

## APPENDIX A

### (Respondent's Mischaracterizations of the Hearing Record and Errant Citations Thereto)

The entries in this appendix are formatted as follows: [page and line numbers in Respondent's Brief], (type of irregularity in Respondent's use of the record).

- [2:22-23]  
Roadtrek claims that "Mega's deliberate failure to pay Roadtrek caused Roadtrek significant financial problems." This statement is cited to hearing transcript dated 9/23/11 at 192:15-193:16. In this portion of the hearing transcript, Mr. James Hammill testified that the Bank of Nova Scotia wanted Roadtrek out because "[t]hey didn't want to lend to people that had, as they described, that had four wheels and rolled. They didn't want to have anything associated with automotive." (Hammill, R.T. 9/23/11, 192:18-193:1.) Although Mr. Hammill testified that the Bank of Nova Scotia mentioned it was "concerned about McMahon's payment situation," it is clear from the testimony that the Bank of Nova Scotia wanted to remove itself from financing involving the automotive industry entirely. (*Id.* at 193:9-16.)
- [3:5-14]  
Roadtrek has designated various citations in support of its arguments without giving pinpoint line citations. For example, on page 3 of Respondent's Brief there are six (6) citations to hearing transcripts that only designate a page or page range, rather than a pinpoint citation. This results in difficulty confirming the accuracy of Respondent's citations. Although Respondent has cited pinpoint line citations elsewhere in its brief, Respondent makes twelve (12) more citations to hearing transcripts without pinpointing lines.
- [4:2-3]  
In support of its statement that Mega identified two issues to be discussed at the March 2008 meeting in Kitchener, Ontario, Canada in a pre-meeting memorandum: Mr. McMahon's holdback payment for 2007 and interest, Respondent cites 8/12/11 Tr. At 93:22-94:8. This citation is irrelevant to the claim Respondent is attempting to support. This portion of the transcript begins in the middle of an unrelated statement by Mr. McMahon and includes a question/statement by Mr. Chronowski regarding the payment of holdbacks upon retail sale of a unit.  
  
In addition, Protestant has clearly testified this memorandum written by Mega occurred after the March 2008 meeting. (Schilperoort, R.T. 8/16/11, 196:3-8.)
- [4:17-22]  
Roadtrek writes that Mega's interest arrangement with Roadtrek, where interest was only to be charged for the time between the sale of a motorhome to a customer and when Mega paid Roadtrek, was "...a significant benefit to Mega because GE and Bank of America charge Mega interest as soon as a motorhome is delivered to Mega." Respondent first cites 8/16/11 Tr. at 92:1-92:12, which does not support its contention that interest was only to be charged for the time between the sale of a motorhome to customer and when Mega paid Roadtrek. In fact, Mr. McMahon testified that there was "no interest." (McMahon, R.T. 8/16/11, 92:5.)  
  
Respondent then cites hearing transcript dated 11/15/11 at 20:15-20:20. This citation is completely irrelevant and begins and ends in the middle of an unrelated paragraph regarding the witness turning to page 006300 of Exhibit 674.

