



*New Motor Vehicle Board*

# *In-Site*

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4.11 Edition

## **SEPTEMBER 27, 2011 GENERAL BOARD MEETING**

The New Motor Vehicle Board (“Board”) held a General meeting on September 27, 2011, in Los Angeles, California. At that meeting, the members considered several case management matters as well as several administrative matters.

■ Shayco, Inc., dba Ontario Volkswagen v. Volkswagen of America, Inc.  
Protest No. PR-2265-10

Volkswagen sought to establish a new Volkswagen franchise in Montclair, California. Protestant is the only Volkswagen franchise located within the relevant market area of the proposed new dealer; they are approximately 8.65 to 8.7 air miles apart. Ontario Volkswagen filed a protest of the establishment. A merits hearing was held before Administrative Law Judge Marybelle D. Archibald.

The Proposed Decision overruling the protest was initially considered by the Board at its May 26, 2011, General Meeting. The Public Members remanded the matter by a three-to-one vote to Administrative Law Judge Archibald to either take additional evidence or briefing on the good cause factor at Vehicle Code section 3063(b), which is the effect on the retail motor vehicle business and the consuming public in the relevant market area (“RMA”); specifically, the 19.4% of sales that Ontario Volkswagen is making in the Montclair RMA. At the September 27, 2011, General Meeting, the Public Members of the Board rejected the Administrative Law Judge’s Proposed Decision Following Remand with regards to the good cause factor in Vehicle Code section 3063(b). The protest was sustained and the Board in consultation with the staff will draft its own decision

which will be considered at the December 7, 2011, General Meeting.

■ Santa Monica Group, Inc. v. General Motors LLC  
Protest Nos. PR-2263-10 and PR-2264-10

This special proceeding, denominated “Cross Motions by Protestant and Respondent” culminates a complicated history of litigation between the parties arising out of the bankruptcy of General Motors in 2009. Vehicle Code section 3050.7(a) provides that the Board may adopt stipulated decisions and orders without a hearing pursuant to Section 3066, to resolve one or more issues raised by a protest filed with the Board. On September 15, 2010, pursuant to section 3050.7(a), the Board issued an “Order Adopting [Proposed] Confidential Stipulated Decision and Order of the Board Resolving Protests” in *Santa Monica Group, Inc. v. General Motors, LLC* (Protest Nos. PR-2203-10, PR-2262-10, PR-2263-10 and PR-2264-10). The settlement agreement negotiated by the parties was confidential and resulted in the resolution of the four protests. Subsequently, a dispute arose between the parties concerning compliance with the terms of the parties’ confidential settlement agreement. The dispute concerned two of the four protests and pertained to the termination of Protestant’s Buick and Chevrolet franchises.

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**The release date for the mobile  
website is November 1, 2011  
[www.nmvp.ca.gov/mobile/](http://www.nmvp.ca.gov/mobile/)  
and can be browsed by any  
smartphone or tablet device**

# 2011 CSECC KICKOFF AND RESULTS

The California State Employees Charitable Campaign (CSECC) was established in 1957 to provide a single charitable fund-raising drive in the State community. This is the 54th year of CSECC, with California State employees given the opportunity to support charitable organizations they feel passionate about.

The “kickoff” for the 2011 CSECC officially began on August 24, 2011. For Board staff, however, fundraisers started at the end of 2010 and have continued throughout the year. The on-going honor bar (since 2007) stocked with candy, chips and other snacks, is still popular and profitable. Considering the small number of staff, the Board has been very successful over the years and has always reached 100% participation.

The Sacramento Food Bank and Family Services is again receiving a large share of the office employees’ collective and individual contributions, and are able to stretch a \$2.00 donation into \$11.00! In total, we collected \$3,053.00 this year which exceeds last year by \$584.00.

