



DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: January 25, 2016

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: PUTNAM MOTORS, INC., dba PUTNAM LEXUS v. TOYOTA MOTOR SALES, U.S.A., INC.

Protest No. PR-2428-15 (Second Amended Protest)

TYPE: Vehicle Code section 3065 Warranty (Hourly Labor Rate)

PROCEDURE SUMMARY:

- FILED ON CALENDAR:¹ Original Protest filed July 31, 2015
[First] Amended Protest filed October 7, 2015
Second Amended Protest filed December 22, 2015
- MOTIONS FILED: Respondent's Motion to Dismiss [First] Amended Protest for Lack of Jurisdiction²
- COUNSEL FOR PROTESTANT: Michael Sieving, Esq.
Tina Hopper, Esq.
Sieving Law Group, LLP
- COUNSEL FOR RESPONDENT: Steven A. McKelvey, Jr., Esq.
Steven B. McFarland, Esq.
Patricia A. Britton, Esq.
Nelson Mullins Riley & Scarborough, LLP

EFFECT OF PROPOSED ORDER:

Adoption of the Proposed Order would result in the dismissal of the Second Amended Protest (regarding only the warranty hourly labor rate).

PROCEDURAL BACKGROUND:

- Protestant (Putnam) filed its original Protest alleging two distinctly different claims under

¹ Both the original Protest and the [First] Amended Protest contained two claims: one relating to the warranty hourly labor rate and the second relating to the requirement for technician training. The Second Amended Protest contains only the claim relating to the warranty hourly labor rate. The claim relating to the technician training is contained in a separate protest also filed on December 22, 2015.

² The original Protest and the [first] Amended Protest as well as the Motion to Dismiss addressed both the warranty hourly labor rate and the technician training. The Motion was denied on December 16, 2015. Protestant then filed the Second Amended Protest that is limited to the issue regarding the warranty hourly labor rate and is requesting the Board members act upon the finding of the ALJ in the December 16, 2015 order but limited solely to the findings that the Board has no jurisdiction over the claim relating to the warranty hourly labor rate.

Section 3065. One claim was seeking payment of a higher hourly warranty labor rate for Putnam. The second claim alleged Putnam (and other dealers) can not be compensated for performing Safety Recall Service as the technicians had not completed TMS-required training with the lack of training due to the failure of TMS to provide sufficient classes.

- Putnam subsequently filed a [First] Amended Protest in an attempt to clarify the claims. TMS filed a Motion to Dismiss [First] Amended Protest asserting the Board had no jurisdiction to hear either claim. After briefing and a hearing, the ALJ concluded that the Board did not have jurisdiction over the warranty labor rate claim but that the Board did have jurisdiction over the technician training claim.³ Because the ALJ found the Board did have jurisdiction over one of the claims in the Protest and [First] Amended Protest, the ALJ denied the Motion to Dismiss [First] Amended Protest, with the ruling also stating that the hearing on the Protest would be limited to the technician training issues. Nothing was submitted to the Board members for consideration as both claims were in a single protest and the ruling was not purporting to be dispositive of the [First] Amended Protest as of that time. It was anticipated that the Board members would consider both the ruling as to the jurisdiction over the hourly warranty labor rate claim and the merits of the technician training claim at such time as the merits hearing was concluded as to the technician training claim. After the ALJ's ruling denying the Motion to Dismiss [First] Amended Protest (issued December 16, 2015), Putnam, on December 22, 2015, filed a Second Amended Protest that was limited to only the warranty hourly labor rate claim. Putnam, on the same day, also filed a new protest (PR-2455-15) limited to what had been the second claim in the original Protest and the [First] Amended Protest as to the technician training.
- Putnam, in the Second Amended Protest relating to the hourly labor rate, stated that it was not seeking any new proceedings regarding the Second Amended Protest (as to the hourly labor rate) other than to have the prior ruling by the ALJ of "no jurisdiction" as to the hourly labor rate claim considered at this time by the Board members rather than waiting until the conclusion of the merits hearing on the technician training claim. Both sides agreed that no further briefing was desired as to the issue of jurisdiction over the Second Amended Protest (the hourly warranty labor rate claim) and that the record before the Board to date, including the ALJ's Order of December 16, 2015 denying the Motion to Dismiss, would be presented to the Board for its consideration but only of that portion of the ALJ's Order finding there was no jurisdiction to consider the hourly labor rate claim.

SUMMARY OF PROPOSED ORDER:

- As to the warranty labor rate, the ALJ found that the Protest does not come within the provisions of Vehicle Code section 3065(a).

³ Section 3065(a) provides in part: "**The warranty reimbursement schedule or formula shall be reasonable with respect to** the time and compensation allowed to the franchisee for the warranty diagnostics, repair, and servicing, and **all other conditions of the obligation.** The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a protest with the board. (Bold and underline added.) The ALJ found that: The requirement of the technicians completing the TMS-required training classes in order for Putnam (and other Lexus dealers) to be compensated for performing Safety Recall Service was one of the "conditions of the obligation" within the language of Section 3065(a); and, The Second Amended Protest raised the issue of whether this was a reasonable condition if, as alleged by Putnam, TMS does not provide a sufficient number of classes for the technicians of Putnam and other Lexus dealers.

- The ALJ found that “Although the Board has jurisdiction to determine if the schedule or formula is reasonable, the Board does not have jurisdiction to resolve a dispute between the parties as to whether the formula is being properly applied by the franchisor to an individual franchisee. Any claim of Putnam that it is not being paid what it is contractually or statutorily entitled to receive as its hourly labor rate compensation from TMS for warranty repairs is best pursued in Superior Court or Federal Court in a claim for damages.” (Paragraphs 28 and 29 of Order Denying Motion to Dismiss [First] Amended Protest)
- The proposed order, if adopted by the Board, would dismiss the Second Amended Protest that now contains only the claim relating to the hourly labor rate paid to Putnam. The merits of the separate new protest pertaining to the technician training will be heard in due course by an ALJ of the Board and subsequently submitted to the Board upon conclusion of that hearing.

RELATED MATTERS:

- Related Case Law: *Automotive Management Group, Inc. v. New Motor Vehicle Board* (1993) 20 Cal. App.4th 1002, 24 Cal.Rptr.2nd 904 requires that the Board members act upon and decide any order that would be dispositive of a protest.
- Related Protests: Protest No. PR-2455-15 is the new protest involving the same parties that pertains to the technician training claim.
- Applicable Statutes and Regulations: Vehicle Code section 3065