

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Texas Department of Motor Vehicles
4000 Jackson Avenue
Building 1
Lone Star Room
Austin, Texas 78731

Thursday,
June 8, 2023
8:58 a.m.

BOARD MEMBERS:

Charles Bacarisse, Chair
Christian Alvarado
Stacey Gillman
Brett Graham
Tammy McRae
Sharla Omumu
John Prewitt
Paul R. Scott

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P R O C E E D I N G S

1
2 MR. BACARISSE: Good morning. My name is
3 Charles Bacarisse, and I'm pleased to open the Board
4 meeting of the Texas Department of Motor Vehicles.

5 It is now 8:58 a.m., and we're going to start
6 it early. Isn't that great? I'm now calling the Board
7 meeting for June 8, 2023 to order, and I want to note for
8 the record that the public notice of this meeting,
9 containing all items on the agenda, was filed with the
10 Office of Secretary of State on May 31, 2023.

11 Before we begin today's meeting, please place
12 all cell phones and other communication devices in the
13 silent mode. Also, as a courtesy to others, please do not
14 engage in side conversations in the meeting room.

15 I want to welcome those who are with us for
16 today's Board meeting. If you wish to discuss or address
17 the Board or speak on an agenda item during today's
18 meeting, please complete a speaker's sheet at the
19 registration table or send an email to
20 GCO_General@TxDMV.gov Again that's GCO General@TxDMV.gov.

21 Please identify in your email the specific item
22 you're interested in commenting on, your name and address,
23 and whether you are representing anyone or speaking for
24 yourself. If your comment does not pertain to a specific
25 agenda item, we'll take your comment during the general

1 public comment portion of the meeting.

2 In accordance with the Department's
3 administrative rule, comments to the Board will be limited
4 to three minutes. To assist each speaker, a timer has
5 been provided at the podium. The timer light will be
6 green for the first two minutes, yellow when the speaker
7 has one minute left, and then red when the speaker's time
8 is up. Individuals cannot accumulate time from other
9 speakers, and comments should be pertinent to the issues
10 stated on your comment sheet.

11 When addressing the Board, please state your
12 name and affiliation for the record. There are few things
13 that will help to make this meeting run more smoothly and
14 assist the court reporter who's getting an accurate record
15 of the meeting: First, please identify yourself before
16 speaking, speak clearly and slowly, do not speak over
17 others, and ask me for permission to speak and be sure to
18 get recognized before speaking.

19 I'd like to thank our court reporter who is
20 transcribing this meeting.

21 Before we begin today, I'd like to remind all
22 presenters and those in attendance of the rules of conduct
23 of our Board meetings. In the department's administrative
24 rule, the chair has the authority to supervise the conduct
25 of the meetings. This includes the authority to determine

1 when a speaker is being disruptive of the meeting or is
2 otherwise violating the timing or presentation rules I
3 just discussed.

4 So with all of that out of the way, I'd now
5 like to have a roll call of the Board members. Please
6 respond verbally when I call your name.

7 Member Alvarado, are you present?

8 MR. ALVARADO: Present.

9 MR. BACARISSE: Member Gillman?

10 MS. GILLMAN: Present.

11 MR. BACARISSE: Member Graham?

12 MR. GRAHAM: Present.

13 MR. BACARISSE: Member McRae, vice chair?

14 MS. McRAE: Present.

15 MR. BACARISSE: Member Omumu?

16 MS. OMUMU: Present.

17 MR. BACARISSE: Member Prewitt?

18 MR. PREWITT: Present.

19 MR. BACARISSE: Member Scott?

20 MR. SCOTT: Present.

21 MR. BACARISSE: And let the record reflect that
22 I, Charles Bacarisse, am here too, so we have a quorum.
23 It's great to see everybody.

24 We're now going to move to item 2, which is the
25 pledges of allegiance to the Texas and U.S. flags, and so

1 I will turn it over to Member Omumu to lead us in the U.S.
2 pledge.

3 (The U.S. pledge was recited.)

4 MR. BACARISSE: And now Member Prewitt will
5 lead us in the Texas pledge.

6 (The Texas pledge was recited.)

7 MR. BACARISSE: Thank you, Members Omumu and
8 Prewitt, for leading us in those pledges.

9 As we move to agenda item 3, I wanted to take
10 this opportunity to recognize and thank our outgoing Board
11 member, Manuel Ramirez; we just call him Manny. Now we're
12 going to call you Commissioner Ramirez.

13 Your service on this Board since 2020 has been
14 incredible and really helpful to this agency, and I think
15 we all appreciate what you did and the way in which you
16 served on this Board and you served the state government
17 and the people of Texas.

18 You were actively engaged in many important
19 issues throughout your time here, and you will be missed.

20 I can't thank you enough for your thoughtful
21 deliberations as a Board member and your good fellowship
22 as well.

23 You are now obviously very much where you
24 should be, serving the people of Tarrant County as
25 Commissioner of Precinct 4, and we're excited for your

1 tenure there. I pray it's long and fruitful, and
2 blessings to you and your family, my friend. Thank you
3 for your service.

4 (Applause.)

5 MR. BACARISSE: I want to ask, members, if you
6 want to say any words regarding Member Ramirez. The floor
7 is yours if you wish.

8 Member Graham.

9 MR. GRAHAM: It was just a pleasure serving
10 with you and have an opportunity to become friends, and
11 look forward to seeing you up in North Texas from time to
12 time and wish you all the best. You wished him a long and
13 fruitful tenure; that may not be what he's looking for.

14 (General laughter.)

15 MR. GRAHAM: But if it is, we wish you all the
16 best, Manny. Thank you.

17 MR. BACARISSE: Thank you.

18 Vice Chair McRae.

19 MS. McRAE: Manny, I just want to wish you the
20 very best. County government is a unique animal, and
21 there is no one better suited for that position than you,
22 and as a county official myself, it's most important to
23 have good leadership from our commissioners court. So
24 congratulations, and we wish you all the best. You will
25 be missed.

1 MR. BACARISSE: Thank you, Vice Chair McRae.

2 Any other members?

3 Member Prewitt.

4 MR. PREWITT: Manny, I just think you
5 contributed greatly to our Board, always appreciated your
6 concise analysis of issues that we faced and your
7 contribution to the Board. So many thanks, I know you're
8 going to do great. Thank you.

9 MR. BACARISSE: Thank you all very much. And
10 again, all the best. Congratulations.

11 (Pause for presentation and photos.)

12 MR. BACARISSE: I'd like to recognize
13 Commissioner Ramirez for some remarks. Commissioner.

14 MR. RAMIREZ: Yes, sir, please start my time
15 clock; I'm going to need it.

16 (General laughter.)

17 MR. RAMIREZ: I just wanted to thank the Board
18 for everything that you do for the State of Texas and for
19 this agency. Coming from the outside in, one really
20 couldn't explain how important this agency is to the
21 state, how many different arenas and areas of business and
22 commerce that it affects.

23 But now having a first-hand look and knowledge
24 inside of it, I can tell you that your work is incredibly
25 important. I was honored to serve with every single one

1 of you. The changes and things that we tackled over the
2 last three years were nothing short of monumental.

3 Working through different leadership at the
4 agency, different legal staff, tackling challenges that
5 were festering for a long, long time, this Board took
6 swift and decisive action, not only to help commerce but
7 to protect all Texans.

8 And being a law enforcement representative and
9 having a passion for public safety, that was incredibly
10 important to me, and this Board, I felt, always
11 prioritized public safety, which means this agency
12 prioritized public safety.

13 You are in incredible hands with your executive
14 director, in incredible hands with the staff, and I'm just
15 looking forward to seeing you grow, thrive, and do an
16 incredible job. And as always, if anybody needs anything
17 in Tarrant County, I'm not very hard to find.

18 Thank you guys very much, I appreciate you.

19 (Applause.)

20 MR. RAMIREZ: I'm going to take my gifts and go
21 home. Thank you.

22 MR. BACARISSE: You don't want to stay?

23 (General laughter.)

24 MR. BACARISSE: Congratulations.

25 Now I'd like to move to item number 4 of the

1 agenda, which is the executive director's report, so I'll
2 turn it over to Mr. Avitia. Daniel.

3 MR. AVITIA: Chairman, thank you. Members and
4 chairman, good morning.

5 Agenda item 4.A is a briefing item. The
6 documents can be found on page 6 of your Board materials.

7 The agenda item before you is an update on the
8 Performance Quality Recognition Program, or PQRP. The
9 Texas Department of Motor Vehicles awarded five Texas
10 counties with Performance Quality Recognition Program
11 awards in the recognition of excellent public service,
12 work quality and dedication.

13 The PQRP award recognizes counties for their
14 exemplary customer service and efforts to go above and
15 beyond providing title registration and services to the
16 Texas residents. PQRP is a voluntary program available
17 for all Texas county tax assessor-collectors to apply.
18 The program recognizes tax assessor-collectors at three
19 levels: bronze, silver and gold. There have been a total
20 of seven gold, seven silver, and 18 bronze recipients
21 since the program's inception in 2017.

22 The award acknowledges a variety of items based
23 on industry best practices, including remitting fees on
24 time, performing efficiently with low error rates and
25 processing transactions in a timely fashion, having a

1 fraud, waste and abuse awareness program, and focusing on
2 customer satisfaction and implementing cost-savings
3 measures.

4 This year's recipients for bronze are Brazoria
5 County, Ms. Kristin -- I'm not going to say this
6 correctly; I'm going to try -- Bulanek, Tax Assessor-
7 Collector; Karnes County, Tammy Broadway, Tax Assessor-
8 Collector. And for silver, Bexar County, Albert Uresti;
9 and McLennan County, Randy Riggs. Gold recognition this
10 year goes to Tarrant County, Ms. Wendy Burgess.

11 Each recipient received a letter and
12 certificate from the TxDMV, and staff -- myself
13 included -- do our very best to provide these awards at
14 their commissioners court. They also receive an insignia
15 that can be placed on the county's website and shared with
16 the public and other stakeholders. Recipient counties and
17 their residents should be very proud of this honor.

18 So members, please join me in congratulating
19 these counties for their exemplary efforts in serving
20 Texans and the great state of Texas.

21 (Applause.)

22 MR. BACARISSE: And Chairman, before I move on
23 to the next item, I'd sincerely like to express the
24 agency's appreciation of all tax assessor-collectors in
25 our communities for their warm welcome and gracious

1 hospitality throughout the 89th Annual TACA Conference.

2 The conference was successful and highly
3 stimulating for myself and the staff. We look forward to
4 another successful year in partnership with our tax
5 assessor-collector partners.

6 Chairman, if I may move on to the next agenda
7 item.

8 MR. BACARISSE: Please.

9 MR. AVITIA: Thank you. The briefing items for
10 agenda item 4.B. Announcements and recognition of years of
11 service, can be found on page 8 of your Board materials.

12 At this time I would like to recognize our
13 employees who have reached a state service milestone. We
14 celebrate these employees as our show of appreciation for
15 their years of service and dedication to the citizens of
16 Texas.

17 First recipient for 20 years of state service
18 is Ms. Johnna Wiegand, with the Vehicle Titles and
19 Registration Division out of our Wichita Falls Regional
20 Service Center. Next we have Marla Rose with the Motor
21 Vehicle Division, who has reached a milestone service of
22 30 years.

23 And then we have our very own chief financial
24 officer, Ms. Glenna Bowman, Finance and Administrative
25 Services, who has reached 35 years State of Texas service.

1 And finally, we have Ms. Annette Smelser with the Vehicle
2 Titles and Registration Division with a 20-year milestone.

3 I'd like to say a few words about some of the
4 recipients that are with us today. First I'll start with
5 Annette Smelser. She started as an executive assistant
6 with the Vehicle Titles and Registration Division.
7 Annette started with the Texas Department of
8 Transportation in 2003 as an administrative assistant
9 working in the Vehicle Titles and Registration Division
10 director's office.

11 Since then she has taken on increasing roles of
12 responsibility within Finance and Administrative Services
13 Division as an administrative assistant. When the Texas
14 Department of Motor Vehicles was established in 2009, she
15 worked collaboratively with the Vehicle Titles and
16 Registration Division and Office of General Counsel in her
17 new position and performed administrative assistant duties
18 for the scan center merger and administrative services.

19 In 2015, Annette transitioned to the
20 Enforcement Division as an administrative assistant
21 supporting motor vehicle investigations, and then in '21
22 she rejoined the Vehicle Titles and Registration Division
23 as an executive assistant, coordinating activities for the
24 division management, where her wealth of knowledge and
25 desire to assist the department are a huge asset.

1 Congratulations to Annette on her 20 years of service.

2 Next we have Mr. John Shrier, an old friend of
3 mine, an investigator with the Investigation Division of
4 Enforcement. John has been with the TxDMV since its
5 inception and was formerly with the Texas Department of
6 Transportation and the Texas Department of Criminal
7 Justice.

8 John is a valued member of our Motor Vehicle
9 Enforcement team and is our resident guru on eLICENSING
10 and testing. Not only does John assist in onboarding new
11 investigators with any and all computer issues, he also
12 provides a wealth of institutional knowledge.

13 John recently began working closely with our
14 compliance services section unit on highly specialized
15 investigations involving fraud, waste and abuse. So
16 congratulations to John in his 20 years of state service.

17 Then finally, we have JoAnn Vasquez. She's an
18 investigator also with the Enforcement Division in the
19 motor carrier side of the house.

20 JoAnn is currently an investigator assigned to
21 the San Antonio Regional Service Center. Her job duties
22 consist of enforcing state laws and TxDMV rules and
23 regulations associated with motor carriers. She assists
24 her peers, the commercial trucking industry, consumers,
25 law enforcement agencies, as well as carriers based in

1 Mexico.

2 Prior to joining the Enforcement Division,
3 JoAnn served as a county with the Vehicle Titles and
4 Registration Services Division in the Texas Department of
5 Transportation. JoAnn also served as a deputy county
6 clerk with the Bexar County Tax Assessor-Collector's
7 office.

