



New Motor Vehicle Board

In-Site

January 2008

A Publication of the California New Motor Vehicle Board

08.1 Edition

PRESIDENT'S YEAR END WRAP



Alan Skobin, President

It has been a great pleasure to serve as the Board's President in 2007. I take pride in reporting the Board's continued success at accomplishing its goals as identified in its mission and vision statements.

The Board's mission is "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." There were 65 protests filed in 2007; many of these resolved without the need for a merits hearing. In fact, there were only four merits hearings in 2007. It is significant to all parties that the Board has been able to either help resolve the disputes at an early stage or reduce the average number of days of hearing.

The Board has continued its efforts to educate not only its members and staff about the industry, but to also assist those who practice before the Board, or would like to. In March 2007, the Board hosted the 6th Annual Industry Roundtable in Sacramento. The event was a huge success and perhaps the best Roundtable to date. Highly qualified speakers addressed a number of issues facing the industry including technological solutions for processing DMV paperwork, the Federal Real ID Act, alternative fuels and advanced propulsion systems, trends in high-tech accessories, and how local cities and counties attract and retain dealerships.

In September 2007, the Board hosted an Attorney Roundtable to educate attorneys that regularly appear before the Board, or who would like to appear before the

Board, on procedures and laws relating to the Board. The event was geared toward manufacturers' and distributors' counsel who prepare or review statutorily required notices sent to the Board and the impacted dealers. The Roundtable provided an excellent opportunity for the staff to get feedback concerning the Board's case management operations. The event was very successful and offered 3.75 hours of Minimum Continuing Legal Education ("MCLE"). It is the Board's plan to hold additional Attorney Roundtables in both Northern and Southern California in 2009.

The Board will continue to host its Industry Roundtable every other year in conjunction with the California Motor Car Dealers Association Gala event. The next Roundtable will be in 2009. On the alternate years, the Board will host a smaller industry focused Roundtable. In November 2008, the Board will host an RV industry focused Roundtable.

In an effort to provide the best service to both our consumer mediation and case management constituents, the Board is sending surveys that solicit feedback concerning their experiences before the Board. So far, the feedback is positive and a detailed analysis will be provided in the future.

You may have noticed that the Board's website has a new look. It is located at www.nmvp.ca.gov. New website rules for the State of California resulted from a collaborative effort between several agencies to improve State run websites. The improvements are intended to allow Californians to conduct more of their business on-line, which in turn reduces the more expensive office visits and phone calls, and improves customer satisfaction and trust in government. Each department's website will have nearly identical layouts and accessibility features which allow users to easily navigate sites from different agencies without having to use search engines to find a specific topic. The Board's website remains popular, with 644,592 hits in fiscal year 2006/2007.

Several new policies were adopted by the members in the past year. They are listed as follows:

See President's Wrap, page 2

President's Wrap cont'd from page 1

Dealer members of the Board will participate in, hear, comment, or advise other members upon, or decide protests between RV dealers and franchisors, unless a Dealer Member also has an interest in an RV dealership, in which case the dealer member will recuse himself or herself from participation in the matter, unless the parties stipulate to such participation. A stipulation concerning such participation was adopted.

On an interim six-month basis, Judges Wong and Rigenbach will preside over all Mandatory Settlement Conferences while the Board attempts to hire additional ALJs.

The Fiscal Committee will meet each May to review the Board's proposed budget. Consideration of the budget will be agendized each June. This enables the Board to take a more active role in the budget process.

The Board established a policy to address manufacturers and distributors who are not in compliance with the filings required by Vehicle Code sections 3064/3074 (current delivery and preparation obligations ("PDI") and PDI schedule of compensation) and 3065/3075 (warranty reimbursement schedule or formula). Prior to being placed on an agenda for noncompliance, the licensees will be sent three written notices requesting compliance with the applicable statutes.

