



New Motor Vehicle Board

In-Site

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10TH INDUSTRY ROUNDTABLE

The Board hosted an Industry Roundtable on Wednesday, March 14, 2013, at the Department of Motor Vehicles' Headquarters in Sacramento. 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. Many topics of interest were presented.

The event opened with welcoming remarks from Jean Shiomoto, Acting Director of the Department of Motor Vehicles.

The first topic was the Department of Motor Vehicles Business Partner Automation and Electronic Liens and Titles (ELT). Andrew Conway, Chief of Registration Policy and Automation Branch gave a presentation addressing DMV's electronic titling changes. California was the first state to implement ELT, starting a pilot program with GMAC in 1989, which became an official program in 1999. Today, there are more than 1265 ELT lienholders with another 100 to be added in April and 600-700 likely to be added in June. He discussed the DMV Business Partner Program. All licensed new car dealers must enroll in the DMV Business Partner program.

Wade Crowfoot from the Office of Planning & Research, State of California, provided a presentation on California Zero Emission Vehicle (ZEV) Strategic Plan for 2013. He discussed the current sales of electric vehicles, from under a thousand in December 2010 and increasing to over 7,000 in November 2012 in monthly U.S. sales. He explained the purpose of the 2013 ZEV Action Plan by the Governor and the four major goals in the Action Plan, which are: Goal 1 – Complete Needed Infrastructure and Planning; Goal 2 – Expand Consumer Awareness and Demand; Goal 3 – Transform Fleets; and, Goal 4 – Grow Jobs and Investments in the Sector. He also touched on key 2013 priorities to reauthorize AB 118 beyond 2015; ensure funding for 68 hydrogen fueling stations by end of 2015; maintain

HOV lane access for plug-ins; oversee effective implementation of NRG settlement; and, ensure affordable electricity rates for electric vehicle charging.

Pat Watson, Vice President of Industry Relations with TRUECar spoke on the Education of New Vehicle Purchasers through the Internet. He explained that in the past, TRUECar was not well received by the industry. After listening to the concerns of dealers, dealer associations, manufacturers and industry leaders, many of their business practices were modified and significantly improved their standing.

A significant portion of the day was dedicated to the subject of Autonomous Vehicles (AV). A presentation was given by Christopher Nowakowski, Human Factors Research and Development Engineer, California PATH, University of California, Berkeley on International Scan of Progress in Cooperative Vehicle-Highway Automation. The presentation included several video clips of autonomous vehicles in multiple driving scenarios, such as an 8-car platoon, a guided snow plow and automated low-speed snowblower, a 3 bus platoon and automated bus docking, and Nevada highway testing. California Department of Motor Vehicles is partnering with PATH on AV regulation development. The presentation concluded with discussion on common unresolved issues and the future.

Aaron Jacoby with Arent Fox and Ron Medford from Google, spoke on legislative and regulatory actions regarding Autonomous Vehicles (AV). Mr. Jacoby provided a list of the states that are considering or have considered bills related to automated driving, and spoke on Senate Bill No. 1298, (Padilla) that addresses AV safety and performance requirements, and Assembly Bill No. 500 (State of Nevada)

See Roundtable, page 3

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JANUARY 22, 2013 GENERAL MEETING

The New Motor Vehicle Board ("Board") held a General meeting on January 22, 2013, in Los Angeles. At that meeting, the members were given a status report on one case management matter, as well as addressing several administrative matters.

Roadtrek Motorhomes, Inc.

Protest Nos. PR-2199-10 and PR-2201-10

David Harris, Chief Counsel for DMV, provided a letter to the members which indicated that "DMV continues to investigate the matter and will report the status and results of the investigation to the Board as appropriate." A status report will continue to be provided to the Board at each meeting until DMV submits its report.

A motion was made to present a resolution to George Valverde, former director of the Department of Motor Vehicles, at the March meeting in Sacramento. A motion was also made to present Peter Welch, former President of the California New Car Dealers Association with a resolution. The motions passed unanimously.

In the annual update on the Board Consumer Mediation Program, Mr. Brennan reported that not as many phone calls or cases were received compared to prior years but the program continues to be a good consumer service. He indicated that in mediated cases involving a consumer and dealer there was an 81% success rate with a 67% success rate for consumer and manufacturer cases.

A report was given on the development and use of the Board's website. It was reported that a few changes and additions were made since previously reported in

December 2011. included the Overview of Consumer Mediation which now includes a translated version entirely in Spanish; a check box was added to the Mediation Request Form "Where did you hear about us?"; The Mediation link was added to the rotating banner on DMV's website; and, the Industry Roundtable information is available on the site. Also reported was that the website was compromised in September by an unknown source. DMV has now added extra security to the site.

