

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 June 5, 2009, at the Mission Inn Hotel, Monterey Room, 3649 Mission Inn Avenue, Riverside, California

2. **ROLL CALL**

Robert T. (Tom) Flesh, President of the Board, called the meeting of the Board to order at 10:07 a.m.

Present: Ramon Alvarez C. (left 1:16 p.m.) William G. Brennan, Executive Director
Ryan L. Brooks Howard Weinberg, General Counsel
Robert T. (Tom) Flesh Polly Riggerbach, Staff Counsel
Haig Papaian
Victoria R. Pearson
Glenn E. Stevens
David W. Wilson (left 1:04 p.m.)

Absent: David C. Lizárraga
Alan J. Skobin

3. **PLEDGE OF ALLEGIANCE**

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

4. **APPROVAL OF THE MINUTES FROM THE APRIL 23, 2009, GENERAL MEETING**

Mr. Alvarez moved to adopt the April 23, 2009, General Meeting minutes. Mr. Papaian seconded the motion. Mr. Brooks did not participate since he did not attend the meeting. The motion carried unanimously.

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

- a. PLATINUM MOTORS LLC, a California limited liability company v. AUTOMOBILI LAMBORGHINI, S.p.A.
Protest No. PR-2140-08

Mr. Flesh indicated that this matter was originally scheduled for the March 24, 2009, General Meeting. Just prior to the Board meeting, there was a Chapter 11 Bankruptcy filing on behalf of Protestant. Given the automatic stay, the Board did not take any action.

This matter was then scheduled for the April 23, 2009, General Meeting, as the Bankruptcy Court modified the stay and the Board was authorized to consider the Proposed Order. On April 22, 2009, Protestant filed a Notice of Removal in the United States Bankruptcy Court, Central District of California, Santa Ana Division. The filing of the Notice of Removal removed jurisdiction of the Board so it did not take any action.

On May 4, 2009, the Bankruptcy Court issued an Order Granting Emergency Motion of Automobili Lamborghini America LLC to Remand Improperly Removed Action. This order remanded the matter to the Board.

Mr. Flesh stated his belief that there was no conflict of interest with Mr. Resnick's firm, Jeffer, Mangels, Butler & Marmaro, LLP. However, he continued his recusal in this hearing and Mr. Stevens presided over this matter.

Oral comments were presented before the Public Members of the Board. Carlos F. Negrete of the Law Offices of Carlos F. Negrete, and Michael J. Flanagan of the Law Offices of Michael J. Flanagan made an appearance on behalf of Protestant. Allen S. Resnick of Jeffer, Mangels, Butler & Marmaro, LLP and Randall L. Oyler, Esq. of Barack Ferrazzano made an appearance on behalf Respondent.

- b. POWERHOUSE MOTORSPORTS GROUP, INC. v. YAMAHA MOTOR CORPORATION, U.S.A.
Protest No. PR-2122-08

Mr. Flesh disclosed hiring Mr. Law's firm, Andre, Morris & Buttery, for real estate matters and offered to recuse himself if the parties so requested. Both parties agreed to Mr. Flesh's participation.

Oral comments were presented before the Public Members of the Board. Dennis D. Law of Andre, Morris & Buttery and Michael J. Flanagan of the Law Offices of Michael J. Flanagan represented Protestant. Kevin M. Colton, Esq. of Baker & Hostetler LLP represented Respondent.

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 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 ORDER**

PLATINUM MOTORS LLC, a California limited liability company v. AUTOMOBILI LAMBORGHINI, S.p.A.
Protest No. PR-2140-08

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

Mr. Flesh did not participate in the closed Executive Session therefore Mr. Stevens presided over these deliberations. The remaining Public Members of the Board deliberated in closed Executive Session. Mr. Papaian moved to reject the Administrative Law Judge's "Proposed Order Granting Respondent's Motion to Dismiss Protest", denied Respondent's Motion to Dismiss, and remanded the matter for a full hearing on the merits. Mr. Brooks seconded the motion. The motion carried unanimously.

b. **CONSIDERATION OF PROPOSED ORDER**

POWERHOUSE MOTORSPORTS GROUP, INC. v. YAMAHA MOTOR CORPORATION, U.S.A.
Protest No. PR-2122-08

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

The Public Members of the Board deliberated in closed Executive Session. Mr. Flesh 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.

7. **OPEN SESSION**

The Public Members returned to Open Session. The decisions on Agenda items 6(a) and 6(b) were not announced until counsel for the parties returned to the meeting.

8. **ANNUAL UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY, AND THE RESULTANT CORRECTIVE ACTION PLAN - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg updating the corrective action taken for each audit finding, and a matrix providing the chronology for each. Mr. Weinberg provided an overview of the Board's compliance with the Audit Findings and Corrective Action Plan.

9. **ANNUAL REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Howard Weinberg updating the Board delegations that were originally adopted in 1997 in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency, and recently revised at the November 20, 2008, General Meeting. Mr. Weinberg reported that the delegation pertaining to spending authority for the procurement of any item in excess of \$3,000 be modified so that if time is of the essence, the staff and Fiscal Committee make the decision and then bring it to the entire Board. Mr. Flesh continued this matter to the next meeting.

