



New Motor Vehicle Board

In-Site

July 2004

A Publication of the California New Motor Vehicle Board

04.3 Edition



Board members from left to right
Glenn Stevens, Tom Flesh, Haig Papaian, David Lizárraga

2004 NMVB INDUSTRY ROUNDTABLE

Each year, the New Motor Vehicle Board holds its Annual Industry Roundtable in conjunction with the California Motor Car Dealer Association's State Convention in Indian Wells, California. The Annual 2004 Roundtable held on April 21, 2004, was notably successful in that participation greatly surpassed the previous years. All Board members were in attendance along with Executive Director, Tom Novi, General Counsel, Howard Weinberg, and Senior Staff Counsel, Robin Parker.

Tom Flesh, Chair of the Government and Industry Affairs Committee, opened the meeting by welcoming all attendees. Changes to the format of this year's session were based upon feedback from last year's Roundtable. Recreational vehicle manufacturers and distributors also participated, in addition to those for passenger cars, motorcycles, and heavy-duty trucks. The following topics were discussed:

The Effect of Public Ownership on the Franchise System - Introduced by Jerry Heuer, President, Power Automotive an AutoNation Company, and Mark Iuppenlatz, Senior Vice President of Corporate Development for Sonic Automotive. This topic covered the impact of publicly held dealerships on private dealers and the public business advantages and disadvantages, and possible implications to manufacturers.

Dealer and Manufacturer Regulatory Issues with the Department of Motor Vehicles - Introduced by Vito Scattaglia, Investigations Area Commander, Department of Motor Vehicles. Mr. Scattaglia discussed problem areas that have been identified in recent years concerning consumer complaints and violations of statutes and regulations by dealers and manufacturers and how DMV responds to the complaints.

How Manufacturers Encourage and Reward Compliance with Franchise Requirements - Various strategies were discussed, including the types of rewards manufacturers use to encourage franchisee compliance with franchisor requirements. Key factors that serve to enhance dealer/manufacturer relations were also discussed.

Strategies and Considerations in Dealership Sales - Introduced by Brady Schmidt, President, National Business Brokers. Mr. Schmidt discussed buy-sell agreements and the role brokers have in their success. He also discussed market forces that affect the valuation of a dealership and the impact of publicly held companies on buy/sell dynamics.

After the meeting, a number of comments were provided by the attendees, such as, "... guest speakers were thoroughly prepared", "... great mix of topics so the audience stayed tuned", "my first time appearing, and I was pleasantly surprised", "...superb event well worth while", and many others too numerous to list.

The 4th Annual Industry Roundtable is scheduled for Wednesday, April 20, 2005. If you would like additional information or have topic suggestions, please contact Robin Parker at (916) 445-2080 or email Robin_P@pacbell.net.

APRIL 22, 2004 GENERAL BOARD MEETING

The day following the Industry Roundtable, the Board held its General meeting, also in conjunction with the California Motor Car Dealer Association's State Convention in Indian Wells. Among the agenda items were two industry matters decided by the public members.

The public members considered General Motors Corporation's request for extension of time to own and operate Gateway Chevrolet Motor Company, Inc., dba Gateway Chevrolet, in preparation for a sale to a successor independent franchisee in compliance with Vehicle Code section 11713.3(o)(2)(a).

Oral comments were presented on the issue by counsel for General Motors Corporation and by counsel for Anaheim Chevrolet. Gina and Woody Oklehas, owners of Anaheim Chevrolet and Tim Mullahey, owner of Mullahey Chevrolet, also shared with the Board the impact on their dealerships.

Peter Welch, President, California Motor Car Dealers Association, presented comments on the history of

the legislation that resulted in the current statutory requirements for dealer development stores.

The Board members discussed the request and deliberated in open session. A motion to deny General Motors Corporation's request for an extension of time to own and operate Gateway Chevrolet was carried by a four-to-one vote. (Note: Subsequent to the meeting, General Motors reported to the Board that the Gateway Chevrolet Motor Company assets had been sold to another entity.)

The second item that was considered was the Administrative Law Judge's Proposed Decision in *Fremont Automobile Dealership, LLC dba Fremont Toyota v. Toyota Motor Sales, U.S.A., Inc.*, Protest No. PR-1844-03.

The Respondent proposed to relocate Piercely Toyota closer to Fremont Toyota. While Piercely Toyota is currently located within its relevant market area, protestant Fremont Toyota believed that its investment would be jeopardized by the relocation.

