



New Motor Vehicle Board

In-Site

January 2011

A Publication of the California New Motor Vehicle Board

1.11 Edition



PRESIDENT'S YEAR END WRAP

So much has occurred in the automotive industry this past year. While indications that overall business conditions were improving, the wreckage of 2009 left many casualties. The motor vehicle industry both nationally and in California, sadly lost too many long time members devastating so many communities. Our hope is that 2011 brings better conditions to all Americans.

It has been a pleasure to serve as the Board's President in 2010. I am, once again, proud to report that the Board and staff continue to elevate itself in successfully accomplishing the goals and responsibilities in accordance with its mission "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." Again this past year, we were able to perform not only within our reduced budget, but we were able to further reduce our operating costs through innovative, albeit temporary, cost reductions. We are very fortunate to have a hard working and loyal staff.

Changes to the Board include the addition of Mr. Bismarck Obando as a public member. Mr. Obando is experienced in State of California government having served in many capacities in the Governor Schwarzenegger administration, most recently as the Director of External Affairs. We welcome Mr. Obando to the Board. With the addition of Mr. Obando, we say good-bye to long time public member, Haig Papaian. Over the years, Mr. Papaian served in many board capacities and the industry has come to highly respect the sound reasoning, good business

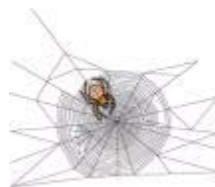
judgment, wisdom, business insights and a fundamental sense of fairness that Mr. Papaian brought to our deliberations. The State of California and the motor vehicle industry will always be grateful to Mr. Papaian for his loyal service. We thank you again for your service and wish you well.

I am pleased to report that the 2010 Industry Roundtable was very successful and will be continued in 2011. The 2011 Roundtable will be held on March 30, 2011, in conjunction with the California New Car Dealer Association's Dealer Day. This forum continues to educate our Board members and staff with current industry issues and welcomes members of the industry to participate. Once again, a portion of the afternoon session will update policies and procedures for attorney's practicing before the Board.

I thank each of our talented and hardworking staff members for their excellent performance. As a team, they have insured that the Board runs smoothly and efficiently. I also want to thank all the professionals appearing before our administrative process for their professionalism in representing their interests. This includes attorneys, interested parties, manufacturers, industry organizations, the motorcar, RV and motorcycle dealer associations and members of the public expressing their views on topics of interest.

Of course, a special thank you to a wonderful group of dedicated Board members for their good work.

In closing, we welcome Governor Brown and his administration and we look forward to continued dedicated service in serving the motor vehicle industry and the great state of California.



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BOARD WELCOMES NEW MEMBER

The New Motor Vehicle Board is pleased to announce the appointment of Bismarck Obando as a Public Member. He was appointed to the Board by Governor Arnold Schwarzenegger in December 2010. Mr. Obando is currently the Director of Community Affairs for the California Emergency Management Agency (Cal EMA).

From July 2007 to January 2011, Mr. Obando served as Director of External Affairs for the Office of Governor Arnold Schwarzenegger where he was responsible for directing major outreach initiatives of the Governor, the external affairs activities of the Governor's five field offices as well as providing strategic day-to-day assistance to the Governor's legislative, communications, press, constituent affairs and advance operations.

He previously served as a Deputy Appointments Secretary in the Office of Governor Schwarzenegger in 2007. Prior to that appointment, Mr. Obando was a Deputy Coalitions Director for Californians for Schwarzenegger 2006, where he was responsible for managing the Latino, environmental, agriculture and infrastructure coalitions. From 2004 to 2006, he served as a legislative analyst for the Governor's Office of Planning and Research. In this position, Mr. Obando analyzed and made recommendations on legislation that impacted cities and counties in the primary issue areas of

housing and transportation.

Prior to joining the Administration, he was a project manager for the Local Government Commission from 1996 to 2004, a nonpartisan membership organization established to provide technical assistance to local government officials on issues relating to land use, transportation, community design and community participation. He is also a founding member of the El Monte Coalition of Latino Professionals. Mr. Obando's term will expire in January 2014.

OCTOBER 29, 2010 SPECIAL MEETING

The New Motor Vehicle Board ("Board") held a Special meeting on October 29, 2010, in Los Angeles, California. At that meeting, the Public Members considered one case management matter.

Bob Lewis Volkswagen dba Bob Lewis Suzuki v. American Suzuki Motor Corp.