The members were updated on manufacturer and distributor compliance with the Board's request that statutorily mandated schedules or formulas be filed with the Board. These entities are now 100% compliant.

The revised Guide to the New Motor Vehicle Board was unanimously adopted by the Board members.

Discussion concerning whether it is necessary for the Board to increase the annual Board fee paid by dealers and manufacturers/distributors was heard. Mr. Brennan indicated that the Board's reserve is being depleted quicker than expected due to the downturn in the industry starting in 2008. Given the length of the regulatory cycle, he indicated it is necessary for the Board to be proactive and take action now. He presented a number of projections and fee scenarios. The staff recommended a unit fee of \$0.62, with a tiered charge for manufacturers/distributors and a \$400 fee for dealers. After a lengthy discussion from the members suggesting alternative revenue sources, this matter was postponed to the March 13 meeting.

The Board used about \$473,000 of its reserve balance to cover costs for fiscal year 2011-12. This is

See January Meeting, page 4



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Edmund G. Brown Jr.
Governor

Officers

Bismarck Obando,
President
Peter Hoffman,
Vice-President

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New Motor Vehicle Board Members

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Ryan L. Brooks
Robert T. (Tom) Flesh
Peter Hoffman
David C. Lizárraga
Bismarck Obando
Victoria R. Pearson
Glenn E. Stevens
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Roundtable, cont'd from page 1

which addresses regulations to allow certified low emission and energy-efficient vehicles to be operated in a lane on a highway under its jurisdiction designated for the preferential use or exclusive use of high-occupancy vehicles. Ron Medford gave information on statistics why a self-driving car could reduce all crashes, especially injury crashes due to driver behavior/error, such as distractions, drowsiness, and not wearing seat belts. He also explained the how the results of traffic congestion of non AV vehicles can cause gallons of fuel and labor hours to be lost by the public. He also pointed out the potential advantage to disabled citizens, both working and non-working. Mr. Medford concluded his topic by stating that there are several obstacles still to be addressed, but believes this will all be worked out in time.

Denise Burroughs, Assistant Branch Chief/Program Manager, Department of Motor Vehicles provided a presentation on AV Regulations Development. She discussed key provisions of SB 1298 and the definitions of autonomous technology – technology that can drive a vehicle without active physical control or monitoring by a human operator; autonomous vehicle – any vehicle equipped with technology that is capable of fully driving the vehicle; operator – a person who causes the technology to engage; and, manufacturer – a person that originally manufactures a vehicle and equips it with the technology, or a person that modifies a vehicle for the technology for conversion after the vehicle was originally manufactured. She also discussed manufacturer testing requirements in that a manufacturer must provide evidence to DMV of having obtained insurance, surety bond, or proof of self insurance in the amount of \$5million; the vehicle is operated on road solely by employees, contractors, or persons designated by the manufacturer; and, the driver must be seated in the driver's seat and be capable of taking over immediate manual control. The autonomous vehicle is prohibited to be operated on public roads by the public until the manufacturer submits to DMV the application certifying it meets all testing requirements and safety standards, and DMV approves the application. Regulations setting forth the submission of evidence of these requirements shall be done no later than January 1, 2015.

Ryan Mauck, attorney with Jeffer Mangels Butler & Mitchell LLP, discussed Vehicle Connectivity and New Technologies – Liability and Other Legal Issues. He explained some of the “promises and perils” for drivers with their technology connected vehicles and that some can lead to distracted driving. Also, he discussed the questions of

who is responsible for distracted driving, and whether the data in the vehicle is private and secure. Mr. Mauck stated that a recent study concluded that 58% of consumers demand new connectivity technologies in their vehicles. In the age group 18-35 the demand is much higher at 67%. He discussed safety and reliability in using technology and expounded on the perils of distracted driving. Mr. Mauck also had 3 true stories in the presentation relating to actual court cases that were dismissed involving a driver using a cell phone, one text messaging, and the third using a navigation system. The conclusion for each was basically, “where does the manufacturer's responsibility end and the driver responsibility begin?” He wrapped up his presentation with a discussion of privacy, and “what does your car really know?” There are contacts from SmartPhones, there are voice memos, music, playlists, GPS location data, Black Box law (VC 9951) which allows recording of driving information in accident situations, and more pending privacy laws to come.

