

NEW MOTOR VEHICLE BOARD  
1507 - 21st Street, Suite 330  
Sacramento, California 95811  
Telephone: (916) 445-1888

STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of

MEGA RV CORP. dba MCMAHONS RV,

Protestant,

v.

ROADTREK MOTORHOMES, INC.,

Respondent.

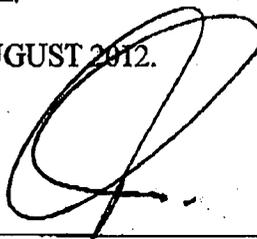
Protest Nos. PR-2206-10,  
PR-2208-10, and PR-2209-10

DECISION

At its regularly scheduled meeting of August 23, 2012, the Public and Dealer Members of the Board met and considered the administrative record and Proposed Decision in the above-entitled matters. After such consideration, the Board adopted the Proposed Decision as its final Decision in these matters.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 23<sup>rd</sup> DAY OF AUGUST 2012.



RAMON ALVAREZ C.  
President  
New Motor Vehicle Board

1 NEW MOTOR VEHICLE BOARD  
1507 – 21<sup>ST</sup> Street, Suite 330  
2 Sacramento, California 95811  
Telephone: (916) 445-1888

**CERTIFIED MAIL**

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8 STATE OF CALIFORNIA  
9 NEW MOTOR VEHICLE BOARD

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11 In the Matter of the Protest of  
12 MEGA RV CORP. dba MCMAHON'S RV,  
13 Protestant,  
14 v.  
15 ROADTREK MOTORHOMES, INC.,  
16 Respondent.

**Protest Nos. PR-2206-10, PR-2208-10,  
and PR-2209-10**

**PROPOSED DECISION  
Vehicle Code section 3075)  
[Warranty Reimbursement]**

17  
18 **PROCEDURAL BACKGROUND**

19 **Parties and Counsel**

20 1. Protestant Mega RV Corp doing business as McMahon's RV (herein "Mega RV" or  
21 "Protestant") is a recreational vehicle dealership, with several California and Arizona locations. Until  
22 early 2012, its primary dealership location was in Irvine, California at 6441 Burt Road, #10; on or about  
23 March 31, 2012, Protestant relocated that dealership to 5400 Garden Grove Boulevard, Westminster,  
24 California.

25 2. Mega RV is a California corporation owned by Brent McMahon. Mega RV is a

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27 ///

28 ///

1 “franchisee” within the meaning of Vehicle Code section 331.1.<sup>1</sup>

2 3. Protestant is represented by the Law Offices of Michael J. Flanagan, by Michael J.  
3 Flanagan, Esquire; Gavin M. Hughes, Esquire; Erin R. Hegedus McIntosh, Esquire; and Danielle R.  
4 Vare, Esquire (as of 11/21/11), 2277 Fair Oaks Boulevard, Suite 450, Sacramento, California.

5 4. Respondent Roadtrek Motorhomes, Inc. (herein “Roadtrek” or “Respondent”)  
6 manufactures Class B motorhomes. It is located in Kitchener, Ontario, Canada.

7 5. Roadtrek is a Canadian corporation. Roadtrek is a “franchisor” within the meaning of  
8 Section 331.2.

9 6. Respondent is represented by Seyfarth Shaw, LLP, by Louis S. Chronowski, Esquire; and  
10 Kavitha Janardhan, Esquire (until 5/1/12), 131 South Dearborn Street, Suite 2400, Chicago, Illinois.

11 **Preliminary Procedural Note**

12 7. Between January and July of 2010, Mega RV filed with the New Motor Vehicle Board  
13 (“Board”) 18 protests alleging violations of the Vehicle Code by Respondent Roadtrek involving Mega  
14 RV's dealership locations in Irvine, Colton, Scotts Valley and Palm Desert. By the first day of the hearing  
15 in August 2011, 12 protests had been consolidated for hearing, and six protests had been dismissed.<sup>2</sup>

16 8. Also in 2010, Mega RV filed with the Board two petitions (Petition Nos. P-456-10 and  
17 P-457-10) against Roadtrek. Both petitions were rejected upon first consideration and the portions of the  
18 petitions that sought adjudication of the dispute pursuant to Section 3050(c)(2) were dismissed by the  
19 Board at the June 15, 2010, and December 3, 2010, General Meetings, respectively. The petitions also  
20 requested that the Board direct the Department of Motor Vehicles (hereinafter “DMV”) to conduct an  
21 investigation of the allegations contained in the petitions and to order DMV to exercise any and all  
22 authority over Respondent’s Occupational License. These requests were also denied at the meetings noted  
23 above.

