



New Motor Vehicle Board

In-Site

January 2010

A Publication of the California New Motor Vehicle Board

10.1 Edition



PRESIDENT TOM FLESH'S YEAR END WRAP

It has been a great pleasure to serve as the Board's President in 2009. I take pride in reporting the Board's continued success at accomplishing its goals as identified in its mission and vision statements.

This past year, the world-wide recession, national economic crises, and a change of administration has had, to say the least, profound effect on the vehicle industry both nationally and in California. There have been downsizings in manufacturing, distribution, retail sales and leasing, suppliers, and parts, creating both personal and commercial losses and uncertainty in virtually every facet of the industry and supporting businesses. Throughout all of these adversities, I can say that the Board and our entire staff have worked hard to carry out our responsibilities consistent with the Board's mission "to enhance relations between dealers and manufacturers throughout the state by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner." It is particularly noteworthy that all of this was accomplished consistent with our Governor's mandate to lower operating costs in light of the significant budget issues facing California. For this, I am appreciative to our excellent staff.

Throughout my experience on the New Motor Vehicle Board, I have never witnessed such adverse conditions and challenges confronting the motor vehicle industry. Among the most profound consequences of this recession included unprecedented industry bankruptcies, not only of General Motors and Chrysler, but also dealerships, suppliers and related industries. The recreational vehicle industry and motorcycle industry also faced hardships and business failures. We hope the New Year brings improved conditions.

Changes to the Board this past year include the addition of Victoria R. Pearson, JD, LL.M., Dealer Member,

who was appointed on March 30, 2009, by Governor Schwarzenegger. Ms. Pearson is Chief Operating Officer and General Counsel for the Rusnak Group. We not only welcome Ms. Pearson to the Board, but have learned much from her and look forward to her continued contributions to Board operations as an experienced and knowledgeable dealer.

Alan Skobin, Dealer member for 12 years, left the Board on December 31, 2009. Alan is not only a respected friend, but has had enormous impact on our Board serving in just about every capacity from President, Vice President, Committee chairs and most importantly on ad hoc committees formed to address challenges confronting the Board's operations. I want to thank Alan for what he has taught me and all of our Board members and staff. Alan is my mentor, and from me and all of our Board and staff, we thank him and wish him well.

Upcoming events for 2010 include an Industry Roundtable held in conjunction with the California New Car Dealers Association legislative day scheduled in March. The purpose of the Roundtable is to further educate Board members and staff with industry concerns in an effort to better serve the California public.

I am most grateful to Governor Schwarzenegger for reappointing me this past year. It has been my personal goal to make every effort to be worthy of this privilege. I have enjoyed serving as President this past year and look forward to dedicated service throughout the duration of my appointment in serving this wonderful and important industry and the great state of California.

In closing, I thank each of our talented and hardworking staff members for their excellent performance. As a team, they have insured that the Board runs smoothly and efficiently. I also want to thank all the professionals appearing before our administrative process for their professionalism in representing their interests. This includes not only lawyers, but interested parties, manufacture organizations, the motor car, RV and motorcycle dealer associations, and members of the public expressing their views on topics of interest.

GENERAL BOARD MEETING DECEMBER 10, 2009

The New Motor Vehicle Board ("Board") held a General meeting on December 10, 2009, at the Board's offices. At that meeting, the members considered two case management matters as well as several administrative matters.

Timmons Volkswagen v. Volkswagen

The Public Members of the Board considered the Administrative Law Judge's Proposed Decision in *Walter Timmons Enterprises, Inc., dba Timmons Volkswagen v. Volkswagen Group of America, Inc.*, Protest No. PR-2146-09.

Respondent sought to relocate an existing Volkswagen franchisee (McKenna VW-Norwalk) from Norwalk to Cerritos. Protestant filed a timely protest and a merits hearing was held before Administrative Law Judge Diana Woodward Hagle. The Proposed Decision sustains the protest and does not permit Volkswagen to relocate the existing franchisee to Cerritos.

The public members deliberated in a closed Executive Session and adopted the Administrative Law

Judge's Proposed Decision by a two-to-one vote with Ryan Brooks opposed.

