

1507 - 21st Street, Suite 330  
Sacramento, California 95814  
Telephone: (916) 445-1888  
Contact Person: Kathy Tomono  
www.nmvb.ca.gov

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board held a General meeting on December 13, 2006, in Hearing Room #1, at the offices of the New Motor Vehicle Board ("Board").

2. **ROLL CALL**

David W. Wilson, President of the Board, called the General meeting to order at 8:40 a.m.

Present:	Robert V. Branzuela	William G. Brennan, Executive Director
	Ryan L. Brooks	Howard Weinberg, General Counsel
	Haig Papaian	Robin P. Parker, Senior Staff Counsel
	Andy Robles	Polly Riggerbach, Staff Counsel
	Alan J. Skobin	
	Glenn E. Stevens	
	David W. Wilson	

Absent: Robert T. (Tom) Flesh  
David C. Lizárraga

3. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 28, 2006, GENERAL MEETING**

Ms. Parker pointed out a minor correction to the minutes. Agenda item 8, Closed Executive Deliberations for consideration of the Proposed Order in MEGA RV CORP., dba McMAHON'S RV v. WESTERN RECREATIONAL VEHICLES, INC., Protest No. PR-1983-05, reflected that "... [Mr. Brooks participate in the oral argument and closed Executive Session deliberations, however, he departed prior to a vote thereon.] It should read "... [Mr. Brooks participated in the ...]".

Mr. Brooks moved to adopt the September 28, 2006, General Board meeting minutes as corrected. Mr. Papaian seconded the motion. The motion carried unanimously.

4. **PRESENTATION OF RESOLUTION TO SUSHIL SHARMA, FORMER PUBLIC BOARD MEMBER**

This matter was postponed pending Mr. Sharma's arrival.

4.a. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO SUNNE WRIGHT MCPEAK, FORMER SECRETARY, BUSINESS, TRANSPORTATION & HOUSING AGENCY**

Mr. Stevens moved to present a Resolution to Sunne Wright McPeak, former Secretary, Business, Transportation & Housing Agency, in recognition for her contribution to the New Motor Vehicle Board, to the motor vehicle industry and to the people of the State of California. Mr. Branzuela seconded the motion. The motion carried unanimously. (The Resolution is scheduled to be presented at the March 28, 2007, General meeting, in Sacramento.)

4.b. **INTRODUCTION AND DISCUSSION FROM GEORGE VALVERDE, DIRECTOR, DEPARTMENT OF MOTOR VEHICLES - BOARD DEVELOPMENT COMMITTEE**

George Valverde, Director of the Department of Motor Vehicles addressed the Board and was available to answer member and audience questions. Director Valverde highlighted the DMV's Strategic Plan which focuses on customer service, driver safety, and identity protection.

5. **ORAL ARGUMENTS BEFORE THE PUBLIC MEMBERS OF THE BOARD**

Mr. Stevens, Board Attorney Member, presided over Agenda items 5-6. The dealer members did not participate in these items because they involve a dispute between a franchisee and franchisor.

- a. **FRONTIER INFINITI v. NISSAN NORTH AMERICA, INC., INFINITI DIVISION**  
Protest No. PR-1969-05

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Protestant. Hal Arnon, Bob Ricks, and Jim Landes were also present on behalf of Frontier Infiniti. Marjorie E. Lewis, Esq., of Gibson, Dunn & Crutcher, LLP represented Respondent. Also present for Infiniti were Morgan Filbey, Esq., Senior Counsel for Nissan, and Kathy Gleason, Assistant Regional Manager, Infiniti West Region.

- b. **RON BAKER CHEVROLET-ISUZU, dba RON BAKER ISUZU v. ISUZU MOTORS AMERICA, INC.**  
Protest No. PR-1999-06

This matter was postponed while the parties engaged in settlement discussions.

6. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

a. **CONSIDERATION OF PROPOSED DECISION**

FRONTIER INFINITI v. NISSAN NORTH AMERICA, INC., INFINITI DIVISION  
Protest No. PR-1969-05

Consideration of the Administrative Law Judge's Proposed Decision, by the Public Members of the Board.