7. **OPEN SESSION**

The parties from the *Platinum Motors* matter returned to the meeting. Mr. Stevens announced that the Board voted to overrule the ALJ's decision and send the matter to a full hearing on the merits.

10. **CONSIDERATION OF REVISED VISION STATEMENT TO MORE ACCURATELY REFLECT THE LICENSEES WITHIN THE BOARD'S JURISDICTION - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan that revised the Vision Statement to more accurately reflect the licensees within the Board's jurisdiction. Mr. Brennan indicated that at the April 23, 2009, meeting he presented the Vision Statement with no modifications and that the Board requested a minor modification to clarify that the Board assists consumers in mediating concerns with dealers, manufacturers, and distributors licensed by the Department of Motor Vehicles. Mr. Brooks moved to adopt the revised Vision Statement. Ms. Pearson seconded the motion. The motion carried unanimously.

11. **DISCUSSION AND CONSIDERATION OF WHO WILL ATTEND THE OUT-OF-STATE TRIPS FOR THE 1ST HALF OF FISCAL YEAR 2009/2010 THAT WERE PREVIOUSLY APPROVED BY THE BOARD - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning who will attend out-of-state trips for the 1st half of fiscal year 2009-2010. At the April 23, 2009, General Board meeting, the Board Members approved and ratified out-of-state travel plans for fiscal year 2009-2010. It was decided at the meeting that the Executive Committee would authorize individuals to attend. The staff proposed the following schedule:

- Travel to the National Association of Motor Vehicle Boards and Commissions Fall Workshop in Charleston, South Carolina for Executive Director Bill Brennan and Staff Manager Dawn Kindel. The workshop will be held October 3 – 6, 2009.

Mr. Brennan recommended that the Board approve the proposed travel but was not committed that Miss Kindel or he actually attend the workshop.

Mr. Flesh moved to conditionally approve the proposed attendees for the out-of-state trips for the first half of the 2009-2010 fiscal year, subject to revisiting this matter at the September 10, 2009, General Meeting, in light of State budgetary constraints. Mr. Stevens seconded the motion. The motion carried unanimously.

7. **OPEN SESSION**

Messrs. Law and Colton returned to the meeting. Ms. Riggenbach announced that the Board adopted the Administrative Law Judge's Proposed Order.

12. **CONSIDERATION OF NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

At the July 18, 2000, General Meeting, the members adopted an Employee Recognition Award Program to recognize staff for their accomplishments. The program was renamed the Solon C. Soteris Employee Recognition Award. The staff submitted employee nominations to the Board Development Committee, Ryan Brooks and Victoria Pearson, who ultimately recommended Polly Riggenbach as the Employee Recognition Award recipient. Ms. Riggenbach is a Staff Counsel in the legal department. Mr. Brennan recognized Polly for uncovering a potential fraud against the State in terms of the services being provided and the quality of the reporting service for a statewide contract. Mr. Alvarez moved to adopt the Committee's recommendation. Mr. Wilson seconded the motion. The motion carried unanimously.

13. **BOARD FINANCIAL CONDITION REPORT FOR THE 3RD QUARTER OF FISCAL YEAR 2008-2009 - 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 3rd quarter of fiscal year 2008-2009. The Board has expended 65% of its appropriated budget for fiscal year 2008-2009. Mr. Brennan reported that with regards to expenses, the Board will come in under 10% of its operating budget.

14. **STATUS REPORT CONCERNING THE BOARD'S COLLECTION OF THE ARBITRATION CERTIFICATION PROGRAMS' ANNUAL FEE - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the Board's collection of the Arbitration Certification Programs' Annual Fee. Mr. Brennan reported that the fee collection was completed. The Board collected \$1,071,731 to fund its Program or \$.566 per vehicle. The Board receives \$5,000 to recover its actual costs of administering the collection.

15. **DISCUSSION AND CONSIDERATION OF THE BOARD'S PROPOSED BUDGET FOR FISCAL YEAR 2009-2010 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the Board's proposed budget for the next fiscal year. Mr. Stevens moved to adopt the proposed budget. Mr. Papaian seconded the motion. The motion carried unanimously. Mr. Brennan indicated that he intends to keep costs in line and maintain a fiscally sound program.

16. **STATUS REPORT CONCERNING THE MANDATORY SETTLEMENT CONFERENCE JUDGE ROTATION WHICH WILL REVERT TO INCLUDE ALL MERITS HEARING ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Polly Riggerbach concerning the Mandatory Settlement Conference Judge Rotation which reverted to include all merits hearing ALJs. Ms. Riggerbach reported that Judge Waits has been trained and added to the rotation for Merits Hearing ALJs. As of May 20, 2009, the extension the Board granted to have the MSCs conducted only by Judges Wong and Riggerbach expired and Judges Archibald, Prod and Hagle were added back to the rotation for the assignment of MSCs along with Judge Waits.