Ken Murphy (Arent Fox), Rob Cohen (Auto Advisory Services, Inc.), Duane Geck (Severson & Werson, P.C.) gave a presentation on Dealer Participation and Fair Lending Practices. They discussed the Dodd-Frank Wall Street Reform and Consumer Protection Act that was signed into law on July 21, 2010. The act created the Consumer Finance Protection Bureau (CFPB), with vehicle dealers securing an exemption. Section 1029(a) of the Dodd-Frank Act states, “[T]he Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority to order assessments, over a motor vehicle dealer that is predominately engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.” They discussed CFPB from an auto lender's perspective and from a dealer's perspective. Between 2000 and 2006, class actions were brought against auto lenders with consumers alleging that discretionary dealer “mark up” policies had a “disparate impact”. They predicted that this subject will gain national attention within the next few months as the industry becomes more aware of its consequences to traditional auto lending practices.

Dana Winterrowd; Staff Counsel with the New Motor Vehicle Board concluded the day by presenting charts depicting Board case statistics and activities.

The Roundtable was well-received by those in attendance. If you are interested in the PowerPoint presentations from the event, you can find them on the Board's website at www.nmvb.ca.gov.

January Meeting, cont'd from page 2

approximately twice what was expected for this fiscal year. Mr. Brennan indicated that the Board was on pace with its appropriated budget having expended 26%. Furthermore, \$641,988 was collected from 166 manufacturers for 1,357 million vehicles sold in 2011.

Out-of-state travel plans for fiscal year 2013-2014 were discussed, with Mr. Brennan indicating he does not anticipate the Board being authorized by Agency for out-of-state travel in fiscal year 2013-2014. However, if the travel restrictions are eased for 2013-2014, staff will submit these requests to the Department of Motor Vehicles, the Business, Transportation and Housing Agency, the Department of Finance and the Governor's office for final approval.

The upcoming Industry Roundtable is set for Thursday, March 14, 2013, in Sacramento at DMV's headquarters. Mr. Brennan reported that he is working on the topics and presenters; he welcomes suggestions from the members. The following topics were suggested by the members: autonomous vehicles and the DMV regulations that are pending; connectivity and the universality of technology; the potential effect on technology of "smart roads" and "smart cars"; and electric batteries and cars.

The Informational Guide for Manufacturers and Distributors was adopted.

In regard to the annual review of Board adopted policies, the new policies that were approved in 2012 are as follows:

Court reporting costs for all merits hearings and dispositive motions (information is available on the Board's website on the Home page, "Transcript Information Sheet"). These revisions apply to each protest that begins the first day of a merits hearing after March 31, 2012.

The Vision Statement was amended to reflect the cost reduction to California taxpayers by having new motor vehicle industry disputes resolved by the Board.

The assignment of cases to Board ALJs in 2012 shows that two of the recently hired ALJs presided over merits hearings. There were three merits hearings and three mandatory settlement conferences, four discovery hearings, and five law and motion hearings in 2012.

Mr. Brennan reported Administrative matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and project status.

Ms. Parker reported that since the members received their written report, there had been no new protests filed and two protests dismissed for a total of 19 protests currently pending, and with regards to judicial matters, a number of writs had been filed which had been very time consuming.

She indicated that the *Powerhouse* matter was now fully briefed, the hearing in the *Volkswagen* writ (Shayco) was in early December and the matter was submitted, and a hearing was set in the *Harley-Davidson* writ pertaining to Laidlaw's Harley-Davidson. With regards to *Mega RV* and *Roadtrek*, there is a case management conference in March.

The CSECC Chair, Kathy Tomono and Co-chair, Eugene Ohta, reported that the campaign was quite successful. The Board raised a total of \$4,375 this year through generous donations made by Board Members, Administrative Law Judges and staff, and through various fundraising events.

The members were provided with Board meeting dates for 2012. The following meetings were scheduled for 2013:

March 13, 2013, CNCDA Dealer Day, Sacramento

March 13, 2013, General Meeting, Sacramento

March 14, 2013, Industry Roundtable, Sacramento

June 11, 2013, General Meeting, Los Angeles or Riverside

Bismarck Obando was nominated as President and elected by a 4 to one vote, and Peter Hoffman was elected as Vice President with a unanimous vote.

FEBRUARY 22, 2013 SPECIAL BOARD MEETING

The New Motor Vehicle Board ("Board") held a Special meeting on February 22, 2013, in El Segundo, California. At that meeting, the Public Members considered one matter.

Shayco, Inc., dba Ontario Volkswagen v. Volkswagen of America, Inc.