The Public members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Papaian seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED ORDER**

RON BAKER CHEVROLET-ISUZU, dba RON BAKER ISUZU v. ISUZU MOTORS AMERICA, INC.  
Protest No. PR-1999-06

Consideration of the Administrative Law Judge's Proposed Order Denying Protestant's Request for Reinstatement of Protest No. PR-1999-06, by the Public Members of the Board.

There were no closed Executive Session deliberations at this time as the parties were engaged in settlement discussions. No oral arguments had been presented.

7. **OPEN SESSION**

The Public members returned to Open Session and Mr. Stevens announced the decision in Agenda item 6(a), Frontier Infiniti.

5. **ORAL ARGUMENTS BEFORE THE PUBLIC MEMBERS OF THE BOARD**

Mr. Stevens, Board Attorney Member, presided over Agenda item 5(b). The dealer members did not participate in this item because it involves a dispute between a franchisee and franchisor.

b. **CONSIDERATION OF PROPOSED ORDER**

RON BAKER CHEVROLET-ISUZU, dba RON BAKER ISUZU v. ISUZU MOTORS AMERICA, INC.  
Protest No. PR-1999-06

Consideration of the Administrative Law Judge's Proposed Order Denying Protestant's Request for Reinstatement of Protest No. PR-1999-06, by the Public Members of the Board.

This matter was postponed while the parties continued their settlement discussions.

7.a. **ORAL ARGUMENTS BEFORE THE PUBLIC AND DEALER MEMBERS OF THE BOARD**

MEGA RV CORP., dba McMAHON'S RV v. WESTERN RECREATIONAL VEHICLES, INC.  
Protest No. PR-1983-05

7.b. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

**CONSIDERATION OF FINDINGS AND PROPOSED ORDER AFTER REMAND**

MEGA RV CORP., dba McMAHON'S RV v. WESTERN RECREATIONAL VEHICLES, INC.  
Protest No. PR-1983-05

Consideration of the Administrative Law Judge's Findings and Proposed Order after Remand, by the Public and Dealer members of the Board.

7.c. **OPEN SESSION**

Mr. Stevens announced that agenda items 7(a) through 7(b) had been taken off the agenda and would be considered at the January 2007 meeting.

4. **PRESENTATION OF RESOLUTION TO SUSHIL SHARMA, FORMER PUBLIC BOARD MEMBER**

At the June 16, 2006, General meeting, the members unanimously moved to present Sushil

Sharma with a resolution for his contribution to the New Motor Vehicle Board, to the motor vehicle industry, and to the people of the State of California. Mr. Wilson presented the Resolution to Mr. Sharma on behalf of the members and staff.

5. **ORAL ARGUMENTS BEFORE THE PUBLIC MEMBERS OF THE BOARD**

Mr. Stevens, Board Attorney Member, presided over Agenda item 5(b). The dealer members did not participate in this item because it involves a dispute between a franchisee and franchisor.

b. **CONSIDERATION OF PROPOSED ORDER**

RON BAKER CHEVROLET-ISUZU, dba RON BAKER ISUZU v. ISUZU  
MOTORS AMERICA, INC.  
Protest No. PR-1999-06

Consideration of the Administrative Law Judge's Proposed Order Denying Protestant's Request for Reinstatement of Protest No. PR-1999-06, by the Public Members of the Board.

This matter was postponed while the parties continued their settlement discussions.