24  
25 <sup>1</sup> Hereinafter, unless otherwise indicated, all section references are to the Vehicle Code. The statutory references are subject to  
26 some qualification: although the parties are properly identified as “franchisee” and “franchisor” under Sections 331.1 and  
27 331.2, it was only as of January 1, 2009 that Section 331.3 (“recreational vehicle franchise”) was enacted. Section 11713.22  
28 (“written [RV] franchise agreement”) was effective January 1, 2008, and amended effective January 1, 2009; Section 11713.23  
29 (“sale of new [RV]”) was effective January 1, 2009. Section 3072 (“establishing or relocating RV dealerships”) became  
effective January 1, 2004.

<sup>2</sup> In the 19 months between the first filing and the first day of hearing, several pre-hearing matters were heard and decided by  
Presiding Administrative Law Judge (“ALJ”) Anthony M. Skrocki.

9. On January 31, 2012, the September 20, 2010 order of consolidation for purposes of the merits hearing was amended for preparation of the Proposed Decisions and Decision by the Board; the new order consolidated the 12 protests into five groups, as follows:

Vehicle Code	Type of Protest	Filed	Protest Nos.
Section 3070(b)	Modification	January 29, 2010 January 29, 2010 January 29, 2010	PR-2198-10 (Scotts Valley) <sup>3</sup> PR-2199-10 (Colton) PR-2201-10 (Irvine)
Section 3075	Warranty reimbursement violations	February 9, 2010 February 18, 2010 February 18, 2010	PR-2206-10 (Colton) PR-2208-10 (Irvine) PR-2209-10 (Scotts Valley)
Section 3076	Franchisor incentive program violations	February 9, 2010 February 18, 2010 February 18, 2010	PR-2205-10 (Colton) PR-2211-10 (Scotts Valley) PR-2212-10 (Irvine)
Section 3072(a)	Establishment violations	May 11, 2010	PR-2233-10 (Colton)
Section 3070(a)	"De facto termination"	July 13, 2010 July 13, 2010	PR-2244-10 (Colton/Irvine) PR-2245-10 (Scotts Valley)

10. A hearing on the merits of the 12 protests was held before Administrative Law Judge Diana Woodward Hagle on the following dates in 2011: August 9 through 12, inclusive; August 15 through 19, inclusive; September 21 through 23, inclusive; September 30; November 7 through 11, inclusive; November 14 and 15; November 17 and 18; and November 28 through December 2, inclusive. Hearing dates in 2012 were the following: January 9 and 10; January 12 and 13; January 18 and 19; January 31; and February 1.

11. The hearing was re-opened for a telephonic hearing on April 26, 2012 to provide evidence of the relocation of Mega RV's primary dealership location from Irvine to Westminster.

12. The matters were submitted on May 3, 2012.<sup>4</sup>

<sup>3</sup> Subsequently, Protestant requested dismissal of Protest PR-2198-10, which was ordered on March 6, 2012.

<sup>4</sup> In October 2010, counsel for the parties stipulated to extend the time the ALJ has to render the proposed decisions from 30 to 60 days after the matters were deemed submitted; the time for the Board to consider the proposed decisions was also extended from 30 to 60 days from the date the ALJ submits the proposed decisions. On May 29, 2012, counsel stipulated to extend the ALJ's time to final and sign the proposed decisions from 60 days to 90 days, or August 1, 2012.

1 Pendant Federal Case

2 13. The parties to these protests are also parties to an action for money damages currently  
3 pending in United States District Court in the Central District of California, Case No. CV 09-09466 SJO.  
4 The federal proceeding is stayed pending the Board's Decision in these protests. (RT 9/21:36-37)<sup>5</sup>

5 Statement of the Case

6 (Warranty Reimbursement Protest Nos. PR-2206-10, 2208-10 and 2209-10)

7 14. On February 9, 2010, Mega RV filed Protest No. PR-2206-10 with the Board; an amended  
8 protest was filed on February 18, 2010. The protest alleged that Roadtrek had violated Section 3075 by  
9 failing to pay warranty reimbursement claims for Roadtrek recreational vehicles sold from Mega RV's  
10 Colton, California dealership location.

11 15. On February 18, 2010, Mega RV filed Protest No. PR-2208-10 with the Board. The  
12 protest alleged that Roadtrek had violated Section 3075 by failing to pay warranty reimbursement claims  
13 for Roadtrek recreational vehicles sold from Mega RV's Irvine, California dealership location.

14 16. On February 18, 2010, Mega RV filed Protest No. PR-2209-10 with the Board. The  
15 protest alleged that Roadtrek had violated Section 3075 by failing to pay warranty reimbursement claims  
16 for Roadtrek recreational vehicles sold from Mega RV's Scotts Valley, California dealership location.