Prior to hearing comments by counsel for the parties, Mr. Flesh addressed the request for intervention filed on December 3, 2009, on behalf of McKenna Motor Co., Inc. (the proposed relocating dealer) by Aaron Jacoby, Esq., for the limited purpose of appearance at the Board's meeting for consideration of the Proposed Decision. It was noted that on December 7, 2009, Bill Brennan as the Executive Director issued an order pursuant to Section 551.13 of Title 13 of the California Code of Regulations denying the request for intervention. In keeping with the Board's recently adopted policy concerning public comment during consideration of Proposed Decisions, Orders, or Rulings conducted pursuant to the Administrative Procedure Act, Mr. Jacoby was permitted to present public comments after the Board's closed Executive Session. He urged the Board to reconsider the time when public comment should occur and to find a way to allow public comment on the record on case management matters.

Calabasas Euro Auto Group v. Automobili Lamborghini

The Public Members of the Board considered the Administrative Law Judge's Proposed Order Granting

See Board Meeting, page 3



State of California
Arnold Schwarzenegger
Governor

IN-SITE

California New Motor Vehicle Board
1507 21st Street, Suite 330 Sacramento, California 95811
(916) 445-1888
email: nmvb@nmvb.ca.gov

Department of Motor Vehicles
George Valverde, Director



*Business, Transportation
and Housing Agency*
Dale E. Bonner
Secretary

New Motor Vehicle Board

Officers

Robert T. (Tom) Flesh,
President
Ramon Alvarez C.,
Vice-President

Members

Ramon Alvarez C.
Ryan L. Brooks
Robert T. (Tom) Flesh
Peter Hoffman
David C. Lizárraga
Haig Papaian
Victoria R. Pearson
Glenn E. Stevens
David W. Wilson

Executive Director

William G Brennan
bbrennan@nmvb.ca.gov

General Counsel

Howard Weinberg
hweinberg@nmvb.ca.gov

Senior Staff Counsel

Robin P. Parker
rparker@nmvb.ca.gov

Board Meeting, cont'd from page 2

Respondent's Motion to Dismiss Protest in *Calabasas Euro Auto Group, LLC v. Automobili Lamborghini, S.p.A.*, Protest No. 2174-09.

Respondent filed a motion to dismiss, alleging the protest was not filed within the statutorily required time. The notice of termination was dated November 25, 2008, and the protest was filed on July 31, 2009. A telephonic hearing was held before Administrative Law Judge Anthony M. Skrocki. The Proposed Order grants Respondent's Motion to Dismiss and allows Lamborghini to terminate Protestant's franchise.

Protestant filed a "Notice of Challenge to Board Member/President Tom Flesh from Participating in Matters and/or Proceedings." During the meeting, Mr. Weinberg, as the Board's General Counsel, concluded that Mr. Flesh's participation was legally required for a quorum for this Board to go forward. Even though Mr. Flesh participated for purposes of a quorum, Mr. Stevens functioned as the presiding member.

The Public Members of the Board considered the Proposed Order, deliberated in closed Executive Session, and adopted the Proposed Order authorizing the dismissal of the protest by a two-to-zero vote with Mr. Flesh abstaining.

The issue of public comment at the Board meetings was discussed. Public Member Ryan Brooks indicated that the Board does not have to allow public comment on matters being adjudicated, but is a big advocate for public comment. The Ad Hoc Committee that reviewed this issue was trying to create a compromise wherein public comment would be allowed in cases after the Board considered the proposed decision, ruling, or order. This matter will be revisited by the Committee.

Administrative Matters

A number of staff reports were given on a variety of topics, including but not limited to the following:

Polly Riggenschach reported on manufacturer and distributor compliance with the Board's request that statutorily mandated schedules or formulas be filed with the Board. Ms. Riggenschach reported that of the 239 licensed manufactures, 89% had compliant filings with the Board or a total of 213. This is up considerably over the 13% compliance in 2007.