The four year terms of Robert Branzuela and David Lizárraga have expired, and we thank them for their service and dedication to the industry. I am pleased to announce that Dealer member David Wilson and Public member Glenn Stevens have been reappointed for four more years. A brand new member, Sossi Keuylian, has joined us. She is a Lamborghini dealer in Orange County. The Board is still waiting for an appointment from the Speaker of the Assembly to make the nine member board complete.

The Board members, as individuals, are busy running their day-to-day business, yet are willing to devote significant time and energy to public service. Little acknowledgement is given them on their efforts to see that the Board continues to function efficiently and effectively. I would like to take this opportunity to again personally thank each of them. It is an honor and pleasure to work with every one of them, and I want to let them know that I truly enjoy working with them.

Lastly, but certainly not least, I would like to thank the staff for their excellent performance. As a team they have insured that the Board runs smoothly and efficiently.

I am greatly enjoying my tenure as president of the New Motor Vehicle Board and look forward to continuing my service to the industry.



State of California
Arnold Schwarzenegger
Governor

IN-SITE

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George Valverde, Director



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New Motor Vehicle Board

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Alan J. Skobin,
President
Robert T. (Tom) Flesh,
Vice-President

Ramon Alvarez C.
Ryan L. Brooks
Robert T. (Tom) Flesh
Sossi Keuylian
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NOVEMBER 15, 2007 GENERAL MEETING HIGHLIGHTS

The Board held a General Meeting on November 15, 2007, in Los Angeles. At that meeting, the members considered four case management matters as well as several administrative matters.

Nader Automotive

In *Nader Automotive Group, LLC, and Nader Eghtesad v. Volkswagen of America, Inc.*, Protest No. PR-2045-07, and *Nader Automotive Group, LLC, and Nader Eghtesad v. Audi of America, Inc.*, Protest No. PR-2046-07, Respondents sought to terminate Nader's Volkswagen and Audi franchise agreements for Protestants' failure to comply with its discovery obligations. These protests were not consolidated but tracked the same schedule. The Public Members of the Board adopted ALJ Skrocki's findings and directed the Board's Executive Director, Bill Brennan, to dismiss the protests with prejudice. On November 16, 2007, these protests were dismissed with prejudice. On November 27, 2007, Nader filed Petitions for Writs of Administrative Mandate in the Sacramento County Superior Court and sought Ex Parte Stays of the Board's decisions. Both requests for stays were denied and it is likely the cases will be consolidated for further proceedings on the Writs.

Bisa Enterprises, Inc., dba Suzuki of El Cajon

Initially this was a Vehicle Code section 3060 termination protest which was filed on December 15, 2006. Nearly nine months later, Protestant filed a Request for Dismissal and *Bisa Enterprises, Inc. dba Suzuki of El Cajon v. Suzuki Motor Corporation*, Protest No. PR-2031-06 was dismissed by an Order of Dismissal. Less than three weeks after the dismissal, Bisa filed what was treated as a "Motion to Vacate the Order of Dismissal" and sought to have the protest revived. A telephonic hearing was held on October 9, 2007, before ALJ Skrocki.

The Public Members considered ALJ Skrocki's Proposed Order Denying "Motion of Protestant Bisa Enterprise's Request to withdraw its Dismissal". The Public Members rejected the Administrative Law Judge's Proposed Order and granted Protestant's Motion Request to withdraw its Dismissal under the following conditions:

(1) the manufacturer, American Suzuki, is to submit a declaration as to fees and costs within 10 calendar days; (2) the

Administrative Law Judge ("ALJ") is to expeditiously set a schedule and hearing on the declaration; (3) depending on the Judge's determination, the fees and costs are to be paid by Protestant's counsel within 10 days; (4) the ALJ is to set a telephonic hearing on American Suzuki's motion to compel that was previously filed and briefed; and (5) the ALJ is to set a merits hearing date and schedule whatever outstanding discovery needs to be completed as expeditiously as possible.

