

April 19, 2004

Mr. Evan Goldberg
Chief of Staff
Office of Senator Debra Bowen
State Capitol
Sacramento, California 95814

Re: SB1711 New Motor Vehicle Board

Dear Mr. Goldberg:

It is my understanding that the Senate Transportation Committee will be hearing Senator Bowen's bill, SB1711, relating to the New Motor Vehicle Board on Tuesday, April 21, 2004. I am unable to attend that hearing, but I would appreciate your presenting this letter at that hearing as part of the public record for that bill.

Dear Chairman Murray and Members of the Committee:

Thank you for considering my comments with respect to SB 1711 introduced by Senator Bowen. As many members of the committee remember, I served the people of the State of California as Director of the Department of Motor Vehicles from January, 2000 to November 17, 2004. In my role as Director it was my pleasure to meet with the members of the New Motor Vehicle Board and assist them in making numerous personnel and structural changes which allowed the Board to carry out its work with respect to mediating and arbitrating commercial disputes between car dealers and manufacturers. As an attorney for over thirty years, I appreciated the forum that the Board provided for commercial disputes. It is important to resolve all legal disputes as quickly as possible and to relieve the judicial system of complex and specialized litigation. I believed then and still believe that the Board, its members, and its staff excelled in this area.

In addition, getting to know both the public and industry members, I was impressed with their knowledge and their concern for consumers. The industry members with whom I dealt were also extremely concerned about allowing a few "bad apples" in the car industry to ruin the reputation of the entire industry. Thus, at least while I was at the DMV, I was confident that the Board and I generally agreed that it was appropriate to aggressively track down fraud and abuse in the new car business and prosecute licensees who engaged in such conduct.

Prior to my coming to the DMV, however, previous boards interfered with the discipline ordered by the Director. The Chrysler case is a primary example. Despite a long and arduous hearing before an independent administrative law judge, who found that Chrysler had repurchased known "lemons" and had resold them to consumers without disclosing their "lemon" status, Chrysler wanted, and received another bite of the apple, from the Board. The Board, with its pro-dealer bias, and a limited understanding of administrative law, interfered with and reversed Director Sally Reed's decision to suspend Chrysler. This Board decision led to many more court hearings, huge attorneys' fees for the DMV, and ultimately had to be settled for an amount equal to the DMV's costs. While Chrysler did

cease its unlawful conduct, it was not, as a result of the Board's interference, adequately disciplined for its egregious conduct.

While I had, I believe, an outstanding relationship with the Board during my tenure (with substantially different members than the Chrysler Board), every time the DMV brought or even mentioned an action for fraud against a new car dealer, the attorneys for that dealer threatened to seek review of any administrative law judge decision at the Board, whether for the purpose of lowering or eliminating the discipline or merely to delay the discipline or otherwise hold up or stay the DMV's decision while the dealer and its attorney put political pressure on the DMV and the Director. This was especially true in the case of Gunderson Chevrolet (now El Monte Chevrolet) which eventually settled their case with the DMV and the Los Angeles District Attorney's office for over \$1,000,000 in fines, \$1.2 million in restitution to defrauded car buyers, 4 years suspension, mandatory audits paid for by the dealer, and six days of forced closure. Gunderson Chevrolet was owned at the time by Autonation, the largest car dealer in the world. Autonation is based in Florida. Throughout the negotiations with Autonation's attorneys that they did constantly threatened to take any judicial or DMV decision to the Board. They constantly wielded the threat of prolonged proceedings before the Board as an axe.

This was also true with Autonation dealership Toyota of Cerritos. Having been caught once for fraud, and severely punished for it, they were outraged when another of their dealerships was caught engaging in underhanded practices. Again, they constantly threatened to use the Board to undermine the DMV, waste DMV resources, and continue to defer their punishment in the meantime. It was my experience as DMV Director that the management and their attorneys in every new dealer discipline case believed that they could negotiate a better deal if they threatened to go to the Board, and believed that the Board would be more sympathetic than to the dealer than the DMV or the independent administrative law judge.

In fact, this tactic of delaying or defeating the DMV disciplinary actions was so well known and highly thought of that last year the Recreational Vehicle Dealers succeeded in amending the provisions of the law relating to the Board, to give the Board jurisdiction over RV dealers. In my first conversation with the RV Dealers' well-paid lobbyist, Skip Daum, Mr. Daum insisted that the reason the RV Dealers wanted to be under the Board's jurisdiction was that the RV Dealers were being routinely treated unfairly by out of state manufacturers and needed the mediation and arbitration functions of the Board to protect RV Dealers in the same way that new car dealers needed such protection against foreign and domestic car manufacturers. I told him I would have no objection to his bill (which he showed me before it was introduced) if it contained language only giving arbitration and mediation jurisdiction over RV Dealers to the Board. As stated above, I believe the Board's mediation and arbitration functions are in the public interest. I told him that if the bill contained language that gave DMV disciplinary review rights to the Board in cases involving RV Dealers, I would strongly oppose the bill. Mr. Daum replied that was fine because the RV Dealers were not looking for the Board to review or reverse DMV disciplinary actions, they only wanted to have the ability to go to the Board for mediation or arbitration of manufacturer disputes. While Mr. Daum was in the office, I proposed language that deleted DMV disciplinary review by the Board in RV Dealer cases. Mr. Daum said that the language would be fine with his client and left my office a happy man. I later learned that Mr. Daum and his clients reneged on Mr. Daum's representations and managed to introduce the bill with DMV disciplinary review language included. Mr. Daum found out that his clients insisted on Board review of DMV disciplinary actions. In fact, it was the most important thing in the bill! I did everything I could to defeat that bill, but it was passed in this house and in the assembly, and signed by former Governor

Gray Davis over my strenuous objection.

Thus, it is clear to me, as former Director, as well as to all DMV personnel (when I was there) that the Board is thought of by new car dealers and RV dealers as an impediment to, as well as weapon against, DMV disciplinary actions. As it is clear to me that SB1711 is intended to protect the valuable mediation and arbitration functions of the Board, and to eliminate the Board's unprecedented, costly, and problematic jurisdiction over DMV's disciplinary actions, I urge its passage.

Very truly yours,

Steven Gourley
Culver City, California