**YOU MAY ACCESS AND SEARCH  
FINAL DECISIONS ON THE BOARD’S  
WEBSITE, AS WELL AS FIND THE  
GUIDE TO THE NEW MOTOR  
VEHICLE BOARD AND THE  
MANUFACTURER GUIDE**

[WWW.NMVB.CA.GOV](http://WWW.NMVB.CA.GOV)



*State of California*  
Edmund G. Brown Jr.  
Governor

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*Department of Motor Vehicles*  
George Valverde, Director



Photo  
unavailable  
at this time

Traci Stevens  
Acting Secretary  
*Business, Transportation  
and Housing Agency*

## *New Motor Vehicle Board*

### Members

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

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President
- Glenn E. Stevens,  
Vice-President

### Executive Director

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### Senior Staff Counsel

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An evidentiary hearing on the cross-motions was heard before Administrative Law Judge Diana Woodward Hagle. The "Proposed Decision Re: Cross Motions by Protestant and Respondent" held that since Santa Monica Group violated the Board's "Order Adopting [Proposed] Confidential Stipulated Decision and Order of the Board", its Buick and Chevrolet franchises are voluntarily terminated.

At the September 27 meeting, the Public Members adopted the Administrative Law Judge's "Proposed Decision Re: Cross Motions by Protestant and Respondent". The motion carried by a four-to-one vote with one Board member opposed.

■ Leehan Inc. Hanlees Hilltop Nissan v. Nissan North America, Inc.

Protest No. PR-2307-11

Hanlees filed a Vehicle Code section 3065.1 protest contending the charge backs from a franchisor incentive program audit were untimely. Respondent filed a motion to dismiss the protest as untimely. A telephonic hearing was held before Administrative Law Judge Jerold A. Prod. The Proposed Order dismissed the protest.

At the May 26, 2011, General Meeting, the Public Members by unanimous vote adopted a Proposed Order which dismissed *Hanlees Hilltop Nissan v. Nissan North America, Inc.*, Protest No. PR-2291-11. The first Hanlees protest challenged the audit findings. The instant protest challenged the timing of the \$64,350 chargeback. The Public Members unanimously adopted the Proposed Order granting Respondent's motion to dismiss.

■ California New Car Dealers Association v. Chrysler Group, a limited liability company

Petition No. P-458-11

Prior to accepting comments of counsel and members of the public, Board President, Mr. Alvarez C., read the following statement:

"Given this is now an adjudicatory matter before the Department of Motor Vehicles which will ultimately be heard by the Office of Administrative Hearings, the Board's role at the meeting is limited to reviewing the Accusation and taking public comment, if any. The Board could ultimately end up reviewing this matter after the DMV makes its final decision on the Accusation, if Chrysler Group, LLC files an Appeal of that decision with the Board."

On September 14, 2011, the DMV filed an Accusation against: Chrysler LLC (Old Chrysler), Chrysler

Group LLC (New Chrysler), La Brea Avenue Motors, Inc., dba Motor Village LA, and Alhambra Chrysler Jeep Dodge, Inc., dba Alhambra Chrysler Jeep Dodge (Alhambra Chrysler). The Accusation alleged a number of Vehicle Code violations for illegal competition (Veh. Code § 11713.3(o), notice violations (Veh. Code §§ 11713.3(o)(3)(A), 11713.3(o)(3)(B), and 11704(c)), and making false statements to DMV (Veh. Code § 20).

Oral comments were presented before the Board. Peter K. Welch, Esq. represented Petitioner. Gwen J. Young, Esq., and Mark T. Cloutre, Esq. of Wheeler Trigg O'Donnell LLP represented Respondent.

Public comment was presented by David Ellis of Glendale Dodge and James Buerge, a Ford Mercury Chrysler/Jeep dealer.

No action was taken by the Board in light of the Accusation filed by the DMV.

**Administrative Matters**

■ Written comments from Joey Shields, President of the California Recreation Vehicle Dealers Association and oral comments from Peter Welch, President of the California New Car Dealers Association were presented in support of the proposed rulemaking reinstating the annual Board fee to \$300 per year for new motor vehicle dealers and to \$.45 per vehicle for new motor vehicle manufacturers and distributors, with a minimum of \$300.

■ The Board authorized Bill Brennan to attend the National Association of Motor Vehicle Boards and Commissions Fall Workshop in Reno, Nevada.

■ The *Guide to the New Motor Vehicle Board* was substantively revised and approved by the members.