Forty-Niner Subaru

In *Forty-Niner Sierra Resources, dba Forty-Niner Subaru v. Subaru of America*, Protest No. PR-1972-05, Respondent sought to terminate Forty-Niner Subaru's franchise agreement. A four-day hearing was held before ALJ Jerold A. Prod. At the September 7, 2007, General Meeting, the Public Members remanded ALJ Prod's Proposed Decision to re-open the record to file Protestant's Post-Hearing Reply Brief dated July 27, 2007 and attached exhibits. ALJ Prod was directed to consider the brief and make any appropriate changes to the Proposed Decision. However, no additional filings or hearings were permitted. At the November 15, 2007, General Meeting, the Public Members adopted ALJ Prod's Proposed Decision after Remand which overruled the protest and allowed Subaru to terminate Forty-Niner's Subaru franchise. On November 28, 2007, Forty-Niner Subaru filed a Petition for a Writ of Administrative Mandate and an Ex Parte Application to Stay the Board's Order overruling the protest. On December 4, 2007, the court denied the Application for an Ex Parte Stay and ordered the underlying Writ proceeding to go forward.

Administrative Matters

A number of staff reports were given on a variety of topics, including the following:

At the Recreation Vehicle Industry Association's ("RVIA") request, the Board decided to reconsider its policy permitting Dealer Board Member participation in Article 5 Recreational Vehicle protests. Public comments were presented by several people representing the RV industry. After a lengthy discussion, the Board, with the three Dealer Members recusing themselves and Tom Flesh abstaining, decided to take no action on this matter. The Board's policy remains that Dealer members of the Board will participate in, hear, comment, or advise other members upon, or decide protests between RV dealers and franchisors, unless a Dealer Member also has an interest in an RV dealership in which case the dealer member will recuse himself or herself from participation in the matter, unless the parties stipulate to such participation.

November 15, cont'd from page 3

Howard Weinberg, General Counsel, discussed the marketing of Smart Cars of America and Tesla Motors, Inc. through the Internet. The Department of Motor Vehicles Occupational Licensing Branch sent letters to both manufacturers mid-November 2007 concerning two Vehicle Code provisions pertaining to advertising and deposits. The Board's analysis expedited the DMV's involvement in this issue and the DMV is bringing both Tesla and Smart Cars in compliance as a result of the Board's action.

Robin Parker, Senior Staff Counsel, reported on the 2008 schedule of Board education. In addition to attending the NADA and NAMVBC conferences in February 2008, along with the CMCDA Dealer Day in March 2008, the Board staff is seeking feedback for additional educational opportunities. If any members of the industry would like to suggest industry-related tours, i.e., vehicle, motorcycle, ATV, or RV, please contact Robin Parker at rparker@nmvb.ca.gov.

In September of 2007, the Board hosted an Attorney Roundtable in West Sacramento, which was discussed at the meeting. The members made several suggestions for future Attorney Roundtables including offering a video or audiotape of the event, associating with other associations to attract a wider net of attorneys that may not practice before the Board, offer the event in Southern California, and charge a fee to recoup the Board's costs.

The members decided to host an RV industry focused Roundtable in November 2008 and the Board's Industry Roundtable in March 2009. If you would like to be added to the Board's mailing list concerning these roundtables, please contact Robin Parker at (916) 323-1536 or rparker@nmvb.ca.gov. Also, any topic or speaker suggestions would be appreciated. As the details unfold, we will provide additional information in the In-Site.

Mr. Brennan reported on the following pending administrative matters: (1) the success of the California State Employees Charitable Campaign; (2) draft regulations were being reviewed by the Board's Administrative Law Judges and the full Board would consider those regulations in February 2008; (3) the Board staff was receiving positive feedback from a case management survey sent to all parties when a protest is closed and the results of those surveys will be reported on in March or April 2008; and (4) a report on the Board's website will be presented at the December 2007 meeting.

DECEMBER 13, 2007 SPECIAL MEETING HIGHLIGHTS

The Board held a Special Meeting on December 13, 2007, in Sacramento. At that meeting, the members considered one case management matter as well as several administrative matters.