The Administrative Law Judge's Proposed Decision concluding that good cause for not relocating the franchise had not been established by Fremont Toyota was adopted as the Board's final decision. On June 3, 2004, Fremont Toyota filed a Writ of Administrative Mandamus in Sacramento County Superior Court challenging the Board's decision.



State of California
Arnold Schwarzenegger, Governor

IN-SITE

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Chon Gutierrez, Director
New Motor Vehicle Board



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Glenn E. Stevens,
President
David W. Wilson,
Vice-President

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Robert Branzuela
Robert T. (Tom) Flesh
David C. Lizárraga
Haig Papaian
Andy Robles
Sushil K. Sharma
Alan J. Skobin

Executive Director

Tom Novi

General Counsel

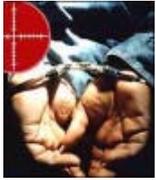
Howard Weinberg

Senior Staff Counsel

Robin P. Parker

Staff Counsel

Cara M. Peralta



DMV INVESTIGATORS BUST CAR THEFT RING

Identity theft and fraud are rampant, as demonstrated by the recent bust of the largest car theft ring in the Department of Motor Vehicles' ("DMV") history. It was a car-buying scam that cost Southern California dealers and banks an estimated \$8.5 million.

The widespread arrest operation started before dawn on Thursday, April 29, 2004. As a result, 17 persons, alleged co-conspirators of a wide-spread car theft and vehicle titling fraud scheme, were taken into custody by teams of DMV investigators and other law enforcement officers throughout Los Angeles and Orange counties.

The arrests came after a two-year long investigation into the dealings of Duty Free Auto Sales of Costa Mesa ("Duty Free"). DMV investigators charged the suspects with organizing and participating in a complex scheme involving so-called "straw buyers" with false credit histories who purchased high-end luxury cars from a number of Southern California dealerships and turned the vehicles over to Duty Free. Subsequently, Duty Free allegedly forged registration cards and resold the vehicles to customers with poor or little credit at highly discounted prices. Duty Free would then stop making the payments to the original dealership, forcing the lender or dealer to take the loss. As a result, the vehicles simply disappeared with no way to track them, resulting in financial losses totaling an estimated \$8.5 million for some 33 victimized dealers and financial institutions.

Almost one hundred Southern California DMV investigators participated in the arrest operation, once again demonstrating the DMV's commitment to cracking down on any crimes committed against any regulated dealership in California. The suspects were charged with more than fifty felony counts of conspiracy, grand theft and forgery. About two hundred leased vehicles still have not been located. When they are found, they will be taken back from those who leased them and most likely returned to the dealerships.

FIRE THREATENS BOARD'S OFFICES

On Saturday, May 22, 2004, at approximately 11:15 a.m., a three-alarm fire occurred at the offices of the New Motor Vehicle Board. Fire fighters arrived to find heavy smoke coming from the roof of the three-story building at 1507 21st Street, resulting in several streets in the midtown area being closed off for about two hours.

The building had been undergoing construction for earthquake retrofitting for several weeks. On that Saturday, welders were working on the beams in one of the Board's offices, when heat traveled down steel bracing causing the adjacent wood to catch fire. Although precautions had been taken by the construction workers, the fire was not detected immediately. As soon as they saw smoke, 911 was called and the fire trucks arrived within minutes.

One office was damaged to the point that it was not usable, but no equipment or files were lost and there were no injuries. Fortunately, the fire was contained before major damage occurred. Then the rains came. As the workers were hurriedly attempting to repair the hole in the roof on the following Friday after the fire, a storm came in over the weekend and dropped a good amount of precipitation. The staff arrived Monday morning to a scurry of workers with wet vacs and the sound of water pouring from the roof into the office. Construction workers were able to keep the water from doing additional damage, but this caused a further delay in the repair schedule.

Throughout the pounding, drilling, and many interruptions, Board staff have maintained a good sense of humor and have ensured that Board business is being conducted in a professional and efficient manner. Repairs are still in progress as of this writing. The building is fully insured and the Board will not experience any costs in making the necessary repairs that are estimated at approximately \$125,000.



Fire engine responding to Board office fire

COURT UPDATE



MICHAEL CADILLAC, INC., dba MICHAEL VOLKSWAGEN, Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent; VOLKSWAGEN OF AMERICA, INC., Real Party in Interest. Sacramento Co. Sup. Court No. 03CS01129, Filed July 31, 2003.

