



*New Motor Vehicle Board*

# *In-Site*

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## **MAY 5, 2010 GENERAL BOARD MEETING**

The New Motor Vehicle Board (“Board”) held a General meeting on May 5, 2010, in Riverside, California. At that meeting, the members considered three case management matters as well as several administrative matters.

### *RV READY v. GULF STREAM COACH, INC.*

The Public and Dealer Members of the Board considered the Proposed Decision in *RV Ready v. Gulf Stream Coach, Inc.*, Protest Nos. PR-2153-09 and PR-2178-09. Oral comments were presented by Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving representing the Protestant, and Chandra E. Kiamiley Esq., of Klinedinst PC representing the Respondent.

Protestant, an RV dealer, sought reimbursement for warranty and franchisor incentive program claims. A merits hearing was held before Administrative Law Judge Jerold A. Prod on December 21 and 22, 2009.

The Public and Dealer Members of the Board considered the Proposed Decision, deliberated in closed Executive Session, and unanimously adopted the Proposed Decision with the exception of the Administrative Law Judge’s denial of payment of \$3,500 for the sales incentive at the Pomona Show. Respondent was ordered to pay Protestant \$20,713.48 for warranty claims, \$6,000 for an incentive on the sale of an RV to the Callaways, and \$3,500 for an incentive at the Pomona Show for a total of \$30,213.48 to be received by RV Ready no later than 30 days after the decision is final.

### *MEGA RV CORP., dba MCMAHON’S RV v. ROADTREK MOTORHOMES, INC.*

The Public and Dealer Members of the Board considered the Administrative Law Judge’s “Proposed Order Granting Respondent’s Motion to Dismiss Protest” (Protest No. PR-2200-10). Oral comments were presented

by Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving representing the Protestant and Louis S. Chronowski, Esq., of Seyfarth Shaw LLP representing the Respondent.

Protestant, an RV dealer, filed four 3070 modification protests. Respondent filed “Respondent’s Motion to Dismiss Consolidated Protests” and “Respondent’s Motion to Dismiss Protest” (PR-2200-10). A telephonic hearing was held before Administrative Law Judge Anthony M. Skrocki on March 15, 2010. The Proposed Order dated April 19, 2010, grants Respondent’s Consolidated Motion to Dismiss with regards to McMahon’s Scotts Valley (PR-2198-10) and grants Respondent’s Motion to Dismiss with regards to McMahon’s Palm Desert (PR-2200-10). However, after the submission of a declaration from James Hammill, Roadtrek’s President, a Supplemental Order was issued on April 29, 2010, denying Respondent’s Motion to Dismiss with regards to McMahon’s Scotts Valley (PR-2198-10). Therefore, the only matter pending before the Board for consideration was the Proposed Order Granting the Motion to Dismiss with regards to McMahon’s Palm Desert (PR-2200-10).

The Public and Dealer Members of the Board considered the Proposed Order, deliberated in closed Executive Session, and unanimously adopted the Proposed Order. The Protest involving McMahon’s Palm Desert was subsequently dismissed.

### *MEGA RV CORP., dba MCMAHON’S RV v. ROADTREK MOTORHOMES, INC.*

The Public and Dealer Members of the Board considered the Administrative Law Judge’s “Proposed Order Granting Respondent’s Motion to Dismiss Protest Nos. PR-2207-10 and PR-2210-10”. No further comments were submitted by counsel in light of the comments submitted during the previous case involving the same parties.

Protestant, an RV dealer, filed four 3075 warranty claim protests and four 3076 franchisor incentive program

## NMVB 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 May 5, 2010, General meeting, the Board considered and unanimously approved the Development Committee's recommendation that Nicole Angulo receive the award.

Nicole can be relied on to make deadlines, juggle multiple tasks at the same time, and create an error proof work product. She is the Board's official payroll timekeeper and recently mastered a complicated, semi-automated timekeeping system that represents the current phase of the State Controller's 21st Century Project. She is also in charge of handling all of the court reporting transcripts and keeps track of corrections needed, while keeping a polite rapport with the vendors. When the Board lost its receptionist last year to another agency, Nicole stepped up to the plate and volunteered for phone duty. She worked closely with DMV Telecom staff to create a new voice mail system to better assist callers.



