



JUNE 26, 2013

GENERAL BOARD MEETING

The New Motor Vehicle Board (“Board”) held a General meeting on June 26, 2013, in Los Angeles, California. At that meeting, the members considered one case management matter as well as administrative matters. ***M&M Automotive Group, Inc., dba Infiniti of Oakland v. Infiniti West, a Division of Nissan North America, Inc.***, Protest No. PR-2360-13

Infiniti of Oakland filed a Vehicle Code section 3060 termination protest. Respondent contends that Protestant voluntarily terminated its Infiniti franchise, which is not subject to the good cause requirements under Vehicle Code section 3060. Respondent filed a motion to dismiss. Protestant cited numerous theories in opposition: (1) that Protestant gave notice of its intent to voluntarily terminate under certain conditions; (2) that no consideration was given for the voluntary termination to take effect; (3) that the dealer’s right to terminate the franchise is also freely revocable by the dealer; (4) that Infiniti allowed Protestant to revoke its termination by stating in its acceptance letter “...if we are not notified to the contrary...”; and (5) given Protestant’s revocation of its voluntary termination, Infiniti terminated Protestant’s franchise without good cause.

A telephonic hearing was held on May 22, 2013, before Administrative Law Judge Kymberly Pipkin. The Proposed Order granting the Motion to Dismiss was unanimously adopted by the Public Members.

Administrative Matters

The Board unanimously decided to present a resolution to Jerry Prod, retiring Administrative Law Judge.

The Board adopted the following revised policy concerning allocation of court reporter fees, which took effect July 1, 2013:

Pursuant to the authority in Section 551.7 of Title 13 of the California Code of Regulations, for all merits hearings and dispositive motions, reporting costs including transcript fees, appearance and transcript delivery fees, per diem costs, Realtime set-up fees, expedite rates, and cancellation fees will be allocated as follows:

- For the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter’s appearance fee, the delivery fee and any other costs excluding Realtime set-up fees, and the Board’s cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired.

- For each subsequent day, the Board will arrange reporting services and will order the parties, on an equal basis, to pay the contracted court reporter service for the reporter’s appearance fee, the delivery fee and any other costs including Realtime set-up fees, and the Board’s cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

- In any other instance, where any party or parties deem reporting services necessary (including requests for reporter’s appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter’s appearance fees, the delivery fee, and any other costs. Counsel can utilize the Board’s contracted reporting service. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

The Solon C. Soteras Employee Recognition Award was unanimously awarded to Suzanne Luke, Acting Administrative Analyst (see article on page 4).

GOVERNOR'S REORGANIZATION PLAN

Governor Edmund G. Brown Jr. recently announced the appointments of three agency secretaries to head the most comprehensive overhaul of state government in decades. The appointments were effective July 1, 2013.

The Governor appointed Marybel Batjer, 58, of Reno, Secretary of the Government Operations Agency, which will be responsible for administering state operations; Anna Caballero, 59, of Salinas, Secretary of the Business, Consumer Services and Housing Agency, which will be responsible for licensing and oversight of industries, businesses and other professionals; and Brian Kelly, 44, of Sacramento, Secretary of the Transportation Agency, which will align all of the state's transportation entities.

The Governor's Reorganization Plan, which cuts the number of state agencies from 12 to 10 and eliminates

or consolidates dozens of departments and entities, was approved by the Little Hoover Commission in May 2012 and the Legislature in June 2012.

Kelly, the new Secretary of the California State Transportation Agency, has served as acting secretary at the California Business, Transportation and Housing Agency since 2012, where he was undersecretary in 2012. He was executive staff director for Senate President pro Tempore Darrell Steinberg from 2008 to 2012 and executive principal consultant for Senate President pro Tempore Don Perata from 2004 to 2008. Kelly was principal consultant for Senate President pro Tempore John Burton from 1998 to 2004 and assistant consultant for Senate President pro Tempore Bill Lockyer from 1995 to 1998. He was a field representative for the California Senate Democratic Caucus from 1994 to 1995. This position requires Senate confirmation. Kelly is a Democrat.



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Edmund G. Brown Jr.
Governor

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July 2013

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The annual discussion and consideration of the methods of determining Board fees was reviewed; the fees are not a tax.

Through the third quarter of fiscal year 2012-2013, the Board expended 67% of its appropriated budget and expended only 46% of its budget for operating expenses.

