



## DECISION COVER SHEET

ACTION BY: Public Members Only

ACTION BY: All Members

To : BOARD MEMBERS

Date: August 14, 2012

From : ADMINISTRATIVE LAW JUDGE: Diana Woodward Hagle

CASE: MEGA RV CORP. dba MCMAHON'S RV v. ROADTREK MOTORHOMES, INC.  
Protest Nos. PR-2206-10, 2208-10, and PR-2209-10

TYPE: Vehicle Code section 3075 Protests (Warranty Reimbursement Claims)  
Proposed Decisions  
PR-2206-10 (Colton Dealership Location)  
PR-2208-10 (Irvine Dealership Location)  
PR-2209-10 (Scotts Valley Dealership Location)

NOTE: An expanded statement of facts is found in the Decision Cover Sheet for termination protests PR-2244-10 and PR-2245-10.

### PROCEDURE SUMMARY:

- **PROTESTS FILED ON CALENDAR:** February 9, 2010, February 18, 2010, and February 18, 2010, respectively.
- **MOTION RELEVANT TO WARRANTY REIMBURSEMENT CLAIMS PROTEST FILED:**
  - Protestant's Objection to Introduction in Evidence of James E. Hammill's Declaration Re: Warranty Reimbursement Claims [Vehicle Code Section 3075] – denied March 20, 2012
- **COUNSEL FOR PROTESTANT:** Law Offices of Michael J. Flanagan  
Michael J. Flanagan, Esquire  
Gavin M. Hughes, Esquire  
Erin R. Hegedus McIntosh, Esquire  
Danielle R. Vare, Esquire (as of 11/21/11)
- **COUNSEL FOR RESPONDENT:** Seyfarth Shaw, LLP  
Louis S. Chronowski, Esquire  
Kavitha Janardhan, Esquire (until 5/1/12)  
James D. McNairy, Esquire

**EFFECT OF PROPOSED DECISION:** This Proposed Decision would sustain Protest Nos. PR-2206-10, PR-2208-10, and PR-2209-10.

**SUMMARY OF PROPOSED DECISION:**

- The issues presented are the following:
  - (1) Did Mega RV sustain its burden of proof of establishing that Roadtrek violated Section 3075, in that Roadtrek failed to fulfill its warranty agreement to adequately and fairly compensate Mega RV for labor and parts used to fulfill warranty obligations of repair and servicing?
  - (2) Did Roadtrek sustain its burden of proof of showing that it not only gave proper notice to Mega RV of disapproved warranty claims, but also that it paid approved claims in a manner meeting the requirements of Section 3075? (Here, the burden of proof is allocated to Respondent because it is in a better position to have knowledge of the facts regarding these issues.)
- The resolution of the issues is the following:
  - (1) Mega RV has sustained its burden of proof of establishing that Roadtrek violated Section 3075.
  - (2) Roadtrek has failed to sustain its burden of proof and has violated Section 3075 relative to its "warranty reimbursement" program, as follows:
    - A. In regard to approved warranty claims, in that it "offset" them without notice to Mega RV, thereby failing to "pay" the claims; and
    - B. In regard to disapproved or cancelled warranty claims, it has no procedure for timely notification to its franchisees.
- Damages, if any, will be determined in the pendant federal court case between the parties.
- In January 2006, Roadtrek launched its Warranty Claim Management System, an electronic database for processing warranty claims. Roadtrek dealers are expected to submit warranty claims online on Roadtrek's dealer website and may check on the status of current warranty claims online.

**Roadtrek's "Offsetting" of Approved Warranty Claims**

- From approximately July of 2008 to approximately February of 2010, Roadtrek determined that some, if not all, of the warranty claims submitted by Mega RV and approved by Roadtrek (in whole or in part) would be used to "offset" amounts which Roadtrek contended were "Mega RV obligations to Roadtrek". However, in lieu of sending payment checks directly to Mega RV for some, if not all, warranty claims which it had approved, Roadtrek "offset" these claims against amounts Roadtrek contends were owed, but unpaid by Mega RV, to Roadtrek

for parts.

- Roadtrek failed to give notice to Mega RV that it was withholding direct payment of approved warranty claims.
- Jennifer Fresh, Mega RV's Warranty Administrator, made email requests to Roadtrek for information about the status of payments for approved warranty claims (see paragraph 73 of the Proposed Decision). She did not get the requested information: Roadtrek admitted that no statements had been sent to Mega RV, concluding their email message by stating that "this [Roadtrek's offsetting of approved claims] was a directive from the President and the VP of Sales. The President has all the back up as to what we have paid out to McMahon's and how it was applied to the parts statements".
- The requirement in Section 3075(d) that approved claims must be "paid" within 30 days of approval assumes that the franchisee will receive a meaningful statement identifying with particularity the warranty claim being paid, the exact amount of the claim being paid, the date the claim is being paid (or "credited" or "offset"), and the account or debt against which the "offset" or "credit" is being made. Moreover, if the franchisor elects to "pay" by way of a "credit" or an "offset", both parties must be in agreement not only that the franchisee approves of this manner of "payment", but also that there is an agreed-upon debt the franchisee owes against which the "credit" or "offset" is made. None of the above conditions of payment were present in Roadtrek's processing of Mega RV's approved warranty claims.

### **Roadtrek's Lack of Notification of Disapproved Warranty Claims**

- In regard to disapproved or cancelled warranty claims, Roadtrek has no procedure for timely notification to its franchisees.
- The Roadtrek warranty claims processing system relies on two-digit status codes to identify various stages in the warranty claims process. Chris Deakins, Roadtrek's Warranty Coordinator, stated that if a warranty claim is denied, "[t]he status would then say 'denied' or 'canceled'... [but he didn't] recall which of the two words [the Roadtrek system] uses." Since the Roadtrek warranty code system lists a "canceled" status, but not a "denied" status, a denied warranty claim would therefore be identified in the system as "canceled".
- If a warranty claim is submitted, and Roadtrek declines or disapproves the claim, Chris Deakins stated that "...[t]here's no real set procedure per se..." by which Roadtrek's warranty system makes certain that the dealer is notified of the "decline status" or "declination" within a certain period of time.

### **RELATED MATTERS:**

- Related Case Law: None.
- Applicable Statutes: Vehicle Code sections 331.1, 331.2, 3075 and 3066(b).

- Related Board Protests: There are 11 *Mega RV Corp. dba McMahons RV v. Roadtrek Motorhomes, Inc.* protests that are pending a decision on their merits. These Proposed Decisions will be considered at the August 23, 2012, General Meeting as follows:
  - Protest Nos. PR-2199-10 (Colton) and PR-2201-10 (Irvine)  
Section 3070(b) modification.
  - Protest Nos. PR-2206-10 (Colton), PR-2208-10 (Irvine), and PR-2209-10 (Scotts Valley) Section 3075 warranty reimbursement.
  - Protest Nos. PR-2205-10 (Colton), PR-2211-10 (Scotts Valley), and PR-2212-10 (Irvine) Section 3076 franchisor incentive program reimbursement.
  - Protest No. PR-2233-10 (Colton)  
Section 3072 establishment.
  - Protest Nos. PR-2244-10 (Colton/Irvine)  
Section 3070(a) termination.
  - Protest No. PR-2245-10 (Scotts Valley) - A Proposed Order Granting Respondent's Motion to Dismiss Protest No. PR-2245-10, a Section 3070 termination protest for the Scotts Valley location, will also be considered at the August meeting.