

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 22-0003938 CAF**

<b>ANTOINETTE AND JOHN ZUNICH,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainants</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>HISUN MOTORS CORP. USA,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	

**DECISION AND ORDER**

Antoinette and John Zurich (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2020 Strike 1000 UTV. Complainants assert that the vehicle’s engine will die and will not restart. Hisun Motors Corp., USA. (Respondent) argued that the vehicle is repairable and that they are willing to perform such repairs. The hearings examiner concludes that the vehicle does have an existing warrantable defect and Complainants are eligible for repurchase relief.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened via Microsoft Teams on March 3, 2022, before Hearings Examiner Edward Sandoval. Antoinette and John Zurich, Complainants, both appeared and represented themselves in the hearing. Also appearing and testifying for Complainants was Mike Salazar, Parts and Service Manager for Moto El Paso. Respondent, Hisun Motors Corp., USA., was represented by Jamie Cheek, Vice President of Operations. Also testifying for Respondent was Paul Welch, Technical Support and Warranty Claims. The hearing record closed on March 3, 2022.

**II. DISCUSSION**

**A. Applicable Law**

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market

value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have provided written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

In addition to these conditions, a rebuttable presumption can be established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the repair attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>6</sup>

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>7</sup>

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.<sup>8</sup>

Finally, a rebuttable presumption can be established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist that substantially impairs the vehicle’s use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>9</sup>

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

<sup>7</sup> Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

<sup>8</sup> Tex. Occ. Code § 2301.601(4).

<sup>9</sup> Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

The 30 day out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.<sup>10</sup>

## **B. Complainant's Evidence and Arguments**

### **1. Antoinette Zurich's Testimony**

Complainants purchased a new 2020 Hisun Strike 1000 UTV on March 19, 2021, from Moto El Paso (Moto) located in El Paso, Texas.<sup>11</sup> The vehicle had not been driven at the time of delivery and it had zero mileage.<sup>12</sup> Respondent provided a manufacturer's warranty for the vehicle which provides coverage for two (2) years from the date of purchase. On the date of hearing the vehicle's warranty was still in effect.

Ms. Zurich testified that Complainants took immediate possession of the vehicle and took it to their property in New Mexico. She also stated that Mr. Zurich is the primary driver of the vehicle.

Ms. Zurich stated that initially the vehicle worked fine. However, after a while the vehicle's speedometer and odometer stopped working. Also, the vehicle's transmission started grinding when the driver attempted to shift into low gear. Ms. Zurich stated that they took the vehicle back to Moto for repair when these issues started occurring in May of 2021.

On November 12, 2021, Complainants wrote a letter to Respondent advising them of their dissatisfaction with the vehicle.<sup>13</sup> Ms. Zurich stated that there was no response to the notification letter. Respondent did not request for an opportunity to repair the vehicle.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on December 1, 2021.<sup>14</sup>

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<sup>10</sup> Tex. Occ. Code § 2301.605(c).

<sup>11</sup> Complainant Ex. 2, Sales Contract dated March 19, 2021.

<sup>12</sup> *Id.*

<sup>13</sup> Complainant Ex. 3, Letter to Hisun Motors Corp., USA dated November 12, 2021.

<sup>14</sup> Complainant Ex. 1, Lemon Law Complaint dated December 1, 2021.

## 2. John Zurich's Testimony

John Zurich, co-Complainant, testified in the hearing. He stated that he is the primary driver of the vehicle.

Mr. Zurich testified that he decided not to test drive the vehicle at the time of purchase. When Complainants took the vehicle home, it ran okay.

Mr. Zurich testified that in May of 2021, he began to notice that the vehicle's transmission would grind when it was placed in low gear and that sometimes it was difficult to shift into low gear. In addition, the vehicle's speedometer and odometer stopped working. Due to these issues, Mr. Zurich took the vehicle to Moto for repair on May 21, 2021. Moto's service technician replaced the vehicle's speed sensor and adjusted the shift linkage in order to resolve Complainants' concerns with the vehicle.<sup>15</sup> The vehicle's mileage on this occasion was 2.<sup>16</sup> The vehicle was in Moto's possession for about two (2) weeks. Complainants did not receive a loaner vehicle while their vehicle was being repaired.

Mr. Zurich stated that a few days after getting the vehicle back from Moto after it was repaired, he noticed a puddle of oil beneath the vehicle. After driving it a couple of times, Mr. Zurich noticed that there was a fluid leak from the vehicle's engine area. As a result, Mr. Zurich took the vehicle back to Moto for repair for the leak on June 24, 2021. Moto's service technician determined that there was a fluid leak from the right side of the vehicle's transmission.<sup>17</sup> The technician replaced the vehicle's O rings and gaskets on the right side of the transmission in order to resolve the issue.<sup>18</sup> The vehicle's mileage on this occasion was 14.<sup>19</sup> The vehicle was in Moto's possession until August 4, 2021. Complainants did not receive a loaner vehicle while their vehicle was being repaired.

