

STATE OF CALIFORNIA



MEMO

To : ALL BOARD MEMBERS

Date: January 28, 2014

From : WILLIAM BRENNAN
ROBIN PARKER

Subject: **DISCUSSION AND CONSIDERATION OF REQUEST FOR CONSENT TO FILE AN AMICUS CURIAE LETTER IN SUPPORT OF YAMAHA MOTOR CORP., U.S.A.'S PETITION FOR REVIEW TO THE CALIFORNIA SUPREME COURT OF THE NOVEMBER 26, 2013 PUBLISHED COURT OF APPEAL DECISION UPHOLDING IN ALL RESPECTS A VERDICT ADVERSE TO YAMAHA**

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

Protest No. PR-2122-08; San Luis Obispo County Superior Court No. CV098090; Second Appellate District Court of Appeal No. B236705; and California Supreme Court No. S215677

On January 23, 2014, the Board received Yamaha's letter requesting to be heard at the February 4, 2014, General Meeting and urging the Board to file an amicus letter in support of Yamaha's Petition for Review of the Court of Appeal's decision in the above-captioned matter with the following attachments (1) the Court of Appeal's decision (Exhibit A); (2) Yamaha's Petition for Review (Exhibit B); and, (3) a proposed draft amicus letter to be sent by the Board (Exhibit C) (see attached).

Yamaha "...believes that the Board has a substantial interest in having the Supreme Court grant review in this case, as the decision upends the Vehicle Code's termination protest mechanism by holding that a franchisor must continue to treat a franchisee who fails to file a timely protest to a Notice of Termination as having an active franchise. Moreover, by effectively holding that the filing of a timely protest to a statutorily compliant Notice of Termination is optional, the decision threatens a significant portion of the Board's jurisdiction – its jurisdiction over franchise terminations." Yamaha contends that the decision is contrary to Section 3060, cannot be reconciled with *Sonoma Subaru*, and "effectively holds that the failure to file a protest within the statutory deadline has no legal significance, despite the plain text of Section 3060."

On January 28, 2014, the Board received an opposition to Yamaha's request for amicus brief submitted on behalf of Powerhouse Motorsports Group, Inc. and Jerry Namba, successor in interest to Timothy L. Pilg and Chapter 7 Bankruptcy Trustee for the bankruptcy estate of Timothy Pilg and his wife Frances Pilg (collectively "Powerhouse") and Powerhouse's Answer to Yamaha's Petition for Review (Exhibit A) (see attached).

Powerhouse contends that its claims are damage claims, which are required to be filed in court, “based on Yamaha’s violation of section 11713.3 and related common law tort theories.” It “does not contend or suggest that this Board lacks jurisdiction to hear protests.” Furthermore, the Board “retains full jurisdiction to hear protests, and it has the authority to determine whether a protest is timely or untimely, just as it did in this case. But a party who has a statutory or common law damage claim cognizable in the courts is not precluded from pursuing that remedy simply because a protest was filed late, or not at all.” Lastly, Powerhouse contends that “[a]n amicus brief will alter the balance of the playing field, and it is unnecessary because the issues are factual in nature and unique to this case.”

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”).¹ 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 letter, 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.

Attachments

¹ Effective July 1, 2013, Business, Transportation & Housing Agency is now California State Transportation Agency (“Agency”).