Protestant filed a Vehicle Code section 3065.1 (franchisor incentive program reimbursement) protest on February 20, 2007. After being stayed for a number of months due to Bankruptcy proceedings, this matter went to a merits hearing before Administrative Law Judge Linda S. Waits on June 21-22, 2010.

At the October meeting, oral comments were presented. No appearance was made on behalf of Protestant. Jim Mulcahy, Esq., of Mulcahy LLP represented Respondent. The Public Members unanimously adopted the Proposed Decision which overruled the protest.



State of California
Edmund G. Brown Jr.
Governor

IN-SITE

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New Motor Vehicle Board

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Ryan L. Brooks
Robert T. (Tom) Flesh
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Bismarck Obando
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Robert T. (Tom) Flesh,
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Traci Stevens
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DECEMBER 3, 2010 GENERAL MEETING

The New Motor Vehicle Board (“Board”) held a General meeting on December 3, 2010, at the Board’s offices. At that meeting, the members considered two management matters as well as several administrative matters.

Mega RV Corp. dba McMahon’s RV v. Roadtrek Motorhomes, Inc., Petition P-457-10

The first item considered by the Public Members pertained to Petitioner’s “request that the Board issue a ruling clarifying its jurisdiction, stating for the Federal Court who has jurisdiction over the unlawful acts contained in...Sections 11700 to 11909, and whether the Board has the power to award monetary damages for any vehicle code violations.” For the Board to issue this type of ruling, the petition would have to be referred to an administrative law judge pursuant to Section 3050(c)(2). This petition was objected to upon first consideration under Section 557 of Title 13 of the California Code of Regulations and agendaized for consideration.

Michael M. Sieving, Esq. and Tina Hopper, Esq. of the Law Offices of Michael M. Sieving represented Protestant. Jim McNairy, 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 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 moved to deny the relief requested by Petitioner.

Mega RV Corp. dba McMahon’s RV v. Roadtrek Motorhomes, Inc., Protest Nos. PR-2234-10, PR-2235-10 and PR-2236-10

At the August 24, 2010, Special Meeting, the members adopted the Proposed Order granting Roadtrek’s motion to dismiss. Glenn Stevens requested that the issue of whether to designate this decision as a precedential decision be considered at the next General Meeting.

This decision provides in essence that Vehicle Code sections 331 and 331.3 require for a franchise or recreational vehicle franchise to exist that there be a “written agreement”. Although an OL-124 (certificate of proposed franchise) is “written”, there is nothing on it which indicates it is a “written agreement between two or more persons” which is needed for a “franchise” (under either definition of “franchise” or “recreational vehicle franchise”). An OL-124 does not constitute a “written agreement” and does not evidence there is a “commercial relationship of definite duration or continuing indefinite duration”, both of which are required for there to be a “franchise” or “recreational vehicle franchise”.

The Administrative Procedure Act (APA) provides that “[a] decision may not be expressly relied on as precedent unless it is designated as a precedent decision by the...” Board. (Gov. Code § 11425.60(a)) The Board “...may designate as a precedent decision a decision or part of a decision that contains a significant legal or policy determination of general application that is likely to recur.” (Gov. Code § 11425.60(b))

After a discussion concerning the criteria by the full Board, the motion to designate the McMahon’s RV decision as a precedent decision did not carry.

Administrative Matters

A number of staff reports were given on a variety of topics, including but not limited to the following:

A resolution will be presented to Robert L. Frisch, former Vice President, Western Region, BMW of North America, LLC, in appreciation for his contribution to the New Motor Vehicle Board, to the motor vehicle industry, and to the people of the State of California at an upcoming meeting or will be mailed to him.

Per the Board adopted policy, Ms. Parker reported on non-substantive changes to the proposed regulatory amendments that were adopted by the Board in February 2010. Additionally, Ms. Parker reported that public comments were received for the proposed amendments to Section 551.12 (Notice of Assignment of Administrative Law Judges; Peremptory Challenges). The comments posed

should be considered by the staff, the Policy and Procedure Committee, and ultimately the Board at a noticed meeting. This will take several months. In order to not delay the other eight regulations that were also noticed with Section 551.12, it is permissible to sever Section 551.12 from the other regulations. The staff can then proceed with the final rulemaking packet for the remaining regulations.

