

1507 - 21st Street, Suite 330  
Sacramento, California 95811  
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 ("Board") held a General meeting on February 5, 2009, at the Hilton Los Angeles Airport, San Lorenzo E Room, 5711 West Century Boulevard, Los Angeles, California.

2. **ROLL CALL**

Robert T. (Tom) Flesh, Vice President of the Board, called the meeting of the Board to order at 10:35 a.m.

|          |                       |  |
|----------|-----------------------|--|
| Present: | Ramon Alvarez C.      | William G. Brennan, Executive Director |
|          | Ryan L. Brooks        | Howard Weinberg, General Counsel       |
|          | Robert T. (Tom) Flesh | Robin Parker, Senior Staff Counsel     |
|          | David C. Lizárraga    |  |
|          | Glenn E. Stevens      |  |

Absent: Haig Papaian  
Alan J. Skobin  
David W. Wilson

Mr. Stevens led the members and staff in the Pledge of Allegiance.

3. **APPROVAL OF THE MINUTES FROM THE NOVEMBER 20, 2008, GENERAL MEETING**

This matter was postponed until after Agenda item 4.

4. **DISCUSSION CONCERNING TRENDS AT DMV IN THE INVESTIGATIONS DIVISION BY KATHRYN DOOR, DEPUTY DIRECTOR - BOARD DEVELOPMENT COMMITTEE**

Mr. Flesh welcomed Kathryn Door, Deputy Director, Investigations, DMV, who discussed trends in the Investigations Division and provided the members with an overview of the Division. Doug Brenn, Deputy Chief, Region II, DMV Investigations, addressed trends from an enforcement perspective.

3. **APPROVAL OF THE MINUTES FROM THE NOVEMBER 20, 2008, GENERAL MEETING**

Mr. Stevens moved to adopt the February 5, 2009, General Meeting minutes. Mr. Lizárraga seconded the motion. The motion carried unanimously.

5. **2009 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

This matter was postponed until after Agenda item 9.

6. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BOARD DEVELOPMENT COMMITTEE, FISCAL COMMITTEE, GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE, AND POLICY AND PROCEDURE COMMITTEE, BY THE INCOMING BOARD PRESIDENT**

This matter was postponed until the March meeting.

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

Agenda items 7(a) and 8(a), *Carlsen Subaru*, involved a dispute between a franchisee and franchisor. Agenda items 7(b) and 8(b) also involved a dispute between a franchisee and franchisor; however, counsel for both parties stipulated to allow Public and Dealer Member participation in *California Motorcycle Assessories, Inc., dba Long Beach Honda*.

With regards to Carlsen Subaru, Mr. Flesh stated for the record that he knows Joe Putnam, the proposed Subaru dealer's father, worked with him as a Board Member, and has purchased automobiles from his dealerships. Mr. Flesh offered to recuse himself. Messrs. Sieving and Sanchez indicated they do not have any problem with Mr. Flesh's disclosure. Mr. Stevens also made the same disclosure concerning Joe Putnam. Again, Messrs. Sieving and Sanchez did not have a problem with Mr. Steven's disclosure.

a. **CARLSEN SUBARU v. SUBARU OF AMERICA, INC.**  
Protest No. PR-2096-07

Oral comments were presented before the Public Members of the Board. Michael M Sieving, Esq. of the Law Offices of Michael M. Sieving represented Protestant. Maurice Sanchez, Esq. and Kevin Colton, Esq. of Baker & Hostetler LLP presented Respondent.

- b. CALIFORNIA MOTORCYCLE ASSESSORIES, INC., dba LONG BEACH HONDA, a California corporation v. AMERICAN HONDA MOTOR CO., INC., a Corporation  
Protest No. PR-2136-08

Oral comments were presented before the Public and Dealer Members of the Board. Halbert B. Rasmussen, Esq. of Manning, Leaver, Bruder & Berberich represented Protestant. Brenda N. Buonaiuto, Esq. of King & Spaulding LLP presented Respondent.

8. **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 convenes in closed Executive Session to deliberate the decisions 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**

CARLSEN SUBARU v. SUBARU OF AMERICA, INC.  
Protest No. PR-2096-07

Consideration of the Administrative Law Judge’s Proposed Decision, by the Public members of the Board.