In the proceeding before the Board, Protest No. PR-1819-02, Michael Cadillac, Inc., dba Michael Volkswagen protested the establishment of a new Volkswagen dealership to be located in the Clovis area, within 10 miles of the Protestant's dealership. Protestant was noticed by Respondent Volkswagen of America, Inc. by letter on August 8, 2002. A hearing on the merits was held before a Board Administrative Law Judge.

The Proposed Decision overruled the Protest and determined that the addition of a second Volkswagen dealership, located in Clovis, would have a beneficial effect on the retail motor vehicle business, the consuming public and the public welfare. The Proposed Decision further found that although Protestant had fully adequate facilities, inventory and staff, there was inadequate competition in the Fresno market such that the addition of a second Volkswagen dealer would improve inter-brand and intra-brand competition to the benefit of the consuming public.

The Proposed Decision, was adopted as the Final Decision at the Board's June 17, 2003, General Meeting.

Michael Volkswagen challenged the Board's action in a Petition for a Writ of Administrative Mandamus, alleging the Board proceeded in excess of its jurisdiction and committed a prejudicial abuse of discretion by failing to consider evidence in support of findings in the final decision.

The Sacramento County Superior Court denied the petition in a ruling of February 27, 2004, and entered judgment in favor of the Board on March 23, 2004.

The appeal period of 60 days from entry of judgment having lapsed, the court's decision is final.

PENDING COURT CASES

DAUGHERTY LINCOLN MERCURY, INC., Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent; FORD MOTOR COMPANY, LINCOLN MERCURY DIVISION, Real Party In Interest. Sacramento Co. Sup. Court No. 03CS00861, Filed August 12, 2003

In Daugherty's Petition for a Writ of Administrative Mandamus, it alleges that the Board abused its discretion in the Decision to overrule Protest No. PR- 1798-02, which challenged Ford's termination of Daugherty's Lincoln Mercury franchise.

UNIVERSITY FORD, INC., dba BOB BAKER FORD, Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent; FORD MOTOR COMPANY, Real Party In Interest. Sacramento Co. Sup. Court No. 03CS01227, Filed August 27, 2003

In Baker's Petition for a Writ of Administrative Mandamus, Baker alleges the Board had no jurisdiction to hear the petition pursuant to the outcome of *Phillips Mazda*, and in the alternative, alleges the Board did not "consider or address" various evidentiary matters, and lastly, seeks an independent standard of review of the Board's decision.

FREMONT AUTOMOBILE DEALERSHIP, LLC, dba FREMONT TOYOTA, Petitioner v. NEW MOTOR VEHICLE BOARD, Respondent; TOYOTA MOTOR SALES U. S. A., INC., Real Party in Interest. Sacramento Co. Sup. Court No. 04CS00715, Filed June 3, 2004

In Fremont's Petition for a Writ of Administrative Mandamus, it alleges that the Board acted in excess of its jurisdiction by improperly weighing the evidence supporting the Final Decision, and that the Board denied Fremont a fair hearing by upholding several allegedly erroneous ALJ factual findings. Fremont also alleges it does not have a plain, speedy or adequate remedy under the law, and lastly, Fremont seeks an independent standard of review of the Board's April 22, 2004, decision.



Peter Welch, David Wilson, Jeff Estabrooks

DAVID WILSON RECEIVES 2004 CHAIRMAN'S AWARD

The Board is proud to report that David Wilson, Board Vice President, was this year's recipient of the prestigious Chairman's Award, which he received at the California Motor Car Dealers Association's annual State Convention in Indian Wells. The award was created in 1996 and honors a dealer or industry leader for a "lifetime of dedication to his community and industry." Each year the outgoing CMCD A chairman chooses a dealer to receive this award.

Outgoing Chairman Jeff Estabrooks recognized Mr. Wilson for his tireless efforts to jump start the 17200 ballot initiative drive to limit unlawful business practices lawsuits against auto dealers with a significant campaign contribution. Congratulations, David, for recognition well deserved.

BOARD HONORED FOR CSECC CAMPAIGN

Suzanne Takehara, Chair, and Nicole Angulo, Co-Chair, of the California State Employees Charitable Campaign ("CSECC") were invited along with Executive Director Tom Novi, to attend the 2004 Annual Awards Luncheon hosted by United Way, California Capital Region, on May 26, 2004. The Board received the Star Award for Outstanding Employee Participation and was recognized along with Bank of America, Hewlett-Packard, Intel and other outstanding organizations for its fundraising success.