Nicole Angulo

In addition to the above, Nicole keeps all of the Board's maintenance agreements up to date, takes care of Bar dues for the attorneys on staff, orders all business cards, and prepares the CalCard statements. She is able to navigate through the bureaucracy and large amounts of paperwork involved in all of her duties. Congratulations for a job well done, Nicole!



*State of California*  
Arnold Schwarzenegger  
Governor

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*Department of Motor Vehicles*  
George Valverde, Director



*Business, Transportation  
and Housing Agency*  
Dale E. Bonner  
Secretary

### *New Motor Vehicle Board*

#### **Officers**

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President  
Ramon AlvarezC.,  
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Peter Hoffman  
David C. Lizárraga  
Haig Papaian  
Victoria R. Pearson  
Glenn E. Stevens  
David W. Wilson

#### **Executive Director**

William G Brennan  
[bbrennan@nmvb.ca.gov](mailto:bbrennan@nmvb.ca.gov)

#### **Senior Staff Counsel**

Robin P. Parker  
[rparker@nmvb.ca.gov](mailto:rparker@nmvb.ca.gov)

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reimbursement protests. Respondent filed a motion to dismiss all eight protests. A telephonic hearing was held before Administrative Law Judge Anthony M. Skrocki on April 7, 2010. The Proposed Order grants Respondent's Motion to Dismiss with regards to McMahon's Palm Desert (PR-2207-10 and PR-2210-10).

The Public and Dealer Members of the Board considered the Proposed Order, deliberated in closed Executive Session, and unanimously adopted the Proposed Order. The Protests involving McMahon's Palm Desert were subsequently dismissed.

#### Administrative Matters

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

Roadtrek Motorhomes, Inc. submitted a request pursuant to Vehicle Code section 3076(b) to audit the franchisor incentive program claims for Mega RV Corp dba McMahon's RV's three locations in Colton, Scotts Valley, and Irvine. Given that this involves recreational vehicles, both Public and Dealer Members participated. Louis S. Chronowski, Esq. of Seyfarth Shaw LLP represented Roadtrek. Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving represented McMahon's RV. After a brief discussion, the members unanimously denied Roadtrek's request for an extension of time to audit McMahon's RV.

The Solon C. Soteras Employee Recognition Award was awarded to Nicole Angulo, Legal Assistant (see article on page 2).

Mr. Brennan reported that the Board's collection of the Arbitration Certification Programs' Annual Fee had been completed. The Board collected \$1,042,000 or \$.714 per vehicle to fund ACP's operations. The Board receives approximately \$5,000 to recover the cost of administering the collection.

THE GUIDE TO THE  
NEW MOTOR VEHICLE BOARD  
AND THE MANUFACTURER  
GUIDE ARE AVAILABLE ON  
THE BOARD'S WEB-SITE  
WWW.NMVB.CA.GOV.

## JUNE 15, 2010 GENERAL BOARD MEETING

The New Motor Vehicle Board ("Board") held a General meeting on June 15, 2010, in Los Angeles, California. At that meeting, the members considered a petition as well as several administrative matters.

MEGA RV CORP. DBA MCMAHON'S RV v. ROADTREK MOTORHOMES, INC., Petition P-456-10

At the time of the meeting, there were 13 pending protests for modification, establishment, warranty reimbursement and franchisor incentive program reimbursement involving McMahon's RV. McMahon's RV also filed a petition wherein it sought relief pursuant to Vehicle Code section 3050(c)(1)-(3). There have been a total of 18 protests filed involving these same parties; three of the protests were dismissed for lack of jurisdiction at the May 5, 2010 meeting and two termination protests were filed in July.