■ Bill Brennan reported that the Department of Consumer Affairs Arbitration Certification Programs' Annual Fee has been collected on their behalf. Invoices were sent to 47 manufacturers and distributors on April 5, 2011. The

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The Holidays are right around the corner!

Here are a few helpful links for safety:

[www.holidaysafety.org/](http://www.holidaysafety.org/)

[www.usfa.fema.gov/citizens/home\\_fire.../holiday](http://www.usfa.fema.gov/citizens/home_fire.../holiday)

[www.nachi.org/holidaysafety](http://www.nachi.org/holidaysafety)

[www.cdc.gov/family/holiday](http://www.cdc.gov/family/holiday)

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collection was completed on June 20, 2011, with a total of \$1,058,538 collected.

■ The Board is working on topics for its next Industry Roundtable on March 21, 2012, in Sacramento. This matter will be discussed again at the December 7 meeting.

■ The Board adopted Parliamentary Procedures concerning debate and voting were amended to more accurately reflect the Board's practice as follows:

In any order of business before the Board which requires Board action or resolution, the Board shall have the opportunity to debate the matter before taking action thereon. Debate is any spoken comment on the merits of a pending matter, whether or not a motion has been made regarding the issues raised by the agenda item. At any time during the debate on an item, any Board Member may make a motion regarding the matter. If a motion is made regarding a particular item, the President or presiding officer shall ask for a second. If there is no second, the motion dies and the Board may continue its debate. If there is a second, the President or presiding officer shall ask if there is any further discussion. If there is no further discussion, then the matter shall be voted upon. If a dispute arises as to whether debate shall continue, the issue shall be resolved by majority vote, unless there is a motion "to order the previous question," in which case an immediate vote must be taken requiring a two-thirds majority.

■ The members were informed that the Governor signed Senate Bill 642 and Assembly 1215. Assembly Bill 1215 increases the dealer document preparation charge for both sales and leases; requires new car dealers to electronically register all new and used vehicles and charge a separate fee for the service; and, requires dealers to check the federal National Motor Vehicle Title Information System database to determine if a vehicle has a branded title. Senate Bill 642 updates dealer franchise laws to prohibit the waiver of dealer protest rights, reduces unfair competition against dealers by factory-owned stores, and prohibits auto manufacturers and distributors from discriminating against dealers that sell non-factory service contracts and GAP agreements.

■ Lastly, to fill in behind Administrative Law Judges ("ALJs") Archibald and Waits who recently resigned, the Board hired three ALJs: Lonnie Carlson, Kymberly M. Pipkin and Victor D. Ryerson. Upon completion of their training, these ALJs will be added to the Board's assignment

logs for settlement conferences and merits hearings. (see page 6 for the ALJ bios)



## MEDIATION SPOTLIGHT

The Board received a mediation request form on March 14, 2011 from a consumer who was having an issue with multiple repairs on her 2008 Can Am Spyder motorcycle. Repairs were made for loud brakes squeaking, back firing, shifting failure, and repeated slippage of the drive belt. There was also excessive side exhaust temperature that was causing burns to the rider's leg. The case was assigned to Mediator, Kathy Tomono and an email letter of inquiry was sent to CAN AM BRP ("BRP").

On April 4, 2011, an interim report was received from BRP stating they would send more information in a few weeks. On May 9, 2011, BRP responded that the vehicle had been repaired, had new brakes, and wanted to offer the consumer a credit toward a next purchase at a dealer of their choice. This offer was good for 12 months. The consumer was not willing to accept this offer on the grounds that a new Spyder would cost \$17,000 plus tax and license and hers had a trade in value of \$9,200 plus two pages of repairs with only 8,800 miles on the vehicle. It appeared to the consumer that she was expected to spend thousands just to purchase another Spyder and felt this was not consistent with exceptional customer service, nor was it fair. The consumer submitted a rebuttal to either replace the

(See Medation on page 5)

Spyder with a new one or start the warranty over with three full years just as if it was a new vehicle, and include a dollar amount for the extreme down times since the purchase of the vehicle

On May 23, 2011, BRP stated they were working on a second interim internal report. Between the dates of June 23 and July 7, 2011, the consumer and BRP, through mediation, went back and forth on a revised offer. It was decided that the consumer would receive \$2200 credit toward a new 2010 Spyder RS SE5 with the same configurations as her current Spyder, the standard 24 month BRP limited warranty, the B.E.S.T. (BRP Extended Service Terms) contract would be in force after the limited warranty expired, all of their existing accessories would be transferred to the new Spyder at no charge, and saddle bags and color kit would be provided by BRP at no charge to the consumer as a courtesy and good faith solution. The consumer agreed to this offer and was very pleased to take delivery of the new Spyder on August 19.