8. **CONSIDERATION OF A REVISED DOCUMENT REQUEST POLICY, WAIVER REQUEST POLICY, AND FACSIMILE REQUEST POLICY - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning a revised document request policy, waiver request policy, and facsimile request policy. With regards to document requests, Ms. Parker suggested that the Board continue to charge fees that are consistent with Evidence Code section 1563 (\$.10 per page and \$24.00 per hour of labor, computed on the basis of \$6.00 per quarter hour or fraction thereof). With regards to the waiver request policy, Ms. Parker recommended that all fees for document requests that total \$10.00 or less (less than 40 pages and less than 15 minutes of actual labor) be waived by the Board, subject to review and approval by the Executive Director. With regards to the facsimile request policy, Ms. Parker suggested that given the limited number of such requests, the small amount of revenue generated, and the Board's surplus, that a formal facsimile request policy be eliminated. However, if an individual required an excessive number of documents be sent via fax, then he or she could be referred to an attorney support service. Mr. Skobin moved to adopt the recommendations. Mr. Robles seconded the motion. The motion carried unanimously.

Mr. Brooks inquired as to whether the Board meeting materials could be provided electronically or via CD. Mr. Brennan indicated that he would look into this and report back to the Board concerning the feasibility.

5. **ORAL ARGUMENTS BEFORE THE PUBLIC MEMBERS OF THE BOARD**

Mr. Stevens, Board Attorney Member, presided over Agenda item 5(b). The dealer members did not participate in this item because it involves a dispute between a franchisee and franchisor.

b. **CONSIDERATION OF PROPOSED ORDER**

**RON BAKER CHEVROLET-ISUZU, dba RON BAKER ISUZU v. ISUZU MOTORS AMERICA, INC.**

Protest No. PR-1999-06

Consideration of the Administrative Law Judge's Proposed Order Denying Protestant's Request for Reinstatement of Protest No. PR-1999-06, by the Public Members of the Board.

Oral arguments were presented before the Public and Dealer members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Protestant. Bruce L. Ishimatsu, Esq., of Loeb & Loeb LLP, represented Respondent.

Mr. Sieving withdrew Protestant's request for reinstatement of the Protest. Protest No. PR-1999-06 remains dismissed. Mr. Sieving indicated that he would not seek to file any additional requests for reinstatement on behalf of his client. This matter was taken off the Board agenda over Mr. Ishimatsu's objection.

9. **CONSIDERATION OF WHETHER TO REQUEST THE DEPARTMENT OF MOTOR VEHICLES TO WITHHOLD RENEWAL AND/OR SUSPEND THE EXISTING OCCUPATIONAL LICENSE OF WESTERN GOLF CAR MANUFACTURING, INCORPORATED FOR ITS FAILURE TO PAY THE ANNUAL BOARD FEE (13 CCR § 553) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning whether to request the Department of Motor Vehicles to withhold renewal and/or suspend the existing occupational license of Western Golf Car Manufacturing, Incorporated ("Western") for failure to pay the annual Board fee. Ms. Parker reported that attempts to communicate with Western went unanswered. Mr. Stevens moved to exercise the Board's authority under Vehicle Code section 3050(c)(3), to request the Department of Motor Vehicles to withhold the renewal of Western's license and/or suspend its existing license until the fee has been paid. Mr. Papaian seconded the motion. The motion carried unanimously.

The members requested that the staff look into whether the DMV can issue a probationary license in light of Western's failure to timely pay the annual Board fee. The staff will look into this and report back at a subsequent meeting.

10. **ANNUAL REPORT ON BOARD DEVELOPMENT PROGRAM - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker reporting on the Board Development Program. Ms. Parker highlighted the planned schedule of Board meetings and educational presentations for 2007.

11. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR FISCAL YEAR 2005-2006 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for fiscal year 2005-2006. Miss Kindel reported that the Board expended 81% of its appropriated budget for the fiscal year.

11.a. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1ST QUARTER OF FISCAL YEAR 2006-2007 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the Board financial condition report for the 1st quarter of fiscal year 2006-2007. Miss Kindel reported that the Board has expended 22% of its appropriated budget through the 1st quarter of fiscal year 2006-2007.

11.b. **ANNUAL STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF ITS ANNUAL FEE (13 CCR § 553.10) - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel, and Linda Lighter concerning the status of the Board's collection of its annual fee. Miss Kindel indicated that out of 189 invoices only one manufacturer, Western Golf Car Manufacturing, Incorporated failed to pay the required fee. [See Agenda item 9]. The Board collected \$863,624.