Kathy Tomono provided an update of the development and use of the Board's website and indicated that no substantial changes have been made to the website since previously reported in November 2009. One upcoming addition will be an "Email Alert" subscription button. Viewers can click on this to subscribe and add their email addresses to automatically be alerted when new information is added, such as agendas, minutes, etc.

Dawn Kindel discussed the Board's lease on its current facility and potential alternative locations. The Board's current lease agreement ends on July 31, 2014. The DMV's facilities coordinator is currently looking into alternatives to reduce the Board's lease costs.

Polly Rigggenbach provided an update on the manufacturer and distributor compliance with the Board's request that statutorily mandated schedules or formulas be filed with the Board. Ms. Rigggenbach reported that of the 235 manufacturers/distributors which fall within the Board's jurisdiction that are required to file schedules and formulas pursuant to Vehicle Code sections 3064/3074 and 3065/3075, there is 100% compliance. In December 2007, there was only 13% compliance. In November 2009, there was 84% compliance.

The semi-annual discussion and consideration of the methods of determining Board fees was discussed by Mr. Brennan who indicated that there was no reason to change the method for assessing fees at this time. However, he went on to explain that an adjustment to the fee amounts assessed to manufacturers, distributors, and dealers may be necessary. This issue will be considered by the Finance Committee prior to the next meeting.

The Board financial condition report for fiscal year 2009-2010 was discussed. The Board expended 91% of its appropriated budget through the end of the fiscal year. Mr. Brennan indicated that the Board's payroll exceeds its revenue by \$50,000. As a consequence, the Board is using a portion of its fund reserves to finance the Board's operations. For the 1st quarter of 2010-2011, it was reported that the Board expended 16% of its appropriated budget;

however, this figure is misleading as there was no state budget until the end of September, and therefore, no operating expenditures are reflected for this period. Mr. Brennan reported that many of the employees now have new Union contracts; however, the attorneys are still furloughed. The Board's annual manufacturer/distributor fee collection has been completed for this year; \$415,718.41 was collected from 169 manufacturers and distributors, for the 1,558,165 vehicles sold in calendar year 2009.

The 2011 Industry/Attorney Roundtable is scheduled for March 30, 2011, the day after the California New Car Dealers Association Dealer Day event.

Proposed regulatory revisions were adopted to streamline and reduce the costs of performing the Annual Board Fee collection and the Arbitration Certification Program ("ACP") fee collection.

The Board adopted the 2011 Rulemaking Calendar which was subsequently approved by Business, Transportation & Housing Agency and will ultimately be published in the California Regulatory Notice Register by the Office of Administrative Law.

A report was given on the 2010 California State Employees Charitable Campaign. Mr. Ohta, a Co-Chair of the campaign reported that the Board raised a total of \$2,469 this year through generous donations made by Board Members, Administrative Law Judges and staff, and through the fundraising events. In addition, nine members of staff are now signed up for monthly payroll deductions, and, as a direct result of an inspiring presentation made by a representative from the Sacramento Food Bank and Family Services, the Board adopted a family for Christmas.



SAVE THE DATE!

New Motor Vehicle Board

INDUSTRY/ATTORNEY ROUNDTABLE

Wednesday, March 30, 2011, 8:00 a.m.

(Location to be announced)

For additional information

**Contact Robin Parker at (916) 323-1536
or email rparker@nmvb.ca.gov**

STAFF COUNSEL, POLLY RIGGENBACH LEAVES THE BOARD

Polly Rigggenbach, Staff Counsel, has resigned from the Board. Polly was a valuable contributor to the Board's success as an organization and did an excellent job scheduling hearings, conferences, motions, and other business related functions with our Administrative Law Judges, attorneys and parties. She was extremely successful as a settlement mediator, helping parties to reach fair, timely and cost saving resolutions of their disputes. She was also able to tackle the long time problem of out of date warranty information from manufacturers and distributors, and was able to bring them into full compliance. The Board would like to express our personal gratitude for a job well done, and wish her all the success in the world in her new challenge.

2010 16th ANNUAL RV CONFERENCE

The Board's Executive Director, Bill Brennan, and Senior Staff Counsel, Robin Parker, at the invitation of the California Recreation Vehicle Dealers Association ("CalRVDA"), addressed dozens of RV dealers at their 16th annual education conference in Ontario, California.