8 Members, please join me in congratulating JoAnn
9 on 25 years of state service.

10 (Applause.)

11 MR. AVITIA: We also have the following
12 individual that retired from the agency, Ms. Donna Spratt.

13 She served in the Vehicle Titles and Registration
14 Division, Midland-Odessa Regional Service Center, and
15 reached a milestone of 11 years prior to her retirement.

16 Chairman, members, would you please join me in
17 the front of the dais for a photo opportunity.

18 (Pause for presentations and photos.)

19 MR. BACARISSE: Thank you, Mr. Avitia.

20 Now we move to agenda item number 4, our
21 contested case, and before we move to the oral
22 presentations from the parties to this contested case --
23 this is the PFD, All Star Imports, Inc., d/b/a World Car
24 Mazda North, Petitioner, v. Mazda Motor of North America,
25 Inc. is the Respondent -- I'm going to ask our general

1 counsel, Laura Moriaty, to present the procedural history
2 and summary of the case, so let me turn it over to Laura.

3 MS. MORIATY: Good morning, Board. Laura
4 Moriaty, general counsel. I'm here to present agenda item
5 number 5, which is a contested case arising from World Car
6 North's protest of Mazda's proposed termination of its
7 franchise.

8 The issue for the Board here today is whether
9 Mazda has established good cause for the termination of
10 World Car North by a preponderance of the evidence, as
11 required by Texas law. The summary of everything and all
12 of the materials start on page 9 of your Board book.

13 So how we got here. An administrative law
14 judge -- those are called ALJs from here on out -- from
15 the State Office of Administrative Hearings, which is
16 known to its friends as SOAH, conducted a hearing on the
17 merits of this case July 19 to July 23 of 2021, and the
18 ALJ issued a proposal for decision, or PFD, on January 6,
19 2022.

20 The ALJ found that Mazda had established good
21 cause for the termination of the franchise and recommended
22 that the Board deny World Car North's protest.

23 After considering the briefs and the exceptions
24 from the parties and the amicus brief from the Texas
25 Automobile Dealers Association, the ALJ issued an

1 exceptions letter on August 31, 2022.

2 So in response to the exceptions, the ALJ found
3 no reason to make any changes to the PFD. The ALJ pointed
4 out that her reasoning had been based not on the single
5 actions of one technician who failed to exchange the
6 Takata airbags but on the reaction of the dealership as a
7 whole in response to the discovery of the technician's
8 actions.

9 It's important to note at this point that when
10 Texas Occupations Code Chapter 2301 refers to a dealer, it
11 is not talking about the individual owner of the
12 dealership, it's talking about the whole business entity,
13 including all of its employees acting in their
14 professional capacity.

15 And that can be confusing because Texas
16 Occupations Code 2301 defines dealer as person, but under
17 the Code Construction Act in Texas statutes, a person is a
18 corporation, organization, partnership, association, any
19 other legal entity. As a wise man once said, corporations
20 are people too. So that's what we're looking at here
21 today: the dealer in this case is not the individual
22 owner, it's going to be the whole business entity,
23 including all of the employees.

24 So the Board has jurisdiction to consider the
25 PFD in this contested case and to enter a final order

1 today. In determining whether Mazda has established good
2 cause for termination of the franchise, you will look to
3 Texas Occupations Code 2301.455, which establishes the
4 factors that you're going to consider. There are seven
5 specific statutory factors. It also requires you to look
6 at all existing circumstances, and it requires that the
7 termination cannot be based solely on the desire for
8 market penetration.

9 The ALJ's analysis of these statutory factors
10 is already summarized in your Board book, beginning on
11 page 10, but I'll go through it right now shortly.

12 The ALJ found that four of the seven factors
13 supported the termination. Those four factors that were
14 supported the termination were: Factor 3, injury or
15 benefit to the public; Factor 4, the adequacy of the
16 dealer's service facilities, equipment, parts and
17 personnel; in that specific factor the ALJ focused on the
18 personnel; Factor 5, whether warranties are being honored
19 by the dealer; and Factor 6, the parties' compliance with
20 the franchise.

21 The ALJ found that three factors were neutral
22 and didn't weigh either for or against termination. Those
23 factors were: Factor 1, the dealer's sales in relation to
24 the market; Factor 2, the dealer's investment and
25 obligation; and Factor 7, the enforceability of the

1 franchise from a public policy standpoint.

2 Beyond those seven factors, the ALJ held that
3 the Board should consider another existing circumstance,
4 and that was Mazda's concern about World Car's
5 trustworthiness. The ALJ found that that weighed in favor
6 of termination.

7 The ALJ did not make an explicit finding about
8 whether termination was based solely on the need for
9 market penetration, but neither party to this case argued
10 that, and sales have not been a significant factor in this
11 case, so there is therefore no risk that Mazda is seeking
12 termination solely for market penetration in this
13 situation.

14 The Board has several options before you today
15 as you decide this PFD. First, you could decide that the
16 PFD is perfect on its face and move to accept it and
17 direct staff to direct an order consistent with just
18 adopting it.

19 Your next option is that you could amend
20 portions of the PFD, adopt the PFD as amended, and then
21 direct staff to draft an order consistent with those
22 amendments. If you do so, any changes to the PFD must
23 comply with Section 2001.058(e) of the Texas Government
24 Code, and that means that the Board can only make changes
25 to a finding of fact or conclusion of law if the

1 administrative law judge has made an error in a finding of
2 fact, like a typo, or has misapplied or misinterpreted the
3 applicable law, the rules, written policies or prior
4 administrative decisions, or if the ALJ relied on a prior
5 administrative decision that the Board now thinks was
6 incorrect or should be changed.

7 Those are the only ways that we can make a
8 change to a finding of fact or conclusion of law, so if
9 you're making a motion to make a change to a finding of
10 fact or conclusion of law, your motion must identify the
11 specific change you're requesting, identify the applicable
12 law or policy or case that was misapplied or
13 misinterpreted, explain why that interpretation was
14 incorrect, and how the findings of fact that the ALJ made
15 support your new interpretation.

16 Your third option today is to remand a portion
17 of the PFD back to SOAH, but our remand options are very
18 limited. SOAH will do a remand if there's an area that
19 they didn't make findings of fact or conclusions of law
20 about, like a whole issue that they failed to analyze; we
21 could remand back for that.

22 But we cannot remand to get a change to a
23 finding of fact, to get a different outcome, to make SOAH
24 make new findings of fact that conflict with findings of
25 fact that they've already made. Those are not reasons

1 that SOAH will accept a remand. Moreover, SOAH is not
2 required by any law to accept our remand, so it's very
3 possible that they could simply send it right back to us.

4 Finally, the area where the Board has the most
5 discretion in these contested cases is in deciding how to
6 weigh the factors that determine whether or not you
7 terminate the franchise.

8 For example, in the contested case that you
9 considered at the April Board meeting, the Board heavily
10 weighted two factors: injury or benefit to the public and
11 whether warranties were being honored by the dealer, and
12 said that those factors in that case weighed more heavily,
13 were more important than the other factors. And that
14 weight, that determining what's the important parts of the
15 case, what's the vital bits that you want to focus on,
16 that's firmly within the Board's discretion.

17 But when you're making a motion to amend a
18 conclusion of law or finding of fact, to change the way a
19 factor weighs in favor or against termination, we still
20 need you to describe in that motion why you're attributing
21 this particular weight to that factor and why the
22 application of that weight is consistent with good public
23 policy.

24 Now, if someone else makes a motion and you
25 would like to amend that motion, we'd still need you to

1 specifically state in your motion to amend which parts you
2 want to change, which words you want to insert, which
3 words you want to remove.

4 And if your amendment is going to make a new
5 change to the PFD, we need you to explain all the things I
6 discussed before: which law was misinterpreted, how it
7 was misinterpreted, which findings of fact support your
8 conclusions. We'd still need those even in an amendment
9 to someone else's motion.

10 Okay. That's all of your guidelines for how to
11 do motions and how to make changes here. Both parties
12 have provided notice of intent to make oral argument
13 today, and they've both submitted written materials which
14 are provided in your Board book beginning on page 130.

15 So the parties will now begin their
16 presentations. It will go first World Car North and then
17 Mazda. Neither party can provide a rebuttal, nobody can
18 make a closing statement.

19 So that concludes my remarks, and I will turn
20 it back over to Chairman Bacarisse to introduce the
21 attorneys for both parties and to describe the rules
22 governing their presentations. Thank you.

23 MR. BACARISSE: Thank you, Ms. Moriaty.

24 Let me just add that a party that timely
25 submitted a request to make an oral presentation will be

1 allowed up to 15 minutes to make an oral presentation.
2 Time spent by a party responding to any Board questions is
3 not counted against the party's time. The timer light
4 will be green for the first 14 minutes, yellow when
5 there's one minute left, and then red when the party's
6 time is expired.

7 I'd also like to remind the Board members and
8 the parties that the Board's decision must be based solely
9 on evidence contained within the administrative record
10 from the State Office of Administrative Hearings.

11 If a Board member asks a question about
12 evidence that is not in the SOAH's administrative record
13 for this case, the parties should respond by saying that
14 question is about evidence that's not in the SOAH
15 administrative record.

16 Petitioner All Star Imports d/b/a World Car
17 Mazda North is represented by Jarod Stewart and Jeffery
18 Oldham, who will now make the case for World Car Mazda
19 North's oral presentation on this case.

20 So gentlemen, the podium is yours, absolutely.
21 Thank you.

22 And let me just mention too, members may
23 have -- will have questions and so after your presentation
24 I'll throw it open to them for questions and we'll just
25 have a conversation.

1 MR. STEWART: Sure. And Mr. Oldham and I are
2 going to split time, roughly ten minutes, five minutes.

3 MR. BACARISSE: Great.

4 MR. STEWART: Good morning, Mr. Chair and
5 members of the Board. My name is Jarod Stewart, and I
6 represent World Car Mazda North.

7 Every case is important, but this case is
8 extremely important to World Car and its employees, as
9 well as its owner, Nader Zabihian, who is with us here
10 today.

11 The ALJ erred by recommending termination of a
12 longtime good dealership based on facts relating to the
13 criminal acts of a rogue former employee. The Board would
14 set a dangerous precedent by accepting the ALJ's
15 recommendation, because all Texas dealers would be subject
16 to franchise termination for pre cure letter conduct
17 relating to the past hidden conduct of a low-level
18 employee.

19 That is why the TADA submitted an amicus brief
20 in support of World Car in this case, excerpts of which
21 are found on page 144 and 145 of your Board books. This
22 is the same ALJ the Board recently reversed in the Bert
23 Ogden Subaru matter.

24 The rogue former employee created a serious
25 issue with his misconduct, and World Car took significant

1 steps to address that criminal conduct. It's undisputed
2 that World Car replaced this employee with experienced
3 certified techs, hired an experienced service manager who
4 is a master mechanic, and implemented a parts policy that
5 everyone agrees will prevent a repeat of these hidden
6 criminal acts, and because of the dealership's actions in
7 2018, this issue cannot happen again.

8 Involuntary termination of a franchise is an
9 extreme action, rarely occurs in Texas. Termination
10 requires Mazda to prove good cause based on "existing
11 circumstances," not based on past events or speculation
12 about what might happen in the future.

13 The existing circumstances, therefore, are the
14 key in this case, and they include the following findings
15 by the ALJ: one, World Car North's service department is
16 currently performing well; two, current staffing of World
17 Car North's service department seems appropriate; three,
18 World Car North's addition of the part-for-part policy
19 appears to be a good one and seems designed to limit
20 future occurrences. We've set out these findings and more
21 on page 131 of your Board books.

22 The ALJ made the right factual findings that
23 demonstrate that World Car for 20-plus years was a good
24 dealership and has addressed the rogue employee issues
25 from 2018 and is performing well.

1 The ALJ simply reached the wrong conclusion by
2 recommending termination based on a "slow response"
3 relating to events that happened before Mazda even gave
4 the dealership a cure letter. The dealer agreement here
5 required Mazda to give the dealership written notice and
6 an opportunity to cure.

7 Given that the ALJ did not find that World Car
8 failed to comply with the cure letter after it was issued,
9 the ALJ's recommendation would gut the purposes of a cure
10 letter by basing termination on past conduct and ignoring
11 subsequent efforts made to comply with that cure.

12 So I'm going to walk through a few of the
13 facts, particularly the ALJ's findings about existing
14 circumstances. Mr. Oldham will then discuss how the ALJ's
15 findings establish there's no good cause under Texas law.

16 We aren't asking the Board to make new fact
17 findings but to take the ALJ's own findings that she
18 didn't include in the formal findings of fact to support
19 the decision, properly apply Texas law to conclude that
20 World Car's franchise should not be terminated.

21 The World Car Mazda North dealership performs
22 over a thousand manufacturer warranty repairs per year and
23 hundreds of manufacturer recall repairs each year. The
24 customers of World Car really like the dealership. For
25 the last month available in the record, the dealership's

1 overall customer satisfaction score, or OSAT, was 9.8 out
2 of 10, at the top of the district.

3 Similarly, the customer likelihood-to-return
4 score for the last month in the record was 98 percent, at
5 the top of the district. Those are found in page 136 of
6 your Board book.

7 If the Board were to terminate World Car Mazda
8 North, the public in San Antonio would lose the
9 availability of these warranty and other services. These
10 satisfied customers would have to find somewhere else to
11 go for repairs. Mazda's own expert testified that fewer
12 service technicians in San Antonio would be bad for the
13 public.

