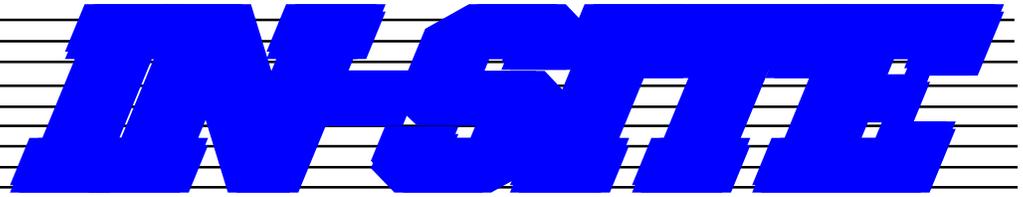




New Motor Vehicle Board



July 2001 • A PUBLICATION OF THE CALIFORNIA NEW MOTOR VEHICLE BOARD • 01.3 EDITION

EFFORTS ADDRESS ENERGY CRISIS

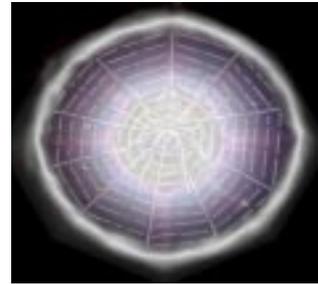
While the Davis Administration and the Legislature deal with the “big picture” complications of power supply contracts and allegations of inflated pricing by energy suppliers, the day-to-day effect of California’s ongoing energy crisis on the new vehicle industry remains a topic of concern at the New Motor Vehicle Board.

One of the strongest voices in urging statewide conservation measures as a way to deal with the crisis has been Maria Contreras-Sweet, Agency Secretary, Business, Transportation & Housing, the Board’s oversight agency. Secretary Contreras-Sweet, who was recently appointed to the State CAL-ISO Board by Governor Davis, has issued energy saving tips designed to help reduce usage while realizing cost savings. Some simply involve a common sense approach, such as setting thermostats at 78 degrees when you are at home, 85 degrees or off when you are away; avoiding running appliances during the peak times of 4-6 p.m.; and eliminating wasted energy sources, such as unnecessary extra refrigerators.

Here at “home,” the Board and, specifically its Dealer members, have kept a “weather eye” on the impact of the energy crisis on California’s new vehicle industry, working closely with the California Motor Car Dealers Association to develop strategies designed to safely reduce unnecessary dealership energy usage. Dealers throughout the state have aggressively pursued virtually all possible energy saving strategies that are available.

Along with the Administration and Agency, the Board will continue to closely monitor the State’s energy situation.

For more energy-saving solutions visit:
www.flexyourpower.ca.gov



WEB SITE IMPROVES

Have you browsed the Board’s web site (www.nmvm.ca.gov) lately? In our effort to continually improve the service we provide via the site, you will find that several new features have been implemented.

First, check out the new look to our home page - new photos, new information. The link to our oversight agency, Business, Transportation & Housing, Maria Contreras-Sweet, Agency Secretary, has been relocated to the top of the home page along with the link to Governor Gray Davis’ site.

Next, Board meeting agendas and approved meeting minutes are now available, as are copies of all documents pertaining to any regulatory actions undertaken by the Board (see “2001 Rulemaking” page 6). To access this information simply select the “Public Notices” button bar on the home page.

Finally, new navigational links can be found near the bottom of the home page. “What’s New” will highlight Board news that is current and of special interest, and “Calendar” will provide access to upcoming Board meeting dates and locations.

Give us another look and let us know what you think. We want our site to be of benefit to you!

GENERAL COUNSEL SOON TO JOIN BOARD

It appears that the selection of the Board's General Counsel will soon be completed.

At its June 26, 2001, Special Meeting, interviews were held for the selection of a nominee for the position. The nominee selected will be reviewed by DMV Director, Steven Gourley, and Business, Transportation and Housing Agency. Once the selection process is complete, the Board will reconvene to announce its new General Counsel.

The criteria for the prospective applicants was that they be either State Civil Service employees, employees of the Legislature for two or more years, or non-elected exempt employees in the executive branch who meet certain statutory criteria, and must have at least two years experience as a Staff Counsel, at salary range D.

Some of the duties of the General Counsel include analyzing proposed decisions prepared by Administrative Law Judges, advising the Board concerning those proposed decisions, and advising the Executive Director and Board on all other legal matters of interest.