These deliberations were postponed until after Agenda item 8(b).

b. **CONSIDERATION OF PROPOSED ORDER**

CALIFORNIA MOTORCYCLE ASSESSORIES, INC., dba LONG BEACH HONDA, a California corporation v. AMERICAN HONDA MOTOR CO., INC., a Corporation  
Protest No. PR-2136-08

Consideration of the Administrative Law Judge’s Proposed Order Granting Respondent’s Motion to Dismiss Protest, by the Public and Dealer members of the Board.

The Public and Dealer Members of the Board deliberated in closed Executive Session. Mr. Alvarez C. moved to adopt the Administrative Law Judge’s “Proposed Order Granting Respondent’s Motion to Dismiss Protest”. Mr. Stevens seconded the motion. The motion carried unanimously.

a. **CONSIDERATION OF PROPOSED DECISION**

**CARLSEN SUBARU v. SUBARU OF AMERICA, INC.**

Protest No. PR-2096-07

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. Brooks moved to remand the Administrative Law Judge's Proposed Decision as follows:

The ALJ shall consider evidence, in the record or reopen the record as may be necessary, on comparable Subaru sales in relevant markets with similar demographics, climate and topographical features as exists in the greater San Francisco Peninsula Market. The ALJ shall have discretion to order additional evidence, briefing, and/or arguments, and shall not consider data from markets that are not similar to those serviced by Carlsen Subaru and the proposed Burlingame location.

Mr. Flesh seconded the motion. The motion carried unanimously.

9. **OPEN SESSION**

The members returned to Open Session. Mr. Flesh thanked counsel for their comments and Robin Parker announced the decisions in Agenda Items 8(a) and 8(b).

5. **2009 ELECTION OF BOARD PRESIDENT AND VICE PRESIDENT - EXECUTIVE COMMITTEE**

Mr. Stevens moved to nominate Tom Flesh as President. Mr. Alvarez C. seconded the motion to nominate Mr. Flesh as President. Mr. Stevens moved to close the nominations, with Mr. Brooks seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Tom Flesh as President carried unanimously.

Mr. Brooks moved to nominate Ramon Alvarez C. as Vice President. Mr. Lizárraga seconded the motion to nominate Mr. Alvarez C. as Vice President. Mr. Flesh moved to close the nominations, with Mr. Lizárraga seconding the motion. This motion to close the nominations carried unanimously. The motion to nominate Ramon Alvarez C. as Vice President carried unanimously.

10. **ANNUAL UPDATE ON BOARD CONSUMER MEDIATION PROGRAM - ADMINISTRATION COMMITTEE**

This matter was postponed until the March meeting.

11. **CONSIDERATION OF THE REVISED GUIDE TO THE NEW MOTOR VEHICLE BOARD TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES - ADMINISTRATION COMMITTEE**

This matter was postponed until the March meeting.

12. **STATUS REPORT CONCERNING MANUFACTURER AND DISTRIBUTOR COMPLIANCE WITH VEHICLE CODE SECTIONS 3064/3074 AND 3065/3075 (THE FILING OF STATUTORILY REQUIRED SCHEDULES AND FORMULAS) - ADMINISTRATION COMMITTEE**

This matter was postponed until the March meeting.

13. **REPORT ON THE NUMBER OF NEW VEHICLE DEALERSHIPS, MANUFACTURERS, AND DISTRIBUTORS CLOSING IN 2008 - BOARD DEVELOPMENT COMMITTEE**

This matter was postponed until the March meeting.

14. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR THE 1ST QUARTER OF FISCAL YEAR 2008-2009 - FISCAL COMMITTEE**

This matter was postponed until the March meeting.

15. **ANNUAL REPORT CONCERNING OUT-OF-STATE TRAVEL PLANS FOR THE 2009-2010 FISCAL YEAR - FISCAL COMMITTEE**

This matter was postponed until the March meeting.

16. **CONSIDERATION OF 2009 REVISIONS TO THE INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS WHICH OUTLINES THEIR OBLIGATIONS TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS - POLICY AND PROCEDURE COMMITTEE**

This matter was postponed until the March meeting.

17. **ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES - POLICY AND PROCEDURE COMMITTEE**

This matter was postponed until the March meeting.

18. **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.

This matter was postponed until the March meeting.

19. **SELECTION OF BOARD MEETING DATES FOR 2009**

This matter was postponed until the March meeting.

20. **PUBLIC COMMENT. (GOV. CODE § 11125.7)**

No additional public comment was presented.

21. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 1:42 p.m.

Submitted by

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

APPROVED: \_\_\_\_\_  
Robert T. (Tom) Flesh  
President  
New Motor Vehicle Board