Manteca Trailer and Camper Inc. (Vehicle Code section 3070 termination)

In *Manteca Trailer and Camper Inc. dba RVs of Sacramento v. Home and Park Motorhomes Roadtrek*, Protest No. PR-2036-07, and *Manteca Trailer and Camper Inc. dba Brawley's RV v. Home and Park Motorhomes Roadtrek*, Protest No. PR-2074-07, Respondent sought to terminate Protestants' franchise agreements. A four day hearing was held before Administrative Law Judge Marybelle D. Archibald. The Public Members of the Board unanimously adopted the Proposed Decision sustaining the protests. Roadtrek was not allowed to terminate Protestants' franchise agreements.

Administrative Matters

The Board appointed Linda Waits as an Administrative Law Judge. Judge Waits will be added to the case assignment logs once she is trained. (See article on page 5)

Mary Garcia, Branch Chief, Occupational Licensing, for the Department of Motor Vehicles ("DMV") discussed with the members and staff the impact of the Car Buyers Bill of Rights on the automobile industry and the DMV. Ms. Garcia reported that the DMV has received 25 consumer complaints concerning the contract cancellation option. Additionally, the DMV sent 15,000 surveys to recent car purchasers concerning their car buying experience. The results of the survey are forthcoming.

A number of staff reports were given on a variety of topics, including the following:

The Board unanimously decided to request the DMV to withhold the renewal and/or suspend the existing occupational licenses of Hot Rod Manufacturing, LLC and Motoman Distributing until the Annual Board Fees had been paid.



Tom Flesh and Mary Garcia

December 13, cont'd from page 4

Polly Rigganbach, Staff Counsel, reported on manufacturer and distributor (hereinafter manufacturer) compliance with the Board's request that statutorily mandated schedules or formulas be filed with the Board. Many licensees were not in compliance with the statutory requirements and additional follow-up is necessary. The Board adopted a policy to encourage manufacturer compliance with the statutory requirements that provides, in part as follows:

1. Each January a notice will be directed to all manufacturers identified by the DMV as within the Board's Jurisdiction who have dealers in California. Manufacturers with current filings less than three years old, will also receive the notice to encourage current and up-to-date filings. The manufacturers will have eight (8) weeks from the date of the notice to submit compliant documents.
2. A second notice will be sent to all manufacturers who have not responded or do not already have current documents on file with the Board, giving the manufacturers an additional four (4) weeks from the date of the letter to comply with the pertinent Vehicle Code sections.
3. A third and final notice will be sent to all noncompliant manufacturers explaining that the matter will be placed on the Board's next agenda for Board consideration as to whether or not to exercise the Board's authority under Vehicle Code section 3050(c)(3) unless compliant filings are received within two (2) weeks from the date of the letter.
4. If compliant filings are not timely submitted, the matter will be placed on the Board's next agenda.
5. At the noticed Board Meeting, the members will determine whether to request that the DMV withhold the renewal and/or suspend the existing occupational license of the manufacturer for failure to comply with the pertinent Vehicle Code sections.

Bill Brennan, Executive Director, reported that the Board is fiscally sound having expended 26% of its appropriated budget for the 1st quarter of Fiscal year 2007-2008, and that the Board collected \$831,756.64 in Annual Board Fees from 207 manufacturers and distributors. Only two manufacturers, American Hot Rod Manufacturing, LLC and Motoman Distributing failed to pay the required fee.

The following meetings for 2008 were tentatively selected: February 11, 2008, General Meeting in San Francisco; March 25, 2008, Special Meeting in Sacramento if there are case management matters and the Public Members are available to attend; April 30, 2007, General Meeting in Indian Wells; and May 2, 2008, Special Meeting in Riverside.