The Board's collection of the Arbitration Certification Programs' ("ACP") annual fee was completed. ACP requested that the Board collect \$1,123,835 to fund its program. This figure was divided by 1,261,317 vehicles distributed in 2011 that were under the ACP's jurisdiction; \$5,000 is added in to cover the Board's costs for administering the collection. This resulted in a fee of \$.891 per vehicle.

The Board unanimously approved its proposed budget of \$1,722,334 for fiscal year 2013-2014.

After the March 14, 2013, Industry Roundtable, the surveys were reviewed. Several comments were made by attendees that they would have liked to hear a more robust discussion about the Board's case statistics and trends. As a result of these comments, detailed information on this topic was sent to all attendees following the meeting. The presentations on Autonomous Vehicles ("AVs"), Vehicle Connectivity, and Dealer Lending Practices were all very well-received. In total, there were 60 attendees not including Board staff, Members and Judges. 33 were attorneys for either dealers or manufacturers; 12 represented State government; 8 were from the private sector; and 7 represented industry trade groups.

The following meetings were tentatively scheduled for the second half of 2013: July 25, 2013, Special Meeting in Los Angeles; and November 12, 2013, General Meeting, in Sacramento.

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SPECIAL BOARD MEETING July 25, 2013

The New Motor Vehicle Board ("Board") held a Special meeting on July 25, 2013, in Los Angeles, California. At that meeting, the Public Members considered two case management matters.

Burbank Kawasaki, Inc. v. Kawasaki Motors Corp., U.S.A., a Corporation, Protest Nos. PR-2328-12 and PR-2333-12

Kawasaki sought to terminate Burbank's Kawasaki franchise because it contends Burbank failed to meet sales requirements, maintain model inventory, provide equal representation for Kawasaki products, and maintain flooring. Protestant contends that any deficiencies and/or claimed operational problems it may have are directly due to actions or inactions of Kawasaki. A merits hearing was held before Administrative Law Judge Jerold A. Prod February 5-7, 2013. The Public Members unanimously rejected the Proposed Decision and remanded the matter to the Administrative Law Judge.

D&A Automotive Group, O.C. Genuine Scooters of Santa Ana v. Genuine Scooters, Protest No. PR-2355-12

D&A Automotive Group, O.C. Genuine Scooters of Tustin v. Genuine Scooters, Protest No. PR-2356-12

Protestants filed Vehicle Code section 3062 establishment protests. Genuine Scooter contends that Protestants have abandoned these matters by its failure to participate in the Mandatory Settlement Conference and discovery. Protestants contend that they have been timely corresponding with Respondent's counsel and filing necessary documents as required. A telephonic hearing was held before Administrative Law Judge Anthony M. Skrocki on June 28, 2013.

The ALJ found that the elements of Vehicle Code section 3050.2(b) were satisfied in that: (1) There was a "failure to comply with authorized discovery" by Protestants;

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AUTONOMOUS VEHICLES REGULATIONS: DMV WELCOMES PUBLIC PARTICIPATION

The Department of Motor Vehicles (DMV) has been conducting a series of public workshops on the development of regulations related to autonomous vehicles to allow for increased public participation in the rulemaking process. Hopes are that feedback from the public will help improve the quality of the regulations that will eventually be adopted. Interested parties have the ability to provide comments during the formal regulation process when DMV publishes the proposed text of the regulations. Senate Bill 1298 (Chapter 570, Statutes of 2012) requires the DMV to adopt regulations governing the testing and use of autonomous vehicles on public roadways no later than January 1, 2015.

A workshop was held on April 19, 2013, at the Department of General Services Auditorium, and a subsequent live webcast was held on June 18, 2013, from the Assembly Room at DMV. The agendas were structured from the key definitions of SB 1298, which will guide DMV's development of the regulations. Brian Soublet, Assistant Chief Counsel with DMV, was the facilitator for both workshops.

Board Executive Director Bill Brennan has been providing valuable input to the DMV staff on this project and has attended educational forums put on by AV manufacturers along with DMV staff.

For more information, please visit DMV's website at www.dmv.ca.gov.



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(2) The failure was material; and (3) Protestants had no "substantial justification for that failure". ALJ Skrocki recommended that the Executive Director obtain direction of the Board to dismiss the protests in accordance with Section 3050.2(b). The Executive Director concurred in the ALJ's findings and requested that the Board direct that the protests be dismissed with prejudice. The Public Members unanimously determined that there has been a failure of Protestants to comply with authorized discovery without substantial justification for that failure and adopted the findings of the Administrative Law Judge and directed the Executive Director to dismiss the protests with prejudice.