The Board's financial condition report for fiscal year 2008-2009 was discussed by Bill Brennan. He reported that the Board expended 85% of its appropriated budget

for the fiscal year, and 90% of its budgeted expenditures on payroll. With regards to general operating expenses, the Board spent 52% of its budgeted amount. Mr. Brennan indicated that the Board has not filled two clerical positions in an effort to reduce expenditures. For 2009-2010, Mr. Brennan reported that the Board expended 20% of its appropriated budget through the first quarter of fiscal year. Additionally, Mr. Brennan reported that the Board staff collected \$541,000 for manufacturer and distributor fees on vehicles sold in 2008, and that this is down substantially from the previous fiscal year.

A tentative date was set for the 7th Industry/Attorney Roundtable in Sacramento for March 24, 2010, the day after the California New Car Dealers Association Dealer Day event. The Roundtable is to be held at the Ziggurat Building in West Sacramento. A "Save the Date" card will be forthcoming.

Heather Collins, Chairperson for the 2009 California State Employees Charitable Campaign, reported that the Board raised a total of \$2,169 for the campaign this year and achieved 100% participation from the staff.

Ms. Parker reported that there were 107 notices of termination filed year-to-date. (See related article on page 5) This number is up considerably over prior years. There were 52 notices of termination in 2008 and 34 notices of termination in 2007. Additionally, 52 protests were filed this year compared to 42 in 2008. Thirty-one of these were terminations. In addition, nine RV protests were filed this year, which is an increase from previous years.

Messrs. Flesh, Alvarez, Brooks, and Stevens thanked Alan Skobin (see related article on page 4) for his years of service on the Board. Mr. Brennan also thanked Mr. Skobin for his service to the Board. A Resolution was presented to Mr. Skobin on behalf of the members.

FURLOUGH DAYS

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

BOARD MEMBER LEAVES



Alan J. Skobin, Dealer Member, served on the Board through three administrations. He was originally appointed to the Board by Governor Pete Wilson in 1994, was appointed again by Governor Gray Davis in March 2001, and reappointed by Governor Arnold Schwarzenegger in

2005. Mr. Skobin served two terms as Board President, and served on nearly every Board committee. He is Vice President and General Counsel, as well as a Director for Galpin Motors, Inc. and has been part of the Galpin organization since 1977.

Mr. Skobin was appointed to the LAPD Board of Police Commissioners by then Mayor James K. Hahn in July 2003, and was the only Police Commissioner reappointed by Mayor Antonio Villaraigosa in 2005. He previously served as Vice President of the Los Angeles City Board of Transportation Commissioners. He is a founding member of the board of directors of the Los Angeles County Sheriff's Youth Foundation and a Board Member of the Los Angeles Business Council.

He is also a Reserve Commander (promoted in 2003) with the Los Angeles County Sheriff's Department (LASD), and has been a reserve peace officer for 34 years. He began as a Reserve Police Officer with the San Fernando Police Department in 1973, later making a lateral transfer to the LASD in 1981. In 1995 he was transferred to the Task Force of Regional Auto Theft Prevention (TRAP) as an auto theft investigator. Mr. Skobin was promoted to Sergeant in 1995, Lieutenant in 1997 and served with TRAP in both those ranks. He received the LASD Distinguished Service Award in 2001 and the Meritorious Service Award from the California Reserve Peace Officers Association (CRPOA) in 2004. He was nominated for Reserve Officer of the Year by the Peace Officers Association of Los Angeles County in 2005.

Mr. Skobin earned a Bachelor of Arts Degree from California State University, Northridge, and a Juris Doctorate degree cum laude from the University of LaVerne Law School, San Fernando Valley campus. He is a member of the Los Angeles County Bar Association, where he has served on the Judicial Elections Evaluation Committee, the San Fernando Valley Bar Association, and the American Bar Association. Mr. Skobin is also a member of the American

Corporate Counsel Association. His term with the Board expired on January 15, 2009, and he served a one-year grace period.