17 17. On August 3, 2011, Presiding ALJ Skrocki issued an Order Granting in Part and Denying  
18 in Part Protestant's Motions in Limine. Among other things, the Order identified issues related to the  
19 Section 3075 protests not within the jurisdiction of the Board: "[a]ny issues of damages, and the amounts  
20 of any set-offs if the set-offs do not constitute the claims being 'paid' within the meaning of Section  
21 3075...".

22 18. On March 20, 2012, ALJ Woodward Hagle issued an Order Overruling Protestant's  
23 Objection to Introduction in Evidence of James E. Hammill's Declaration Re: Warranty Reimbursement  
24 Claims; Findings Related Thereto (herein referred to as "Order").

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>5</sup>References herein to "RT" followed by a date (excluding the year) are to the transcripts of the proceedings. References to  
"Exh" are to Exhibits.

1 **ISSUES PRESENTED**

2 19. Did Mega RV sustain its burden of proof of establishing that Roadtrek violated Section  
3 3075, in that Roadtrek failed to fulfill its warranty agreement to adequately and fairly compensate Mega  
4 RV for labor and parts used to fulfill warranty obligations of repair and servicing?

5 20. Did Roadtrek sustain its burden of proof of showing that it not only gave proper notice to  
6 Mega RV of disapproved warranty claims, but also that it paid approved claims in a manner meeting the  
7 requirements of Section 3075?<sup>6</sup>

8 **PROTESTANT'S CONTENTION**

9 21. Roadtrek failed to fulfill its warranty agreement to adequately and fairly compensate Mega  
10 RV for labor and parts used to fulfill warranty obligations of repair and servicing.

11 **RESPONDENT'S CONTENTION**

12 22. Roadtrek satisfied all warranty obligations to Mega RV for labor and parts used to fulfill  
13 warranty obligations of repair and servicing, by either paying Mega RV for warranty work or by  
14 offsetting amounts owed to Mega RV for warranty work against debts which Mega RV owed to Roadtrek.

15 **IDENTIFICATION OF WITNESSES**

16 **Protestant's Witnesses**

17 23. Brent McMahon is the president and CEO of Mega RV Corp, doing business as  
18 McMahon's RV. (RT 8/9:76-173; 8/10:14-244; 8/11:6-267; 8/12:7-249; 8/15:6-205; 8/16:6-124)

19 24. Jennifer Fresh is an independent contractor who has been working as Warranty  
20 Administrator for Mega RV since March 31, 2009. (RT 1/9:7-221)

21 25. Laurie Fosdick was initially hired by Mega RV in September of 2006 (during a "growing  
22 phase") as Controller for all Mega RV locations. Since January 2011, she has been the Office Manager of  
23 Mega RV's Colton and Palm Desert dealerships. (RT 8/10:82; 1/9:6-86)

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28 <sup>6</sup> 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.

1 Respondent's Witnesses

2 26. James Hammill is President and CEO of Roadtrek. He was initially hired as General  
3 Manager in April 2005. He was appointed President around the beginning of 2007 and was named a  
4 Director of the company in 2008. He oversees "...all operations, everything tangible about the company,  
5 reporting to the board of directors... sales, manufacturing, engineering, quality, materials, purchasing...  
6 [e]ssentially all departments." (RT 9/22:73-242; 9/23:6-220; 11/7:8-217; 11/8:9-187; 11/9:6-225; 11/10:  
7 6-208; 11/11:6-93)

8 27. Chris Deakins, Roadtrek's Service, Warranty and Parts Coordinator, is the main person  
9 handling warranty claims. He worked at Roadtrek from 1993 to 2002, first in the plant as an assembler  
10 and inspector, later as a service, warranty and parts specialist. He returned to Roadtrek in May of 2005, to  
11 his former job as a service, warranty and parts specialist. (RT 11/29:7-124; 11/30:6-185; 12/1:6-169;  
12 12/2:6-71)

13 28. Dawn Crowe started working at Roadtrek in May 2005 as a receptionist. Soon thereafter,  
14 she became a sales and shipping assistant and technical sales representative. Since mid-2011, she has  
15 been Regional Sales Manager. Her duties have included administrative work supporting regional sales  
16 managers, attending trade shows, providing dealer support and answering consumer complaints. (RT  
17 1/10: 88-90)