## NAMVBC 2011 FALL WORKSHOP

The National Association of Motor Vehicle Boards and Commissions ("NAMVBC") held its Fall Workshop in Reno, Nevada October 12-15, 2011. A packed agenda of information and ideas of common interest to motor vehicle regulators and various industry associations was presented over the three days of the event, with several keynote speakers discussing industry issues.

Highlights included a presentation by distinguished Administrator, David Strickland of the National Highway Traffic Safety Administration. He spoke on *Safety, Technology, and Consumer Choice in the American Market*. Other topics of interest discussed were:

*Organized Crime and Money Laundering* by Michael Rothe, Director of Legal Services and Carey Smith, Director of Investigations with the Ontario Motor Vehicle Industry Council.;

*Recently Passed and/or Proposed legislation dealing with Manufacturer Issues* with Steve Kelso of Wheeler Trigg O'Donnell LLP (manufacturer perspective), and Rich Sox of Bass Sox Mercer (dealer perspective);

*Facilities Requirements and Upgrades: Benefits, Burdens, Tensions, Tests - Panel discussion of respective concerns by manufacturers, dealers, and financial institutions in today's market* with Ken Murphy of Arent Fox LLP, Dave Braun of Comerica Bank, John Sande of Northern Nevada New Car Dealer Association, and Colm Moran of Hogan Lovells US LLP;

*Internet Advertising, "Forward Trends with Dealer Presence on the Internet: Third Party Web Portals vs. Regulatory Hurdles"* with Aaron Jacoby of Arent Fox LLP;

*A Presentation on new software to identify curbstoners* was presented by Allen Atamer of LTAS Technologies; and

*Electronic titling* with Mary Garcia, Branch Chief of Occupational Licensing with the California Department of Motor Vehicles, Berta Phelps, Vice President of Best Practices with Manheim and Tom Fullington, Director of eBusiness/Commerce, Arizona Automobile Dealers Association.

*Recreational Vehicle Industry Specific Legislation* with Roy Dockum, Oklahoma Motor Vehicle Commission.

The workshop concluded with the NAMVBC business meeting at which time the new officers for 2012 were elected: Greg Kirkpatrick, President; Ian Christman, Vice president; Molly Cost, Secretary; and William Brennan, Treasurer.

Discussion of the location for the 2012 Fall Meeting presented a tentative location of Washington, DC. If you would like to know more about the NAMVBC please visit their website at [www.namvbc.org](http://www.namvbc.org), or contact Bill Brennan at (916) 324-6197.

## SCHOLARSHIPS TO CALIFORNIA STUDENTS

The California New Car Dealers Scholarship Foundation announced on August 17, 2011, that 103 California students enrolled in post-secondary automotive technology or automotive management programs have been awarded a total of \$41,475 in scholarships for the 2011-2012 school year.

\$413,000 in scholarships has been awarded since 1995. More than 62 scholarships have been awarded to students pursuing Auto Management degrees. In 2006 the Foundation expanded its scholarship program to include an auto technician scholarship, and in just four years, 300 scholarships worth over \$204,000 were awarded to students in Auto Technology programs. There are over 70 post-secondary schools with automotive technology programs in California.

## MEET THE NEW ADMINISTRATIVE LAW JUDGES

### KYMBERLY PIPKIN

KyMBERly Pipkin retired in June 2008 after 30 years of state service; the last 11 as an Administrative Law Judge II with the State Personnel Board. Prior to that, she served as Senior Staff Counsel with the Department of Housing and Community Development handling license disciplinary cases, the Employment Development Department, and the Agricultural Labor Relations Board. She graduated from UC Davis Law School in 1977, and UC Berkeley in 1974, where she majored in psychology.