Protest No. PR-2265-10

The Board members considered the Sacramento County Superior Court's Ruling on Petition for Writ Administrative Mandamus wherein the Court ordered the Board to vacate its December 13, 2011, final decision entitled "Order Confirming Decision to Sustain Protest."

Allen Resnick, Esq. of Jeffer, Mangels, Butler & Mitchell LLP, was present on behalf of Volkswagen of America, Inc. but did not make any public comments.

Mr. Flesh moved to vacate the Board's final decision and Mr. Stevens seconded the motion. The motion carried unanimously.

MARCH 13, 2013 GENERAL MEETING

The New Motor Vehicle Board held a General Meeting on March 13, 2013, in Sacramento. There was one case management item and several administrative items *Shayco, Inc., dba Ontario Volkswagen v. Volkswagen of America, Inc.*

Protest No. PR-2265-10

Sacramento County Superior Court's Ruling on Petition for Writ Administrative Mandamus wherein the Court ordered the Board to vacate its December 13, 2011, final decision entitled "Order Confirming Decision to Sustain Protest" in the above-referenced matter. Gavin M. Hughes, Esq. of the Law Offices of Michael J. Flanagan represented Protestant. Allen Resnick, Esq., and Ryan Mauck, Esq., of Jeffer, Mangels, Butler & Mitchell LLP represented Respondent.

President Obando read the statement into the record referring to the one-year grace period for three of our members (Victoria Rusnak, Glenn Stevens, and David Wilson) which expired on January 15, 2012. He indicated that counsel for the parties in *Shayco, Inc.* have been apprised of these provisions and do not object to Public Member Glenn Stevens' participation in this matter.

The Board agreed to permit the parties to file declarations and set the schedule. There will be two Special Meetings, May 7, 2013, and June 17, 2013.

The annual review of the Board's Mission and Vision Statements were discussed. Mr. Brennan indicated that the Vision statement was amended last year. He recommended that the Board continue with the current statements.

The annual update on training programs attended by staff was presented to the members. Ms. Kindel reported that the ALJs and staff have attended several informational classes via webcasts that are sponsored by the National Judicial College. Most of the training has been at no or low cost to the Board.

A number of resource materials along with summaries of the Administrative Procedure Act, Bagley-Keene Open Meeting Act, Political Reform Act, and Public Records Act were provided to the Board members. Mr. Winterrowd indicated to the Board that they might want to take note of the FPPC's handout on limitations and restrictions on gifts and honorarium and traveling allowance because that covers Board members, and particularly footnote 4 on page 3, it talks about the recent increase in the gift limit to \$440. He

also indicated that there were no substantive changes.

The Board's financial condition for the 2nd quarter of fiscal year 2012-2013 was discussed. Ms. Kindel indicated that the Board had expended 46% of its allocated budget through the end of the second quarter, and also noted that, as anticipated, the Board's expenditures would exceed its revenues this year. This fact will impact the Board's reserve funds.

The members presented a Resolution to George Valverde, former DMV Director, for his contribution to the New Motor Vehicle Board, to the motor vehicle industry, and to the people of the State of California. President Obando personally praised Mr. Valverde for his service to the Board. Mr. Valverde discussed AB1215 and the dealer members commented how positive the results are. Mr. Valverde was presented with a resolution and pictures were taken with the Board members and staff.

See March Meeting, page 6

2013 COMMITTEE MEMBERS

ADMINISTRATION COMMITTEE

Peter Hoffman, Chair
Ryan Brooks, Member

BOARD DEVELOPMENT COMMITTEE

Ryan Brooks, Chair
David Lizarraga, Member

EXECUTIVE COMMITTEE

Bismarck Obando, Chair
Peter Hoffman, Member

FISCAL COMMITTEE

Victoria Rusnak, Chair
Tom Flesh, Member

GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

Tom Flesh, Chair
David Wilson, Member

POLICY AND PROCEDURE COMMITTEE

Ramon Alvarez, Chair
Glenn Stevens, Member

March Meeting, cont'd from page 5

The issue whether it is necessary for the Board to increase the annual Board fee paid by dealers and manufacturers/distributors was discussed. Mr. Brennan indicated that staff is recommending a \$0.60 per vehicle fee per vehicle sold with a tiered minimum fee for manufacturers and a \$400.00 dealership fee. The members of the Board engaged in a detailed discussion of the fee increase with the staff. The motion was moved and seconded to adopt the proposal with the Option 1 tier (go to our website, March 13, 2013 Board meeting materials, for the complete memo). Following the consideration of adopting the proposed regulations increase, Mr. Obando read the statement into the record allowing the Board's decision to go forward and delegating to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act.