18 VEHICLE CODE SECTION 3075 GOVERNS THE SUBMISSION AND  
19 PAYMENT OF WARRANTY CLAIMS

20 29. Vehicle Code section 3075, effective January 1, 2004, provides a framework for the  
21 submission, payment and audits of claims made by RV franchisees for "warranty reimbursement". The  
22 "...warranty agreement made by [the franchisor] ... [shall] adequately and fairly compensate each of its  
23 franchisees for labor and parts used ... when the franchisee has fulfilled warranty obligations of repair and  
24 servicing...". The franchisor's "warranty reimbursement schedule or formula" must be "reasonable" and  
25 filed with the Board. (The reasonableness of Roadtrek's warranty reimbursement schedule is not at issue.)  
26 (Section 3075(a))

27 ///

28 ///

1 30. No statutory time requirement or manner of making a warranty claim is imposed on the  
2 franchisee. The franchisor, however, must approve or disapprove a franchisee's warranty claim "within  
3 30 days after ... receipt...". (Section 3075(d))

4 31. The 30-day period is critical for the franchisor: "[a] claim not specifically disapproved in  
5 writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day."  
6 (Section 3075(d))

7 32. Additionally, and within the 30-day period,<sup>7</sup> if the franchisor disapproves a claim: "...the  
8 franchisee ... shall be notified in writing of its disapproval within the required period, and the notice shall  
9 state the specific grounds upon which the disapproval is based." (Section 3075(d))

10 33. Furthermore, in regard to disapproved claims, "...[f]ranchisee claims for warranty  
11 compensation shall not be disapproved except for good cause, including, but not limited to, performance  
12 of nonwarranty repairs, lack of material documentation, or fraud." (Section 3075(e))

13 34. Approved claims (no specific notice is required) must be paid "within 30 days following  
14 approval"; therefore, under the statute, the latest date an approved claim may be paid is 60 days following  
15 receipt of the warranty claim by the franchisor. (Section 3075(d))

16 35. A franchisor's failure to pay or approve a claim within permissible time limits may be  
17 excused "...in individual instances for reasons beyond the reasonable control of the franchisor...".  
18 (Section 3075(d))

## 19 **FINDINGS OF FACT**<sup>8</sup>

### 20 **Preliminary Findings**

#### 21 **Respondent Roadtrek Motorhomes, Inc. (formerly Home & Park Motorhomes)**

22 36. Roadtrek is a Class B motorhome manufacturer headquartered in Kitchener, Ontario,  
23 Canada. (RT 11/14:12-13)

24 ///

25 \_\_\_\_\_  
26 <sup>7</sup> The phrase, "...within the required period..." refers to the 30 days after submission of the claim.

27 <sup>8</sup> References herein to testimony, exhibits or other parts of the record are examples of evidence relied upon to reach a finding  
28 and are not intended to be all-inclusive.  
Findings of Fact are organized under topical headings for readability only and are not to be considered relative to only the particular topic under which they appear.

1 37. Between 1981 or 1982 and at least 2006, Roadtrek was the largest manufacturer of Class B  
2 motorhomes in North America.<sup>9</sup>

3 38. Class B motorhomes (also called "vans") are built on General Motors and Chrysler  
4 manufactured chassis. (RT 9/23:212)

5 39. Roadtrek maintains a website, a part of which is dedicated for use by Roadtrek dealers.  
6 (RT 8/12:31)

7 **Protestant Mega RV Corp doing business as McMahon's RV**

8 40. Brent McMahon, the owner of Mega RV, started in the recreational vehicle<sup>10</sup> business at  
9 "TravelLand", a large multi-dealer RV park in Irvine, California. He then owned a small dealership  
10 selling used RVs; on April 9, 2001, he established Mega RV Corp as a new recreational vehicle dealer.  
11 (Exh 1; RT 8/9:83-88)

12 41. Brent McMahon eventually expanded Mega RV to other locations throughout California,  
13 and into Arizona. In addition to the Irvine dealership at "TravelLand" (which was the main location),  
14 Mega RV had dealerships in Colton, California and Scotts Valley, California. (RT 8/9:106, 109, 139)

15 **Roadtrek's "Warranty Reimbursement" Program**

16 42. In January 2006, Roadtrek launched its Warranty Claim Management System, an  
17 electronic database for processing warranty claims, replacing the former system of paper warranty claims.  
18 (RT 11/29:16-18)

19 43. Chris Deakins, Roadtrek's Service, Warranty and Parts Coordinator, is the main person  
20 handling warranty claims. (RT 11/29:7-124; 11/30:6-185; 12/1:6-169; 12/2:6-71)

21 44. Dealers may access Roadtrek's "Warranty Policy" online on the dealer-exclusive portion of  
22 Roadtrek's website. (Exh 703: RMI 007185-007193)

23 45. Roadtrek dealers are expected to submit warranty claims online. (RT 11/30:44)

24 46. Depending upon how the economy is doing, Roadtrek processes from 2,000 to 3,000  
25 warranty claims in a year. (RT 11/29:19-20)

26  
27 <sup>9</sup> Official notice was taken of the Board's Decision in *Manteca Trailer and Camper Inc. v. Home and Park Motorhomes*  
28 *RoadTrek* (PR-2036-07 and 2074-07). The reference is at page 6.