Kym and her husband, Jerry, live in Lake Tahoe, where she enjoys reading, cross-country skiing, bridge, and hosting friends and family, especially her 7 grandkids. She recently took a pine needle basket weaving class in hopes of finding some use for the hundreds of pounds of pine needles her trees shed each year. Kym serves as a board member on the Talmont Resort Improvement Board, a small water district serving her neighborhood.

### VICTOR RYERSON

Victor D. Ryerson served as an Administrative Law Judge with the California Public Utilities Commission for more than 20 years, including two years on loan to the Office of Administrative Hearings as a long-term judge pro tem, before retiring in May 2011.

Before he entered law school, Victor worked in management positions for two railroads. He joined Amtrak's Washington, D.C., legal staff in 1977, serving as Assistant General Counsel until 1982. He then returned to California and entered private practice, but shortly thereafter returned to the railroad business as Vice President and General Counsel of Kyle Railways, Inc., the country's preeminent short line railroad company at the time. He returned to private practice in 1987, representing a number of railroad clients, including Southern Pacific and the fledgling Napa Valley Wine Train, until he joined the California Public Utilities Commission as an ALJ in 1990.

Victor received his bachelor's and master's degrees from the University of California at Berkeley, and his law degree from the University of California at Davis. He is an active member of the California State Bar, and an inactive member of the District of Columbia Bar. He lives in Orinda with his wife of 42 years, Margie.

### LONNIE CARLSON

Lonnie Carlson's State service career of 34 years was with the California Department of Social Services where he was an Administrative Law Judge and was appointed to a variety of administrative positions. As an Administrative Law Judge, he conducted well over 5,000 hearings during his career.

He is married to Carolyn, his wife of 43 years and has two grown children; a daughter, Robyn and a son, Michael. He has five grandchildren; two grandsons with his daughter and two grandsons and one granddaughter with his son. They range in age from three years of age to eighteen years of age.

He enjoys running, when his knees will allow it, and walking regularly with an occasional foray into golf. He and his wife love to travel and are regulars at the Shakespeare Festival in Ashland, Oregon.

## A LITTLE CAR TRIVIA

Hagerty Insurance, who specializes in insurance for antique and vintage autos and classic and wooden boats, recently posted their vote for the 10 worst car names.

**1. Mohs Ostentatienne Opera Sedan:** The MOOS (as it could have been called) could only be entered from a rear hatch, leaving the side doors as mainly a conversation piece.

**2. Zimmer Quicksilver:** Although quicksilver is an antiquated word for mercury, we think it's actually not a bad name for a car. It definitely sounds fast, and shiny. Of course, saying "I just bought a silver Zimmer Quicksilver" doesn't really roll off the tongue.

**3. Studebaker Dictator:** Fortunately for Studebaker, the Dictator was produced in the 1920s and '30s, before the word had such a negative connotation.

**4. Geely Beauty Leopard:** Because of a fuzzy translation—and the words "beauty" and "leopard" just not meshing well—the compact Geely's name is slightly more impressive than the car. Other choices were the Geely Happy Fun Time and the Geely Amazing Fast Car.

**5. Mitsubishi MAUS (Mini Active Urban Sandal):** Introduced at the Tokyo motor show in 1995, the MAUS really wasn't heard from after that.

**6. Isuzu Mysterious Utility Wizard:** This is the actual name of an SUV that debuted in Japan in 1991. At least if it was the Mysterious Utility Vehicle, it could have been a MUV, which would have been a little funny.

**7. Honda That's:** Honda's rationale for the name was that it wanted people to see the car and exclaim, "That's it!" It was probably more like, "That's um . . . what?" The That's was, until 2007, a 0.65-liter Kei car shaped like the Nissan Cube.

**8. Mitsubishi Delica Space Gear:** This is not a piece of steel to fix your broken rocket ship; it's just another in a long line of names like Starion, Cordia and Tredia.

**9. Datsun Fairlady:** We really don't mind the name Fairlady. The 50 years of performance have blinded us to the absurdity of the fact than Nissan actually named the car after the musical *My Fair Lady*.

**10. Mazda Bongo Friendee:** The Bongo Friendee was a minivan you could stuff full of . . . Friendees.

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