NEW ADMINISTRATIVE LAW JUDGE LINDA WAITS



Linda Waits

The Board is pleased to announce the appointment of Linda Waits as its newest Administrative Law Judge, and welcomes her to the staff. Judge Waits received a Bachelor of Arts degree from U.C. Santa Barbara in 1977, and her Juris Doctorate from McGeorge School of Law School in 1981.

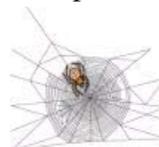
Judge Waits has extensive professional law experience, having started out in a private practice for four years, and then continuing her career with the State of California working with the California Energy Commission, Office of the Governor, and the Department of Social Services. Judge Waits also serves the Sacramento Superior Court performing as a pro tem judge for the Small Claims Division.

EXECUTIVE DIRECTOR ATTENDS RV CONFERENCE

At the invitation of the California Recreation Vehicle Dealers Association ("CALRVDA"), the Board's Executive Director, Bill Brennan, addressed dozens of RV dealers at their 14th annual education conference in Indian Wells, California.

The CalRVDA members were particularly interested in the Board's rulings and procedures, as Mr. Brennan recapped actions taken in the last year. Dealers listened intently to his remarks about the Board's policy that allows Dealer Board Members to participate in RV cases, which CalRVDA supports.

This marked the third time that Mr. Brennan was invited to the conference, since RVs were brought under the Board's jurisdiction. CalRVDA Executive Director Skip Daum commented, "Bill is always a welcome VIP at our gatherings. He certainly communicates well with the dealers and helps them understand the Board's role in our industry."



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on the web...

...at www.nmvb.ca.gov

NAMVBC 2007 FALL WORKSHOP

Portland, Maine was the host city for the 2007 Fall Workshop and Breakfast Meeting of the National Association of Motor Vehicle Boards and Commissions ("NAMVBC"). The meeting was held on Saturday, October 20 through Wednesday, October 24, 2007. The workshop provided a forum for the exchange of information and ideas of common interest to the various motor vehicle board and commission members who attended.

Sunday morning, the meeting opened with Tom Brown, President of the Maine Automobile Dealers Association. Keynote speakers were Kenneth Murphy and Aaron Jacoby of Venable LLP, who discussed motor vehicle boards and dealer education programs. Morgan Filbey, Senior Counsel of Nissan North America, spoke on the subject of recent legislation and proposed legislation regarding factory audits and/or chargebacks. In the afternoon, there was a panel discussion regarding the RV industry which included representatives from the RV Dealers Association, RV Industry Association and RVPTIA (Park Trailer Industry). Shawn Mercer, attorney with Myers & Fuller, PA also spoke on current manufacturer/dealer franchise issues from the dealers' perspective.

Monday's meeting featured several speakers. Tim Bruche, representing the motorcycle manufacturer industry along with Ed Lemco, representing cycle dealers, gave a presentation focused on regulatory and franchise issues in

the cycle/scooter/ATV industry. Steve McKelvey, attorney with Nelson, Mullins, Riley & Scarborough LLC, spoke on the changing face of ownership in the auto industry. Carl Compton and Mary Jane South, from the Ontario, Canada Motor Vehicle Industry Council discussed consumer protection laws in Ontario, how self-regulation works in Ontario, and curbstoning issues.

Tuesday began with a roundtable discussion, which is the most requested and informative agenda item at the meeting. Participants are allowed a few minutes to update the attendees on what is happening in their state and/or industry with information that may be informative or helpful. After the roundtable session, the election of the 2008 officers was held, and upcoming meeting dates and locations were discussed. The New Motor Vehicle Board was represented by Executive Director William G. Brennan, who was once again elected Treasurer.



Former Board Member Robert Branzuela and Bill Brennan at L.A. Auto Show

2007 ANNUAL L.A. AUTO SHOW

The 2007 Annual L.A. Auto Show was held at the Los Angeles Convention Center on Friday, November 16 through Sunday, November 25, 2007. The show is an international event showcasing the newest vehicles from 47 of the world's automobile manufacturers. The show featured a "Green" theme for 2007, with a number of environmentally friendly vehicles on display.