<sup>10</sup> Hereinafter, recreational vehicles will sometimes be referred to as "RVs".

1 47. Dealers are supposed to submit claims to Roadtrek within 30 days of doing warranty  
2 repairs. (Exh 703: RMI 007192; RT 11/30:125)

3 48. In Roadtrek's interactive online warranty claims process, it is up to the dealers to "...go in  
4 and click the 'submit for payment' button...", which is "...the last step of interaction in the system for the  
5 dealer [to be paid the warranty claim]." If a claim is authorized by Roadtrek but the dealer never changes  
6 the status to "submit for payment", Roadtrek will not pay the claim. However, Roadtrek does have the  
7 ability to move the claim to "submit for payment" and, on occasion, does so for dealers. (RT 11/29:66;  
8 11/30:41; 12/1:112)

9 49. Dealers may check on the status of current warranty claims online on Roadtrek's dealer  
10 website. (RT 11/30:44; 1/9:20-22)

11 50. In the Roadtrek system, the date that dealers "open" or start to "build" a warranty claim by  
12 entering it online is not necessarily the "submission" date. "They could submit the claim the same day or  
13 they could submit the claim three months later. That's just the date that the dealer started creating the  
14 claim that [Roadtrek looks] at." (RT 11/30:117-118) Mega RV's argument that the "submission" date  
15 will always be the dealer's first online entry on the manufacturer's warranty claim system is expressly  
16 rejected.

17 51. The Roadtrek warranty claims processing system relies on two-digit status codes to  
18 identify various stages in the warranty claims process. Chris Deakins stated that if a warranty claim is  
19 denied, "[t]he status would then say 'denied' or 'canceled'... [but he didn't] recall which of the two words  
20 [the Roadtrek system] uses." Since the Roadtrek warranty code system lists a "canceled" status, but not a  
21 "denied" status, a denied warranty claim would therefore be identified in the system as "canceled". (Exh  
22 535; RT 11/29:61)

23 52. In Chris Deakins opinion, "decline" has the same meaning as "disapproval of claim" or that  
24 a claim is "denied". (RT 11/30:153)

25 53. Roadtrek may "decline" a warranty claim (thereby putting it into "canceled" status) for  
26 reasons stated in the "Warranty Policy" (requests for normal maintenance, damage due to accident or  
27 unauthorized repairs or alterations, as examples). (Exh 703; RT 11/30:149-151)

28 ///

1 54. A warranty claim may also be "canceled" if it has been sitting inactive for a period of time  
2 "...if too much time has passed...".<sup>11</sup> (RT 11/29:68-70; 122-123; 11/30:125)

3 55. If a warranty claim is submitted, and Roadtrek declines or disapproves the claim, Chris  
4 Deakins stated that "...[t]here's no real set procedure per se..." by which Roadtrek's warranty system  
5 makes certain that the dealer is notified of the "decline status" or "declination" within a certain period of  
6 time. (RT 11/30:152-153)

7 56. In the Roadtrek warranty system, the status code for "canceled" (or "declined") means  
8 "...any warranty claim ...that's not going to be covered so it gets the status level of 'canceled' and the  
9 claim is locked how it was submitted. No more changes can be made to the claim by either party." If the  
10 claim has been inactive for six months or so, Roadtrek might go in occasionally, review the database and  
11 look at claims that have been sitting for an extended period of time. If the dealer has provided no further  
12 information, the claim is considered to have gone inactive and Roadtrek will cancel the claim. However,  
13 a dealer may re-submit a "canceled" claim (Exh 535; RT 11/29:61, 65, 68-69; 11/30: 42)

14 57. The status of "'completed' means that the claim has been all the way through the system  
15 and a check has been issued." (Exh 535; RT 11/29:61, 65, 68-69; 11/30:154)

16 **Mega RV's Submission of Warranty Claims and Roadtrek's Processing of the Claims**<sup>12</sup>

17 58. An agreement existed between the parties, express or implied, that Mega RV would  
18 receive compensation from Roadtrek for labor and parts used to fulfill warranty obligations for repair and  
19 servicing of Roadtrek vans. This was a "warranty reimbursement" program under Section 3075. (Order,  
20 pp. 5-6)

21 59. Jennifer Fresh, the Warranty Administrator for Mega RV, is responsible for submitting all  
22 warranty claims to manufacturers, keeping the warranty schedules current, posting any monies that come  
23 in, and submitting preauthorization requests for the service departments at all Mega RV dealership  
24 locations. (RT 1/9:7-11)