Peter Hoffman

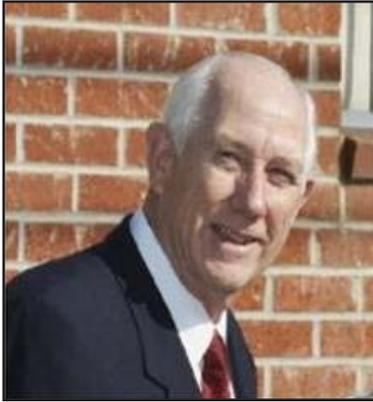
NEW BOARD MEMBER

Governor Schwarzenegger recently appointed a new dealer member. Peter Hoffman of Monrovia was appointed on December 28, 2009, to serve a 3 year term. He has served as president of Sierra Autocars since 1996, and vice president from 1988 to 1995. Mr. Hoffman was an intern attorney, and then partner for Nossaman, Guthner, Knox and Elliott from 1980 to 1988. He was a legal intern for the Solar Energy Research Institute in 1979 and a member of the technical staff for Hughes Aircraft Company from 1976 to 1978. Mr. Hoffman graduated from University of Notre Dame with a BS in Aerospace Engineering; UCLA with an MS in Quantum Electronics; and UCLA with his Juris Doctorate. He is a member of the California New Car Dealer Association and Greater Los Angeles New Car Dealer Association. Mr. Hoffman is a Democrat.

REVENUE

NEW MOTOR VEHICLE DEALER	
Licensing Fee:	\$ 219,575.00.00
NEW MOTOR VEHICLE BOARD	
Manufacturer/Distributor Annual fee:	541,049.36
NEW MOTOR VEHICLE BOARD	
Filing fees:	8,000.00
Document Requests:	1,777.74
Arbitration Cert. Program Reimbursement:	4,481.57
As of December 31, 2010	\$774,883.67

PASSING OF BMW EXECUTIVE



Jim Ryan

Jim Ryan, well known BMWNA executive, passed away on January 17, 2009. He retired from the company in December 2002 after 30+ years of service, and had an extensive and distinguished BMW career including roles as National Technical Manager, Regional Manager, Senior Vice President, and Regional Vice president in both the East and West.

He was a passionate BMW enthusiast, building strong and lasting relationships with dealers. Most recently, Jim served as the highly visible BMW Group spokesman and marketing liaison for the BMW Hydrogen project and was still actively involved with promoting the BMW electric vehicle project at the time of his passing.

Jim is survived by his wife Toni and his 4 children as well as several grandchildren. A donation in his memory can be made to either of the two organizations below that he was passionate about.

St. Francis Medical Center
 Foundation Footprints Program
 3630 East Imperial Highway
 Lynwood, CA 90262
www.stfrancismedicalcenter.org/foundation

CHP-11-99 Foundation
 2244 North Gate College Blvd
 Fullerton, CA 92831
<http://www.chp11-99.org>

3062 RELOCATION PROTESTS SUSTAINED

Since 1975, there have only been two Vehicle Code section 3062 relocation protests sustained by the Board. In *Southland Cycle Center, Inc. v. U.S. Suzuki Motor Corporation*, Protest No. PR-239-79, Suzuki sought to relocate House of Suzuki from Fountain Valley to Westminster. The proposed relocation would have placed these dealers approximately 2.5 miles apart with a 5-7 minute drive. The Board sustained the protest at its September 25, 1979, meeting.

Thirty years later in *Walter Timmons Enterprises, Inc., dba Timmons Volkswagen v. Volkswagen Group of America, Inc.*, Protest No. PR-2146-09 (see related article in December 10, 2009 General Meeting on page 3), Volkswagen sought to relocate McKenna Volkswagen, a Volkswagen dealership currently located in Norwalk, California, to the Cerritos Auto Square. Timmons Volkswagen and McKenna VW-Norwalk are located 7.5 miles apart, and the proposed relocation would have them 4.6 miles apart. After a nine (9) day hearing with approximately 10 witnesses and close to 100 exhibits, Judge Diana Woodward Hagle issued a Proposed Decision sustaining the protest. Protestant Timmons Volkswagen established its burden of proof under Vehicle Code section 3066(b) that there is good cause not to relocate McKenna Volkswagen-Norwalk to the Cerritos Auto Square. At its December 10, 2009, General Meeting, the Public Members of the Board adopted the Proposed Decision by a two-to-one vote with Ryan Brooks opposed.