14 Now, the dealer has made significant
15 investments here: built a building in 2009 specific for
16 Mazda, Mazda's requirements, for \$1.5 million; has
17 invested over \$1.2 million in fixed assets; and renovated
18 the North store in 2021 at the same time Mazda was seeking
19 to terminate the franchise.

20 So 2018 the dealership learned that one of its
21 Mazda certified service technicians reported that he had
22 completed an airbag inflator repair, when he actually
23 didn't do the work. The airbag inflator is in a sealed
24 compartment in the vehicle, and the technician puts the
25 old inflator in a sealed box and returns it to the

1 manufacturer, so unless you're the one doing the work, you
2 can't know whether or not the repair was done.

3 Mazda's own witnesses acknowledged that a one-
4 off mistake in repair happens. Mazda's expert testified
5 that two instances of missing an inflator repair would be
6 plausible as a mistake.

7 So World Car followed its employee disciplinary
8 policy: on the first instance gave the employee a
9 warning, second instance wrote the employee up, and on the
10 third instance the employee fled before he could be fired.

11 Once World Car discovered that this happened more than
12 three times, World Car filed a police report for this
13 criminal conduct, but the police could not find this
14 individual.

15 Now, importantly, the ALJ found that no one in
16 World Car Group's management intended this employee to do
17 what he did, because he hid his actions. The ALJ also
18 found that no other World Car employee left an original
19 airbag inflator in a vehicle but marked the recall work as
20 complete. Mazda's witnesses have agreed on record it's
21 highly unusual, not foreseeable for a technician to engage
22 in criminal conduct like this.

23 World Car had no incentive to allow this to
24 happen. It's only created harm and expense for the
25 dealership. This is not something that helps the

1 dealership. Critically, nothing like this had ever
2 happened at World Car Mazda North in its 20-plus years of
3 existence or at any of the other 11 franchises that Mr.
4 Zabihiyan owns in the World Car family of dealerships,
5 Nissan, Hyundai, Kia, Genesis.

6 World Car acknowledged the seriousness and
7 important nature of this airbag inflator recall and made
8 significant efforts to address this once it was
9 discovered.

10 So again, after the employee was gone, we hired
11 two experienced service technicians, and the record shows
12 that as of the close of record there were five certified
13 technicians at the World Car Mazda store. We hired an
14 experienced service manager, master mechanic who walks the
15 service floor, does spot checks to make sure the work is
16 being done.

17 We have implemented a part-for-part policy;
18 it's on page 137 of your Board books. This requires the
19 technician to turn in the old part before even receiving
20 the new part, something that not even Mazda or any other
21 manufacturer requires. We put that into place so that
22 this could not happen again.

23 Mazda's zone manager for service and parts,
24 Doug Furrer, testified that these changes -- getting rid
25 of the technician, hiring an experienced service manager

1 and implementing this policy -- solved the problem. His
2 testimony is found on page 132 of your Board books. He
3 did not support termination.

4 The dealership agreement provides if there's a
5 failure of performance, Mazda shall give written notice
6 and shall give the dealership a reasonable period of time
7 to cure. The cure letter here issued on August 10, 2018,
8 and upon receipt of that letter, World Car made this its
9 number-one priority.

10 When there was difficulty, the dealership
11 offered free oil changes, free loaner cars. As Mazda's
12 district manager recognized, the dealership made progress
13 in contacting customers to have their vehicles inspected
14 to make sure the repairs were done.

15 World Car asked Mazda's regional manager to
16 work together on this outreach effort. The regional
17 manager rejected the offer and said Mazda was taking over
18 that effort. But Mazda didn't finish the job. Mazda made
19 three calls generally to the customers, and if that didn't
20 work, they stopped, and those calls stopped shortly after
21 the notice of termination was delivered to Mr. Zabihiyan.
22 This was a shock. When the dealership learned this during
23 the proceeding, they immediately started calling the
24 customers back to get them in, and those efforts have
25 continued to make sure that everyone gets reinspected.

1 Now, again, key to this is that the ALJ made no
2 finding in the PFD that World Car North failed to comply
3 with the cure letter. The zone manager for service
4 testified that missing some of the photographs that the
5 dealership was submitting of repairs being done after this
6 employee was no longer there didn't mean that the
7 dealership wasn't actually doing the inspections or
8 repairs. There were some technical issues, and everyone
9 recognized that. Again, their own zone manager testified
10 he didn't support termination. That's on page 132 of your
11 books.

12 The ALJ found that World Car was slow to
13 respond before the cure letter issued, but all of the
14 formal findings in the PFD supporting termination focused
15 on the events that happened while that employee was still
16 at the dealership as of June 2018.

17 The ALJ did not include in the formal findings
18 all of the dealership's subsequent efforts to comply with
19 the cure. They're in the PFD, but they're not in the
20 formal findings that support her recommendation. So if
21 conduct before the cure alone is sufficient to justify
22 termination, what is the purpose of a cure letter? The
23 ALJ's recommendation ignores Mazda's obligation and World
24 Car's right to notice and a cure.

25 So although the dealership complied with the

1 cure, Mazda still delivered a notice of termination, told
2 the dealership it could avoid termination if it would sell
3 all three of its franchises, even the two that didn't have
4 this problem. Those two are operating today. World Car's
5 significant investment and long history meant that they
6 were not going to accept that offer, and they filed this
7 protest.

8 The ALJ's findings on page 131, that we've
9 excerpted, show that World Car is a good dealership,
10 average performing, renovated facilities, and a capable
11 management team that Mazda's own witnesses testified they
12 trust and rely upon.

13 Mr. Webber, the district manager, the boots on
14 the ground, he testified World Car has been average and
15 equal to other dealers and that he trusts and relies on
16 the management. These are the existing circumstances.
17 The ALJ's own findings show there's no good cause for
18 termination.

19 MR. OLDHAM: Good morning. I'm Jeff Oldham,
20 also here on behalf of World Car Mazda North.

21 Legally, the primary basis for the Board to
22 find for World Car is that the ALJ misinterpreted and
23 misapplied the Texas Occupations Code and its factors when
24 determining there is good cause to terminate World Car's
25 franchise.

1 We've explained this in our exceptions brief,
2 and in Exhibit B to our exceptions, which is found at
3 pages 96 through 106 of the Board book, we show in redline
4 the specific changes that should be made to the ALJ's
5 findings and conclusions.

6 The two key take-aways from our exceptions are
7 these. First, under Occupations Code 2301.455, the
8 termination decision has to be based on "all existing
9 circumstances," which the ALJ ignored when explaining her
10 termination decision.

11 The ALJ instead based termination on two
12 things: first, on past events relating to the criminal
13 acts of one rogue former employee; and two, on speculation
14 about future events. That sets a bad precedent that
15 threatens all Texas dealers. To follow the law you have
16 to look at the existing circumstances when applying the
17 seven statutory factors.

18 Second, the ALJ's own findings about existing
19 circumstances show there is not good cause for
20 termination. The ALJ actually made findings that speak to
21 the existing circumstances but then simply failed to
22 credit those when explaining the decision to terminate in
23 the formal findings.

24 This, again, is the same ALJ that this Board
25 recently reversed in the Subaru matter, and with our

1 proposed changes, the Board can rule for World Car simply
2 by applying the ALJ's findings in the legally correct way.

3 And I'll walk through the factors briefly, some
4 of the factors. Factors 1 and 2, dealer sales and
5 investments were found neutral, but they actually weigh
6 against termination, because the undisputed evidence was
7 that World Car is an average selling dealer that has
8 invested substantially in its buildings. Factor 3, public
9 injury or benefit, weighs against termination.

10 The ALJ justified termination based on the past
11 facts relating to the rogue former employee and the
12 immediate aftermath of that, and then by minimizing World
13 Car's solutions by speculating about the future, all of
14 which ignores the existing circumstances.

15 Now, the former employee's misconduct was
16 unfortunate, but thankfully there is no record of it
17 causing public injury. As the ALJ found, World Car
18 brought in new employees, supervisors, and a part-for-part
19 policy, all of which has the service department operating
20 well.

21 Our proposed changes on Board book pages 103 to
22 104 reflect the existing circumstances that weigh against
23 termination on this factor because they pose no threat of
24 public harm and they benefit the San Antonio public with
25 cars and services available. Terminating one of the few

1 Mazda dealerships in such a large market is what would
2 injure the public.

3 On factor 4, the ALJ found World Car's
4 facilities, equipment and parts adequate and faulted
5 personnel only by, again, wrongly looking to past facts
6 related to the rogue misconduct and then speculating about
7 the future to minimize the good work currently.

8 This factor also weighs against termination.
9 So does factor 5, because there is no evidence that World
10 Car is not honoring warranties. The ALJ's decision was,
11 again, based solely on the past facts and failed to credit
12 what World Car did after Mazda's cure letter. That would
13 entire defeat the point of cure periods.

14 The same is true for factor 6, franchise
15 compliance, because the ALJ ignored that World Car
16 addressed all the issues in response to the cure letter.

17 So to sum up, all the factors weigh against
18 termination. The ALJ rested termination on past facts,
19 again, relating to one rogue employee and the immediate
20 aftermath, and if that stands, all Texas dealers will be
21 subject to the extraordinary penalty of franchise
22 termination based on hidden acts of a single employee.

23 That is a very dangerous precedent, which is
24 precisely why the Texas Automobile Dealers Association
25 supported us in this case with the amicus brief that's in

1 the record, and again, is at page 144 and 145, excerpts of
2 it, for this Board.

3 So we ask the Board to properly focus on
4 existing circumstances and decide there is not good cause
5 to terminate and reverse the ALJ's proposal for decision.

6 MR. BACARISSE: Thank you, Mr. Oldham.

7 I think now we're going to go ahead and hear
8 from the Respondent, Mazda Motor Car of North America,
9 Inc., and they're represented by Brit Brown and Benjamin
10 Escobar, who will now make their oral presentation for
11 Mazda Motor Car of North America, Inc. on this case.

12 So gentlemen, you can get situated, and the
13 podium is yours.

14 MR. BROWN: Thank you, sir.

15 My name is Brit Brown. I'm here with my law
16 partner, Ben Escobar. We represent Mazda. Also,
17 Stephanie Keener, who was one of the witnesses in the
18 proceeding and part of the executive group that assessed
19 this issue and also contributed to the decision to move
20 for termination.

21 Let me say, first of all, the testimony -- and
22 the judge references some in the PFD -- the testimony that
23 was put in front of the Board is this group, this Mazda
24 group has never before moved for termination, not one
25 time. There have been voluntary terminations where a

1 dealership discontinued operations entirely, surrendered a
2 franchise, but as far as a contested termination, this
3 group had never done it.

4 Mr. Chao had never been involved in that, Ms.
5 Keener had never been involved in that, this was a huge
6 decision. They understood going in, there's plenty of
7 testimony, it was going to be very disruptive, extremely
8 expensive, but they thought they had to do it.

9 There are some things briefly I want to
10 disagree with counsel. There is no evidence that the cure
11 was followed or the cure was complied with; it's to the
12 contrary. There was evidence that was presented that the
13 judge discusses in her proposal for decision that there
14 were failures in compliance with the cure process that was
15 required for us to know that the dealership was doing the
16 right thing, and I can discuss that in more detail, but
17 with time, I want to go to something else I think is more
18 significant that the judge heard a lot of testimony on.

19 First, as you've already heard, the termination
20 letter was submitted December 2018, the protest filed
21 January 2019, the trial or the final hearing not until
22 July 2021, and of course, the proposal for decision
23 January 2022. Five days of trial, eleven witnesses that
24 she identified live, three by deposition, over 200
25 exhibits.

1 The judge was able to look at people, assess
2 the probative value of what they said, assess their
3 credibility, and weigh what was discussed. A lot of the
4 testimony was contested, and she identified some of the
5 more relevant parts that were contested.

6 Let's talk about this idea that there was one
7 rogue employee. First of all, as counsel stated, there is
8 testimony that they called the police. Mr. Kiolbassa
9 called the police, the testimony was, probably toward the
10 end of the first quarter 2019. That was months after the
11 termination, that was many, many months, almost a year --
12 depending on which month the call was, there's no record,
13 or if there was, I don't exactly recall when the call
14 was -- almost a year after they first found out that there
15 were falsified recall work being done. It wasn't shortly
16 after they found out. It was more than one or two, it was
17 done after it was clear that there was going to be
18 litigation. No one could find the guy.

19 As Mr. Kiolbassa testified, I'm not saying this
20 was the intent, but he freely admitted, yeah, when you
21 call the police on somebody, they might go on the lam,
22 they might disappear. That's exactly what happened.

23 And it was lucky we even found their service
24 manager. These people weren't fired, they quit. And the
25 service manager also quit, Katie Dodd. We did find her,

1 she did testify, her testimony was extremely relevant.

2 It was all information that we did not even
3 know until we got into the litigation that made it clear
4 we could not trust what was going on. And the judge
5 specifically found that Katie Dodd was credible, and the
6 efforts to impeach her credibility by several of their
7 witnesses were not credible, including an outright
8 contradiction as to what happened between Katie Dodd and
9 the then current interim GM, Mr. Bill Keys. She didn't
10 believe Mr. Keys; she believed Ms. Dodd.

11 So one and only one tech. Let's examine that.

12 When you look at the PFD, the judge correctly found that
13 some of the evidence we were relying on to show that this
14 is more than just one tech was not reliable. We couldn't
15 prove it. Why couldn't we prove it? Because the records
16 that we received from the dealership were not reliable.

17 There were all kinds of inconsistencies and
18 errors in those records, so she even states specifically,
19 well, on the one hand, Mazda, you can't prove that there
20 was more than one tech. On the other hand, what you did
21 prove is that their own recordkeeping is pretty bad.

22 And we all know here we rely entirely on our
23 dealers. We don't know that warranty work is done, we
24 don't know that recall work is done, we have no idea
25 except for the documentation that we receive from them.