25  
26 <sup>11</sup> One Mega RV warranty claim was "canceled" because "[t]oo much time has passed to claim missing items...Please send  
27 photos of problem to warranty@roadtrek.com [and then] goes on to say, "nine months has gone by with no activity on this  
claim, canceled." (RT 11/29:68-70; 122-123; 11/30:124-125)

28 <sup>12</sup> Some findings are taken from the Order Overruling Protestant's Objection to Introduction in Evidence of James E. Hammill's  
Declaration Re: Warranty Reimbursement Claims; Finding Related Thereto (dated 3/20/12). Those findings are based upon  
the Declaration of James E. Hammill, on inferences to be drawn from the declaration, and on Exhibits 496 and 708.

1           60.     Mega RV did submit warranty claims online to Roadtrek's "warranty reimbursement"  
2 program. (Order, p. 6; RT 11/30:44; 1/9:20-22)

3           61.     Jennifer Fresh stated that she becomes aware of warranty claims submitted to Roadtrek  
4 being denied by "... going online into their system." When Roadtrek denies a claim, Roadtrek provides  
5 Mega RV with "notice of denial of that claim" online. (RT 1/9:13, 20-24)

6           **Roadtrek's "Offsetting"<sup>13</sup> of Mega RV's Approved Warranty Claims**

7           62.     Roadtrek received warranty claims from Mega RV and---either expressly or by failing to  
8 disapprove the claim within 30 days of receipt---approved some claims. (Order, p. 6)

9           63.     Roadtrek received warranty claims from Mega RV and---either expressly or by failing to  
10 disapprove a portion of the claim within 30 days of receipt---approved some claims for less than the  
11 amount of the full amount of the claim submitted by Mega RV.<sup>14</sup> (Order, p. 6)

12           64.     From approximately July of 2008 to approximately February of 2010, Roadtrek  
13 determined that some, if not all, of the warranty claims submitted by Mega RV and approved by Roadtrek  
14 (in whole or in part) would be used to "offset" amounts which Roadtrek contended were "Mega RV  
15 obligations to Roadtrek". (Order, p. 6)

16           65.     In lieu of sending payment checks directly to Mega RV for some, if not all, warranty  
17 claims which it had approved from approximately July of 2008 to approximately February of 2010,  
18 Roadtrek offset these claims against amounts Roadtrek contends were owed, but unpaid by Mega RV, to  
19 Roadtrek for parts. (Order, p. 6)

20           66.     Check memos show that Roadtrek "vouchered"<sup>15</sup> checks reflecting the Mega RV claims  
21 for warranty reimbursement. Roadtrek's bookkeeping system required it to "issue" checks even though  
22

23 <sup>13</sup> Paul A. Baumann, Respondent's expert witness, testified that an "offset" is "When a client or a particular business has  
24 monies that are owed to them and they're also doing business with that entity where there's amounts going back and forth as far  
25 as amounts being owed, that instead of actually rendering a physical check back to that particular customer, they simply take  
26 that amount and they deduct it from the amount that's due and don't actually physically send them a check." (RT 1/31:129)

27 <sup>14</sup> In each instance where Roadtrek approved an amount less than the amount of the warranty claim submitted by Mega RV  
28 (and therefore "disapproved" a portion of the claim), Section 3075(d) requires Roadtrek to give timely notice in writing to  
Mega RV of the disapproval, stating "...specific grounds upon which the disapproval is based...".

<sup>15</sup> "Vouchered", as used herein, means the following: "When [Roadtrek vouchers] a check, [Roadtrek assigns] it a number. So  
it's printed or created in the system to be printed" and "voucher as it's commonly known in Roadtrek is when a check is printed,  
[it's] assigned a check number, not necessarily signed off. But when [Roadtrek vouchers] one, it actually creates a check."  
(Testimony of Dawn Crowe, RT 1/10:134-135)

1 the checks were not going to be transmitted to the payee, but rather were going to be applied as offsets.<sup>16</sup>  
2 (Order, p. 6; Exh 496: RMI 009155-RMI 009158)

3 67. Roadtrek did not mail checks it had vouchered for warranty reimbursement to Mega RV; it  
4 is unknown if any of these checks were negotiated. (Order, p. 6)

5 68. From approximately July of 2008 to approximately February of 2010, Roadtrek entered  
6 line-item "credits"<sup>17</sup> to Mega RV as offsets to amounts which Roadtrek contends Mega RV owed for  
7 parts. These offsets were presumably entered into Roadtrek's books of accounts or ledgers. (Order, p. 6;  
8 Exh. 496, pp. RMI 009155-009158)