Governor Schwarzenegger was present at the show and highlighted the importance of alternate fuel and hybrid vehicles for California and throughout the world. This was the second year the Governor attended the show to highlight such vehicles.

Chevrolet's Tahoe Hybrid was named the "Green" car for 2008. Other alternative fuel and hybrids were the Chevrolet Equinox fuel cell, Mitsubishi's Concept-cX, the Porsche Cayenne Hybrid, Volkswagen's space up! blue, and the Volvo ReCharge.

Executive Director Bill Brennan, General Counsel Howard Weinberg, and Senior Staff Counsel Robin Parker attended the show in conjunction with the November 15, 2007, General Board Meeting.

BOARD MEMBERS

Ramon Alvarez C., Dealer Member
 Ryan L. Brooks, Public Member
 Robert T. (Tom) Flesh, Public Member
 Sossi Keuylian, Dealer member
 Haig Papaian, Public Member
 Alan J. Skobin, Dealer Member
 Glenn E. Stevens, Public Member
 David W. Wilson, Dealer Member
 Vacant Position, Public Member

2007 CSECC OUTCOME

The California State Employee Charitable Campaign (“CSECC”) provides an opportunity for state employees to contribute and learn how their efforts benefit the programs and the agencies it serves. These agencies provide a wide variety of services, from disaster relief to treatment and prevention of child abuse. The CSECC was established in 1957 to provide a single charitable fund raising drive among State Employees. The California Victim Compensation and Government Claims Board screen the participating organizations to ensure their eligibility, but do not endorse them in any way.

The “kickoff” for the event normally takes place in the fall, but because of the small number of Board employees, fundraisers for 2007 CSECC started at the end of 2006 and continued throughout the year. The CSECC theme was “Reaching for the Stars”, signifying that when you participate in CSECC you become a star yourself. Polly Riggenschach was the Chair, with Robin Parker as Co-Chair.

There were multiple events with themes such as a Super Bowl Party, Valentines and Easter Potlucks, a Breakfast Party, and games for drawings, just to name a few. These events were in addition to pledge forms that gave staff the opportunity to contribute to selected organizations through a one-time donation or through monthly payroll deductions.

Due to the outstanding effort of all who participated, the Board achieved 100% participation from the staff. In addition, the campaign received donations from several Board members and Administrative Law Judges. A total of \$4,265.00 was raised.

INTERNET CAR SHOPPING

A recent completed study commissioned by AutoTrader.com and completed by R.L. Polk & Co., confirmed that new-car buyers find the Internet to be one of the most helpful media sources for information throughout the entire car-shopping process, more so than traditional media. According to this data, the Internet is second only to the dealer visit as the overall most useful source of information.

The study found that 42 percent of new-car buyers think the Internet was the most helpful source of information; only eight percent said TV was most helpful; two percent indicated direct mail was the most helpful source; and only one percent pointed to radio or newspapers as the best source.

However, 2006 National Automobile Dealers Association data indicated 27.3 percent of dealer advertising dollars were spent on newspapers, 19.5 percent spent on TV and 18.1 percent spent on radio. Meanwhile, only 11.5 percent of dealer advertising dollars were spent on the Internet. According to the study, independent of price, when searching the Internet for new cars, 27 percent of new-car buyers said dealer inventory was the most important piece of information they wanted.

It seems that the most important thing people want to know is whether the car is available to see and test drive, confirming that people shop for cars online, but don't purchase online. Furthermore, 36 percent of new-car buyers said manufacturers' sites were the most useful. Twenty percent said third-party car sites were the most useful sites, and 18 percent said individual dealer sites were most useful.

(Source: NADA Headlines)

UPCOMING BOARD MEETINGS

General Meeting
February 11, 2008
San Francisco



Special Meeting
March 25, 2008
Sacramento

NEW MOTOR VEHICLE BOARD
1507 21st Street, Suite 330
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