheon.

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# UPCOMING BOARD MEETINGS

**\*GENERAL MEETING**  
May 5, 2010  
Riverside



**\*GENERAL MEETING**  
June 15, 2010  
Los Angeles

\*All meeting dates are subject to change

## NAMVBC/IALLA TO HOLD JOINT MEETING

For the first time, the National Association of Motor Vehicle Boards and Commissions (“NAMVBC”) and the International Association of Lemon Law Administrators (“IALLA”) will hold a joint conference. The meeting will be held October 9 -13, 2010, in Biloxi, Mississippi.

Given the current state of the economy and the fact that both groups have similar missions, the executive leadership for NAMVBC and IALLA decided to hold this collaborative meeting.

The NAMVBC is an organization dedicated to promoting fair, reasonable and uniform laws between the states with respect to the distribution and marketing of motor vehicles in order to prevent frauds and unfair business practices, and to promote and maintain a fair and sound system of distribution of motor vehicles to the public. With a membership that includes over 40 private and government organizations, the NAMVBC organization provides a forum for the exchange of ideas for the purpose of developing better methods of management and regulation of the automotive, motorcycle and recreational vehicle industry.

IALLA supports and promotes the role of government agencies at the state/provincial, territorial and

national levels responsible for ensuring an honest, safe, informed marketplace, and promoting consumer and business responsibility in a competitive economy.

The agenda for this meeting has yet to be finalized. For more information, please visit [www.namvbc.org](http://www.namvbc.org) or [www.ialla.net](http://www.ialla.net).

## UPCOMING NAMVBC/IALLA EVENT

NATIONAL ASSOCIATION OF MOTOR  
VEHICLE BOARDS AND COMMISSIONS  
Annual Fall Workshop October 9-13, 2010

**Beau Rivage Hotel & Casino**  
Biloxi, MS 39530

For more information, please contact  
William Brennan at (916) 324-6197.



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