Ms. Parker presented an overview of the Board and its powers, the types of cases filed, the licensees within the Board's jurisdiction, the trends in case management, the number of new motor vehicle protests compared to RV protests, and the differences between the statutes for motor vehicle protests other than RVs and RV protests. The following summarizes some of the statistical comparisons between motor vehicles and RVs.

Involuntary Notices of Termination:

In 2007, there were 29 notices of termination for new motor vehicles and 5 for recreational vehicles for a total of 34.

In 2008, there were 47 notices of termination for new motor vehicles and 5 for recreational vehicles for a total of 52.

In 2009, there were 107 notices of termination for new motor vehicles and 3 for recreational vehicles for a total of 110.

Through November 5, 2010, there were 150 notices of termination for new motor vehicles and 8 for recreational

vehicles for a total of 158. This includes 77 notices of termination for the discontinuation of the Mercury line of vehicles. [A total of 164 notices of termination were filed for 2010 and 10 were for RVs.]

Number and Type of Protest Filed:

Typically, there are about 45-50 protests filed each year. In 2009 there were 54 protests, 9 of those were for RVs. Through November 5, 2010, there were 82 protests, 20 of those were for RVs. [A total of 85 protests were filed for calendar year 2010.] Eighteen (18) of those protests have been filed by *Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc.* for termination, modification, establishment, warranty reimbursement, and franchisor incentive program reimbursement. There have been 43 RV protests filed since 2004; 29 of those were in the last two years.

Types of RV protests filed since 2004:

- 14 Termination Protests (33%)
- 8 Modification Protests (19%)
- 2 Off-Site Sales Protests (5%)
- 2 Establishment Protest (5%)
- 11 Warranty Reimbursement Protests (25%)
- 6 Franchisor Incentive Program Reimbursement Protests (13%)

There were other presentations from dealers, lenders, insurers, attorneys and marketing pros discussing alternative financing, arbitration and mediation programs, consignment sales, current market data, and "New Reality" marketing through social media and innovative advertising techniques.

In addition manufacturers, vendors and service providers were there to share news and information about their programs in an informal atmosphere.

California is the nation's second largest market for RVs (after Texas) and accounts for approximately 12% of the nation's RV purchases.

**YOU MAY ACCESS
AND SEARCH FINAL
DECISIONS ON THE
BOARD'S WEB-SITE AT
WWW.NMVB.CA.GOV**

**NEW: PETITION DECISIONS
HAVE BEEN ADDED**

2010 ANNUAL L.A. AUTO SHOW

The 2010 Annual L.A. Auto Show was held at the Los Angeles Convention Center November 19-28, 2010. The international show exhibits over 1,000 of the 2011 makes and models of import and domestic cars, including several World and North American debuts, as well as alternative fuel/electric vehicles and race cars. There was a tremendous focus on the electric and hybrid vehicles at this year's showing. There was also a notable uptrend from the last 2 years, which is good news for the industry. For the younger attendees, Nissan put on a Nissan Quest Kids' Fun Zone featuring interactive activities for kids 12 and under.

Executive Director Bill Brennan and Board Member Glenn Stevens attended one day of the show and were accompanied by former Board Member, Robert Branzuela.

Mr. Brennan attended the Manheim Auto Auction following the L.A. Auto Show and observed the auctioning of luxury vehicles with Berta Phelps, former Vice President of Strategic Operations who retired from Manheim after 38 years, but is still very active within the organization.



MARK YOUR CALENDAR! CNCDA 2011 DEALER DAY

California New Car Dealers Association ("CNCDA") Dealer Day Legislative Conference will be held on March 29, 2011, in Sacramento. Mark your calendars for this important event. Attend a variety of events, including Dealer Day, Annual Meeting of the Members, and informative seminars to learn about the current state of affairs in the industry and see dealers and dealership personnel outside the confines of the office. Contact the California New Car Dealers Association at (916) 441-2599 for more information.

48TH ANNUAL NATIONAL RV TRADE SHOW

Executive Director Bill Brennan, attended the 48th Annual National RV Trade Show in Louisville, Kentucky, November 30 - December 2, 2010.

The theme of the show was "Outlook 2011: A New Era Begins", which focused on how the RV industry will meet the challenges and take advantage of opportunities in a changing, more cost-conscious market for 2011, and years to come.

