

STATE OF CALIFORNIA



MEMO

To : ALL BOARD MEMBERS

Date: August 14, 2012

From : WILLIAM BRENNAN
ROBIN PARKER

Subject: DISCUSSION AND CONSIDERATION OF YAMAHA MOTOR CORPORATION, U.S.A.'S RENEWED REQUEST THAT THE BOARD FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF ITS ARGUMENTS REGARDING THE JURISDICTION OF THE BOARD, BEFORE THE SECOND DISTRICT COURT OF APPEAL IN VENTURA

POWERHOUSE MOTORSPORTS GROUP, INC. v. YAMAHA MOTOR CORPORATION, U.S.A.

Protest No. PR-2122-08; SLO County Superior Court No. CV098090; and Court of Appeal No. B236705

On May 9, 2012, the Board received the initial request seeking the New Motor Vehicle Board ("Board") file an amicus curiae brief in the above-referenced Court of Appeal case on behalf of Yamaha Motor Corporation, U.S.A. ("Yamaha"). The initial request was filed by Maurice Sanchez, Esq. of Baker & Hostetler LLP. Yamaha requested that the Board submit an amicus curiae brief that would be the same as the letter¹ submitted to the Supreme Court. According to counsel, "...the brief would explain the difference in the Board's jurisdiction between protests and petitions and would set forth the difficulties that would occur if the Board were held to lack jurisdiction over protests. The brief also would request the appellate court to recognize that rulings of the Board, in making its jurisdictional determination on a termination protest, are entitled to deference in the courts of this state." Counsel indicated that Yamaha is not requesting the Board take a position with regard to the ultimate outcome of the case - the proposed brief is meant to educate the court.

At the May 22, 2012, General Meeting, the initial request was considered by the Public and Dealer Members of the Board. Dennis D. Law, Esq. of Andre, Morris & Buttery on behalf of Powerhouse Motorsports Group, Inc. ("Powerhouse) and Tim Pilg presented public comments. No appearance was made on behalf of Yamaha. After a lengthy discussion, Yamaha's request was denied. The Board indicated that Yamaha could present additional information to support its request.

¹ As you may recall, the Board filed an amicus letter last year with the California Supreme Court in the *Powerhouse* case. The letter was filed prior to the jury trial in which Robin testified by providing statistical information on case management and explained the difference between a protest and a petition.

On August 3, 2012, the Board received the attached renewed request (herein "Request") that the Board file an amicus curiae brief in the Court of Appeal case on behalf of Yamaha. The Request was also filed by Mr. Sanchez. Yamaha maintains that the amicus curiae brief would "...educate the Court of Appeal on the issue of the Board's jurisdiction to hear and decide protests, especially termination and establishment protests." It believes that refusal to file the amicus curiae brief could have "catastrophic results" in that if the Court of Appeal fails to reverse the trial court's decision it "...will very likely adversely impact or eliminate the jurisdiction of this Board." According to counsel, Yamaha's primary argument on appeal is that the case should have not gone to the jury and it was entitled to a summary judgment in its favor. Yamaha contends that the underlying facts were never in dispute: Powerhouse closed its doors; Powerhouse was in the process of a buy-sell; Yamaha issued a notice of termination; Powerhouse failed to file a timely protest; and Powerhouse's franchise was terminated by operation of law. Yamaha does not request that the Board take a position with regard to the ultimate outcome of the case or anything that happened during the jury trial.

On August 13, 2012, Powerhouse and Jerry Namba, successor in interest to Timothy L. Pilg and Chapter 7 Bankruptcy Trustee, filed the attached opposition to Yamaha's Request. The opposition was filed by Mr. Law. Powerhouse indicated that its responsive brief in the appeal "...does not contend, argue or suggest that this Board lacks jurisdiction to hear protests. Powerhouse's claims are based on Yamaha's violation of section 11713.3 and related common law tort theories..." which the superior court has jurisdiction to address. Accordingly, the Board's protest jurisdiction is not an issue. Mr. Law summarized the contentions in both sides' appellate briefs. Powerhouse maintains that "this matter is between it and Yamaha. An amicus brief will alter the balance of the playing field, and it is unnecessary..."

This matter is being agendized for discussion and consideration in accordance with the July 1996 Performance Audit conducted by Business, Transportation & Housing Agency. The policy adopted as a result of the Audit is as follows:

The Board will not file any amicus briefs without the consent of Business, Transportation & Housing Agency ("Agency"). As a prerequisite to requesting the consent of Agency, the Board must (a) discuss and approve the consent request at a noticed public meeting, or (b) in the case where time constraints do not permit the foregoing the President may authorize the request for consent. In any instance when the President authorizes the request, a notice shall be immediately sent to Board members. If any member seeks immediate review of this action, the member may request that the President call a special meeting of the Board to discuss the matter. If there is no such immediate review requested, the matter will be included in the agenda of the next regularly scheduled Board meeting. If the Board determines that it does not want to file the amicus brief, the request for consent will be withdrawn.

Therefore, this matter is being agendized for Board consideration. As indicated above, in the event the Board decides to go forward with the amicus curiae brief, Agency as well as the Governor's Office needs to approve this request. This is merely the first step in seeking that permission.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 324-6197 or Robin at (916) 323-1536.

Attachment: as stated