



New Motor Vehicle Board

In-Site

July 2008

A Publication of the California New Motor Vehicle Board

08.3 Edition

MAY 2, 2008 GENERAL MEETING HIGHLIGHTS

The Board held its May 2, 2008, General Meeting in Riverside. The Board unexpectedly lost its Public Member quorum for consideration of cases, but maintained a quorum for consideration of several staff reports.

General Counsel Howard Weinberg discussed whether or not Vehicle Code section 3050.7 (Proposed Stipulated Decisions and Orders) encroaches on the Board's jurisdiction. Mr. Weinberg provided an overview of Stipulated Decisions and Orders, and indicated that in 1997 a Board delegation was given to staff that permits its Administrative Law Judges to make a determination as to whether certain conditions have or have not been met in accordance with the terms of the Stipulated Decision. After a brief discussion, Board President Skobin assigned this project to the Executive Committee and Board staff as determined by Executive Director Bill Brennan to review all of the Board delegations for eventual review by the full Board at a future meeting. It is anticipated that this topic will be on the October 2008 agenda.

The Board unanimously adopted the revised *Guide to the New Motor Vehicle Board* that Mr. Weinberg drafted. The updated *Guide* is on the Board's website at www.nmvp.ca.gov. If you would like a hard copy of the *Guide*, please contact the legal staff at (916) 445-1888.

Annually the members review the *New Motor Vehicle Board Administrative Law Judges Benchbook*. The *Benchbook* is provided to the Board's Administrative Law Judges for purposes of reference and training. As the Board is proposing a number of regulatory amendments at its October meeting that will impact its case management

procedures, it was expected that substantial modifications to the *Benchbook* would be necessary in the next edition. Therefore, the Board unanimously decided that no new edition would be produced until after the proposed regulatory amendments are promulgated.

Polly Rigggenbach, Staff Counsel, reported on the availability of the Board's Administrative Law Judges to preside over merits hearings and to conduct mandatory settlement conferences. Ms. Rigggenbach reported that the Board has three ALJs who are trained and able to conduct merits hearings (Judges Archibald, Hagle and Prod). Due to their various vacation schedules, many are unavailable for extended periods. Staff recommended and the Board authorized ALJs Rigggenbach and Wong to preside over all Mandatory Settlement Conferences for an additional six-month period. This will allow the Board to continue to train recently hired ALJ Linda Waits.

JUNE 26, 2008 GENERAL MEETING HIGHLIGHTS

The Board held a General meeting on June 26, 2008, in Los Angeles, California. At that meeting, the members considered two cases as well as several administrative matters. Walker Management, Inc.

In *Walker Management, Inc., dba Good Times Kawasaki Suzuki Ducati v. Ducati North America, Inc.*, Protest No. PR-2048-07, Respondent sought to establish a new Ducati dealership within 10 miles of Protestant's dealership. At the March 18, 2008, General Meeting, the public members of the Board heard the decision and remanded it back to Administrative Law Judge Diana Woodward Hagle, with instructions to consider the good cause factor enumerated in Vehicle Code section 3063(b). The

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remand was limited to considering if the new Ducati dealership would have a significant impact on Protestant's Ducati sales and service without consideration of the impact on the entirety of Protestant's business. After remand the ALJ determined that there would not be a significant impact on the Protestant's business and recommended that the Protest be overruled. The Public Members of the Board considered the decision, deliberated in closed Executive Session, and unanimously adopted the decision following remand.

Nick Alexander Imports

In *Nick Alexander Imports, a California Corporation, d/b/a Nick Alexander Imports v. BMW of North America, LLC*, Protest Nos. PR-2049-07 (car line) and PR-2062-07 (truck line), Respondent sought to relocate a new BMW dealership within 10 miles of Protestant's dealership. This matter was originally agendized for the May 2, 2008, General Board meeting. Due to an unexpected lack of quorum, it was carried over to the June 26, 2008, meeting. On March 19, 2008, Protestant requested dismissal of the protest. The Board issued an Order Dismissing Protests with Prejudice and Retaining Jurisdiction Over Pending Motions for Sanctions Sought to be Imposed Against Protestant on April 1, 2008. Therefore, the only issue remaining to be considered by the Board was a motion by Respondent seeking recovery of attorney's fees and costs

from Protestant Nick Alexander Imports for its failure to comply with its discovery obligations.

The Public members deliberated in a closed executive session and unanimously adopted the Administrative Law Judge's recommendation that sanctions of attorney's fees and costs in the sum of \$12,159.14, be paid by Protestant Nick Alexander Imports, Inc. to Respondent BMW of North America, LLC for discovery abuses.

Upon conclusion of the disussion of the cases, the Members welcomed back David C. Lizárraga, newly re-appointed Public Board Member, and former Dealer Member Robert Branzuela was acknowledged with a resolution for his contribution to the New Motor Vehicle Board, to the motor vehicle industry, and to the people of the State of California.

Administrative Matters

Staff reports were given on numerous topics, some of which are listed below:

- Overview of the Board's compliance with the Audit Findings and Corrective Action Plan;
- Attendance for out-of-state trips for the 1st half of fiscal year 2008/2009;
- Recent changes to the Administrative Procedure Act, Bagley-Keene Open Meeting Act, Political Reform Act and Public Records Act;
- The Board financial condition report for the 2nd and 3rd quarters of fiscal year 2007-2008;

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Arnold Schwarzenegger
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UPCOMING BOARD MEETINGS

*GENERAL MEETING

October 16, 2008

Los Angeles



*GENERAL MEETING

November 20, 2008

Los Angeles

*SPECIAL MEETING

December 11, 2008

Sacramento

*Board meeting dates are subject to change.

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- The Board's collection of the Arbitration Certification Programs' Annual Fee;
- The Board's proposed budget for the next fiscal year;
- Nomination of the Solon C. Soteras Employee Recognition Award (see article this page) ;
- Success of the Board's 2007 California State Employees Charitable Campaign.



Dan Strike

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, 2008, General meeting, the Board considered and unanimously approved the Development Committee's recommendation that Dan Strike receive the award for a job well done.

Dan is the newest staff member at the Board, having joined us in September 2007. He has quickly become a favorite to all, and is an important contributor to our close-knit staff. He is very diligent when working on various projects and most often completes them prior to the deadline.

He is punctual, hard working, and never balks at taking on a new project. He is pleasant on the phones when talking to consumers, and does a great job at supporting the Mediation staff. He is well liked by all coworkers and is always ready to lend a helping hand when needed. Congratulations, Dan!

FREE PUBLIC WORKSHOP

The Federal Trade Commission and the California Office of Privacy Protection will co-host a free public workshop on how businesses can secure personal information and protect the privacy of consumers and employees.

Wednesday, August 13, 2008

**Protecting Personal Information: Best Practices for
Business**

8:30 am - 1:00 pm

Ronald Reagan State Building

300 South Spring Street

Los Angeles, CA 90013

The workshop is presented in partnership with the International Association of Privacy Professionals and the Los Angeles Area Chamber of Commerce. It will feature business people, attorneys, government officials, privacy officers, and other experts who will provide practical guidance for businesses of all sizes on data security, privacy, best practices for developing an appropriate data security program, and how to respond to privacy and security problems, including data breaches.

Link to the FTC's information on the workshop at:
<http://www.ftc.gov/bcp/workshops/infosecurity/index.shtml>

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