1 So as of trial what did we find out? As of the trial date
2 206 instances of failed Takata recall work. Now, what
3 does that mean? That doesn't mean the guy just made a
4 mistake. That means that one technician or maybe more did
5 the work, claimed to do the work, put it in the computer
6 system, they billed us for it, we paid them for it.

7 The customer was told that your airbags had
8 been changed out, when in fact the work was never done.
9 It wasn't just an error, it was falsified reporting, 206
10 as of the date of trial. There are 350 vehicles that
11 still have not been found; 250 were found that were other
12 recalls that were reported as having been done when in
13 fact the work was never done.

14 They want to say it was just one guy. Well,
15 the judge made it clear in her PFD that it's not just one
16 guy. It's a 50-page proposal for decision, but various
17 parts of it discuss this. Page 35 is one example of it.
18 She talks about Minatra. Minatra was the second GM that
19 was involved in this series of facts, the first one being
20 Bill Keys, and I'll come back to Bill Keys in a moment.

21 Mr. Minatra was, as of April or so, March or
22 April of 2018 -- when he was first told, under his
23 testimony, about the occurrence, it was in April. World
24 Car didn't find this.

25 North Park found it, a different dealership.

1 They had a car come into their dealership, the technician
2 was doing some other unrelated work, not Takata work, he
3 had to pull the dash off, and he noticed the old Takata
4 inflator was still behind the dash.

5 And I need to tell you a little bit about this
6 defect itself. He realized, well, this needs to be done.

7 He pulls up the computer system; he says, well, hold it,
8 this work was already done. It was done by World Car
9 North; they said it was already changed out. Well, it
10 wasn't. He reports that to Mazda, Mazda reports it to
11 World Car. That was in April 2018. They said it was just
12 a one-off, a mistake.

13 No other dealership has made this mistake.
14 There have been mistakes about mechanically it was not
15 done correctly, but as far as, well, I thought I tore off
16 the dash, I thought I pulled out the old inflator, I
17 thought I put the old inflator on the skid and put a blue
18 tag on it -- which was the policy, which the evidence is
19 if you do that policy, this would never occur. So they
20 said they've got a new policy that's going to fix it, it
21 will never happen again. No, you have to follow the
22 policies before they do anything; none of their policies
23 were followed, none of our policies were followed.

24 But all that, took off the dash, thought I
25 replaced the cylinder, thought I put a new one in, took

1 the old one out, gave the old one to the parts guy,
2 thought everything was good, put it into the computer,
3 they billed us, we paid. Whoops, didn't do it. That's
4 just not credible, and the judge knew it wasn't credible.

5 Again, as counsel stated, you can't see this
6 inflator. It's not the bag itself, part of the airbag
7 system. You've heard other airbag failures where it deals
8 with the timing of the inflation. If it inflates too late
9 when the impact occurs and the body goes into the bag, the
10 bag is going into the body, it creates greater trauma.

11 This is not what we're talking about. We're
12 talking about a manufactured inflator that has a chemical
13 compound in it that degrades over time, particularly in
14 heat and humidity. Degradation of that chemical creates a
15 more explosive force than the cylinder -- about the size
16 of a Subway sandwich, I think one of the witnesses said --
17 and the container is not designed sufficiently to
18 withstand that heightened explosion, so it's like having a
19 fragmentation grenade behind your dash. There's one
20 behind the driver side, one behind the passenger.

21 We submitted a report only just to explain what
22 this defect is. It talks about the injuries, it talks
23 about the deaths that were reported as of that date -- the
24 date of the report is 2017 -- so this is a different
25 animal, and it's behind the dash; it's not something that

1 can mistakenly not be done.

2 So the first one was in April. They did
3 nothing. They spoke to the tech. The tech said, Oh, I
4 just missed it; I was too busy. Okay, well, don't do it
5 again. Second one was detected again by North Park Mazda,
6 they found another one. The second one was reported by
7 North Park Mazda to Mazda. Mazda told World Car, World
8 Car, what are you going to do about it? They spoke to the
9 guy again. For the first time they put something in the
10 file, the first time there was a writeup, this is May.

11 The second one that they told us about was May
12 2018. During that entire time, this gentleman continued
13 to do recall work, also continued to reinspect his own
14 work to see if he did it right. They're telling us it's
15 just a one-off.

16 On May 25, we gave them a list of 132 vehicles,
17 asking them to reinspect. They're telling us it's a one-
18 off, it's not a big deal. We asked them to do it with
19 urgency for the reasons I stated because of the severity
20 of the defect and what can happen. That was on May 25.

21 We did a follow-up with them, expecting our
22 dealer to do this because they said, We're going to take
23 care of it, we're going to take care of it. Who's doing
24 this work? It's the same technician that they now claim
25 was the bad guy. Who's doing the work? Nothing else was

1 done.

2 Two cars were reinspected in the first 30 days.
3 By the end of July there were -- I'll get it wrong -- 37
4 cars that were reinspected out of the list of 132, the
5 sampling that we gave them.

6 And when they told us about that at the end of
7 July, we were shocked -- under their reporting are they
8 telling us everything? -- that 27 of the 37 were bad,
9 meaning that the work had never been done even though they
10 said it had been done. Only ten passed. Frankly, we
11 don't even know if the ten passed.

12 And that's when things accelerated. What you
13 were telling us, sorry, respectfully, it was just false.
14 It was not a one-off only, it's something much more
15 systemic and much more worrisome. Like I say, as of the
16 date of the hearing, 250 were identified -- sorry -- 206
17 were identified, 250 other falsified recalls were
18 identified.

19 Now, I want to tell you why the judge's
20 statement in the PFD about why we couldn't prove other
21 techs were involved is kind of telling: It's their
22 records, because when you look at -- well, first of all,
23 the other thing she said -- and I'll go back to the
24 records if I have time -- the other thing she said, it's
25 not just the technician, it's the GM who took no action,

1 no investigative action, no disciplinary action when they
2 first found out, never any investigation -- and I'll go
3 back on that in a second -- parts department did not
4 follow the tag process, which if you follow the blue tag
5 process, it's just like their part-for-part process: If
6 you follow it, this can't happen, but they were not
7 following it. And she states that they gave an
8 unsatisfactory answer: They said they ran out of blue
9 tags. Right? That was the answer that the parts group
10 gave the audit group.

11 She also goes into Mr. Zabihiian. Mr. Zabihiian,
12 the owner, the dealer principal, a couple of things. She
13 found that he was not credible, and she states a specific
14 instance of that where he was saying that Mr. Chao did
15 something that just 100 percent contradicted his earlier
16 testimony in a deposition. She found that he was not
17 credible.

18 But also, there was many minutes where the
19 judge heard me ask him questions about do you accept
20 responsibility for the safety of your operations, do you
21 accept responsibility for your service department's proper
22 service work? There was probably ten different ways I
23 rephrased the question. He never would, and she states
24 that.

25 Now, it's not were you responsible for this

1 act; it's do you have any responsibility for making sure
2 it's done right? Is this a management from the top down
3 or is this you don't touch anything? And he said, No,
4 it's not me. And she took note of that. It's not just
5 that he said not me, it's how he said it, refusing to
6 accept any accountability or responsibility, even though
7 he was told back in May about this and he took no action.

8 They allowed and they put all this blame on a
9 young woman, Katie Dodd, who was their service manager who
10 was also a service advisor, who was also given sole
11 responsibility for customer outreach to do the re-
12 inspections. She basically had two and a half jobs and
13 she was doing it by herself with no assistance.

14 And on top of that, when they say go out and
15 try to reach these customers and get back, this is why we
16 asked them to stop -- and the record states and the PFD
17 states -- she was told and instructed no emails, no
18 voicemails, don't leave a paper trail. Okay. It was a
19 guarantee for failure.

20 I've got a minute left, and so I'm going to
21 just be quick on some other instances that's clear that
22 something else was involved, and she states it in the PFD.

23 In August, the third week of August, well after
24 Katie Dodd had quit, well after Mr. Winkler had quit, the
25 technician, we had a group there doing warranty audits.

1 And that group was observing a high level of traffic.
2 When vehicles left, they wanted to inspect them. Well,
3 the dealer group never brought them back, so we were never
4 able to inspect them, so they had to have others brought
5 back. During one day, work that was just done at that
6 time, they found two -- and she talks about it -- two that
7 had still the old inflator inside the vehicle and she
8 identifies it. And then she talks about another one where
9 there was a brand-new inflator on the skid -- why is a new
10 inflator on the old part pull-out skid? -- and they found
11 that one was also falsified.

12 My time is out. I'll wait for questions.
13 Thank you, sir.

14 MR. BACARISSE: Thank you. Mr. Brown, Mr.
15 Escobar, thank you.

16 Any questions from our Board members for either
17 party in this? Any questions, members?

18 MS. OMUMU: I have a question.

19 MR. BACARISSE: Member Omumu has a question.

20 MS. OMUMU: Mr. Brown, have we seen any
21 improvement in World Car Mazda's performance, or is it
22 that we no longer trust World Car Mazda's performance?

23 MR. BROWN: Thank you very much for that
24 question, because I didn't have time -- sorry, because of
25 my own bad time management, I didn't go into that, so

1 thank you very much for the question.

2 The testimony -- and the judge quotes a lot of
3 testimony from Mark Webber, who is one of the gentlemen I
4 think Mr. Stewart was talking about. Mr. Webber said,
5 Yeah, they're about middle of the pack, they're doing
6 better. But he also said it's attributed to our
7 oversight.

8 And this is a gentlemen that literally had to
9 get off the job because he was being worn out and having
10 marital issues, but he got back into it and he testified
11 at the trial. Once he got off the job, he didn't quit
12 Mazda; he just got off the World Car issue.

13 To answer your question, to put it into
14 perspective, we have about 547 dealerships, the Gulf Coast
15 Region has 146, I believe, and for 146 there's 30 field
16 people that represent those dealerships. There is no way
17 we can give the amount of oversight that we gave to World
18 Car, which was constant presence to observe.

19 This started in August and it continued --
20 parts of it are still going on today, where we have to get
21 photograph evidence of every single thing they do. When
22 the photographs don't come in, we chase it down. We have
23 more frequent field visits to that location. It's like a
24 spotlight on them 24/7. With that and with the
25 parachuting in of World Car Group's vice president who is

1 responsible for 12 dealerships and other business
2 operations, not just dealerships, it started to improve in
3 that sense.

4 But the testimony was clear, and the judge
5 stated in her PFD there is no assurance that without that
6 oversight it will continue, particularly when you find out
7 that even at trial they were denying what Katie Dodd said,
8 and I never even got to this.

9 I said the first discovery was April. No.
10 They at least knew about this as early as February 2018,
11 when Katie Dodd found it and reported it to the GM, and
12 they sat on it. They didn't do anything; they never
13 reported it to us. They real quickly repaired it again
14 and took it off the account so it wasn't shown as a second
15 repair, but no one told us about it.

16 So with all that -- and they were denying that
17 at trial -- they're saying it didn't happen. And if
18 anybody asks me, I'll tell you how the evidence they
19 presented that it didn't happen just shows that it
20 happened again with a different tech, and that's in the
21 PFD.

22 But with all that there was zero confidence at
23 the end that if we take the spotlight off that we're going
24 to be told truthfully, whether it's accuracy, whether it's
25 confidence, whether it's lack of staffing, whether it's

1 something more sinister. We had no confidence that this
2 would be done correctly, that our customers would be taken
3 care of, that the citizens and drivers and the highways of
4 the state of Texas would be safe from this, and that's
5 what the ALJ found as well.

6 Sorry, ma'am. Thank you very much.

7 MS. OMUMU: I have one more follow-up question
8 for you.

9 MR. BROWN: Yes, ma'am.

10 MS. OMUMU: I think the World Car attorney
11 referred to them as OSAT scores. Have you seen a drop in
12 their recent OSAT scores, or has a customer come back to
13 complain as of recently of warranty work not being
14 completed or service campaign work not being fulfilled on
15 their vehicle?

16 MR. BROWN: The score that was being referred
17 to -- and ma'am, if I get it wrong, I apologize -- what I
18 understood was being referred to when a vehicle comes in
19 to a dealership you're supposed to check and see if the
20 work was done, and a lot of vehicles are being turned away
21 without even that check having been done, and there's a
22 score kept on that. I'm not sure if that's the score
23 counsel was referring to; apparently he wasn't because
24 he's saying no.

25 MR. STEWART: Yes, sorry.

1 MR. BROWN: Well, with her permission I'll let
2 you say so I can better respond.

3 MR. STEWART: It was the overall satisfaction
4 score, the customer's overall satisfaction, and the score
5 I referenced was the last month available in the record.

6 MR. BACARISSE: Mr. Stewart, if I may
7 interrupt. I'm sorry. Would you just say your name for
8 the record?

9 MR. STEWART: I'm sorry. Jarod Stewart for
10 World Car Mazda North.

11 MR. BACARISSE: Thank you.

12 MR. BROWN: And now this is Brit Brown again.
13 With that, I can answer the question a little bit better.

14 MS. OMUMU: Please go ahead, Mr. Brown.

15 MR. BROWN: There's a different score they're
16 getting that's jumping all over the map, and that's one
17 where vehicles are coming in and they're not being
18 checked.

19 But on the satisfaction score, their scores are
20 pretty decent. We weren't complaining about that. And
21 ironically, just to put it in perspective, the vehicles
22 that were serviced where the inflator was not replaced,
23 the bad inflator was still in, they're getting good
24 scores, customer feedback on those too, because the
25 customer was not only told, hey, we changed out your

1 inflator but they did it in record time. Right?

2 So we didn't exactly put a lot of confidence
3 and trust in those survey responses when the customers
4 were being lied to about their dangerous, defective
5 inflator having been replaced when in reality it wasn't.
6 Quick work, but they weren't done.