- 1     ▪ [5:4-7]  
2     Respondent writes that “Mega paid the first \$35,000 payment [for interest], but never made  
3     the second payment. Mega fails to offer any explanation for not making this payment.”  
4     First, Respondent cites 1/12/12 Tr. at 6:10-6:21 in support of this contention. However, the  
5     cited testimony references the swearing in of Marshall Maresh as a witness. Second, Mega  
6     provided explanation for not making the second interest payment in its Post-Hearing  
7     Opening Brief at 4:26-5:2.
- 8     ▪ [5:17]  
9     Respondent cites Ex. 637 in support of its contention that “[f]rom roughly mid-2008 to the  
10    end of 2009, Roadtrek constantly chased Mega for payments on sold Roadtrek  
11    motorhomes.” However, this exhibit was not admitted in its entirety and therefore  
12    Respondent did not represent the admission of this exhibit accurately. Specifically pages  
13    RMI 00070 and RMI 00100 were not admitted into evidence and should not be taken into  
14    consideration as support for Respondent’s claims.
- 15    ▪ [5:19-20]  
16    Respondent writes that, “Roadtrek later agreed that Mega could pay it upon the retail  
17    funding for each unit.” Respondent cites 8/18/11 Tr. at 183:21-183:25. This cite does not  
18    support the proposition that Roadtrek agreed Mega could pay it upon the retail funding for  
19    each unit. Mr. Schilperoort testified that, “what Roadtrek expected and what Mega RV  
20    attempted to do was to pay each one of those units within 14 days of retail funding.” *Id.*  
21    This 14 day time period for repayment was reiterated by Mr. Schilperoort at R.T. 8/18/11,  
22    184:13-16.
- 23    ▪ [5:25-26]  
24    Respondent stated that, “[i]n the RV business, this [failing to pay Roadtrek on time] is  
25    known as being “out of trust.” Respondent cites Mr. McMahon’s testimony in support of  
26    this statement. However, Mr. McMahon testified that he does not agree that is an  
27    appropriate use of the term “out of trust” and Respondent has mischaracterized his  
28    testimony. (McMahon, R.T. 8/18/11, 198:17-19.)
- 29    ▪ [6:5-6]  
30    Respondent cites a string of exhibits (626, 637, 664, 641) in support of the proposition that  
31    Mega said it would catch up quickly on payments when the issue was raised by Mr. Cassidy  
32    or Mr. Hammill. However, two of these exhibits are irrelevant: 626 and 641, and  
33    Respondent cited Exhibit 637 without explaining its incomplete admission, as discussed  
34    above. Exhibit 626 is an email from Mr. Hammill to Mr. Schilperoort requesting review of  
35    certain units allegedly out of trust. There is no email from Mr. Schilperoort regarding  
36    catching up on payments. In addition, Exhibit 641 includes a chart of allegedly unfunded  
37    units and Mr. Cassidy and Mr. McMahon trying to clarify what the other is discussing.  
38    Again there is not mention of catching up on payments.
- 39    ▪ [6:13-14]  
40    Respondent cites transcript testimony of 1/11/12 Tr. at 197:11-197:19. There was no  
41    hearing held on 1/11/12 and therefore there is no transcript to reference for this citation.
- 42    ▪ [6:14-16]  
43    Respondent cites Ex. 516 at RMI 7367-68 in support of this statement: “[Fosdick short-  
44    paying invoices] was a violation of Roadtrek’s consumer cash back policy because payment  
45    was approved after each sale and Roadtrek would then send a check to Mega.” The exhibit  
46    cited is discrete Dealer Notes but does not demonstrate short-payment as a violation of  
47    Roadtrek’s consumer cash back policy or evidence that Roadtrek approved incentives after  
48    each sale and subsequently sent Mega a check. It is unclear why this exhibit was cited for

1 these propositions.

2 ■ [6:19-20]

3 Respondent cites Exhibit 725 in support of the claim that Mega's offsetting forced the  
4 parties to communicate on multiple occasions solely to understand what Mega was  
purporting to do. This exhibit is a completely irrelevant email string between Mr. Cassidy  
and Mr. Schilperoort regarding messages posted on the CyberRally website.

5 ■ [7:5-6]

6 Respondent makes the claim that, "[b]y mid-2009, the payment problems were significant  
7 enough that Hammill traveled to Irvine to meet with Mega." Respondent cites hearing  
8 testimony at 9/23/11 Tr. at 1431 for support. Page 1431 does not exist and therefore this  
contention and alleged support cannot be substantiated.

9 ■ [9:24-26]

10 Respondent writes that it sent Mega a number of iterations of the settlement agreement over  
11 a period of days. Respondent cites several exhibits in support of this statement. In its  
citation, Respondent included Exhibit 672, which was not admitted into evidence and should  
not be considered in support of Respondent's arguments.