Mr. Zurich testified that he picked up the vehicle and took it to his home. Mr. Zurich stated that during a test drive of the vehicle, the engine would die, and it would be difficult to restart. This occurred every time he attempted to drive the vehicle. He stated that the time interval that the engine would function became shorter and shorter the more he attempted to drive the vehicle. Mr. Zurich took the vehicle back to Moto on August 11, 2021 for repair for the issue. Moto's service technicians attempted several repairs to the vehicle. The technicians replaced the vehicle's crank sensor, the temperature/pressure sensor, the electronic control unit (ECU), the

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<sup>15</sup> Complainant Ex. 4, Repair Order dated May 21, 2021.

<sup>16</sup> *Id.*

<sup>17</sup> Complainant Ex. 5, Repair Order dated June 24, 2021.

<sup>18</sup> *Id.*

cylinder controller, the ignition coils, the fuel injector, and the spark plugs.<sup>20</sup> However, the technician was not able to resolve the issue. The vehicle's mileage on this occasion was 23.<sup>21</sup> The vehicle has been in Moto's possession since August 11, 2021, and as of the date of the hearing on the merits, March 3, 2021, the vehicle had not been repaired. Complainants were not provided with a loaner vehicle while their vehicle was being repaired.

### 3. Mike Salazar's Testimony

Mike Salazar, Parts and Service Manager for Moto El Paso, testified for Complainants in the hearing. Mr. Salazar has worked for 25 years in the motor vehicle industry. He has worked for five (5) years in his present position. Prior to being hired by Moto, Mr. Salazar had prior work experience as a service advisor with a car dealership.

Mr. Salazar testified that he has personally seen the subject vehicle. However, Moto's technical staff primarily worked on it when it was taken for repair. Mr. Salazar stated that he did test drive the vehicle in August of 2011, and that the engine died and would not restart while he was driving it which verified Complainants' concern. Mr. Salazar stated that Moto's technicians attached a diagnostic tool to the vehicle's computers, and it indicated a diagnostic trouble code (DTC) had been activated. The code was listed on Respondent's service manual, but there was no trouble shooting guide for the code. Moto's service technicians contacted Respondent's technicians to determine how to address the code and were advised that they should Google the code. The triggered DTC had to do with a lean condition in the engine's bank 1 (either too much or not enough fuel or an intake leak).

Mr. Salazar testified that Moto's service technicians initially replaced the vehicle's crank sensor to address the concern, but the issue persisted. As a result, they took out the replacement sensor and reinstalled the original. They then replaced the vehicle's temperature/pressure sensor, but this did not resolve the issue with the vehicle. The technicians then replaced the vehicle's ECU, the cylinder controller, the fuel injector, ignition coils, and spark plugs. However, the vehicle's engine continued to die after running for a few minutes. Mr. Salazar stated that he believes that the issue with the vehicle may be a faulty fuel pump. Moto's technicians attempted to replace it on two occasions with fuel pumps provided by Respondent, but the first pump had the wrong connectors and the second was too tall for the vehicle.

Mr. Salazar verified that the vehicle had not been repaired as of the dated of hearing. In addition, he stated that he believes that the useful life of a UTV is 4,000 to 5,000 miles.

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<sup>19</sup> *Id.*

<sup>20</sup> Complainant Ex. 6, Repair Order dated August 11, 2021.

<sup>21</sup> *Id.*

## **C. Respondent's Evidence and Arguments**

### **1. Jamie Cheek's Testimony**

Jamie Cheek, Vice President of Operations, testified for Respondent. He stated that Respondent provided a two (2) year manufacturer's warranty for the vehicle from the date of purchase for any issue resulting from a manufacturing defect. As of the date of hearing, the vehicle's warranty was still in effect.

Mr. Cheek stated that Respondent received Complainants' notice letter regarding the vehicle. He stated that Respondent did not attempt to contact Complainants asking to inspect the vehicle.

Mr. Cheek stated that he believes the useful life of the vehicle is 5,000 miles.

### **2. Paul Welch's Testimony**

Paul Welch, technical support and warranty claims employee, testified for Respondent. He stated that he has worked with Respondent for the past seven (7) months. Prior to his employment with Respondent, Mr. Welch was in the US Navy for 21 years. He worked with small engines and aircraft mechanics. In addition, he worked for five (5) years as a process technician for Plasti-Pak working with large machines.