7 MR. STEWART: That's a customer service score
8 from 2021.

9 MR. BACARISSE: Again, if you'll state your
10 name. Thank you.

11 MR. STEWART: I'm sorry. Jarod Stewart, World
12 Car Mazda North.

13 The score I was referencing was a customer
14 service score as of 2021. This is three years after any
15 issues. There have been no repeats.

16 And if we are talking about the missed recall
17 scores that Mr. Brown just referenced, Mazda has a program
18 for missed recalls, and they have tiers of that. And the
19 evidence was in the record and testimony, there's
20 documents showing that World Car was at the top tier of
21 the missed recall program for every period in which they
22 had that period, all of which post-dated this employee's
23 involvement because that program was put into place for
24 all dealerships, Mazda dealerships, and World Car was
25 consistently at the top tier for that program, and that

1 was undisputed in the record.

2 Those are two different scores. The customer
3 satisfaction score, again, was 2021. It couldn't have had
4 anything to do with these inflator repairs that weren't
5 done by Mr. Winkler back in 2018.

6 So yes, there has been improvement by the
7 dealership, and as of the close of the record, customer
8 satisfaction on missed recalls were as high as they could
9 get.

10 MR. BROWN: Brit Brown again for the record,
11 and ma'am.

12 MR. BACARISSE: If I may.

13 MR. BROWN: Sorry, sir.

14 MR. BACARISSE: I'm sorry. We could go back
15 and forth all day. Let's let the members ask the
16 questions to one or the other of you, and you can respond
17 to them in that way. That will help. Thank you.

18 MR. BROWN: Yes, sir.

19 MR. BACARISSE: Any other questions?

20 Member Gillman.

21 Member Omumu, we'll come back to you in a
22 moment.

23 MS. OMUMU: That answered my question.

24 MR. BACARISSE: You're done? Okay, thank you.

25 Member Gillman.

1 MS. GILLMAN: Thank you, Mr. Chairman.

2 My question for Mazda is how long have you had
3 a franchise agreement with Mr. Zabihian? How long have
4 you had a franchise agreement? Because I think you have
5 three stores. Right?

6 MR. BROWN: World Car has -- yes, ma'am, World
7 Car has three Mazda stores, and to answer your question,
8 it's in the record. I'd lie to you if I said I remember
9 the year of the first one.

10 MR. STEWART: 1993.

11 MR. BROWN: Thank you. 1993, was that the
12 first one?

13 MR. STEWART: That's the first one. This
14 dealership at issue was 1998.

15 MS. GILLMAN: Is that 30 years?

16 MR. STEWART: World Car Mazda North is 25
17 years, but the first World Car --

18 MS. GILLMAN: In relationship, a dealer
19 agreement 30 years.

20 MR. STEWART: Mr. Zabihian's first vehicle
21 franchise was with Mazda in '93.

22 MS. GILLMAN: And I guess in those 30 years
23 doing Mazda warranty work, have you had any other incident
24 of this level, this devastating level?

25 MR. BROWN: I can tell you there's general

1 testimony about other incidents --

2 MR. BACARISSE: Please state your name.

3 MR. BROWN: I'm sorry. Brit Brown responding
4 to Member Gillman's question.

5 Certainly nothing of this level. In fact, the
6 testimony is nothing of this level had been experienced in
7 any of their dealerships.

8 MS. GILLMAN: And I would say have you
9 experienced any other criminal act -- and I would say this
10 is a premeditated horrible criminal act, devastating, by
11 this technician -- have you had any criminal act regarding
12 warranties or any other devastating criminal act in any
13 other Mazda dealership in Texas?

14 MR. BROWN: Honestly, I don't know if I can
15 answer regarding criminal act, but I think I can address
16 the spirit of your question. Again, this is Brit Brown.

17 With regards to the severity of the issues that
18 we identified, and frankly, the totality of the management
19 failure that was involved, there's plenty of testimony --
20 and I could go through the blue tag issue, the prior
21 reporting of several things --

22 MS. GILLMAN: I'm talking about how often does
23 this happen.

24 MR. BROWN: That's what I'm saying, ma'am. On
25 each of those things I was about to identify, they had not

1 experienced that with any other dealership.

2 MS. GILLMAN: And how often -- and I know you
3 probably can't speak over the last 30 years -- how often
4 do you send out a cure letter? In Mazda's experience, how
5 often do you send out a cure letter?

6 MR. BROWN: I have an understanding of that,
7 but to be honest, I don't think it's in the record, but
8 with the chair's permission, I can give you my
9 understanding.

10 MS. GILLMAN: And I guess what I'm leaning
11 toward --

12 MR. BACARISSE: We have to confine it to the
13 record, so thank you.

14 MS. GILLMAN: I guess what I wanted to know was
15 what is an acceptable time period for a cure letter. I
16 don't know that it's defined in Texas law, so I just was
17 wondering in your experience with dealerships what is an
18 acceptable time frame to cure.

19 I don't know. In this particular case it seems
20 what I have read is somewhere between -- and I'm sure I'm
21 going to get the dates wrong -- the beginning of the year
22 when the dealership employees found out about it and then
23 the dealer found out about it and then the termination, it
24 all was within one year, I'm going to say.

25 I'm sure someone has a very specific month by

1 month. But I just was wondering after you send a cure --
2 I guess I'm struggling with giving the dealer, because
3 that's who you have a franchise agreement with for 30
4 years, what is the appropriate time frame? And that's
5 what I truly am struggling with, because I know that this
6 dealership is not the only one to have some criminal do
7 something horrible.

8 MR. BACARISSE: Let's confine it to the facts
9 in the record; let's not bring in other dealerships, but
10 if you can focus your question as you're doing, that's
11 great.

12 MS. GILLMAN: What do you think is a proper
13 cure period?

14 MR. BROWN: I can answer if the Board allows.
15 I don't think the record has like an opinion on a proper
16 cure period in it. There was certainly discussion about
17 why what was done as far as the decision-making and
18 there's certainly argument by counsel. That's in the
19 record in that sense, but I don't want to mislead the
20 Board that there's some standard out there that --

21 MS. GILLMAN: Can I ask World Car a similar
22 question? Have you ever received a cure letter from Mazda
23 ever other than this?

24 MR. STEWART: Jarod Stewart for World Car
25 Mazda.

1 Member Gillman, I'd like to confine myself to
2 the record, and what I would reference is the dealer
3 agreement, the franchise agreement between World Car Mazda
4 North and Mazda, provides if there is a cure letter for
5 termination of failure of performance -- this is World Car
6 Exhibit 7 -- that Mazda shall notify dealer in writing of
7 such failures, Mazda shall grant dealer a reasonable
8 opportunity or such period as may be required by law to
9 correct such failures, and then if dealer fails or refuses
10 to correct the failures prior to the expiration of the
11 notice period, Mazda may issue a notice of termination.

12 And so here the question is what is a
13 reasonable period. The period in which the cure letter
14 was issued was August 10, 2018. The termination notice
15 issued in December. If you look at the PFD on pages 45
16 and 46, the ALJ did not make a finding that World Car
17 failed to comply with the cure letter during that period,
18 and so obviously Word Car's position is that no reasonable
19 opportunity was given before that termination notice
20 issued in December.

21 But as far as whether there was evidence of
22 other cure letters and what time period were given, that's
23 not in the record, so I can't speak specifically to that,
24 but I will say World Car has 12 franchises with many
25 brands, and this is not something that's happened before.

1 MR. BROWN: And this is Brit Brown. With
2 permission, I didn't give the answer I was going to give.
3 Counsel is correct about what's not in the record to a
4 certain extent, that deals with a limited time period.
5 The contract says what it says, it's reasonable. What the
6 testimony was and what the argument of counsel was under
7 these circumstances they gave them far too long.

8 MS. GILLMAN: What was the time period between
9 the cure letter and termination letter?

10 MR. BROWN: First cure letter was August 10,
11 2018.

12 MS. GILLMAN: And the termination letter?

13 MR. BROWN: December 17, 2018.

14 MS. GILLMAN: August to December.

15 MR. BROWN: Yes, ma'am. And from notice of
16 failure, it was February 2018 to December 2018.

17 MS. GILLMAN: Agreed.

18 MR. BROWN: On the reasonableness, the reasons
19 that were given is because they continued to not only have
20 problems that required Mazda oversight and supervision to
21 ensure that they had those compliance recall and warranty
22 recall compliance documentation to know it was even done.

23 There were instances found where they gave
24 photographs of an inflator that was used with a particular
25 VIN number. The problem was they used the same inflator

1 in different VIN numbers. So mistakes -- I'm not saying
2 it was malicious, but it's certainly not reliable.

3 MS. GILLMAN: Thank you, Counsel.

4 MR. BACARISSE: Thank you.

5 MS. OMUMU: Chairman, I have a question.

6 MR. BACARISSE: Member Omumu.

7 MS. OMUMU: Mr. Stewart, there are three Mazda
8 stores that World Car owns. Correct?

9 MR. STEWART: That's correct, in San Antonio.

10 MS. OMUMU: Were there any issues at any of the
11 other Mazda stores?

12 MR. STEWART: No. The testimony and evidence
13 was clear that there were no issues like this at either of
14 the stores, and there has been no oversight, as Mr. Brown
15 testified to, of any of the other two dealerships. Mazda
16 has not issued a cure letter or seeks to terminate the
17 other dealerships, and they all report to the same
18 management, which is Mr. Zabihian and Mr. Kiolbassa, the
19 VP of operations, who is right back here.

20 So it's our position to say you don't trust the
21 management? Well, they're not different management at one
22 store versus the other. It's the same dealer, it's the
23 same franchises, and to say that we don't trust them in
24 this building but we trust them in that building is
25 inconsistent, in our view.

1 MS. OMUMU: Thank you, Mr. Stewart.

2 MR. BACARISSE: Members, any other questions
3 for counsel?

4 MR. PREWITT: I have a question.

5 MR. BACARISSE: Member Prewitt.

6 MR. PREWITT: I'm curious, from prior
7 director's comments, Mr. Winkler committed, in your mind,
8 a criminal act. He wasn't convicted of that but in your
9 mind he committed a criminal act, and you just commented
10 that there is a common managerial structure that manages
11 all 12 dealerships, and opposing counsel, Mazda, they made
12 mention that no admission of wrongdoing or responsibility
13 was ever given by World Car as far as this being their
14 responsibility instead of just one rogue employee.

15 Has World Car ever accepted responsibility that
16 there was a managerial failure to oversee this employee
17 properly to prevent these actions?

18 MR. STEWART: Yes.

19 MR. PREWITT: How did that take place? Was
20 that a written admission? Was that done before SOAH? How
21 did that happen?

22 MR. STEWART: There's no written admission. I
23 think the testimony that Mr. Brown was referring to is
24 when he was questioning Mr. Zabihiyan about whether Mr.
25 Zabihiyan himself was personally responsible, and Mr.

1 Zabihian -- a couple of things to note: He's a very
2 literal person, so when he answered the questions he
3 answered about who's responsible in the chain of command.

4 Mr. Zabihian also has a hands-off delegation managerial
5 style, so he allows the service department to handle
6 service issues, so that's the way he answered the
7 question.

8 And finally, during this time period, Mr.
9 Zabihian's wife was dying of cancer, so he was not as
10 personally involved as he normally would have been.

11 MR. PREWITT: Just as a note, I've survived
12 cancer four times, I run a business, and I've never not
13 been involved. I worked full-time through four rounds of
14 chemo and radiation, so I understand what going through
15 cancer is. I also understand the responsibility of
16 running and owning a business.

17 My concern is that if you're calling a man a
18 criminal, and he was never convicted of being a criminal
19 but you're calling him one, then by association is the
20 management team that manages those 12 dealerships also
21 committed a criminal act.

22 MR. STEWART: Jarod Stewart, World Car Mazda.

23 No, Member Prewitt. As the ALJ found, no one
24 in the management knew or intended what Mr. Winkler was
25 doing. Obviously there's no benefit to the dealership.

1 MR. PREWITT: But by virtue of that, does that
2 mean he's not being properly overseen by management, is
3 nobody paying attention to his job, or is he a
4 freewheeling individual that can do whatever he wants?

5 MR. STEWART: As I mentioned, the testimony was
6 that the airbag inflator is in a sealed compartment in the
7 vehicle, so you have to trust in a Mazda-certified
8 technician that passes a background check to do the work.
9 You can't hold their hand every time they're doing a job
10 and have someone doing that.

11 So yeah, Mr. Winkler hid his actions, World
12 Car's management wasn't aware of that. When they became
13 aware of it, they did everything they could to address it,
14 but that doesn't make the management complicit in the
15 crimes; they're more like a victim. This man was being
16 paid for work he wasn't doing, he caused a host of
17 problems for the dealership, and when the management
18 became aware, they took action to address it.

19 MR. PREWITT: So when Mazda North notified
20 Mazda that there was a discrepancy in the documentation of
21 the replacement of the Takata airbag inflator and World
22 Car became aware of that -- and it was said in, I think,
23 earlier testimony that he was admonished as it was a
24 mistake -- at what point did World Car determine that he
25 had committed a criminal act?

1 MR. STEWART: So the testimony was from all
2 witnesses that at the first instance no one believed this
3 was a pattern or a fraud or anything. I think we're
4 looking at something in hindsight when we talk about the
5 first instance.

6 There were several witnesses, including Mazda's
7 own expert, Kevin Vincent, who testified that a second
8 instance could be plausible as a mistake. Mr. Webber, the
9 district service manager, who was also a service
10 technician himself prior, said that mistakes can happen.

11 Mr. Minatra, the general manager of the World
12 Car North store, testified that on the third instance it
13 was clear to him that this was no longer plausible to be a
14 mistake. And Mr. Kiolbassa testified that as they ran
15 through the verification process over the next several
16 months and saw that there was a clear pattern here, that's
17 when they determined they believed this to have been a
18 criminal act, taking money from the employer and getting
19 paid for work that wasn't being done, falsifying.