12 ■ [10:6-8]

13 Respondent cites the Cal. Evid. Code §1119(a) and the case of *Rinaker v. Superior Ct.*, 62  
14 Cal. App. 4<sup>th</sup> 155 (Cal. App. 3d Dist. 1998) when stating "settlement discussions are not  
admissible in trial or hearings" but "...in certain circumstances, settlement discussions can  
15 be considered evidence." First, there is no dispute whether the settlement discussions in this  
case should be considered in evidence. Second, the Evidence Code section and case cited in  
16 support of its statement are specifically in regard to the admission of settlement discussions  
made during *mediation*. The present case does not involve mediation and therefore  
17 Respondent's are irrelevant.

18 ■ [11:16; 12:15]

19 On pages 11-12 of its brief, Respondent cites the case of *Trust Co. for USL, Inc. v. Wien Air*  
20 *Alaska*, 1997 U.S. App. LEXIS 11958 at \*6-7 (9<sup>th</sup> Cir. March 12, 1997) as stating, "repeated  
delinquencies are reasonable grounds for insecurity." However, this case not published for  
21 citation. A notice at the top of the case states, "Ninth Circuit Rule 36-3 provides that  
dispositions other than opinions or orders designated for publication are not precedential and  
22 should not be cited except when relevant under the doctrines of law of the case, *res judicata*,  
or *collateral estoppel*." None of these doctrines of law are applicable to Respondent's  
23 citation and therefore it is inappropriate for Respondent to use this case in support of its  
arguments. All references to this case should be disregarded.

24 ■ [13:16]

25 Respondent cites Ex. 758 as support for its statement that, "[i]n January 2010, Mega's  
26 Shawn McMahon sent a text message to Cassidy telling him that he just sold a Roadtrek  
motorhome to a customer and that Roadtrek would need to pay the \$5000 consumer cash  
27 back incentive directly to the customer." The admission of Exhibit 758 into evidence was  
denied in its entirety. In fact, ALJ Hagle found that Mr. Cassidy's testimony was  
28 inconsistent with the text of the exhibit and denied its admission.

- 1 • [23:24-24:5]  
 2 Respondent mislabels and mis-cites various pleadings within its Post-Hearing Brief. For  
 3 example, for the pleading entitled Order Deferring Proposed Order Granting  
 4 Respondent's Motion to Dismiss Protest No. PR-2245-10 (Scotts Valley) RE;  
 5 Termination, dated 3/13/12, Respondent mislabels it as the "March 13, 2012 Proposed  
 6 Order Granting Respondent's Motion to Dismiss Protest No. PR-2245-10" and then fails  
 7 to provide a pinpoint cite for the quotation it provides (which is located in the pleading  
 8 at ¶ 61). Respondent mislabels this document again at 24:9-10 and 27:15-16. In addition,  
 9 Respondent misdated the Order Deferring Ruling on Respondents Motion to Reserve  
 10 Making Findings of Fact and Conclusions of Law on UCC Issues, which was issued on  
 11 August 3, 2011. (See Respondent's Post-Hearing Opening Brief at 10:20-22.)
- 12 • [28:23-26]  
 13 Roadtrek claims, "Despite Schilperoort's November 24, 2009 email to Roadtrek  
 14 requesting the shipment of Roadtrek units, Mega still refused to pay Roadtrek for units  
 15 that it sold out of trust." This statement is cited to Exhibit 663. However, the November  
 16 24, 2009 email from Schilperoort in Exhibit 663 states he is requesting *a list of Roadtrek*  
 17 *units available* so Mega could put them on its flooring line; the email does not request  
 18 the *shipment* of units. In addition, the exhibit does not mention *anything* about Mega  
 19 refusing to pay Roadtrek for units.
- 20 • [30:14-15]  
 21 Roadtrek claims, "McMahon and Schilperoort agreed that no specific investment to sell  
 22 Roadtrek was made at any location." This statement is cited to the hearing transcript for  
 23 8/15/11 at 94:23-95:5. However, this portion of the transcript contains statements from  
 24 Mr. McMahon only; there is no corroboration from Mr. Schilperoort. Also, in the  
 25 portion of the transcript cited, Mr. McMahon states only that he did not know what the  
 26 dealer agreements required and didn't recall being told he had to build something at the  
 27 Irvine location, but did recall having a parts stocking requirement. (McMahon, R.T.  
 28 8/15/11, 94:23-95:5.)
- [31:5-7]  
 Roadtrek claims, "In a memo labeled 'Points of Contention,' prepared by Mega in  
 March of 2008, Mega claimed that it hired a 'hundred employees that are sales staff that  
 represent the Roadtrek product.'" This statement is cited to Exhibit 609. However, the  
 quote used by Roadtrek is not contained within Exhibit 609. Rather, it is a  
 recharacterization of the exhibit by Mr. Chronowski during the hearing. (See McMahon,  
 R.T. 8/12/11, 67:14-19.)
- [31:8-9]  
 Roadtrek claims when questioned about the statement that he had 100 employees  
 representing Roadtrek, "McMahon testified that 'I would be honest and say that's  
 probably a little bit of an exaggeration.'" This testimony is uncited by Respondent. After  
 searching the transcripts, Protestant was able to locate the quote in the hearing transcript  
 for 8/12/11 at 67:21-22. However, once the actual quote is found within the transcript, it  
 reveals that Respondent has attempted to mischaracterize the statement by Mr.  
 McMahon, which actually states:  
 "...I would be honest and say that's probably a little bit of an exaggeration in the sense  
 that the company's employee total varied, especially after this period where the