Mediation Statistics July 2000 to June 30, 2001

Mediation Phone Calls Received	9,221
Mediation Request Forms Sent to Consumers	2,070
Cases Filed	625

*You can reach
Mediation Services at
(916) 445-1888*

IN-SITE

California New Motor Vehicle Board
1507 21st Street, Suite 330 Sacramento, California 95814
(916) 445-2080
e-mail: nm vb@pacbell.net



State of California
Gray Davis, Governor



Business, Transportation and Housing Agency
Maria Contreras-Sweet, Secretary

Department of Motor Vehicles
Steven Gourley, Director

New Motor Vehicle Board

Officers

Robert T. (Tom) Flesh,
President
Frederick E. (Fritz) Hitchcock,
Vice-President

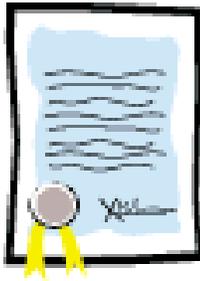
Members

Edward W. Bayuk
Wendy Brogin
Alan J. Skobin
Solon C. Soterias
Glenn E. Stevens
David W. Wilson

Executive Director
Tom Novi

Staff Counsel
Robin P. Parker, Esq.
Michael Dingwell, Esq.

Questions or comments: Michael Dingwell, Editor, nm vb@pacbell.net



JUNE 2001 EMPLOYEE RECOGNITION

Twice each year, the Board awards one of its employees with the NMVB Employee Recognition Award (ERA). At the June 12, 2001, General meeting, the Board voted unanimously to honor Robin P. Parker, Esq., Staff Counsel, as the June 2001 recipient.

Ms. Parker was recognized for exceptional legal knowledge relating to Board operations, effectiveness in answering questions regarding the Civil Code and Vehicle Code, ability to manage and complete projects effectively, conscientious work habits, and positive attitude in working with and helping co-workers. In summary, her outstanding performance has contributed greatly to the Board's operations.

In addition to a Letter of Commendation signed by the Board President, the Chair of the Board Development Committee and the Executive Director, Ms. Parker received a monetary Gold Star Award from DMV and a valuable prize package. Congratulations to a most deserving recipient!

ACP FEE COLLECTION ENDS

In addition to our duties involving new vehicle industry disputes and consumer mediation, the Board annually assesses and collects the fees which support the activities of the Department of Consumer Affairs' "Arbitration Certification Program" (ACP). Instituted in 1988, ACP is

the program responsible for certifying third-party dispute resolution processes used in the arbitration of disputes between consumers and vehicle manufacturers.

This year, invoices mailed to 30 manufacturers and distributors on February 14, 2001, marked the start of fee collection for fiscal year 2000-2001. From those invoices, the Board collected \$700,491.00 in fees based on the reported sale of 2,027,609 new motor vehicles in the State of California in calendar year 1999.



REVENUE

*Fiscal Year 2000-2001**

NEW MOTOR VEHICLE DEALER Annual Fee:	\$307,079.00
NEW MOTOR VEHICLE BOARD Filing fees:	21,800.00
NEW MOTOR VEHICLE BOARD Manufacturer/Distributor Annual fee:	849,169.20
NEW MOTOR VEHICLE BOARD Hearing Transcripts:	2,854.00
Arbitration Cert. Program Reimbursement	3,460.60
Total	\$ 1,184,362.80

*July 1, 2000 thru May 31, 2001

UPCOMING

HEARINGS * *

September 18, 2001 - PR-1767-01, PR-1768-01 Kia of Riverside v. Kia

October 15, 2001 - PR-1763-01 Fresno Dodge v. DaimlerChrysler

December 10, 2001 - PR-1765-01 Corning Truck & Radiator Service v. International Truck

**Dates are subject to change.

The forum featured automobile dealers from around the country and focused on how technology can help dealers to realize higher profits, and, find, sell and retain more customers.

In other news, Fritz Hitchcock was joined by fellow Dealer members Alan Skobin of Galpin Ford, and David Wilson, of David Wilson Automotive Group in the *Automotive News* top 100 dealership groups in the United States. Dealerships were ranked on year 2000 new vehicle retail sales units with Wilson ranking 11th while Galpin and Hitchcock ranked 28th and 33rd, respectively. On a special note, David Wilson was awarded with the first annual Boy Scouts of America "Good Scout Award" at the *Motor Trend* 2001 California International Auto Show. The Board is very proud of our exceptional Board members for their efforts. Congratulations to all!

JULY



HONORS, AWARDS TO BOARD MEMBERS

The staff at the New Motor Vehicle Board thinks our Board members are quite notable, so it's always a pleasure to be able to report when they are recognized by the motor vehicle industry as such.