In 2009, there were 110 notices of termination received from 26 manufacturers/ distributors. Of these, 42 were 15-day notices of termination and 68 were 60-day notices of termination, as indicated below:

PRODUCT	15-DAY NOTICE	60-DAY NOTICE
Cars	21	18
Heavy-Duty Trucks	0	1
Motorcycles, ATV, Scooters, Off-Road Utility	16	48
Recreational Vehicles	2	1
Trailers	3	0
Total	42	68

2009 ANNUAL L.A. AUTO SHOW

The 2009 Annual L.A. Auto Show was held at the Los Angeles Convention Center December 4-13, 2009. The international show exhibits over 1,000 of the 2010 makes and models of import and domestic cars, including several World and North American debuts, as well as alternative fuel/electric vehicles and race cars.

Executive Director Bill Brennan and Board Member Glenn Stevens attended the show.

GALPIN MOTORS NUMBER "1"

Bert Boeckmann, owner of Galpin Ford placed first for the 20th consecutive year in the highest number of Ford vehicles sold. He was in the running with Bill Brown Ford in Livonia, Michigan and Woodhouse Ford in Blair, Nebraska. The last day of the official sales year was January 4, 2010. The 2009 race was very close, but at 11:45 EST, Galpin came in with 4,370 cars over Brown's 4,358 and Woodhouse with 4,099. Galpin's success can be attributed to his strategies, such as oil and filter changes for 5 years, 0% financing on almost every new Ford, and in-car portable DVD players.

NMVB HOLIDAY SPIRIT

Board staff showed their holiday spirit by donating canned food and other non-perishable food items to the Department of Motor Vehicles' 2009 annual food drive. The staff provided several items of food and money donations for bags of rice. All donations were distributed through FoodLink, a network of food closets, emergency shelters, soup kitchens and senior sites in the greater Sacramento area. For more information, please contact:

FOODLINK
936 Exchange Street
Rochester, NY 14608
Phone (585) 328-3380
Fax (585) 328-9951
Email info@foodlinkny.org

eDISCOVERY WEBINARS

In its ongoing effort to provide the Administrative Law Judges ("ALJs") as members of the New Motor Vehicle Board bench with instructive and useful training, the Board has made available a webcast series co-sponsored by the Corporate Counsel Technology Institute at Widener University School of Law. The series is designed to provide the ALJs with recognition of the challenges courts face with eDiscovery. All types of civil or criminal litigation can be affected by the enormous amounts of email and other electronic data that are created each day. The courses offer a 360 degree perspective of the eDiscovery process, including as appropriate to each webcast, a panel of state judges, plaintiff and defense attorneys, corporate counsel, technology experts and law professors leading the discussions. The ultimate objective is to allow our ALJs to define common eDiscovery terms; identify state and federal rule changes and case law; and be aware of eDiscovery's impact on the judicial process.

*You can reach the
Mediation Services Staff*



Call (916) 445-1888

*Email us at
nmvbmediation@nmvb.ca.gov*

*Submit a Mediation Request form
at www.nmvb.ca.gov*

UPCOMING BOARD MEETINGS

***SPECIAL MEETING**
March 9, 2010
Southern California

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

***GENERAL MEETING**
March 23, 2010
Sacramento



***GENERAL MEETING**
June 3, 2010
San Francisco

***SPECIAL MEETING**
March 24, 2010
Sacramento

*All meeting dates are subject to change



CNCDA 2010 DEALER DAY

California New Car Dealers Association (“CNCDA”) Dealer Day Legislative Conference will be held on March 23, 2010 in Sacramento. Mark your calendars for this important event. Attend a variety of events, including Dealer Day, Annual Meeting of the Members, and informative seminars to learn about the current state of affairs in the industry and see dealers and dealership personnel outside the confines of the office. Contact the California New Car Dealers Association at (916) 441-2599 for more information.

SAVE THE DATE!!

New Motor Vehicle Board ATTORNEY/INDUSTRY ROUNDTABLE

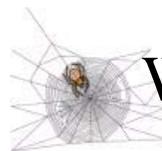
Thursday, March 24, 10:00 a.m.

Ziggurat Building

707 3rd Street, West Sacramento, CA 95605

For additional information

Contact Robin Parker at (916) 323-1536 or email
rparker@nmvb.ca.gov



Why not visit us
on the web...

...at www.nmvb.ca.gov

NEW MOTOR VEHICLE BOARD
1507 21st Street, Suite 330
Sacramento, California 95811