Mr. Welch stated that has never seen the subject vehicle. He has assisted in providing technical support to Moto's service technicians to repair the vehicle. Mr. Welch stated that although he has provided the requested fuel pumps to Moto's technicians in their attempts to repair the vehicle, he does not believe that the fuel pump is causing the current problem with the vehicle. He is aware that the vehicle has been in Moto's possession since August of 2021 and has not been repaired.

## **D. Analysis**

Under the Lemon Law, Complainants bear the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainants must meet the presumption that the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainants are required to serve written notice of the defect or nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is

still unable to conform the vehicle to an express warranty by repairing the defect or condition, Complainants are entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainants' vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainants' concern with the vehicle is that the vehicle's engine dies and will not restart.

The evidence presented at the hearing established that there have been several issues with the vehicle. The latest issue regarding the engine dying first manifested in August of 2021. The first-hand testimony provided by Complainant indicates that the problem has not been resolved despite the vehicle being in the possession of Respondent's authorized dealer for repair since August of 2021, and there has been no adequate repair performed. As such, the hearings examiner must hold that Complainants have met the burden of persuasion to establish the existence of a defect or nonconformity (the vehicle's engine dying) in the subject vehicle. The defect or nonconformity with the vehicle substantially impairs the vehicle's value or use as it cannot be used for its intended purposes and no one would wish to purchase it from Complainants as any potential purchaser could not be assured that the vehicle would operate properly.

Complainants also presented evidence to indicate that Respondent or its authorized representative was provided with a reasonable number of repair attempts to repair the defect or nonconformity with the vehicle. Complainant presented the vehicle for repair to Respondent's authorized dealer on August 11, 2021 and, as of the date of hearing (March 3, 2022), the vehicle had not been repaired or returned to Complainants. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(3) provides that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist that substantially impairs the vehicle's use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner. In the present case, Complainants have met the requirements of this test, and, despite the repair attempts, the problem continues to exist.

In addition, the evidence presented at the hearing indicates that Complainants provided Respondent with written notice of the defect and a final opportunity to cure the defect. Complainants informed Respondent via letter dated November 12, 2021, of their concerns with the vehicle's performance and providing Respondent with an opportunity to cure. Respondent continued to work with their authorized dealer in their attempts to repair the vehicle. Respondent

did not request from the Complainants that they be allowed to inspect or repair the vehicle.

Although Respondent has been provided adequate opportunity to repair the vehicle and to ensure that it operates properly, they have not been able to repair the vehicle so that it conforms to their written warranty. As such, Complainants have met their burden of persuasion to establish that the vehicle has a warrantable and existing defect or condition which substantially impairs the use or market value of the vehicle. Therefore, the hearings examiner will order Respondent to repurchase the vehicle as requested by Complainants.

Based on the evidence and the arguments presented, the hearings examiner finds that repurchase of the vehicle is the appropriate remedy in this case. Complainants' request for repurchase relief is hereby granted.

### **III. FINDINGS OF FACT**

1. Antoinette and John Zunich (Complainants) purchased a new 2020 Strike 1000 UTV on March 19, 2021, from Moto El Paso (Moto) located in El Paso, Texas with mileage of 0 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Hisun Motors Corp., USA (Respondent), issued a manufacturer's warranty for the vehicle which provides coverage for the first two (2) years after purchase.
3. The vehicle's mileage on the date of hearing was 23.
4. At the time of hearing the vehicle's warranty was still in effect.
5. In August of 2011, Complainants experienced a situation where the vehicle's engine will die and will not restart.
6. On August 11, 2021, Complainants took the vehicle for repair to Respondent's authorized dealer, Moto, in order to address their concerns with the vehicle's engine dying and not restarting.
7. During the repair visit described in Findings of Fact #6, the vehicle's mileage was 23 at the time of deliver to the dealer.
8. Also during the repair visit described in Findings of Fact #6, Moto's service technician attempted several repairs of the vehicle, including: replacing the clutch sensor, the



temperature/pressure sensor, the electronic control unit (ECU), the cylinder controller, fuel injector, ignition coils, and spark plugs.

9. On November 12, 2021, Complainants mailed a letter to Respondent advising them that they were dissatisfied with the vehicle.
10. On December 1, 2021, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. As of March 3, 2022, the date of the hearing on the merits, the vehicle had not been repaired.
12. Complainants have not had possession of the vehicle since August 11, 2021, as it has been in Moto's possession for repair.
13. The useful life of the vehicle is 5,000 miles.