20 MR. PREWITT: And that third time was post-
21 event from the 132 vehicles that were to be reinspected.
22 Was it after that that you determined he was a bad apple?

23 MR. STEWART: It was during that process.

24 MR. PREWITT: During that process?

25 MR. STEWART: Yes.

1 MR. PREWITT: Thank you. No more questions.

2 MR. BACARISSE: Member Graham.

3 MR. GRAHAM: Thank you, Chairman.

4 This is a question for Mr. Brown. As we've
5 talked about the cure letter -- and certainly the evidence
6 suggests that Mazda feels like the actions of the dealer
7 post-cure were insufficient; the dealer believes their
8 actions post-cure were sufficient. However, I don't think
9 I have found one finding of fact in this PFD pertaining to
10 the actions or what the ALJ decided were important facts
11 in a finding of fact. And so this is going to be kind of
12 an open question. I'm trying to understand that why.

13 I mean, clearly Mazda sent a notice to cure, so
14 the cure letter must be an important document, or there's
15 a reason to send a cure letter, I think we can conclude.
16 So I'm just trying to understand that and maybe shed some
17 light on that, and perhaps both parties.

18 MR. BROWN: Yes, sir. For the record, Brit
19 Brown.

20 Sir, on the importance of the cure letter, they
21 did believe it was important at the time. They didn't
22 know the severity. No one knew at that time we're going
23 to have eventually 206 Takata, 250 non-Takata falsified
24 recalls.

25 We also did not know at that time there was

1 certainly strong evidence that it wasn't just one. We
2 also did not know at that time -- this goes into our
3 action on the cure -- we did not know at that time that
4 the dealership knew about the discovery earlier than the
5 first one that was discussed, the April-May-June trilogy
6 that was discussed a moment ago in response to Member
7 Prewitt's question, but they actually knew about this at
8 least as early as February and never told us about it. So
9 there is an importance to the cure.

10 The reasonableness, the testimony was we
11 thought that the time given was much more reasonable than
12 it should have been because, frankly, the success that
13 they started to experience was almost predominantly or
14 largely because by Mark Webber essentially doing 95
15 percent of his work at that point overseeing the accuracy
16 of the reporting by World Car. There was Mazda oversight
17 in a way that there's no way we can do again; we just
18 don't have the manpower, we're not equipped for it, we
19 can't do it in the future.

20 Going back to the findings, the judge did state
21 that there was both -- there's seven factors that she
22 talks about, and as general counsel identified, the only
23 factors that she thought was relevant, the only factors
24 that the parties thought at the time for, all were in
25 favor of termination, and then the fifth one, other

1 circumstances, the trustworthiness, she also found was in
2 favor of termination.

3 Part of that was that there was reason to doubt
4 and reason to believe that there would be a risk to the
5 public once Mazda discontinued its oversight, and that to
6 the extent they were having success during that oversight
7 period was largely a result of that oversight. That's in
8 the book, the findings.

9 But also, she spends a fair amount of time in
10 the body of her report talking about the testimony talking
11 about what she thought was and was not reliable in that
12 testimony, including from Mr. Webber that she actually
13 quotes some of the Q&A.

14 MR. STEWART: Jarod Stewart for World Car
15 Mazda.

16 Member Graham, to address your question about
17 the cure letter and what the ALJ found, if we look on
18 pages 45 and 46, there's a heading that says "The Cure
19 Letter." This is on page 63 of the Board book.

20 MR. GRAHAM: Is this in the PFD?

21 MR. STEWART: In the PFD. It's page 63 of your
22 Board books.

23 There's a specific section in the formal
24 findings of fact titled "The Cure Letter," and if you read
25 those, those are findings of fact 51 through 59. The ALJ

1 did not find that World Car failed to comply with the cure
2 letter. The closest the ALJ found was World Car had
3 difficulty fully complying with the photograph
4 requirement. There were technological difficulties on
5 both ends, along with other issues.

6 So the testimony from Mr. Furrer that's in your
7 Board books at pages 132 to 135 -- he was the zone manager
8 for service and parts responsible for receiving the
9 photographs during the cure period.

10 The failures of performance that were noted in
11 the notice of termination on December 17, Mr. Chao
12 testified in his deposition and at the hearing that those
13 failures of performance were a failure to submit all of
14 the photographs as required.

15 Mr. Furrer, who was responsible for receiving
16 the photographs, said that there were instances due to
17 technological issues on both sides where maybe four out of
18 five of the photographs made it through but that that
19 didn't mean the dealership wasn't performing the re-
20 inspections or the repairs.

21 So in terms of the cure letter and what
22 happened between August 10, 2018, and December 17, 2018,
23 the complaints that Mazda had was that World Car wasn't
24 submitting every single photograph, but even on that
25 issue, the ALJ did not find there was a failure to comply.

1 So in terms of failure to comply with the cure
2 letter being a basis for termination, that's not in the
3 ALJ's PFD, and that's not what happened. What you heard
4 was, well, there's a reason to doubt that if we remove the
5 supervision that World Car may not do a good job.

6 That is the very type of speculation that Texas
7 law prohibits. As you heard from Mr. Oldham, there are a
8 multitude of decisions from ALJs, from this Board, and
9 from Texas courts that say you have to look at existing
10 circumstances, and what they're asking you to do and what
11 the ALJ had did was to say, well, this is what would
12 happen, I fear that if -- the ALJ said, If Mr. Kiolbassa
13 is no longer there or if we remove the photograph
14 requirement, we don't know what kind of job they're going
15 to do.

16 Well, we do know, based on existing
17 circumstances, that the only person this happened with, as
18 the ALJ found, was Mr. Winkler. He's been gone at the
19 time of the hearing for three years; it's now been five
20 years.

21 So what we know is that's the reason for the
22 photograph requirement. We can't speculate about what
23 would happen if it's removed. And there was no finding of
24 a failure to comply with the cure in that four-month
25 period where Mazda then issued the notice of termination

1 on December 17.

2 MR. GRAHAM: Thank you.

3 MS. GILLMAN: I have one more question.

4 MR. BACARISSE: Member Gillman.

5 MS. GILLMAN: I also have experienced a lot, a
6 lot of my time during these years was spent at my
7 dealerships with replacing airbags, and I would just say,
8 to kind of go back to the beginning, I find it difficult
9 and it's heartbreaking that there is blame going on on
10 both sides.

11 First I would say it's the manufacturer that
12 produced a car that had an airbag that would explode and
13 the safety of the citizens of Texas are at risk, and it's
14 the manufacturer -- and not just Mazda -- that I would say
15 chose Takata airbags and chose to put them in those cars.

16 It's the dealer's responsibility then, upon
17 getting notification from the manufacturer, to apologize
18 to our customers and say, I'm really sorry that we sold
19 you a car in that condition; please come back in and let's
20 repair it.

21 What I just described is -- to me, it's a big
22 problem that both the manufacturer and the dealer has.
23 It's a shared responsibility, shared accountability, and
24 in light of that, I was chuckling when I was reading the
25 findings of fact and conclusions of law -- I say that

1 lightly -- I was laughing because at first the dealer was
2 asked to contact all these customers, then the
3 manufacturer was going to contact all these customers,
4 then you take pictures and then we can't receive the
5 pictures.

6 I was laughing just because that is the kind of
7 collaboration that is necessary to try and get all of
8 these airbags replaced. And I know in my own stores more
9 than I'm comfortable with are still driving around Texas
10 highways with the recall not finished.

11 MR. BACARISSE: Do you have a question?

12 MS. GILLMAN: Yes.

13 MR. BACARISSE: Okay.

14 MS. GILLMAN: This was to quote you; you said,
15 No one knew the severity. My question is that I think
16 that it was -- I feel it was appropriate. I'm asking you
17 don't you feel it is appropriate to share in the
18 responsibility with your dealer, this dealer and all the
19 other dealers in Texas the shared responsibility of this
20 airbag recall, while the actions of these few employees
21 and this one seems to be small in relation to the entire
22 Takata airbag issue and the shared responsibility that
23 goes along with it and the successes that we do have in
24 changing some out?

25 And I'm directing it to both, the shared

1 responsibility and shared accountability.

2 MR. BROWN: Member Gillman, again, Brit Brown
3 responding.

4 Without a doubt we have responsibility, legal
5 and I think morally and otherwise, and there is testimony
6 specifically on that point. And of the 19 manufacturers
7 we're number three as far as percentage completion. They
8 take it extremely seriously, and that's why they're doing
9 this.

10 And there is testimony in the record on our
11 record compliance. I'm not sure what it was then, I know
12 what it is now, so I might have misspoke -- I didn't
13 misspeak on the number; I just don't know if that's in the
14 record.

15 We did take it very seriously and we do believe
16 we have an obligation. And I'm not telling you anything
17 you don't already know, but the way this works, there's no
18 way we can have people onsite looking over their shoulder
19 to see if the right thing is put behind the dash, so all
20 we can do is have dealers that we can count on to report
21 to us when they find something wrong and not try to hide
22 it -- which they did, and there are several indications of
23 that occurring in this case, not just sitting on it being
24 lethargic, but also sitting on it and not reporting it,
25 but also, to be truthful in all reporting to us.

1 We have to have that degree of reliance. We
2 can't have people at every dealership, and we're
3 certainly, obviously, not allowed to do it ourselves,
4 legally or otherwise.

5 So we do have responsibility; I think we also
6 have legal liability --

7 MS. GILLMAN: It sure seems like the discovery
8 was hidden from the dealer as well for a time until, I
9 think, the finding of fact was that Mazda -- I can't
10 remember exactly who notified the dealer.

11 MR. STEWART: It was Mazda.

12 MS. GILLMAN: It was Mazda, so it was hidden
13 from the dealer as well.

14 MR. BROWN: Let me correct -- apologies, but
15 that's not what the record is or the finding. When the
16 dealer first found out, including their general manager at
17 that time, it was in February; Mazda was not told about
18 that.

19 Mazda first found out from a different dealer,
20 and that was North Park, and that, ma'am, was in April,
21 and that's when we went back and told the dealership
22 again.

23 But they knew about it first, at least as
24 early, two months prior, and decided not to investigate,
25 not to discipline, and not to tell us about it. We had to

1 find out from a different dealer.

2 MR. STEWART: Jarod Stewart for World Car
3 Mazda.

4 Member Gillman, yes, this is a shared
5 responsibility that requires cooperation because it is a
6 big problem. What's in the record, if you're at World Car
7 Exhibit 15, shows that as of June 2018 when this issue
8 came to the forefront with Mr. Winkler, Mazda was at about
9 a just over 50 percent completion rate, so there were
10 589,950 airbags repaired, with 558,897 airbags remaining
11 on the road to be repaired, so this was a big problem that
12 required cooperation by both the dealer and the
13 manufacturer.

14 Now, on page 140 of your Board book is an email
15 from Mr. Kiolbassa, the vice president of operations, and
16 he sent an email detailing all of his efforts to Mr. Chao,
17 the regional manager at Mazda, and he said, I've been
18 involved in this for a couple of days, I've drafted a
19 script, all of these customers reached out, we've made
20 eleven appointments out of the sixteen people we've
21 contacted in the first day.

22 And this is what he said, In reviewing your
23 letter -- this is the cure letter that said Mazda was
24 going to do this -- as well as personally realizing the
25 importance and urgency of seeing this situation through, I

1 cannot see why we cannot work together to accomplish our
2 mutual goal of seeing that our mutual customers are taken
3 care of and safe. Based on our success rate, working on
4 this for a few hours and making 29 calls, it is evident
5 that a joint effort would be beneficial to completing this
6 in a more timely fashion, especially because World Car has
7 the relationship with the customers, but Mazda can provide
8 resources to help.

9 And in response to that request to work
10 together -- this is just a few days after the cure letter
11 was issued -- the response from Mazda is on the very next
12 page, page 141. There's a formal certified letter that
13 says: Mazda is hereby instructing you not to contact
14 customers.

15 So rather than work together, Mazda chose to go
16 it alone. Mazda did not have the same level of success.
17 The record was that Mazda ended up contacting about a
18 third of the customers on that list in the few months, and
19 then right after the termination notice issued, stopped
20 contacting the customers. World Car wanted to work
21 together but wasn't able to.

22 Now, one other thing I'll address about this
23 February 2018. The testimony was from an interim general
24 manager, who testified he was not aware of that happening,
25 but even if you credit that there was a one-off thing --

1 again, we're looking at this in hindsight about one
2 mistake, and Mazda's witnesses and Mazda's expert
3 testified that a mistake can happen; obviously when
4 there's a pattern, it becomes an issue -- but the key, in
5 response to your question, is that World Car wanted to
6 work together. And that cooperation has worked at the
7 other two World Car stores, frankly. There's no issues
8 with the Takata airbag inflators at World Car Mazda San
9 Antonio or World Car Mazda New Braunfels.

10 Mr. Kiolbassa, who is over all those stores,
11 tried to work together, Mr. Chao rejected that, and
12 actually told the dealership: Do not call me, all of our
13 communications must be by certified mail or in writing.
14 And so during that cure period when Mazda said, oh, we're
15 having issues, we need more customers to get in, we need
16 you to set up these X time service appointments, the
17 dealership did that. Mazda didn't use any of the X time
18 appointments, even though they required the dealership to
19 do it.

20 And then there was no attempt to call -- a
21 Mazda witness testified we have your cell phone numbers,
22 we know how to get a hold of you. There was no attempt to
23 call anybody at the dealership during that four months.
24 It was just we're going to put it in writing, we're going
25 to send you a letter, even though the dealership was

1 asking to work together to help the customers and get this
2 done.