SOL SOTERAS EMPLOYEE RECOGNITION AWARD

Each year, the Board recognizes a member of the staff for his or her outstanding performance with the Sol Soteras Employee Recognition Award. At its June 26, 2013, General meeting, the Board considered and unanimously approved the Development Committee's recommendation that Suzanne Luke receive the award.

Suzanne is being recognized for readily taking on the duties of Linda Lighter upon her retirement, which is a significant endeavor on her part. Ms. Luke is a Staff Services Analyst with the Board. She exhibits excellent job performance, outstanding efficiency in completing projects in a timely and accurate manner, and has excellent organizational skills. She diligently prepares all fiscal budget reports for the Board. She manages all the travel arrangements for Board members and staff. She is key in processing all contracts and invoices, as well as preparing and processing all personnel documents to the highest satisfaction of her coworkers. She also responds to and coordinates all facility related concerns.

Suzanne is a pleasure to work with; she is witty, kind, and considerate of her coworkers, and always comes to work with a smile and a bounce in her walk. Suzanne also has a contagious positive attitude. In summary, her outstanding performance and genuine disposition has contributed greatly to the Board's operations.

UPCOMING NAMVBC EVENT

NATIONAL ASSOCIATION OF MOTOR VEHICLE BOARDS AND COMMISSIONS

Baltimore, MD

Fall Meeting

September 25-28, 2013



Visit the new website at
www.namvbc.org

The NAMVBC Fall Workshop will be held at the Royal Sonesta Harbor Court, Baltimore, Maryland September 25-28, 2013. The theme for this year's Workshop is "*Resilience – Working With An Ever Changing Industry.*"

The workshop will begin with a reception on the evening of Wednesday September 25, and will conclude around 1:00pm on Saturday, September 28.

The planning committee is currently developing the agenda with sessions focused on this theme that will examine the industry from the state, federal, and dealer/manufacturer perspective. Major topics include Tesla Motors, the Consumer Financial Protection Bureau, automated self-driving cars and vehicle connectivity, and regulating in a transparent world. Additionally, we are planning presentations on the use of computer technology for investigations and document imaging and retrieval.

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INTERESTED IN BECOMING A MEMBER?

NAMVBC Government Members

Government members of the NAMVBC represent various government departments or agencies responsible for licensing and overseeing the distribution and sale of new and

used motor vehicles within their state or provincial jurisdictions. Typical members are the leaders of the government department or agency charged with these tasks. While legislation can vary greatly amongst the jurisdictions, there are common and unifying issues such as dealer-manufacturer and dealer-consumer disputes (including unlawful activity), and dealing with unlicensed dealer activity (including curbstoning). Coupled with these issues, is the challenge of regulating in an ever changing political and economic framework and climate and the ease in which motor vehicles cross jurisdictional boundaries.

The NAMVBC offers a unique forum for members to reach out to these various state and provincial members, simultaneously, to gather or share information on emerging trends or problems. The members also share ideas for best practices in delivering on their mandates in cost effective ways. Many state members have found the NAMVBC to be an invaluable resource when they need guidance in new areas of responsibility due to legislative mandates. The NAMVBC also provides a means for government members and industry members to exchange information and resolve concerns in an open and cooperative environment.

NAMVBC Associate Members

Associate members of the NAMVBC represent a diverse group of private stakeholders from organizations and companies with an interest in the vehicle industry. Upon approval of the Executive Committee, membership is open to any person or organization whose professional activities will enhance, further, or support the objectives of the NAMVBC. Typically they are industry leaders who can bring a wealth of information and insight to the meetings and workshops. Associate members represent nearly every area of the vehicle industry including; legal counsel for manufacturers, dealer association groups, recreational vehicle associations, auto auctions, and software providers, just to name a few. Associate members help develop supportive relationships between the private sector and government agencies, thus promoting opportunities for better understanding each other's philosophies and interests to reach common goals.

A LITTLE TRIVIA

EVER WONDER ABOUT A NAME...

Giovanni Angelic, with several investors, founded the Fabbrica Italiana Automobili Torino (F.I.A.T.) in 1899. Its acronym name was changed to upper and lower case letters (Fiat) in 1906.



OR A DESIGN ...

William Bushnell Stout designed the Stout Scarab, a unique 1930–1940s automobile produced in small numbers by Stout Motor Car Company of Detroit, Michigan. With its host of novelties and innovations, the Stout Scarab is credited by some as the world's first production minivan, and a 1946 experimental prototype became the world's first car with a fiberglass body shell and air suspension.



OR, WHAT IS IT?



1951 Reyonah
from the RM Bruce Weiner Microcar Museum

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