1 economic calamity began to escalate. So it probably was over a hundred people that  
2 could sell Roadtreks at different times in the organization. Definitely is today. I can tell  
3 you it's probably 150. But, you know, at any given point, that might have gone down to  
4 50 or -- or 70 employees, so that's a fair statement." (McMahon, R.T. 8/12/11, 67:21-  
5 68:5.)

- 6 • [31:11-13]  
7 Roadtrek claims "McMahon testified that '[w]e weren't spending \$140,000 a month just  
8 focusing on Roadtrek.'" This statement is cited to the hearing transcript from 8/10/11 at  
9 96:5-96:14, 98:11-99:12. First, the quote Roadtrek is using does not come from the cited  
10 portions of the transcript; it is from the 8/10/11 transcript at 98:8-9. Secondly,  
11 Roadtrek's citation to pages 96:5-96:14 does not contain the direct statement it purports  
12 to contain and, thus, needs a "See" in front of it. Finally, Roadtrek's citation to pages  
13 98:11-99:12 is to a portion of the transcript that was partially stricken after an objection  
14 by Roadtrek itself: "Yeah. I'm going to object. Move to strike the testimony with respect  
15 to what everybody else would. Hearsay, foundation, etc. This and that." (McMahon,  
16 R.T. 8/10/11, 99:15-18.)
- 17 • [31:16-19]  
18 Roadtrek claims, "The termination of Mega's franchises would not be injurious to the  
19 public because (1) Mega has not provided any services to the public in over two years,  
20 and (2) the service that Mega provided to the public was poor." This statement is cited to  
21 the 9/23/11 hearing transcript at 171-172 and Exhibits 682-683. First of all, Roadtrek has  
22 *again* failed to provide a pincite for its transcript citation, citing only page numbers.  
23 Secondly, page 171 contains merely a discussion of interest and warranty payments;  
24 there is absolutely no mention of services to the public. Page 172 contains more of the  
25 same, with only lines 6-11 actually being arguably applicable to the issue of Mega  
26 serving the public. However, even these lines are misleadingly cited, as they do not  
27 support Roadtrek's allegation that Mega was providing poor service. Instead, lines 6-11  
28 speak to the domino effect caused by Roadtrek not paying Mega for warranty work:  
Roadtrek did not pay Mega, causing Mega to not pay its service writers, which allegedly  
caused the *service writers* to give poor service to Roadtrek customers. Further, the  
exhibits are merely 2 isolated customer complaints and do not serve as proof of poor  
public service.
- Respondent cites a string of exhibits (691, 692, and 693) in support of the proposition  
that "customers confirmed in writing and in depositions that they did not sign consumer  
cash back forms, and that Mega did not even notify them that cash back incentives were  
available on their units." However these exhibits were not admitted in their entirety and  
therefore Respondent did not represent the admission of these exhibits accurately.  
Specifically, the exhibits' admission was limited to show only that (1) Roadtrek had  
information on which to pursue the remedy stated in 3076(b), (2) the "official use only"  
portion discussed stocking levels, and (3) Roadtrek took a reasonable amount of time to  
react.