Suzanne and Nicole started the fundraising activities early in 2003, and continued throughout the year with a variety of creative endeavors that included a Hot Dog and Chili sale, Nacho sale, Breakfast Feast, and ended with the traditional "Dollar-a-Dip" potluck and Opportunity Basket raffles. The big money maker for the year was the Board Calendar, featuring artwork and pictures of the staff's children and grandchildren. The total dollar amount from the campaign was \$3,077, which was a 20% increase in donations over the previous year.

The Board is extremely proud of Suzanne and Nicole for their accomplishments. With both staff and Board member contributions, we are helping those most in need in our community. That is truly the real reward.

INDUSTRY AWARDS

TOYOTA BOARD OF GOVERNORS

David Wilson, Dealer Member – Toyota of Orange, Toyota of Riverside
Fritz Hitchcock, former Dealer Member – Puente Hills Toyota

GM MARK OF EXCELLENCE PRESIDENT'S TRAVEL REWARD WINNERS

Fritz Hitchcock, former Dealer Member – Puente Hills Pontiac GMC
Joe Putnam, former Dealer Member – Putnam Pontiac GMC

PRESIDENT'S AWARD

Alan Skobin, Dealer Member – Galpin Lincoln Mercury
David Wilson, Dealer Member – Toyota of Orange

WARDS TOP 10 – REVENUE/DEALERSHIP

Alan Skobin, Dealer Member – Galpin Automotive Group

WARDS TOP 10 – BY F&I REVENUE

David Wilson, Dealer Member – Wilson Automotive Group

Mediation Statistics

Mediation Phone Calls Received	5,408
Mediation Request Forms Sent to Consumers	1,385
Cases Filed	508

July 2003 through June 2004

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

CONSUMER MEDIATION SPOTLIGHT

Listed below is a recent mediation case that was brought to resolution by Heather Collins, Senior Mediation Analyst.

On January 26, 2004, the New Motor Vehicle Board's Consumer Mediation Services Program received a request for mediation from a consumer who had purchased a new Mercedes-Benz model C320 in February 2002. The vehicle started experiencing problems at 2,400 miles with the cooling system, electrical system, engine, frame and transmission. The vehicle had been in for repairs at least 8 times, the last in December 2003, for 22 days. After the numerous unsuccessful repair attempts, the consumer asked the dealership to buy back the vehicle.

On January 27, 2004, Ms. Collins sent a letter to the manufacturer and dealership along with a copy of the consumer's complaint, requesting their version of the situation and what remedy they would be willing to do to satisfy the consumer. On February 3, 2004, Ms. Collins received a mailgram from the manufacturer stating the case would be reviewed on a local level. Ms. Collins received a call from the factory representative on March 23, 2004, stating that an appointment had been made for the consumer to pick out another vehicle. The consumer went to the dealership on April 1, 2004, considered the offer,

but decided that she would prefer a refund instead.

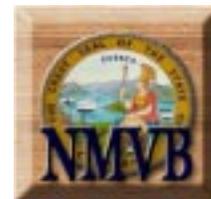
Through Ms. Collins' diligence in working between the two parties, an agreement was reached in the buy-back for the consumer. Ms. Collins received a call from the consumer on May 19, 2004, stating that she had taken the vehicle back to the dealership, received her refund check, and was pleased with the outcome.

RV MEDIATION PROCEDURE UPDATE

On January 1, 2004, SB 248, sponsored by Senator Kevin Murray, took effect. It places the recreational vehicle ("RV") industry within the jurisdiction of the Board for purposes of appeals, petitions, and protests. With regard to the Consumer Mediation Services Program ("Program"), the legislation requires that the staff recommend to a member of the public that he or she consult with the Department of Consumer Affairs when seeking a refund involving the sale or lease of, or a replacement of, an RV.

Pursuant to the language of the bill, the Board's mediation program staff have implemented the use of a Mediation Checklist for Recreational Vehicle Jurisdiction when dealing with complaints from the public regarding RVs. The checklist enables staff to guide the consumer through key Lemon Law criteria, and enable the consumer to choose the proper course of action, and was approved by the Board at its April 22, 2004, General meeting.

Since January 1, 2004, the Program has received three complaints regarding RVs. None of the complaints met the referral criteria, and were, therefore, mediated by Board staff.



**THE GUIDE TO THE
NEW MOTOR VEHICLE BOARD
IS NOW AVAILABLE ON
THE BOARD'S WEB-SITE
WWW.NMVB.CA.GOV**

BOARD ADMINISTRATIVE LAW JUDGES

The Board employs part-time Administrative Law Judges to preside over its legal cases, and has been fortunate to have J. Keith McKeag, Anthony Skrocki, Kenneth Wilson, and Marilyn Wong serving as Judges. All are highly regarded judges that have been with the Board for many years. Due to upcoming retirements, the Board will be losing a number of these Judges in the next year or so.