3 MS. GILLMAN: I would concur that the best cure
4 is when there's a shared partnership to try and help the
5 citizens of Texas.

6 MR. BACARISSE: Members, any other questions on
7 this matter of either counsel?

8 MR. GRAHAM: One question.

9 MR. BACARISSE: Yes, Member Graham.

10 MR. GRAHAM: Should be quick.

11 MR. BACARISSE: That's fine, take your time.

12 MR. GRAHAM: Mr. Brown, is there anything in
13 the record that alludes to other -- was there any
14 testimony regarding if there were other dealerships or
15 dealers who had warranty audit issues? I mean, I know
16 that kind of resulted as a part of this as it unfolded.
17 Was there anything in the record that covers whether -- I
18 don't know how common that is, and I don't know if there's
19 anything in the record on it.

20 MR. BROWN: Yes, sir, there was, mostly from
21 Mr. Young; he's the recall manager and also responsible
22 for audits. There are audits that are done, I don't know
23 about routinely, but they're not rare, and the testimony
24 was any issue that's determined is really rare and not to
25 this extent.

1 This was like a totally different issue as far
2 as what was found. And bear in mind with that, because
3 his testimony also dealt with his visit to the dealership
4 in August after this email that Mr. Kiolbassa provided
5 that counsel spoke of, after the technician was fired
6 during their visit, and it's in the record and also in the
7 PFD. I'll tell you what page to read it.

8 MR. GRAHAM: That answers my -- I think that
9 helps answer the question. Thank you.

10 MR. BROWN: Thank you.

11 MR. BACARISSE: Any further questions, members?

12 (No response.)

13 MR. BACARISSE: Seeing none, the chair would
14 entertain a motion.

15 MS. GILLMAN: I have a motion.

16 MR. SCOTT: Chairman.

17 MR. BACARISSE: Member Scott.

18 MR. SCOTT: Paul Scott, for the record.

19 Before I submit my motion, could I have a
20 moment to visit with counsel, please.

21 MR. BACARISSE: I believe we can take about a
22 five-minute recess. Right?

23 MS. MORIATY: Probably a good time to take a
24 break anyway; we've been going for a while.

25 MR. BACARISSE: Okay, good. We'll recess for

1 about five minutes. Thank you. It is now 10:39 a.m.

2 (Whereupon, a brief recess was taken.)

3 MR. BACARISSE: It is now 10:53 a.m., and the
4 Board of the Texas DMV is back in open session. There
5 is -- just to remind everybody, Member Scott has been
6 recognized to make a motion, and so, Member Scott, you
7 have the floor.

8 MR. SCOTT: Thank you. For the record, Paul
9 Scott.

10 I move that the Board adopt the following from
11 the proposal for decision: findings of fact number 1
12 through 36.

13 MR. BACARISSE: One moment. I'm sorry, Member
14 Scott. I'm sorry. There's a document being shared
15 around, so we'll do that. I'm sorry.

16 MR. SCOTT: That's fine. I believe it's a copy
17 of this motion.

18 MR. BACARISSE: Very good. All right. I'm
19 sorry, Member Scott. Please continue.

20 MR. SCOTT: Let me back up. I move the Board
21 adopt the following from the proposal for decision:
22 findings of fact numbers 1 through 36, findings of fact
23 numbers 38 through 97, and conclusions of law 1 through
24 11.

25 I move that the Board modify findings of fact

1 number 37 and 98 from the proposal for decision to read as
2 follows:

3 Finding of fact number 37: In the morning of
4 May 25, 2018, Mr. Webber emailed Mr. Minatra and Mr.
5 Zabihiyan to tell him that he was compiling an initial list
6 of cars that would need an inspection to ensure that the
7 airbag inflator replacement reported by World Car had
8 actually occurred. Finding of fact number 98: Mazda is
9 concerned about World Car North's trustworthiness.

10 These changes are permissible under Texas
11 Government Code 2001.058(e) because there is a technical
12 error in a finding of fact and because the administrative
13 law judge, ALJ, did not properly apply or interpret either
14 Texas Occupations Code 2301.455(a) or a prior court
15 decision involving Metro Ford Truck Sales, Inc. and Ford
16 Motor Company, which I will refer to as Metro Ford.

17 For finding of fact number 37, the change is
18 necessary because the ALJ made a technical error
19 misstating the year as 2021 rather than 2018. The proposed
20 new language for the finding of fact simply corrects that
21 date.

22 Respondent's Exhibit R-08 from the State Office
23 of Administrative Hearings is an email chain which
24 includes the May 25, 2018 email from Mr. Webber to many
25 people, including Mr. Minatra and Nader regarding the

1 initial list of cars that would need a re-inspection. The
2 email address for Nader is the email for Ahmad Nader
3 Zabihiyan, according to finding of fact number 8.

4 With the proposal for decision Volume 1, pages
5 101 through 102 of the transcripts of the State Office of
6 Administrative Hearings, Mr. Minatra testified about
7 receiving the email dated May 25, 2018, including
8 according to Volume 2, pages 463 and 481 of the
9 transcripts from the State Office of Administrative
10 Hearings.

11 The change to finding of fact number 98 is
12 necessary because of the following reasons: The ALJ
13 misinterpreted the court's decision in Metro Ford to mean
14 that a lack of trust between a dealer and a manufacturer
15 is reason for termination. The ALJ misinterpreted Texas
16 Occupations Code 2301.455(a) regarding what existing
17 circumstances are relevant for the Board to consider in
18 deciding whether to terminate a dealer's franchise.

19 As in all relationships, trust between a dealer
20 and a manufacturer is always in flux, growing and
21 declining, and growing again as the dealer and
22 manufacturer work through various issues and events in the
23 course of their relationship. Trust is, therefore, too
24 volatile and fickle to be a basis of decision to terminate
25 a franchise.

1 In the Metro Ford case, the court analyzed the
2 statute which became the current Occupations Code
3 2301.455(a) and determined that the statute requires a
4 consideration of existing circumstances rather than a
5 speculative evaluation of what kind of relationship a
6 manufacturer and a dealer might have in the future.

7 Although the court said that the dealer's
8 admitted efforts to deceive Ford violate basic and
9 fundamental precepts of the relationship between a
10 manufacturer and a dealer and that Metro will probably not
11 perform according to the terms of its franchise agreement
12 if allowed to remain a dealer, the court didn't make a
13 decision on this speculative point.

14 The court emphasized that the undisputed facts
15 alone justified Ford's actions in terminating Metro, so no
16 speculation about the future relationship was necessary to
17 decide the case.

18 Finding of fact number 98, therefore,
19 misinterprets the existing circumstances under Texas
20 Occupations Code 2301.455(a) and Metro Ford regarding
21 whether there is a good cause for terminating a
22 dealership's franchise.

23 Concern about a dealership's trustworthiness is
24 too vague and potentially too temporary to be an
25 additional factor on which to terminate a franchise. As

1 the ALJ herself noted on page 40 of the proposal for
2 decision, the trustworthy analysis is essentially the same
3 as an injury or benefit analysis under Texas Occupations
4 Code 2301.455(a)(3) because it is about the dealership's
5 initial slow response to the problem.

6 Under a correct interpretation of Occupations
7 Code 2301.455(a), the issue of the dealership's initial
8 slow response to the problem is addressed fully through
9 the analysis of injury to the public required by
10 subsection (a) and (3).

11 It does not require the Board to look at a
12 vague question of trust as another existing circumstances
13 under subsection (a). It is therefore necessary to modify
14 finding of fact number 98 to remove the ALJ's improper
15 conclusion that concern over trustworthiness is a fact
16 that supports termination separate and apart from the
17 factor of injury to the public.

18 With these modifications, I move that the Board
19 find that Mazda has met its burden of demonstrating good
20 cause for the termination of World Car North's franchise,
21 that the Board deny World Car North's protest, and that
22 the Board approve the termination of World Car North's
23 franchise.

24 MR. BACARISSE: Thank you, Member Scott.

25 Is there a second to this motion?

1 MS. McRAE: I would like to motion for a
2 second.

3 MR. BACARISSE: Member McRae seconds Member
4 Scott's motion. We now have time for discussion. Is
5 there any discussion?

6 Member Gillman, you're looking at me.

7 MS. GILLMAN: I think I'd like to ask for
8 counsel's help for just a minute.

9 MR. BACARISSE: Okay. So we're going to take a
10 brief recess so that Member Gillman may confer with
11 counsel, and just a few moments. Everybody stay in your
12 seats; don't wander off. Thank you.

13 I'll note the time for the record is now 11:01,
14 and we are in recess for a few moments.

15 (Whereupon, a brief recess was taken.)

16 MR. BACARISSE: Okay, members, it appears we
17 are back in open session. It is 11:16 in the morning.
18 I'm just making a note for my own record here. Thank you.

19 And we have a motion on the floor that has been
20 seconded, and Member Gillman, I give you the floor.

21 MS. GILLMAN: I raised my hand.

22 MR. BACARISSE: Yes. Thank you.

23 MS. GILLMAN: I'd like to move for a substitute
24 motion.

25 MS. MORIATY: Member Bacarisse, if I could give

1 some background for the Board on this.

2 So a substitute motion, Member Gillman is going
3 to offer a separate and entirely different motion that she
4 would like to put on the floor in place of Member Scott's
5 motion.

6 So after she reads it, she will need a second
7 in order to do this, and then you will vote not on the
8 motion itself but just on the question of whether Member
9 Gillman's motion is a motion you want to take up instead
10 of Member Scott's motion, whether Member Gillman's motion
11 will replace Member Scott's motion as the motion that
12 you'll debate.

13 So the vote that you take, if she gets a
14 second, the vote is not on the merits of the motion; it is
15 only on whether you want to debate that motion instead of
16 Scott's.

17 MR. BACARISSE: Thank you.

18 Member Gillman.

19 MS. GILLMAN: Laura, can you come here for just
20 one second?

21 There is some duplication, and she just advised
22 me that I need to go ahead and read my full substitute
23 motion again.

24 So I move that the Board adopt the following
25 from the proposal for decision: findings of fact number 1

1 through 36 -- I'm going to wait until it is passed out.

2 MR. BACARISSE: Okay. Thank you.

3 (Pause while copies passed out to the Board
4 members.)

5 MS. GILLMAN: I move that the Board adopt the
6 following from the proposal for decision: findings of
7 fact number 1 through 36, findings of fact 38 through 72,
8 findings of fact 74 through 79, findings of fact 82
9 through 84, findings of fact 87 through 89, findings of
10 fact 91 through 97, conclusions of law numbers 1 through
11 9.

12 I move that the Board reject findings of fact
13 73, 80, 81, 86, 90, and conclusions of law number 10 and
14 11. I move that the Board change findings of fact number
15 37, 85 and 98 and add new conclusions of law 10 through 16
16 as follows.

17 Finding of fact number 37, as Member Scott
18 said, In the morning of May 25, 2018, Mr. Webber emailed
19 Mr. Minatra and Mr. Zabihian to tell them that he was
20 compiling an initial list of cars that would need
21 re-inspection to ensure that the airbag inflator
22 replacement reported by World Car North had actually
23 occurred.

24 Change finding of fact number 85: World Car
25 North's service department is currently performing well.

1 Change finding of fact 98: Mazda is concerned
2 about World Car North's trustworthiness.

3 Conclusion of law number 10: World Car North's
4 investment and obligations weigh against termination.

5 Conclusion of law number 11: World Car North
6 has improved its processes and personnel to the point that
7 its warranty work and continued operation do not present a
8 risk of injury to the public. The factor of injury or
9 benefit to the public weighs against termination.

10 Conclusion of law number 12: World Car North
11 has improved its personnel to the point that its
12 personnel, service facilities, equipment, and parts are
13 all currently adequate in relation to other dealers of new
14 motor vehicles of the same line make. The factor of
15 adequacy of service facilities, equipment, parts, and
16 personnel weighs against termination.

17 Conclusion of law number 13: World Car North's
18 warranty service has been improved and competent staff and
19 new processes. There is no evidence in the record to
20 suggest that World Car North is not currently honoring
21 warranties. The factor of honoring warranties therefore
22 weighs against termination.

23 Conclusion of law number 14: After Mazda sent
24 World Car North the cure letter on August 10, 2018, World
25 Car North was not given reasonable time to cure. Mazda's

1 recall manager visited World Car North to audit the
2 dealership's warranty work within three weeks of issuance
3 of the cure letter. Moreover, the technological
4 difficulties on both sides that impacted World Car North's
5 ability to comply with the photographic documentation
6 requirements of the cure letter reduced the significance
7 of World Car North's failure to meet those requirements.
8 Given this lack of time to cure and the technological
9 difficulties of both parties, World Car North's breach of
10 the franchise agreement does not weigh heavily in favor of
11 termination.

12 Conclusion of law number 15: Mazda did not
13 meet its burden of demonstrating good cause for the
14 termination of World Car North's franchise. Texas
15 Occupations Code 2301.453.

16 Conclusion of law number 16: World Car North's
17 protest should be granted.

18 These changes are permissible under Texas
19 Government Code 2001.058 -- and this is the same as Member
20 Scott's -- because there is a technical error in finding
21 of fact and because the administrative law judge did not
22 properly apply or interpret either Texas Occupations Code
23 2301.455 or a prior court opinion involving Metro Ford
24 Truck sales, Inc. and Ford Motor Company, which I will
25 refer to as Metro Ford.

1 For finding of fact number 37, the change is
2 necessary because the ALJ made a technical error,
3 misstating the year as 2021 rather than 2018. The
4 proposed new language for finding of fact number 37 simply
5 corrects this date.

6 Respondent's Exhibit R-08 from the State Office
7 of Administrative Hearings is an email chain which
8 includes the May 25, 2018 email from Mr. Webber to many
9 people, including Mr. Minatra and Nader regarding the
10 initial list of cars that would need re-inspection.