14. The appropriate calculations for repurchase are:

Purchase price, including tax, title, license and registration	\$15,846.30
Delivery mileage	0
Mileage at first report of defective condition	23
Mileage on hearing date	23
Useful life determination	5,000

Purchase price, including tax, title, license and registration	\$15,846.30				
Mileage at first report of defective condition	23				
Less mileage at delivery	<u>0</u>				
Unimpaired miles	23				
Mileage on hearing date	23				
Less mileage at first report of defective condition	<u>-23</u>				
Impaired miles	0				
Reasonable Allowance for Use Calculations:					
Unimpaired miles					
	<u>23</u>				
	5,000	X	\$15,846.30	=	\$72.89
Impaired miles					
	<u>0</u>				
	5,000	X	\$15,846.30	X .5	= <u>\$0.00</u>
Total reasonable allowance for use deduction:	\$72.89				
Purchase price, including tax, title, license and registration	\$15,846.30				
Less reasonable allowance for use deduction	-\$72.89				
Plus filing fee refund	<u>\$35.00</u>				
TOTAL REPURCHASE AMOUNT	\$15,808.41				

15. On January 12, 2022, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.

16. The hearing in this case convened via Microsoft Teams on March 3, 2022, before Hearings Examiner Edward Sandoval. Antoinette and John Zunich, Complainants, both appeared and represented themselves in the hearing. Also appearing and testifying for Complainants was Mike Salazar, Parts and Service Manager for Moto El Paso. Respondent, Hisun Motors Corp., USA., was represented by Jamie Cheek, Vice President of Operations. Also testifying for Respondent was Paul Welch, Technical Support and Warranty Claims. The hearing record closed on March 3, 2022.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainants timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainants bear the burden of proof in this matter.
6. Complainants' vehicle has an existing defect or condition (the vehicle's engine dies and will not restart) that substantially impairs Complainants' use or market value of the vehicle. Tex. Occ. Code § 2301.604(a).
7. After a reasonable number of attempts, Respondent has been unable to repair the nonconformity in Complainants' vehicle so that it conforms to the applicable express warranty. Tex. Occ. Code §§ 2301.604(a) and 2301.605.
8. Based on the above Findings of Fact and Conclusions of Law, Complainants are entitled to relief and repurchase of the 2020 Strike 1000 UTV under Texas Occupations Code § 2301.604(a).

**IT IS THEREFORE ORDERED** that:

1. Respondent shall accept the return of the vehicle from Complainants. Respondent shall have the right to have its representatives inspect the vehicle upon the return by Complainants. If from the date of the hearing to the date of repurchase the vehicle is substantially damaged or there is an adverse change in its condition beyond ordinary wear and tear, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party may request reconsideration by the Office of Administrative Hearings of the repurchase price contained in the final order;
2. Respondent shall repurchase the subject vehicle in the amount of **\$15,808.41**. (This total includes the \$35.00 Lemon Law filing fee.) The total refund shall be paid to Complainants and the vehicle lien holder as their interests require. If clear title to the vehicle is delivered to Respondent, then the full refund shall be paid to Complainants. At the time of the return, Respondent or its agent is entitled to receive clear title to the vehicle. If the above noted repurchase amount does not pay all liens in full, Complainants are responsible for providing Respondent with clear title to the vehicle;
3. Within 20 calendar days from the receipt of this order, the parties shall complete the return and repurchase of the subject vehicle. If the repurchase of the subject vehicle is not accomplished as stated above, barring a delay based on a party's exercise of rights in accordance with Texas Government Code § 2001.144, starting on the 31<sup>st</sup> calendar day from receipt of this order, Respondent is subject to a contempt charge and the assessment of civil penalties. However, if the Office of Administrative Hearings determines the failure to complete the repurchase as prescribed is due to Complainants' refusal or inability to deliver the vehicle with clear title, the Office of Administrative Hearings may deem the granted relief rejected by Complainants and the complaint closed pursuant to 43 Texas Administrative Code § 215.210(2);
4. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall obtain a Texas title for the vehicle prior to resale and issue a disclosure statement provided by or approved by the Department's Enforcement Division – Lemon Law Section;
5. Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall affix the disclosure label to the reacquired vehicle in a conspicuous place, and upon the first retail sale of the vehicle, the disclosure statement shall be completed and returned to the Department's Enforcement Division – Lemon Law Section; and Respondent, pursuant to 43 Texas Administrative Code § 215.210(4), shall provide the Department's Enforcement

Division – Lemon Law Section, in writing, the name, address and telephone number of the transferee (wholesale purchaser or equivalent) of the vehicle within 60 calendar days of the transfer.

### **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **GRANTED**. It is further **ORDERED** that Respondent, Hisun Motors Corp., USA., shall repair the warrantable defect (the vehicle's engine dying and not restarting) in the reacquired vehicle identified in this Decision.

**SIGNED March 17, 2022.**



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**EDWARD SANDOVAL  
CHIEF HEARINGS EXAMINER  
OFFICE OF ADMINISTRATIVE HEARING  
TEXAS DEPARTMENT OF MOTOR VEHICLES**