The first item considered by the Public Members pertained to Petitioner's request for adjudication of a licensee versus licensee dispute [Section 3050(c)(2)]. This matter was objected to upon first consideration pursuant to Section 557 of Title 13 of the California Code of Regulations and agenda'd for consideration. Michael M. Sieving, Esq. of the Law Offices of Michael M. Sieving represented Protestant. Louis S. Chronowski, Esq., of Seyfarth Shaw LLP represented Respondent.

After consideration of the oral comments of counsel, the Public Members rejected the petition upon first consideration and dismissed the portion of the petition that sought adjudication of the dispute pursuant to Vehicle Code section 3050(c)(2). The authority for this rejection is *Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal.App.4th 1451, 1457, which states that "[w]here the Board's activities exceed its authorization, the Board violates the judicial powers clause of the California Constitution."

The second item considered by the Public Members pertained to Petitioner's request that the "Board direct [DMV] to conduct an investigation...and make a written report on the results..." [Section 3050(c)(1)] and that the "Board order [DMV] to exercise any and all authority or

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power that the department may have with respect to the issuance, renewal, refusal to renew suspension, or revocation of the license of . . . Roadtrek . . .” [Section 3050(c)(3)]

After consideration of the oral comments of counsel, the Public Members denied the relief requested by Petitioner Administrative Matters

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

Robin Parker, Senior Staff Counsel, provided an overview of the Board’s compliance with the Audit Findings and Corrective Action Plan.

The revised Board delegations in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency were adopted with only a minor change to the introductory paragraph.

The out-of-state trips for the 1<sup>st</sup> half of fiscal year 2010-2011 were approved for travel to the National Association of Motor Vehicle Boards and Commissions Fall Workshop in Biloxi, Mississippi and the Recreation Vehicle Industry Association 48<sup>th</sup> National Trade Show in Louisville, Kentucky.

Recent changes to the Administrative Procedure Act, Bagley-Keene Open Meeting Act, Political Reform Act and Public Records Act were briefly discussed.

Mr. Brennan, Executive Director, reported that for the 3<sup>rd</sup> quarter of fiscal year 2009-2010 the Board has expended 75% of its appropriated budget and was on target to meet its budget.

The members unanimously approved the Board’s budget for fiscal year 2010-2011.

Ms. Parker reported on the feedback received from the Board’s March 24 Industry/Attorney Roundtable. There were a number of favorable topic and speaker suggestions. The Board is working on a Roundtable for 2011 and will discuss this at its October 8 meeting.

The *New Motor Vehicle Board Administrative Law Judge’s Benchbook* was updated to include the Electronic Discovery Act and the published opinion in the consolidated cases of *Nader Automotive Group, LLC, et al. v. New Motor Vehicle Board* (2009) 178 Cal.App. 4th 1478. The court in *Nader* upheld the Board’s authority to dismiss protests pursuant to Vehicle Code section 3050.2(b) based on plaintiffs’ failure to comply with authorized discovery without substantial justification.

With regards to case management, Ms. Parker reported that 43 protests have been filed this year in comparison to 54 in 2009. Furthermore, Ms. Parker

indicated that Ford issued 77 notices of termination for its Mercury line. In total there had been 115 involuntary notices of termination submitted.

The following meetings were tentatively scheduled for the 2<sup>nd</sup> half of 2010:

- August 24, 2010, Special Meeting, Los Angeles (in the event there are case management matters);
- October 8, 2010, General Meeting, Los Angeles; and
- December 10, 2010, Special Meeting, Sacramento.

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AND SEARCH FINAL  
DECISIONS ON THE  
BOARD’S WEB-SITE AT  
WWW.NMVB.CA.GOV**



Alan Skobin

**FORMER BOARD  
MEMBER  
ELECTED VICE  
PRESIDENT OF  
L.A. POLICE COMMISSION**

Former Dealer Member, Alan J. Skobin was unanimously elected Vice President of the five member panel of the Los Angeles Police Commission on May 4, 2010. He has served as a Police Commissioner since 2003.