RVIA Chairman Gregg Fore hosted the high-energy, multimedia program. Speakers included RVIA President Richard Coon, who shared his thoughts on important trends impacting the RV market and how RVIA is working to forge a bright future for the industry; Go RVing co-chairs Bob Olson and Tom Stinnett joined RVIA's Gary LaBella to introduce the new Go RVing Leads Plus program, report on the impact of the Ambassadors of Affordability campaign, and unveil new plans for 2011; RVIA Public Relations Committee Chair B.J. Thompson and Gary LaBella discussed tools and strategies to maximize the exposure of RVing in a changing media landscape and shared some of the resulting high-impact publicity that will help the demand for RVs.

RVIA also is celebrating the 100th anniversary of the RV industry, whose roots began in the olden days of covered wagons and camping. In 1910, three prominent RV historians - RV collector David Woodworth, RV/MH Hall of Fame and Museum archivist Al Hesselbart, and Smithsonian Institution curator Roger White, began to chronicle this uniquely American industry. The mass-production of the manufactured auto campers and camping trailers were the forerunners of today's RVs, and created a way of travel that has thrived throughout critical economic times in history and accelerated technological advances.



Adams Motor Bungalow, 1917

CALIFORNIA STATE EMPLOYEES CHARITABLE CAMPAIGN (CSECC)

The Board participates every year in the California State Employee Charitable Campaign (CSECC) to contribute to non-profit organizations supported by the United Way. Linda Lighter, Administrative Analyst was Chair, with Jackie Grassinger, Mediator/Analyst and Eugene Ohta, Mediator/Information Systems Technician, as Co-Chairs.

Fundraising events are held throughout the year. Raffles for items donated by businesses including The Cheesecake Factory, In-N-Out Burger, Laughs Unlimited, Rocky Mountain Chocolate Factory, Marie Callender, Esthetics by Jeanette, Cordova Golf Course, Capital Nursery, Jimboys, and Golfland Sunsplash. Staff also donated books for a "Lazy Days of Summer" sale. These events raise money that is in addition to the pledge forms which give staff the opportunity to contribute to selected organizations through a one-time donation or through monthly payroll deductions.

In the last week of the campaign, Genevieve Deignan, Programs Director for the Sacramento Food Bank and Family Services was invited to the Board's offices to speak. She talked about how, more than ever, they needed contributions for their many worthy programs that are provided free of charge to Sacramento area residents. Lorrie Wilson, our campaign liaison was present for the speaking session, and afterward helped staff in filling out the pledge forms. Lorrie retired from the Department of Transportation last year, but volunteered for the campaign because she finds it so rewarding.



NATIONAL ASSOCIATION OF MOTOR VEHICLE BOARDS AND COMMISSIONS

Winter Breakfast/Workshop February 4-6, 2011

Holiday Inn Fisherman's Wharf

San Francisco, CA

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

It is inspiring to know that, despite challenging economic times, State employees remain extraordinarily generous. The Board raised a total of \$2,469 for the campaign this past year, and achieved these goals with 100% participation from the staff. In addition to staff, several Administrative Law Judges and Board Members participated. We are also proud to report that from an office of 12 employees, 9 have signed up for payroll deductions. This means that \$1,344.00 will be going out to the community all year long.

2010 HOLIDAY SPIRIT

In addition to donations to the Department of Motor Vehicles' ("DMV") 2010 annual food drive, Staff voted unanimously to sponsor a family and provide gifts instead of the traditional office gift exchange. The family has 5 children under the age of 7, who without help may not have been able to enjoy the unwrapping of presents on Christmas Day. Staff learned of this program through our California State Employees Charitable Campaign.

INTERESTING TIDBITS

A 1964 Aston Martin DB5—better known as the James Bond car—sold for \$4.61 million to an Ohio collector last Fall at the RMAuctions (a classic car auction company) Automobiles of London sale.

This car is one of just two DB5s used in the iconic 1960s Bond films *Goldfinger* and *Thunderball*, with Sean Connery driving.

The DB5 still has its 007 enhancements, which include Browning machine guns, a bulletproof shield, an oil-slick sprayer, a nail spreader and a smoke screen that are controlled by switches in the center armrest. No special effects were used.

Source: Autoweek, October 28, 2010 article

* * *

Land Rover reached its production of Range Rover's number 1 million and donated a car to Britain's Help for Heroes charity. The charity in turn plans to sell the vehicle at an auction. It took 40 years and three generations of the Range Rover to reach the 1 million mark.

Source: Autoweek Article November 4, 2010

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