



## DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: August 14, 2012

From : ADMINISTRATIVE LAW JUDGE: Lonnie M. Carlson

CASE: WEST COVINA MOTORS, INC., dba CLIPPINGER CHEVROLET v. GENERAL MOTORS, LLC  
Protest No. PR-2213-10

TYPE: PROPOSED DECISION

Pursuant to Vehicle Code section 3050.7(a), the Board, at the request of the parties, issued its "Order Adopting [Proposed] Confidential Stipulated Decision of the Board Resolving Protest" (hereinafter referred to as "Board Order"). The Board Order contemplated a complete resolution of all issues. The "Settlement and Deferred Termination Agreement and Release" (hereafter "Settlement Agreement"; Exhibit A to the "[Proposed] Confidential Stipulated Decision of the Board Resolving Protest") was confidential and filed under Board seal. The Settlement Agreement which was the subject of the Board Order remains confidential and filed under Board seal. Subsequently, a dispute arose between the parties concerning compliance with the terms of the Board Order which included the parties' confidential Settlement Agreement.

### PROCEDURE SUMMARY:

- FILED ON CALENDAR: February 23, 2010  
December 15, 2010 (Board Order resolving protest by adopting parties' confidential settlement agreement)
- HEARING: May 17, 2012
- COUNSEL FOR PROTESTANT: Michael J. Flanagan, Esq.  
Gavin M. Hughes, Esq.  
Law Offices of Michael J. Flanagan

- COUNSEL FOR RESPONDENT: Gregory R. Oxford, Esq.  
Isaacs, Clouse, Crose & Oxford, LLP

**EFFECT OF PROPOSED DECISION:**

Protestant's franchise shall continue in existence pending the timely occurrence of one of the two alternatives available to it, that are: (1) Obtaining floor-plan financing as required by the Settlement Agreement; or, (2) The submission by WCM to GM of the complete buy-sell package as required by the Settlement Agreement. If neither of these alternatives occurs, Protestant's franchise shall terminate on the 81st day after the date of mailing to the parties and their counsel by U.S. Postal Service Certified Mail a copy of the Board's Order adopting this Proposed Decision.

**SUMMARY OF PROPOSED DECISION:**

- Section 4.9 of the Settlement Agreement expressly applies to "Any period specified..." in the Settlement Agreement and states that such time periods "... shall not commence until the first day after personal delivery or the fifth business day after deposition in the United States mail, as the case may be."
- In addition to agreeing upon when the times would commence, the parties also specifically agreed upon the persons to whom the notices or communications must be directed, which for Protestant was Mr. Alhassen as well as Protestant's counsel identified specifically as Mr. Flanagan.
- GM was required to give notice to WCM and its counsel before the 90-day time period to obtain replacement flooring or submit a complete buy-sell proposal commenced.
- The 90-day time period to obtain alternative financing or submit a complete buy-sell proposal began to run at the earliest on March 22, 2012, when WCM's counsel, Mr. Flanagan, first received a communication from GM regarding the expiration of the time limits.
- The 90-day period for WCM to comply with the conditions in sections 2.3, 2.4 and 2.5 of the Settlement Agreement has not expired.
- The notice from GM to WCM that absent alternative flooring or the submission of a complete buy-sell package would result in the automatic or self-executing voluntary termination of its GM Dealer Agreement but only if the time period specified in the Settlement Agreement had commenced to run and had expired.

- However, the time period had not expired as the 90-day period commences to run only when notice is given by GM to Protestant and its named counsel, Mr. Flanagan. This did not occur until March 22, 2012, at the earliest.
- The 90-day period in section 2.3 was tolled effective April 2, 2012.
- The 90-day period should be reduced by the 10 days that elapsed between March 22, 2012 (the earliest date Mr. Flanagan received the communication from GM as stated in section 4.9) and April 2, 2012, the time Protestant sought relief before the Board. Therefore, there remains 80 days for Protestant to either: (a) provide written evidence of a commitment for replacement Dedicated Chevrolet Flooring in amount of at least \$3 million from GMAC or another GM-approved financial institution or (b) present GM with a fully-executed “buy-sell” agreement and complete proposal for the transfer of the stock or assets of WCM to a person or entity not affiliated with WCM or its owner.
- Accordingly, it is determined that while the Protestant lost its \$3 million Dedicated Chevrolet Flooring and the 90-day period in the terms and conditions of the Settlement Agreement were imposed by GM, GM’s failure to provide earlier notice to Protestant’s counsel as required by section 4.9 of the Settlement Agreement, results in a finding that WCM has 80 days to meet the conditions set forth in sections 2.3, 2.4 and 2.5 of the Settlement Agreement.

**RELATED MATTERS:**

- Related Case Law: There are no published court decisions applicable to this case.
- Applicable Statutes and Regulations: Vehicle Code sections 331.1, 331.2, 3050.7, 3060, and 3066.