In addition, Roadtrek cited a string of deposition testimony to support the above  
customer complaint allegation, which contains various errors and misrepresentations. As  
to the Kurt Brittain deposition at 9:1-7, Mega has a standing objection to its designation  
as being unnecessary and irrelevant. Roadtrek thus did not represent the admissibility of

1 this portion of the deposition accurately. Further, in the Robin Hays deposition at 7:24-  
2 8:4, Ms. Hays states Mega did, in fact, tell her she was eligible for a \$5,000 rebate; she  
3 just thought it was a government rebate rather than a manufacturer incentive. Ms. Hays  
4 went on to say that she did received a \$5,000 rebate off of the price of the vehicle she  
5 purchased. (Robin Hays Deposition at 8:11-17.)<sup>1</sup>

- 6 • [32:9-10]  
7 Roadtrek claims, “DeRossett was forced to make payments on the vehicle before he  
8 received his payment from Mega.” This statement is cited to DeRossett’s deposition at  
9 12:14-22. Again, Roadtrek has been misleading with its deposition designation citation.  
10 What DeRossett actually stated was that his payments *became due* before he received his  
11 payment from Mega; he did not state that he was forced to make those payments.  
12 (Thomas DeRossett Deposition at 12:14-22.)
- 13 • [32:10-13]  
14 Roadtrek claims, “DeRossett described his experience in dealing with Mega as ‘very  
15 difficult’ and stated that he ‘wouldn’t even want to drive by the place.’” This statement  
16 is cited to DeRossett’s deposition at 13:13-13:21. Again, Roadtrek has incorrectly  
17 quoted deposition testimony. What Mr. DeRossett actually said was that his experience  
18 with Mega was “very much more difficult than any of the other transactions [he’d] ever  
19 had.” While taken in isolation, this is not too egregious of a citation error, but  
20 Roadtrek’s repeated practice of paraphrasing witness testimony and presenting it to the  
21 ALJ in its Post-Hearing Brief as a direct quote is misleading and an abuse of the record.
- 22 • [34:13-15]  
23 Roadtrek claims, “Since as early as 2005, Mega has used leads developed and  
24 maintained by Roadtrek to sell Pleasure-Way vehicles.” This statement is cited to the  
25 9/22/11 hearing transcript at 110:8-24. However, a large portion of this transcript  
26 segment was stricken from the record. The cited portion begins with many disparaging,  
27 stricken remarks about Mr. McMahan, which Roadtrek gratuitously included in its  
28 citation even though the testimony bore no relation to the usage of leads. In addition,  
Roadtrek presents the citation as evidencing lead stealing ‘since as early as 2005,’ but  
the cited transcript only mentions Mr. Hammill observing such behavior *in* 2005. In fact,  
he later stated that he never saw such behavior again. (Hammill, R.T. 9/22/11, 138:12-  
17)
- [35:3-6]  
Roadtrek again cites designated deposition testimony that has standing objections by  
Mega. Roadtrek cited Barbara Andino’s deposition at 68:3-69:16. This segment of  
testimony was objected to by Mega as unnecessary, not surgical as per the ALJ’s orders,  
and irrelevant.
- [35:10-13]  
Roadtrek cites Exhibit 630 for its statement that Bank of America financed between 150-  
175 units for other Roadtrek dealers in 2009. However, this exhibit does not address this  
premise, but, rather, states Bank of America told Mega it would not floor Roadtreks. It is  
unclear why this exhibit was cited for Roadtrek’s proposition.