9 69. In the fall of 2008, Paul Schilperoort noticed that Mega RV was not receiving payment on  
10 Roadtrek warranty claims, which had "...[begun] to age sometime in the third quarter of 2008". In his  
11 experience in the RV industry, the "average claim takes about 60 days to get paid from all  
12 manufacturers". Non-payment after 60 days is a "red flag". (RT 9/21:128)

13 70. Although James Hammill was aware that offsets were going back and forth between the  
14 parties in 2008 and 2009, he was not concerned about either notifying Mega of the offsets against  
15 approved warranty claims or the time of notification. (RT 11/9:80-84)

16 71. Roadtrek failed to give notice to Mega RV that it was withholding direct payment of  
17 approved warranty claims (approved in whole or in part). (RT 8/19:128, 132-133; 1/10:34)

18 72. According to Jennifer Fresh, the manufacturer Winnebago applies offsets of warranty  
19 claims against amounts owing to it from Mega RV "for parts accounts". She described Winnebago's  
20 procedure: "they have a monthly statement that is issued and sent out, and it's also available on their  
21 online website. So I would go in there each month and print that out, and it will have the warranty that's  
22 due for that month against the parts that are owed." (RT 1/9:47-50)

23 73. On April 27, 2009 (about a month after she started working at Mega RV), Jennifer Fresh  
24 initiated an email dialogue with Roadtrek's Assistant Controller, asking about Roadtrek warranty claims  
25 payment policy:

26 \_\_\_\_\_  
27 <sup>16</sup> It is unknown whether Roadtrek completed writing the checks and, if so, the identities of the payees.

28 <sup>17</sup> James Hammill used the word "credit" interchangeably with "offset" in his declaration, upon which the Order was based, although they are different accounting terms. His intended meaning for both was "offset".

1 A. Jennifer Fresh asked: " Can you let me know how often Roadtrek pays warranty  
2 claims...twice a month, once a month? Also, can you let me know when our next warranty check is being  
3 issued and for what claims?" Roadtrek's Assistant Controller responded: "I am attempting to voucher  
4 warranty claims 2x month. However, working alternate weeks for over 4 months kind of gets in the way  
5 of that. In terms [of] payments, I was informed to apply all of them to outstanding parts invoices. This  
6 was a directive from the President and the VP of Sales. The President has all the back up as to what we  
7 have paid out to McMahon's and how it was applied to the parts statements."

8 B. Jennifer Fresh then asked: "Do you mail a monthly warranty & parts statement out to  
9 McMahon's?" Roadtrek's Assistant Controller responded: "I had assumed there has been several going  
10 out for the last couple of months. The person normally responsible for that is on layoff but was to  
11 continue sending out statements. I could send them to you now but it would have balances at 0."

12 C. The final email in the string is from Jennifer Fresh: "I just talked with our Controller and  
13 we have not been receiving any statements. Is it possible for you to email me the warranty statements? If  
14 not, regular mail is fine. Thank you!" (Exh 365)

15 74. Roadtrek failed to give notice to Mega RV that it was offsetting the amounts of approved  
16 warranty claims against obligations it contended were owed by Mega RV to Roadtrek for parts.<sup>18</sup> (Exh  
17 365; RT 9/21:128, 132-133)

18 75. Roadtrek failed to give notice to Mega RV of the dates when it entered the offsets for  
19 warranty claims it had approved against obligations it contended were owed by Mega RV to Roadtrek for  
20 parts. (Exh 365; 9/21:128, 132-133)

21 **Roadtrek's "Declining" or "Cancelling" of Mega RV's Submitted Warranty Claims**

22 76. As noted above, when Roadtrek declines or disapproves a warranty claim, "...[t]here's no  
23 real set procedure per se..." by which Roadtrek makes certain that the dealer is notified of the "decline  
24 status" or "declination" within a certain period of time. (RT 11/30:152-153) This being so, Roadtrek's  
25 policy fails to comport with the requirements of Section 3075(d), requiring a franchisor to disapprove a  
26 claim in writing within 30 days of receipt.