President Bismarck Obando, made committee appointments (see page 5)

The members were provided with a memorandum of the revised 2013 edition of the *Administrative Law Judges' Benchbook*. Mr. Winterrowd reported that the Benchbook was thoroughly revised and adopted at the March 20, 2012, General Meeting, but had some minor changes for 2013 on pages, 6-7, 8, 11-12, and 70.

Pending legislation was discussed: Legislation of Special Interest - Assembly Bill 988 (Assembly Member Jones) and Senate Bill 155 (Senator Padilla); Legislation of General Interest - Assembly Bill 225 (Assembly Member Nestande); there were none for Pending Federal Legislation of General Interest. Mr. Winterrowd reported that nothing new had changed.

Mr. Brennan discussed Administrative Matters and provided the members with an update on the schedule for the March 14, 2013 Roundtable.

Mr. Winterrowd discussed case management and reported that there had been one protest filed since the last written report. He also updated the Board regarding Santa Monica Auto Group dba Santa Monica Infiniti versus the New Motor Vehicle Board, and the Mega RV case.



Board Staff and Board Members presenting resolution to George Valverde

CNCDA ANNOUNCES ITS NEW PRESIDENT

At the March 13, 2013, Dealer Day, the California New Car Dealers Association Board of Directors announced Brian Maas as the new president. CNCDA's Board created a Search Committee to find the most qualified candidate. The dealers on the committee reviewed many resumes from around the nation, interviewed a handful of candidates, and chose Brian as the best candidate.

Brian has directed CNCDA's political activities and served as the Association's chief legislative advocate for over 11 years. Previously, he was a lobbyist with the California Bankers Association and prior to working with trade associations, Brian spent 12 years practicing law with Pillsbury Winthrop Shaw Pittman LLP as a specialist in political law and lobbying in San Francisco and Sacramento.

Congratulations, Brian! The New Motor Vehicle Board looks forward to continued good relations with the CNCDA.

CNCDA 2013 DEALER DAY

The California New Car Dealers Association ("CNCDA") held their 2013 Dealer Day on March 13, 2013, at the Hyatt Regency Hotel in Sacramento. Members of the CNCDA, sponsors, and guests attended the luncheon. This year's speaker was Rick Claussen, Partner at Goddard Claussen Public Affairs, who gave an insider's view of ballot initiatives.

Attendees were briefed on pending legislation that impacts the vehicle industry. Two bills of interest discussed were SB 155 (Padilla) updates dealer franchise laws concerning warranty time allowances, warranty and incentive claim denial and audit standards, export restrictions, performance standards and flexibility to "Buy California" for facility improvements. CNCDA supports SB 155. SB 686 (Jackson) prohibits dealers from displaying, renting, advertising, selling, or leasing any vehicle subject to a manufacturer's recall until repaired. CNCDA opposes SB 686.

Following the legislative briefing, CNCDA members met with legislators to discuss the various bills of interest. Several Board members and staff attended the luncheon.



UPCOMING NAMVBC EVENT

**NATIONAL ASSOCIATION OF MOTOR
VEHICLE BOARDS AND COMMISSIONS**
Baltimore, MD

Fall Meeting

September 25-29, 2013

**Contact Roy Dockum at (405) 607-8227 x102
or email roy.dockum@omvc.ok.gov**

**Check out the new website at
www.namvbc.org**

DISTRACTED DRIVING AWARENESS MONTH

April is National Distracted Driving Awareness Month and was introduced as a resolution in 2010 by former Rep. Betsy Markey (D-CO). It passed by the U.S. House of Representatives in a 410-2 vote on March 23, 2010. Thousands die needlessly each year because people continue to use their cell phones while driving. Join in the awareness by urging those you care about to:

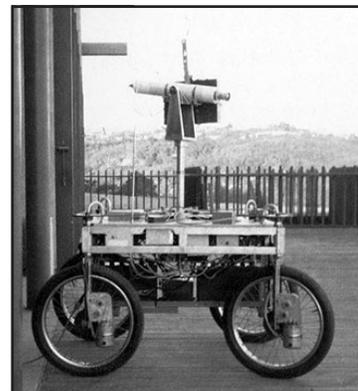
Stop using cell phones while driving;

Inform people who call or text you while driving that you'd be happy to continue the conversation once they have reached their destination; and,

Share what you know about the dangers of cell phone distracted driving.

A LITTLE TRIVIA

One of the first
autonomous vehicles



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