Dealer member and Board Vice President, Fritz Hitchcock (Hitchcock Automotive Resources/Puente Hills Toyota), has been selected as a recipient of the Toyota President's Award given for achieving excellence in all areas of dealership operations. Fritz was also a featured speaker at the *Automotive News* "Dealership Technology Forum" held on May 22-23, 2001, in Washington, D.C.



COURT CASES

The Board does not participate in any action unless a state interest is implicated. The Board, as represented by the Attorney General's Office, is participating in the following court cases marked by an asterisk (*):

* Duarte & Witting Inc., dba Nader Chrysler-Plymouth vs. New Motor Vehicle Board; DaimlerChrysler Motors Corporation, Real Party in Interest

* Sterling Truck Corporation vs. New Motor Vehicle Board; Sacramento Valley Ford Truck Sales, Inc., Real Party in Interest



NEW PROCEDURES SPEED CASE PROCESSING

The Board takes very seriously its mission of striving to “resolve disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner.” To that end, a review of the Board’s case management processes has resulted in the adoption of some new procedures which should assist in moving protests and petitions to hearing in a more expedient fashion.

Matters which remain without action on the hearing calendar will be referred to the assigned Administrative Law Judge (“ALJ”) for review, and/or staff will report the status of the case to the Board as an agenda item at a scheduled Board meeting to allow for Board consideration. If a matter is considered at a Board meeting, the parties will be given the opportunity to appear and comment.

In addition, Board staff has been directed to adhere to the mandates of Vehicle Code section 3066, which provide that hearings may not be postponed beyond 90 days from the Board’s original order setting the hearing date, and Title 13 of the California Code of Regulations section 592 which provides that hearings may not be continued within 10 days of the date for hearing except in *extreme emergencies*. Upon receipt of a request which would violate the above-referenced sections, or when circumstances indicate that it would be beneficial to the process of the case, matters will now be referred to the assigned ALJ for review. Petition matters that do not proceed to hearing within a reasonable period of time, will also be referred to an ALJ for review.

It is believed that these new procedures should provide more expeditious management of Board cases and, ultimately, reduce costs for litigants.

DOCKET

PROTESTS

<u>Vehicle Code Section</u>	<u>Active</u>
3060	
Termination	7
Modification	13
3062	
Establishment	5
Relocation	1
Satellite Warranty Facility	0
3064	
Delivery&Preparation	0
3065	
Warranty Reimbursement	0
3065.1	
Incentive Compensation	1
TOTAL PROTESTS: 26	

PETITIONS

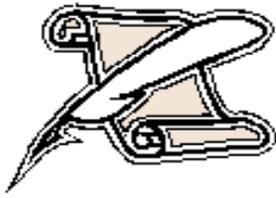
3050(c)	8
TOTAL PETITIONS: 8	

APPEALS

3050(b)	0
TOTAL APPEALS: 0	

MATTERS RECENTLY RESOLVED

Since the last edition of *In-Site*, a total of 14 protests and 2 petitions have been resolved and are not included in the above figures.



2001 RULEMAKING

Have you ever wondered why or how the Board operates in the ways that it does? The answer is that the authority for all Board program functions is derived from “enabling” statutes found in the California Vehicle Code. From that authority, the Board’s regulations (contained in Title 13 of the California Code of Regulations), are enacted by a process called “rulemaking” to implement the intent of the statutes.

For 2001, the Board has proposed rulemaking for the following purposes:

- Add sections 551.14 - 551.17 to establish a mechanism for engaging in informal mediation in petition causes of action prior to the formal filing of a petition.
- Amend section 553 which will *reduce* (by approximately 25%) the annual fees paid by new vehicle dealers, manufacturers and distributors to fund the Board’s activities.
- Add section 565 which will establish a process by which a manufacturer, branch, or distributor may request an extension of time to operate or control a dealership within ten miles of an independent, franchised dealer in preparation for sale to a successor independent franchisee.
- Add section 593.3 to provide a clear explanation as to what actions may be considered for failure to provide to the Board a statutorily required notice or for filing it in an untimely manner.
- Amend section 599 (Conflict of Interest Code) in order to include the Board’s Executive Director, General Counsel, and certain employee positions which make or participate in the making of governmental decisions, in the list of designated positions.

Detailed information regarding the Board’s 2001 rulemaking may be obtained from our web site at: www.nmvb.ca.gov.

CONSUMER MEDIATION SPOTLIGHT

You may remember that we featured Jackie Grassinger, one of our Consumer Mediation Representatives, in the January 2001, issue of In-Site.