As of July 1, 2004, the State hiring freeze has been lifted. As a result, the Board plans to recruit, interview and hire qualified Judges as needed. Board policy provides that hiring selections be made by the Administration Committee, with the final choices brought to the entire Board for final approval.

In the interim, and in order to continue to provide quality service in a timely manner, the Board has contracted with the Department of General Services, Office of Administrative Hearings, to use their Judges on Board matters in the event a regular Judge is not available. As always, the parties will be notified as to the Judge assigned to their case.

BOARD REMEMBERS FORMER PRESIDENT RONALD REAGAN

“Reagan Signs Tough Law” – Automotive News,
October 15, 1973

An article tucked away in the Board’s archives reminds us that if it were not for then Governor Reagan, California new vehicle dealers and manufacturers might not have the services of skilled staff to help resolve disputes in the vehicle industry. Back in 1973, new car dealers throughout California barraged Governor Reagan with letters, telegrams, and telephone calls (no emails back then) to sign Assembly Bill 225 which changed the name of the New Car Dealers Policy and Appeals Board to the New Motor Vehicle Board and expanded the duties and responsibilities of the Board to include dispute resolution between franchisees and franchisors.

The Board, along with all of America, was deeply saddened by the news of the former President’s passing, but fondly remembers and recognizes the positive benefits he brought to the automobile industry in California.

RONALD WILSON REAGAN
1911 - 2004

REVENUE

NEW MOTOR VEHICLE DEALER Fee:	\$ 584,839.00
NEW MOTOR VEHICLE BOARD Manufacturer/Distributor Annual fee:	774,805.79
NEW MOTOR VEHICLE BOARD Filing fees:	19,200.00
Document Requests:	5,153.43
Arbitration Cert. Program Reimbursement:	3,937.84
July 2003 - May 2004	\$ 1,387,936.06

Why not visit us



on the web...

...at www.nmvp.ca.gov

or contact us at

NMVB e-mail:
nmvp@pacbell.net

UPCOMING BOARD MEETINGS

**General Board Meeting
September 30, 2004
Ontario, California**

**Special Board Meeting
September 30, 2004
Tour of Fleetwood
Manufacturing Facility
Ontario, California**

**General Board Meeting
November 4, 2004
San Francisco, California**

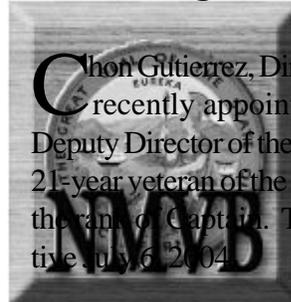
(*Board Meeting dates are subject to change. A meeting agenda with time and location details is mailed 10 days prior to the meeting and is posted on the Board's website.)

SB 1711 UPDATE

In the April issue of the In-site, the Board reported on a bill introduced by Senator Bowen, SB 1711, that would have essentially eliminated the Board. The bill originally sought to abolish the Board and transfer certain Board duties to the Department of Motor Vehicles ("DMV").

The bill was then amended to eliminate only the Board's ability to hear DMV Director Appeals. The May 28, 2004, deadline for the bill to pass out of the Senate was not met, so the bill essentially died. Interestingly, in 1993 a similar bill (AB 699) was introduced by then Assembly Member Bowen to abolish the Board. That bill was also not successful due in large part to industry concerns that abolishment of the Board would jeopardize the ability of dealers and manufacturers to quickly and inexpensively resolve disputes.

DMV DIRECTOR APPOINTS MICHAEL CHAMPION



Chon Gutierrez, Director, Department of Motor Vehicles, recently appointed Michael Champion as the new Deputy Director of the Investigations Division. Michael is a 21-year veteran of the California Highway Patrol and holds the rank of Captain. The appointment will become effective July 6, 2004.

DID YOU KNOW ...

Contrary to popular belief, Henry Ford did not invent the assembly line. It was actually Ransom E. Olds (of Oldsmobile fame) who created the assembly line in 1901. What Henry Ford did was to improve upon Olds' idea by adding conveyer belts to the process. This, in itself, improved the time of manufacturing one automobile from a day and a half to just ninety minutes.



ACTIVE LEGAL CASES

Vehicle Code Section

3060	Termination/Modification	18
3062	Establishment/Relocation	10
3065	Warranty Reimbursement	2
3065.1	Franchisor Incentive	2

TOTAL CASES: 32