17. **REVIEW AND CONSIDERATION OF POLLY RIGGERBACH'S ADMINISTRATIVE LAW JUDGE APPOINTMENT WHICH ENCOMPASSES NON-SUBSTANTIVE PROCEDURAL FUNCTIONS - POLICY AND PROCEDURE COMMITTEE.**

The members were provided with a memorandum from Bill Brennan and Polly Riggerbach concerning Ms. Riggerbach's ALJ appointment to encompass non-substantive procedural functions. Ms. Riggerbach reported that to date it has proven effective and efficient to have procedural matters such as setting discovery schedules and hearing dates ordered as needed by her. The staff recommended that Ms. Riggerbach's authority as an ALJ continue to include Settlement Conferences and non-substantive procedural matters including ordering discovery dates, briefing schedules and hearing dates. Ms. Pearson moved to adopt the staff recommendation. Mr. Brooks seconded the motion. The motion carried unanimously.

18. **DISCUSSION AND CONSIDERATION OF BOARD POLICY ON PUBLIC**

ACT (GOV. CODE § 11120 ET SEQ.), DURING CONSIDERATION OF PROPOSED DECISIONS, ORDERS OR RULINGS CONDUCTED PURSUANT TO GOVERNMENT CODE SECTION 11500, ET SEQ. - POLICY AND PROCEDURE COMMITTEE

The members were provided with a memorandum from Bill Brennan and Howard Weinberg concerning a Board policy on public comments in compliance with the Bagley-Keene Open Meeting Act during the consideration of Proposed Decisions, Orders or Rulings conducted pursuant to the Administrative Procedure Act. After a lengthy discussion, this matter was taken off calendar and assigned by Mr. Flesh to a newly created Ad Hoc Public Comment Committee with Ryan Brooks as Chair and Glenn Stevens as Member.

19. **DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation of Special Interest.
There is no pending legislation of special interest at this time.

- b. Pending Legislation of General Interest.
 - (1) Assembly Bill 5 (Assembly Member Evans) - Electronic Discovery Act.
 - (2) Assembly Bill 1237 (Assembly Members Garrick and Duvall).
 - (3) Assembly Bill 1494 (Assembly Member Eng).
 - (4) Senate Bill 95 (Senator Corbett) - Car Buyers' Protection Act of 2009.
 - (5) Senate Bill 373 (Senator Walters).
 - (6) Senate Bill 424 (Senators Padilla, Florez, and Harman).

- c. Pending Federal Legislation of General Interest.
 - (1) United States House of Representatives Bill 100 (U.S. Representative Drier) - Commonsense Auto Recovery Act of 2009.
 - (2) United States House of Representatives Bill 120 (U.S. Representative Frelinghuysen).
 - (3) United States House of Representatives Bill 159 (U.S. Representative Pascrell).

 - (4) United States House of Representatives Bill 385 (U.S. Representative Rodgers) - Consumer Auto Relief Act of 2009 or the CAR Act of 2009.
 - (5) United States House of Representatives Bill 1550 (U.S. Representative Sutton) - the Consumer Assistance to Recycle and Save Act of 2009.
 - (6) United States House of Representatives Bill 2224 (U.S. Representative Terry)
 - (7) United States Senate Bill 209 (U.S. Senator Boxer).
 - (8) United States Senate Bill 247 (U.S. Senator Feinstein) - Accelerated Retirement of Inefficient Vehicles Act of 2009.
 - (9) United States Senate Bill 271 (U.S. Senator Cantwell) - Fuel

- Reduction using Electrons to End Dependence on the Mid-East (FREEDOM) Act of 2009.
- (10) United States Senate Bill 333 (U.S. Senator Mikulski).

The members were provided with a memorandum from Bill Brennan and Howard Weinberg updating them on pending legislation. There was no discussion concerning this item.

20. **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. He indicated that the furloughs were still in place yet the attitude of the Board employees was still good.

Ms. Riggerbach reported that since the materials were mailed to the members, one protest was closed and five new protests were filed. There were a total a 30 open protests with five cases stayed due to bankruptcy filings.

Mr. Weinberg reported on judicial matters and indicated that in *Carlsen Subaru, Inc., dba Carlsen Subaru, Petitioner v. New Motor Vehicle Board, Respondent, Subaru of America, Inc., Real Party in Interest*, there was a 2:30 p.m. hearing today in the Sacramento County Superior Court. With regards to the two *Nader Automotive Group* cases, Mr. Weinberg reported that they were being briefed. Lastly, he reported that there has been no activity in *Serpa Automotive Group, Inc., Petitioner v. New Motor Vehicle Board, Respondent; Volkswagen of America, Inc., Real Party in Interest*.

21. **APPOINTMENT OF COMMITTEE MEMBERS TO THE ADMINISTRATION COMMITTEE, BY THE BOARD PRESIDENT**

This matter was postponed until the next General Meeting.

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

No additional public comment was presented.

23. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 1:37 p.m.

Submitted by

WILLIAM G. BRENNAN
Executive Director

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