In April, Jackie was again called into action by a consumer experiencing problems with her 2000 Jaguar S Type. The problems included difficulty in starting and unexpected, random stalling. Although the car was serviced on four separate occasions, the problems remained. Action by a specialist dispatched from Jaguar seemed to correct the problems, but by this time the customer had lost confidence in her vehicle.

Jackie immediately contacted Jaguar inquiring what steps Jaguar would be willing to take to satisfy the consumer. In mid-May, Jaguar responded that they had offered a *full refund or replacement* of the vehicle. The customer opted for a 2001 replacement vehicle, praising both Jaguar and the Board for their outstanding cooperation in the matter.



Jaguar XK120



NADER VS. DAIMLERCHRYSLER

In response to DaimlerChrysler's discontinuance of its Plymouth line, Nader Chrysler-Plymouth filed a protest with the Board. A motion to dismiss filed by DaimlerChrysler argued that the Board has no jurisdiction over a franchise termination caused by a manufacturer's discontinuance of an entire line-make or, in the alternative, that discontinuance would constitute "good cause" for termination as a matter of law.

The Proposed Ruling of J. Keith McKeag, Administrative Law Judge which concluded that it was not intended for the Board to approve or disapprove terminations over discontinuance of an entire line-make and that the Board lacks authority to grant the relief Nader requested, recommended dismissal for lack of jurisdiction. The Board subsequently modified the Proposed Ruling dismissing the protest without prejudice.

On June 18, 2001, Nader filed a Petition for Writ of Administrative Mandamus, contending that the Board acted in excess of its jurisdiction by granting the motion to dismiss and committed prejudicial abuse of discretion by denying Nader's statutory right to a hearing on the merits of the protest.

The Office of the Attorney General will represent the Board at a hearing scheduled for September 14, 2001. Future updates on this litigation will be provided in In-Site.

SABA CONCLUDES

The matter of *Saba A. Saba et al. vs. New Motor Vehicle Board; Kawasaki Motors Corp., U.S.A., real party in interest* reached its final conclusion before the Board on June 26, 2001.

As we previously reported in In-Site, the Fourth District Court of Appeal indicated in a published opinion that in Board franchise termination protests, judicial review should be conducted under the "substantial evidence test." The court ordered the Board to reinstate its decision which

allowed *Saba's* termination.

How the *Saba* case would have proceeded in light of the reinstated decision will never be known. In August 2000, Kawasaki served *Saba* with a 60-day notice of termination for reasons unrelated to the earlier litigation. *Saba* did not protest and its franchise was terminated.

Nevertheless, this opinion is important because it clarifies the appropriate standard of review to be applied by trial courts when reviewing Board decisions.



DMV SETTLES GUNDERSON

In April 2001, the Department of Motor Vehicles reached a settlement agreement with Gunderson Chevrolet. Facing some 1,500 counts of consumer fraud, Gunderson has agreed to pay \$900,000 in monetary settlement, restitution to consumers estimated at over \$1,000,000, close its sales department for six consecutive days from April 20 through April 25, 2001, have its dealer license on probationary status for the next four years, remunerate DMV \$200,000 for investigative and legal costs, and be permanently enjoined from violating the laws alleged in the complaints.

The DMV alleged that Gunderson had charged customers for products, such as theft protection and extended warranties, that customers had not agreed to buy. During the probation period, DMV investigators will conduct five unannounced audits of Gunderson's dealership records. Gunderson agreed to pay the costs of the audits, up to a maximum of \$50,000.

DMV spokesperson, John McClellan, indicated that DMV's action "sends a strong message ... that these kinds of illegal business practices will not be tolerated."

The matter has been referred to the District Attorney's Office for civil and possible criminal prosecution.

UPCOMING BOARD MEETINGS

General Board Meeting
September 6, 2001
San Jose*



General Board Meeting
November 8, 2001
Sacramento*

(*Board Meeting dates are subject to change. A meeting agenda with time and location details is mailed 10 days prior to the meeting.)

PREVENTING ... AUTO THEFT

- * Lock car doors and take keys with you. Make no exceptions.
- * Don't hide a second set of keys anywhere on the car.
- * Park in well-lit areas.
- * Don't keep the motor running while you dash to the ATM or convenience store.
- * Don't leave money or valuables in plain view.
- * Apply the emergency brake when parked.
- * Park in the garage if you have one.
- * Don't leave the vehicle title in the car.



NMVB e-mail: nmvp@pacbell.net



DID YOU KNOW...

Travel statistics from the U.S. Department of Transportation show that thirty percent of all trips taken by Americans are vacations. Seventy-five percent take their cars for an average distance of 368 miles.

Why not visit us

on the web...



...at www.nmvp.ca.gov