<sup>1</sup> These lines of the deposition designation are subject to a standing objection by Roadtrek as being irrelevant.

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- 2 • [37:4-8]  
3 Roadtrek alleges Mega breached its DA requirement to operate in a way that reflects  
4 favorably on Roadtrek by, *inter alia*, “falsifying incentive claim forms submitted to  
5 Roadtrek.” Roadtrek cites the 11/8/11 hearing transcript for this accusation, however  
6 there is no mention of incentive claim forms within the cite.
  - 7 • [37:17-18]  
8 Roadtrek alleges, “Mega had not paid a Roadtrek parts invoice since 2008” and cites  
9 Exhibit 496 at RMI 9155-9158 as support. However, this exhibit has limited  
10 admissibility, with the ALJ noting that the Board cannot make decisions regarding  
11 money judgments and that this exhibit should not affect the federal case. Roadtrek, thus,  
12 did not accurately represent the admission of this exhibit.
  - 13 • [37:20-23]  
14 Roadtrek claims, “Mega was required under the parties’ Dealer Agreement and the  
15 Security Agreement to pay Roadtrek the full invoice price of financed vehicles within 14  
16 days after those vehicles were “retail sold.” Roadtrek cites Exhibit 614 as evidence of  
17 this requirement. Roadtrek cites the exhibit without providing any indication of where in  
18 the document it purports this term appears. However, it is no wonder Roadtrek was  
19 unable to provide a pin cite, because none exists; nowhere in Exhibit 614 does it say  
20 Mega is required to pay Roadtrek within 14 days of retail sale.
  - 21 • [37:23-25]  
22 Roadtrek alleges, “From at least late 2007, Mega wrongfully withheld payments from  
23 Roadtrek and forced Roadtrek to expend its time and resources to collect amounts  
24 owed.” Roadtrek cites numerous exhibits as support (Exs. 617, 623, 632, 637, and 641),  
25 but none of them support its contention. Exhibit 617 describes only 4 outstanding  
26 payments on units, which were the 4 units Mega withheld as insurance; the rest of the  
27 units listed in the exhibit weren’t even due yet. Exhibit 623 discusses possible short  
28 payments, which were actually Mega deducting the amount owed to it for incentives on  
each unit. Exhibit 632 does not address amounts owed at all. Instead, it contains vague  
references to units and scheduling discussions between the parties. The only mildly  
relevant reference is to the fact that *both* companies were not paying each other. Exhibit  
637 involves multiple emails listing units that have been sold and represents the normal  
day-to-day attempts between the parties to keep a clear record of unit sales. The emails  
do not represent excessive time or resources Roadtrek had to expand to collect money,  
but, rather, the day-to-day communications needed between a manufacturer and dealer to  
see what units are being sold and what incentives applied to each. Exhibit 641 simply  
contains a table of units without any identification as to what it represents or if payments  
are even due on them. It is unclear why this exhibit was cited for Roadtrek’s  
propositions.
  - [38:2-5]  
Roadtrek alleges it met with Mega in late 2008 to “collect payment on this out-of-trust  
units,” citing Exhibit 632. However, Roadtrek has mischaracterized the exhibit, as  
Exhibit 632 states the parties met to discuss the various amounts *both* parties owed each  
other.

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- [41:3-7]  
Roadtrek alleged Hammill found Mega's claims fell into four broad categories, citing Hearing Transcript 11/8/11 at page 105 for support. First, Roadtrek has again failed to provide a pin cite. Second, the cited page of transcript does not support Roadtrek's contention. It, instead, includes a partial list of units Hammill claims he couldn't fine consumer cash back incentive claim forms for.