12. **DISCUSSION AND CONSIDERATION OF THE FORMAT, ROOM SET-UP, AND DRAFT TOPICS FOR THE 6<sup>TH</sup> ANNUAL INDUSTRY ROUNDTABLE SCHEDULED FOR MARCH 27, 2007, IN SACRAMENTO - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning the upcoming 6<sup>th</sup> Annual Industry Roundtable scheduled for March 27, 2007, in Sacramento. The members were encouraged to offer suggested topics. Mr. Wilson offered a topic suggestion concerning how to address the market and industry need to reduce the number of dealers. The staff indicated that it would look into this suggestion.

13. **STATUS REPORT ON THE REGISTRATION FEES COLLECTED AT THE 5<sup>TH</sup> ANNUAL INDUSTRY ROUNDTABLE, HELD IN SACRAMENTO ON APRIL 4, 2006 - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

This agenda item was not addressed and will not be re-agendized.

14. **CONSIDERATION OF THE DEPARTMENT OF CONSUMER AFFAIRS, ARBITRATION CERTIFICATION PROGRAM'S REQUEST THAT THE BOARD NOT COLLECT SPECIFIED FEES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning the Arbitration Certification Program's request that the Board not collect specified fees. After a brief discussion, this matter was postponed until the January 2007 Board Meeting. The members requested an accounting of the name of the various manufacturers along with the assessed Arbitration Certification Program fee.

15. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
  - (1) Status of Protests.
  - (2) Status of Petitions.
  - (3) Status of Appeals.
  - (4) Matters Resolved.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Brennan provided the members with a Report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status.

The members were also provided with a summary of case management. Ms. Rigganbach reported that six new protests had been filed since the report was drafted. Additionally, there had been 14 new protests since November 17, 2006.

Mr. Weinberg reported on the status of the pending court cases and informed the members that in the *Thompson's* case, the court sustained DaimlerChrysler's demurrer with leave to amend. Furthermore, in the *Forty-Niner* case, Richard E. Wilmshurst and Attorney Jeffrey D. Heiser were directed to individually file letter briefs on whether Mr. Wilmshurst is entitled to personally appear before the court in this appeal. *Serpa Automotive* filed a writ in Tulare County Superior Court.

16. **SELECTION OF BOARD MEETING DATES FOR 2007**

The members were provided with a memorandum from Bill Brennan and Robin Parker

concerning upcoming Board meeting dates. The members went off the record for this discussion. Mr. Wilson went on the record to announce the following schedule:

- January 31, 2007, Los Angeles - General Meeting
- March 27, 2007, Sacramento -Industry Roundtable (California Motor Car Dealers Association (CMCDA) Gala Event)
- March 28, 2007, Sacramento - General Meeting (After CMCDA Dealer Day)
- March 28, 2007, West Sacramento - Special Meeting (Tour of California Fuel Cell Partnership)

The remaining calendar for 2007 will be discussed at the January 31, 2007, General Meeting.

16.a. **ANNUAL REPORT OF STAFF PARTICIPATION IN THE CALIFORNIA STATE EMPLOYEES CHARITABLE CAMPAIGN (CSECC)**

The members were provided with a memorandum from Bill Brennan concerning staff participation in the California State Employees Charitable Campaign. Mr. Brennan reported 100% staff participation. In addition, the campaign received donations from several Board members and Administrative Law Judges.

17. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

Consideration of annual performance review for Executive Director - Executive Committee.

The members of the Board convened in closed Executive Session to discuss this agenda item.

18. **OPEN SESSION**

The members returned to open session. Mr. Wilson indicated that the Board was pleased with Mr. Brennan's performance as the Board's Executive Director.

19. **ADJOURNMENT**

Mr. Stevens moved to adjourn the meeting. Mr. Papaian seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at approximately 12:00 p.m.

Submitted by

\_\_\_\_\_  
WILLIAM G. BRENNAN  
Executive Director

APPROVED: \_\_\_\_\_  
David W. Wilson  
President  
New Motor Vehicle Board