NEW MOTOR VEHICLE BOARD

ATTORNEY ROUNDTABLE

FRIDAY, JANUARY 10, 2014
9:00 a.m. - 4:00 p.m.

California Department of Motor Vehicles
Assembly Room – 6th Floor
2415 1st Avenue
Sacramento, California 95818

ATTORNEY ROUNDTABLE AGENDA

9:00 a.m. Registration

9:30 a.m. Welcome by Bill Brennan, Executive Director, and Introduction of Board Staff and Roundtable Attendees.

Topic 1:

INTRODUCTION AND OVERVIEW OF THE NEW MOTOR VEHICLE BOARD AND DISCUSSION CONCERNING THE TRENDS IN CASE MANAGEMENT

- **Robin Parker, Senior Staff Counsel, New Motor Vehicle Board**

- Brief introduction and overview of the New Motor Vehicle Board.
  - Protests, Petitions, and Appeals.
  - Licensees within the Board's jurisdiction.
  - Statutorily Required Notices.
  - Procedural guidance and training provided by the Board legal staff.
  - Overview and role of the staff.
  - Board Members - Public and Dealer.
  - Value of the Board.

- Discussion concerning trends in case management including:
  - Types and number of notices of termination being filed;
  - Types of protests being filed;
  - Number of cases going to a merits hearing; and
  - The number being resolved prior to hearing.

10:15 a.m. *Topic 2:*

WARRANTY REIMBURSEMENT AND FRANCHISOR INCENTIVE PROGRAM PROTESTS IN LIGHT OF SENATE BILL 155 (CHAPTERED OCTOBER 3, 2013) EFFECTIVE JANUARY 1, 2014

- **Robin Parker, Senior Staff Counsel, New Motor Vehicle Board**

- Warranty Reimbursement Protests (Veh. Code § 3065)
  - Type of New Protests.
  - Written Notice to the Dealer and Board.
  - Time to File Protest.
  - Burden of Proof.
- Franchisor Incentive Program Compensation Protests (Veh. Code § 3065.1)
  - Type of New Protests.
  - Written Notice to the Dealer and Board.
  - Time to File Protest.
  - Burden of Proof.
- Recreational Vehicle Protests (Veh. Code §§ 3075 and 3076)

12:15 p.m. Lunch break (on your own, a full-service cafeteria is available in the building and there are several local restaurants nearby).

1:15 p.m. *Topic 3:*

PANEL DISCUSSION CONCERNING MANUFACTURER/DISTRIBUTOR PRESSURE TO UPGRADE DEALERSHIP FACILITIES

- **Michael J. Flanagan, Esq., Owner, Law Offices of Michael J. Flanagan**
- **Ryan S. Mauck, Esq., Litigation Partner, Jeffer, Mangels, Butler & Mitchell LLP**
- **Colm A. Moran, Esq., Partner, Hogan Lovells US LLP**
- **Halbert B. Rasmussen, Esq., Partner, Manning, Leaver, Bruder & Berberich**

- In light of the economic climate, what are manufacturers and distributors requiring in terms of facility upgrades and new facilities?
- What financial incentives, if any, are being provided?
- Anticipated impact, if any, from recently amended Vehicle Code section 11713.13(c) (effective January 1, 2014)?
  - What is a “reasonable” facility alteration, expansion or addition?
  - Burden of proof.
- Questions and answers.

2:45 p.m. Break

3:00 p.m. *Topic 4:*

DISCUSSION CONCERNING PROPOSED CHANGES TO THE BOARD'S CASE MANAGEMENT OPERATIONS

❖ **Robin Parker, Senior Staff Counsel, New Motor Vehicle Board**

- Proposed regulatory changes:
  - Definitions (13 CCR § 550);
  - Subpoenas; Motion to Quash (13 CCR § 551.2);
  - Notice of Assignment of Administrative Law Judges; Peremptory Challenges (13 CCR § 551.12);
  - Sanctions - Bad Faith Actions (13 CCR § 551.21); and
  - Adoption and Objection to Proposed Stipulated Decision and Order (13 CCR § 551.22).
- What gaps, if any, are there in the Board's statutes and regulations?
- Should "permanency of investment" be defined in a regulation?
- Should the definition of "relevant market area" be revised?
- What procedural changes (changes which do not require legislation or rulemaking) would be of benefit to those practicing before the Board?

3:30 p.m. *Topic 5:*

DISCUSSION CONCERNING PRE-HEARING AND POST-HEARING MOTIONS AND BRIEFS

❖ **Robin Parker, Senior Staff Counsel, New Motor Vehicle Board**

- Pre-hearing briefs and motions.
- Telephonic Pre-Hearing Conference with the assigned ALJ, the numbering of exhibits, court reporters, and transcript fees and costs.
- Protective orders issued prior to and after the merits hearing, sealing the record (transcripts and exhibits), and exclusion of witnesses/dealer principal during the hearing.
- Post-hearing briefs including guidelines for proposed findings of fact and post-hearing motions.
- The timing of issuance of the Proposed Decision and consideration by the Board.

4:00 p.m. Questions and Answers