27  
28 <sup>18</sup> Paul A. Baumann, Respondent's expert witness, did not make an inquiry into whether or not an accounting of "offsets" was ever sent to Mega RV. (RT 1/31:129)

1 77. Roadtrek's warranty policy requires dealers to submit claims within 30 days of doing  
2 warranty repairs. (Exh 703: RMI 007192; RT 11/30:125)

3 78. A dealer's failure to submit warranty claims within 30 days of doing repairs means that the  
4 claims are, or may be, "canceled". (Exh 703: RMI 007192; RT 11/30:125)

5 79. Mega RV points to some of its warranty claims that were "canceled" by Roadtrek with the  
6 comment, "claim over 90 days" and argues that this fails to comport with the Section 3075(d) requirement  
7 of a statement of "specific grounds" for disapproval. Mega RV's argument in this regard is expressly  
8 rejected: the explanation that a claim has aged over 90 days connotes that there has been no activity in  
9 regard to the claim for a period of time and is a clear statement of a reason for cancellation.<sup>19</sup>

10 80. However, in regard to disapproved claims, Section 3075(e) states that "...[f]ranchisee  
11 claims for warranty compensation shall not be disapproved except for good cause, including, but not  
12 limited to, performance of nonwarranty repairs, lack of material documentation, or fraud." Whether  
13 Roadtrek's policies of disapproving warranty claims not submitted within 30 days of repairs<sup>20</sup> and of  
14 cancelling "inactive claims" after the passage of 90 days constitute "good cause" reasons for  
15 "cancellation" or disapproval is a question of fact in each instance. In the federal court action for money  
16 damages, the parties may examine each claim which RoadTrek disapproved because of these policies with  
17 reference to Section 3075(e)'s statement that claims shall not be disapproved except for "good cause".

18 81. Here, it appears that in some instances Mega RV failed to submit timely warranty claims  
19 within the 30 days stated in Roadtrek's warranty policy and, once submitted, it failed to follow through on  
20 Roadtrek requests to submit documentation supporting its warranty claims. (RT 1/10:38-44) Therefore,  
21 in the federal court action, any issue of damages arising from Mega RV's submission of claims which  
22 were cancelled by Roadtrek because of inactivity or lack of documentation must be evaluated on a case by  
23 case basis to determine if there was "good cause" for the cancellation. Moreover, each claim which  
24 Mega RV contends was improperly disapproved or cancelled must be evaluated as to whether there was  
25 "good cause" for Roadtrek's action.

26  
27 <sup>19</sup> Whether "cancelling" a pending warranty claim after the passage of 90 days of inactivity is proper under Section 3075 is an  
entirely different issue, as discussed below.

28 <sup>20</sup> As noted above, Section 3075 contains no time limit for the franchisee to submit warranty claims.

1 ANALYSIS

2 82. The requirement in Section 3075(d) that approved claims must be "paid" within 30 days of  
3 approval assumes that the franchisee will receive a meaningful statement identifying with particularity the  
4 warranty claim being paid, the exact amount of the claim being paid, the date the claim is being paid (or  
5 "credited" or "offset"), and the account or debt against which the "offset" or "credit" is being made.  
6 Moreover, if the franchisor elects to "pay" by way of a "credit" or an "offset", both parties must be in  
7 agreement not only that the franchisee approves of this manner of "payment", but also that there is an  
8 agreed-upon debt the franchisee owes against which the "credit" or "offset" is made.

9 83. None of the above conditions of payment were present in Roadtrek's processing of Mega  
10 RV's approved warranty claims.

11 CONCLUSIONS

12 84. Mega RV has sustained its burden of proof of establishing that Roadtrek violated Section  
13 3075, in that Roadtrek failed to fulfill its warranty agreement to adequately and fairly compensate Mega  
14 RV for labor and parts used to fulfill warranty obligations of repair and servicing.

15 85. Roadtrek has failed to sustain its burden of proof of showing that it not only gave proper  
16 notice to Mega RV of disapproved warranty claims, but also that it paid approved claims in a manner  
17 meeting the requirements of Section 3075. Roadtrek has violated Section 3075 relative to its "warranty  
18 reimbursement" program, as follows:

19 A. In regard to approved warranty claims, in that it "offset" them without notice to Mega RV,  
20 thereby failing to "pay" the claims; and

21 B. In regard to disapproved or cancelled warranty claims, it has no procedure for timely  
22 notification to its franchisees.

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**PROPOSED DECISION**

1  
2 Based on the evidence presented and the findings herein, IT IS HEREBY ORDERED THAT the  
3 Protests in *Mega RV Corp., dba McMahon's RV v. Roadtrek Motorhomes, Inc.*, Protest Nos. PR-2206-10,  
4 PR-2208-10, and PR-2209-10, are sustained.

5  
6  
7 I hereby submit the foregoing which constitutes my  
8 Proposed Decision in the above-entitled matter, as  
9 the result of a hearing before me, and I recommend  
10 this Proposed Decision be adopted as the decision of  
11 the New Motor Vehicle Board.

12 DATED: July 25, 2012

13   
14 By: DIANA WOODWARD HAGLE  
15 Administrative Law Judge  
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26

27 George Valverde, Director, DMV  
28 Mary Garcia, Branch Chief,  
Occupational Licensing, DMV