Mr. Skobin served on the Board through three administrations. He was originally appointed to the Board by Governor Pete Wilson in 1994, was appointed again by Governor Gray Davis in March 2001, and reappointed by Governor Arnold Schwarzenegger in 2005. Mr. Skobin served two terms as Board President, and served on nearly every Board committee. The Board wishes wholehearted congratulations to him.



## MEDIATION SERVICES

Most people are not aware that in addition to the New Motor Vehicle Board's program to quickly resolve specified disputes between dealers and manufacturers/distributors, the Board also offers an informal, no-cost, dispute resolution program for consumers who have a complaint against a new vehicle dealership or manufacturer. The mediation program has been in existence since 1968 and has received over 30,300 requests for assistance. On average, the program is able to come to an amicable resolution in approximately 69% of its cases. The Board's mediation program receives approximately 400 cases annually and fields over 700 phone calls.

The Board's mediators act as neutral facilitators between the disputing parties. Participation in this process is totally voluntary by all parties involved. In addition, the mediation staff do not have the authority to order a dealer or manufacturer to provide a specific remedy.

In FY 2000/01 information on the mediation services program was posted on the Board's website. In July of 2008, the Mediation Request Form became available as an on-line form that consumers can fill out and submit to our offices electronically.

Typical types of complaints filed with the program include contractual disputes, warranty/repair disputes, used vehicles sold by a new/used dealer lot, and used vehicles with remaining original warranties. In 2004 the Board received jurisdiction over certain recreational vehicles such as travel trailers and motor homes. Complaints that apply to the chassis, chassis cab and drive train of RV's are referred to the Department of Consumer Affairs.

Some types of complaints that do not fall within the Board's jurisdiction are private party sales or transactions,

used vehicles with no remaining original warranty vehicles sold "As-Is", odometer fraud, Lemon Law. These types of complaints are referred to the agency with the proper jurisdiction.

The Board does not have authority to enforce the Tanner Consumer Protection Act (commonly called the Lemon Law) but does provide information on this law and refers consumers to the Department of Consumer Affairs' Arbitration Certification Program for more information.

The mediation program provides a vital service to California consumers as well as the motor vehicle industry as a whole. If you would like more information on this service, please visit our website at [www.nmvb.ca.gov](http://www.nmvb.ca.gov) and click on the Consumer Program tab.

*You can call the  
Mediation Services Staff*

*at (916) 445-1888*

*Email us at  
[nmvbmediation@nmvb.ca.gov](mailto:nmvbmediation@nmvb.ca.gov)*

*Submit a Mediation Request form  
at [www.nmvb.ca.gov](http://www.nmvb.ca.gov)*



## LANGUAGE SURVEY

For the weeks of July 12-16 and July 26-30, the Board participated in DMV's Biennial Statewide Language Survey. The survey was a tally of incoming public contact calls by whichever language the caller was speaking. The only calls that were tallied were new public contact calls on our main number (916 445-1888), which are typically consumers seeking mediation assistance.



NUMMI Plant in Fremont, California

## NUMMI NEWS

Tesla Motors has acquired the recently closed NUMMI (New United Motor Manufacturing Inc.) factory in Fremont, California, and is teaming up with Toyota to produce a new line of affordable electric cars. This will add more than 1,000 jobs to start, and could eventually create up to 10,000 positions in the near future. The factory has the capability to produce approximately 500,000 vehicles per year.

The factory was a joint venture between Toyota and General Motors for 25 years producing the Toyota Matrix and Pontiac Vibe, until production ended on April 1, 2010.

Tesla saw NUMMI as the ideal facility to produce its Model S, which aims to be the world's first pure electric premium sedan. The Model S gets about 300 miles per charge (3-5 hours) and is planned to be available in 2012.

Tesla chose Fremont for its long history of quality auto manufacturing and its recent growth in emerging clean technology.

## SUMMER HELP FOR BOARD

The Board is pleased to announce that it has added a summer intern to its staff. In April of this year the Board was asked if we would like to receive a summer intern, via the Sacramento Works for Youth Employment Program (SWYEP), this summer. Of course, we jumped at the chance and now have Taquita Lugo on staff to provide us with clerical support.

SWYEP provides summer employment for youth, ages 16-24. The program offers two activities - pre-employment skills and academic enrichment. SWYEP is funded under Title II of the Federal Workforce Investment Act and the 2009 American Recovery and Investment Act. Worksites are in the public, private and non-profit sector. Sacramento Employment and Training Agency (SETA) administers SWYEP which focuses on primary goals of enhancing the work readiness skills of youth, encourages school completion, provides exposure to the world of work, and enhances the citizenship skills of youth.

SWYEP had 20 students in its summer program and 19 of them were assigned to units at DMV Headquarters in Sacramento. Taquita was specifically chosen by a SWYEP case manager to work for the Board due to her level of maturity and professionalism. She has been made a vital part of the work team at the Board. Staff has been very helpful in giving her some skills training, and feels a sense of reward to see how quickly and efficiently Taquita has familiarized herself with the duties. She is a joy to work with.

## 2010 COMMITTEES

### ADMINISTRATION COMMITTEE

Ryan Brooks, Chair  
Peter Hoffman, Member

### BOARD DEVELOPMENT COMMITTEE

David C. Lizárraga, Chair  
Ryan Brooks, Member

### EXECUTIVE COMMITTEE

Tom Flesh, President  
Ramon Alvarez C., Vice President

### FISCAL COMMITTEE

Ramon Alvarez C., Chair  
Victoria R. Pearson, Member

### GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

David Wilson, Chair  
Tom Flesh, Member

### POLICY AND PROCEDURE COMMITTEE

Glenn Stevens, Chair  
David Wilson, Member

## UPCOMING NAMVBC/IALLA EVENT

The National Association of Motor Vehicle Boards and Commissions (NAMVBC) Fall Workshop is less than 3 months away. For the first time in the history of the NAMVBC, there will be several joint workshop sessions with the International Association of Lemon Law Administrators (IALLA). During discussions with NAMVBC members, who are also IALLA members, it was apparent that both organizations have many issues in common and the idea of the joint workshop sessions was developed.

The conference begins on Saturday, October 9, 2010 with an evening reception and ends with dinner on Tuesday October 12, 2010. The location of the conference is at the Beau Rivage Hotel & Casino, 875 Beach Blvd., Biloxi, MS 39530, (888) 567-6667. Having checked with the hotel regarding the recent oil spill in the Gulf, the Beau Rivage continues to monitor the situation. They have taken all necessary measures to protect their property and do not anticipate any interruption of their services.

If you have not registered to secure your space at the conference and your room at the hotel, now is the time. The cost of the workshop is \$200 per person for registration prior to September 9, 2010; the cost will include several meals and activities. After September 9, 2010, the cost will be \$250 per person.



NATIONAL ASSOCIATION OF MOTOR  
VEHICLE BOARDS AND COMMISSIONS  
Annual Fall Workshop October 9-13, 2010

**Beau Rivage Hotel & Casino**  
Biloxi, MS 39530

For more information, please contact  
William Brennan at (916) 324-6197.



California Fuel Cell Partnership  
West Sacramento, California

## CA FUEL CELL PUBLIC TOURS (CaFCP)

Would you like to learn about the CaFCP and fuel cell vehicles, tour a hydrogen station, meet staff for questions and answers, and ride in a hydrogen fuel cell vehicle? Tours are scheduled for these upcoming Fridays: August 27, and September 24, 2010. CaFCP is located at 3300 Industrial Boulevard, West Sacramento. The tour begins at 1:00 pm, lasts approximately 2 hours, and is free. Space is limited. If you are interested, please call CaFCP for reservations at (916) 371-2870, or email [info@cafcp.org](mailto:info@cafcp.org).

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*on the web...*



...at [www.nmvb.ca.gov](http://www.nmvb.ca.gov)

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