11 The email address for Nader is the email for
12 Mr. Ahmad Nader Zabihian, according to finding of fact
13 number 8 from the proposal for decision and Volume 1,
14 pages 101 and 102 of the transcript from the State Office
15 of Administrative Hearings.

16 Mr. Minatra testified about receiving the email
17 dated May 25, 2018, according to Volume 2, pages 463 and
18 481 through 487 of the transcripts from the State Office
19 of Administrative Hearings. These show that the correct
20 date in finding of fact 37 is 2018, not 2021.

21 The change to finding of fact number 98 is
22 necessary because of the following reasons: the ALJ
23 misinterpreted the court's opinion in Metro Ford to mean
24 that a lack of trust between a dealer and manufacturer is
25 a reason for termination, and the ALJ misinterpreted Texas

1 Occupations Code 2301.455 regarding what existing
2 circumstances are relevant for the Board to consider in
3 deciding whether to terminate a dealer franchise.

4 As in all relationships, trust between a dealer
5 and manufacturer is always in flux, growing and declining,
6 and growing again as the dealer and manufacturer work
7 through various issues and events in the course of their
8 relationship. Trust is, therefore, too volatile and
9 fickle to be the basis of a decision to revoke a
10 franchise.

11 In the Metro Ford case, the court analyzed the
12 statute which became the current Occupations Code 2301.455
13 and determined that the statute requires a consideration
14 of existing circumstances rather than speculative
15 evaluation of what kind of relationship a manufacturer and
16 dealer might have in the future.

17 Although the court said that the dealer's
18 admitted efforts to deceive Ford violation basic and
19 fundamental precepts of the relationship between
20 manufacturer and dealer and that Metro will probably not
21 perform according to the terms of its franchise agreement
22 if allowed to remain a dealer, the court didn't make its
23 decision on this speculative point.

24 The court emphasized that the undisputed facts
25 alone justified Ford's actions in terminating Metro, so no

1 speculation about future relationship was necessary to
2 decide the case.

3 Also, the admitted and intentional fraud in
4 Metro Ford goes beyond a simple trust issue and should not
5 be confused with one. In this case the ALJ noted in
6 finding of fact 91 that the dealer may not have known it
7 was submitting false reports of warranty repairs. This
8 was not intentional fraud.

9 Under state and federal law, recalls are a
10 shared responsibility of both manufacturers and franchised
11 dealers. Manufacturers have to provide notice, determine
12 the necessary repairs, and pay the cost of the repairs,
13 and franchised dealers have to do the work, so recalls
14 require cooperation and involvement from both dealers and
15 manufacturers. It's necessary to modify finding of fact
16 number 98 to remove the ALJ's improper conclusion that
17 concern over trustworthiness is a fact that supports
18 termination.

19 On the issue of World Car North's investment
20 and obligations, which the Board must consider under Texas
21 Occupations Code 2301.455(a)(2), finding of fact numbers
22 16, 19, 70 through 72 show that World Car North has
23 invested about \$1.5 million in fixed assets and has \$3
24 million in debt obligations. These are significant
25 numbers. The ALJ misinterpreted Texas Occupations Code

1 2301.455(a) (2) by holding that this factor weighed
2 neutrally, because these numbers are large enough that
3 they should weigh against termination.

4 As a result, it's necessary for the Board to
5 reject finding of fact number 73 and to add new conclusion
6 of law number 10 because the factor of investments and
7 obligation weighs against termination in this case.

8 On the factor of injury or benefit to the
9 public, the ALJ misinterpreted Texas Occupations Code
10 2301.455(a) (3) and misinterpreted the Metro Ford case. In
11 Metro Ford the Court of Appeals found the Board is
12 authorized to evaluate the dealer's past and current
13 performance.

14 In Metro Ford the Board determined that the
15 past behavior by the dealer that presented a risk to the
16 public outweighed evidence that the dealer had changed its
17 practices and fixed the problem, but the Metro Ford
18 holding does not require that the Board always find that
19 past risk outweighs present corrections.

20 While World Car North may have been slow to
21 start, as findings of fact 23 through 35 and 76 through 78
22 reflect, the efforts that World Car North eventually took
23 to correct the issues with its warranty work on Takata
24 airbags are extensive.

25 Findings of fact 28 and 74 show that a lot of

1 the improper warranty work was done by a single dealership
2 technician.

3 Finding of fact number 36 shows that the
4 dealership added another Mazda certified technician.

5 Finding of fact number 49 shows that World Car
6 North added service advisors to contact impacted customers
7 and added incentives like loaner cars and free oil changes
8 to make it easier and more compelling for impacted
9 customers to bring their vehicles back in to be re-
10 inspected.

11 Findings of fact number 44 and 55 show that the
12 technician and service manager that were involved in the
13 problem are gone from the dealership.

14 Findings of fact number 56 and 85 show that the
15 incompetent service manager has been replaced with an
16 experienced and competent person.

17 Findings of fact number 52 and 53 show that
18 upper level management at World Car North took steps to
19 address and solve the issue once they received the cure
20 letter.

21 Finding of fact number 85 notes that World Car
22 North's service department is currently performing well.

23 It is also important to note that Metro Ford
24 emphasized only past and current performance. It did not
25 authorize the Board to look at hypothetical predictions

1 about future performance. It's therefore appropriate for
2 the Board to reject the hypothetical predictions such as
3 the ones in the second half of finding of fact number 85,
4 which imagines a fictional world in which World Car North
5 has less competent service staff. This is not an existing
6 circumstance or a fact but just speculation. A fact is
7 universal and does not vary from person to person and can
8 be proven or disproven with evidence.

9 It is therefore necessary and appropriate to
10 modify finding of fact number 85 to reduce the speculation
11 and preserve only the existing fact: World Car North's
12 service department is currently performing well. This
13 change is necessary because the ALJ incorrectly
14 interpreted Texas Occupations Code 2301.455(a) and Metro
15 Ford, which, when interpreted correctly, forbids the Board
16 from considering speculation of how the dealer might
17 perform in the future.

18 Based on past and current performance, the
19 findings of fact show that World Car North's corrective
20 actions mean that it is not creating harm to the public
21 now, and those actions outweigh any harm caused in the
22 past by staff who are no longer with the dealership.

23 The ALJ misinterpreted Texas Occupations Code
24 2301.455(a) (3) by holding that past deficiencies in World
25 Car North's warranty work outweigh both the efforts World

1 Car North has taken to improve its processes and present
2 reality that World Car North's service department is
3 currently performing well.

4 The ALJ also misinterpreted Texas Occupations
5 Code 2301.455(a) and Metro Ford by considering
6 hypothetical future deficiencies in World Car North's
7 future personnel and future service work. It's therefore
8 necessary to reject findings of fact number 80 and 81
9 because there are mixed conclusions of fact and law that
10 reflect the ALJ's incorrect interpretation.

11 In their place, I move that we add a conclusion
12 of law number 11 to hold that the factor of injury to the
13 public weighs against termination because World Car
14 North's corrective actions mean it is no longer creating a
15 new risk of injury to the public.

16 On the factor of adequacy of dealer's service
17 facilities, equipment, parts, and personnel, the ALJ
18 misinterpreted Texas Occupations Code 2301.455(a)(4) when
19 she focused primarily on the past failure of service
20 department staff to ensure that the Takata airbag repairs
21 were completed correctly.

22 Findings of fact 36, 44, 49, 55, 56 and 85 show
23 that since discovering the issue, World Car North has rid
24 itself of the poorly performing personnel, added personnel
25 and hired more experienced personnel and that its current

1 service department personnel are performing well. These
2 show that, while World Car North's personnel have been
3 deficient in the past, they are now adequate.

4 This, combined with the following results in
5 World Car North currently having adequate facilities,
6 parts, personnel, and equipment: finding of fact number
7 81 that states there are no concerns with World Car
8 North's service facilities, equipment, or parts, and
9 finding of fact that states World Car North's service
10 department is currently performing well. Sorry, I
11 misspoke; I can't remember what I said -- I said 81, but
12 it's finding of fact number 82 that states there are no
13 concerns with World Car North's service facilities,
14 equipment or parts. Thank you.

15 As a result, this factor weighs against
16 termination. To reflect this, it's necessary to reject
17 finding of fact number 86, which contains the ALJ's
18 incorrect legal conclusion, and to add conclusion of law
19 number 12 to explain the correct interpretation of Texas
20 Occupations Code 2301.455(a)(4).

21 On the factor of whether the dealer is honoring
22 warranties, the ALJ misinterpreted Texas Occupations Code
23 2301.455(a)(5) when she focused primarily on the
24 dealership's past performance of warranty work rather than
25 the efforts World Car North has taken to improve its

1 warranty work and the fact that World Car North's service
2 department is currently performing well.

3 The same findings of fact are described above
4 that set out the steps World Car North has taken to
5 improve its warranty work, and finding of fact number 85,
6 which states that World Car North's service department is
7 currently performing well, show that World Car North is
8 honoring warranties. This factor therefore weighs against
9 termination.

10 It's necessary to remove finding of fact number
11 90, which reflects the ALJ's incorrect legal conclusion,
12 and to add conclusion of law number 13 to reflect the
13 appropriate interpretation and conclusion.

14 On the factor of compliance with the franchise
15 agreement, the ALJ misinterpreted Texas Occupations Code
16 2301.455(a)(6) by misconstruing the significance of the
17 cure letter and the timeline of events and by failing to
18 correctly weigh the significance of the breaches that
19 occurred after the cure letter.

20 Finding of fact number 51 states that Mazda
21 delivered the cure letter on August 10, 2018 and that the
22 cure letter notified World Car North that it was in
23 default of its obligations under the franchise agreement
24 and that it set out specific requirements for World Car
25 North to come into compliance with the franchise

1 agreement.

2 Those specific requirements included World Car
3 North completing all recall work on all vehicles that came
4 into the dealership and supplying Mazda with photographic
5 evidence of all warranty repairs.

6 Finding of fact 51 shows that if World Car
7 North had been able to comply with the terms of the cure
8 letter, it could possibly have cured its default and been
9 back in compliance with the franchise agreement.

10 The ALJ identifies two ways in which World Car
11 North did not comply with the cure letter's requirements.

12 First, in findings of fact number 54 and 93, the ALJ
13 describes how Mazda's recall manager visited World Car
14 North in August, sometime after the cure letter was issued
15 on August 10, and found two cars that still had the
16 original Takata airbag inflators, but this visit took
17 place no more than three weeks after the cure letter,
18 which is not a sufficient cure period given the breadth of
19 procedural changes Mazda asked World Car North to make in
20 the cure letter.

21 Second, finding of fact number 57 notes that
22 World Car North did not fully comply with the cure
23 letter's requirement for photographic evidence of all
24 repairs, but points out that this was due to technological
25 difficulties on both ends.

1 Given the insufficient cure period and
2 technological difficulties, these breaches of the cure
3 letter's terms are not particularly significant.
4 Therefore, World Car North's failure to cure in such a
5 short period of time resulting in breach of the franchise
6 agreement does not weigh heavily in favor of termination,
7 as is reflected in new conclusion of law number 14.

8 It is necessary to add conclusion of law
9 numbers 15 and 16 for the reasons I just stated, as well
10 as the following reason: Under the Third Court of Appeals
11 decision in the Austin Chevrolet case, the Board has the
12 exclusive jurisdiction to determine the issue of good
13 cause, including the weight to be given to each statutory
14 factor.

15 The ALJ misinterpreted the appropriate weight
16 of the factors under Texas Occupations Code 2301.455, and
17 with the correct interpretation of the statutory factors
18 and the modifications I explained above, four of the
19 factors weigh against termination: dealer's investment
20 and obligations, injury or benefit to the public, adequacy
21 of the dealer's service facilities, equipment, parts and
22 personnel, and whether the dealer is honoring warranties.

23 Two of the factors are neutral and weigh
24 neither in favor nor against termination: sales in
25 relation to the market and enforceability of the franchise

1 agreement. One factor, the parties' compliance with the
2 franchise agreement, weighs in favor of termination but
3 does not weigh heavily.

4 The factors in Texas Occupations Code 2301.455
5 thus weigh against revoking World Car North's dealership
6 franchise. Therefore, I move that World Car North's
7 protest should be granted because Mazda has not
8 established good cause for franchise termination.

9 MR. BACARISSE: Thank you, Member Gillman.

10 As pointed out to us by our general counsel
11 moments ago, I now am asking for a second on this
12 substitute motion.

13 MR. GRAHAM: Second.

14 MR. BACARISSE: Member Graham seconds the
15 substitute motion. Thank you.

16 So I now will call the vote on the substitute
17 motion as to whether or not it replaces the original
18 motion made by Member Scott.

19 Is that correct, Ms. Moriatty?

20 MS. MORIATY: Yes, sir.

21 MR. BACARISSE: Thank you.

22 MR. GRAHAM: Question before you call the vote.

23 MR. BACARISSE: Yes, Member Graham.

24 MR. GRAHAM: So this is to, in essence,
25 deliberate the motion?

1 MR. BACARISSE: Well, it's to -- we can now
2 deliberate, yes, if there are questions before I call the
3 vote. Right?

4 MS. MORIATY: We can only deliberate on the
5 question of moving to substitute the thing, not actually
6 allowed to deliberate on the merits of it until it becomes
7 the substituted motion.

8 MR. GRAHAM: Okay, understood. Thank you.

9 MR. BACARISSE: Very, very focused activity
10 right here.

11 Member Alvarado.

12 MR. ALVARADO: If the motion is passed or
13 granted, what then of the first motion?

14 MS. MORIATY: So the first motion would no
15 longer be the motion under consideration. It would
16 essentially disappear and you would be looking at Member
17 Gillman's motion as the motion under consideration. You
18 could then deliberate on its merits and vote on its merits
19 or amend it. That would become the motion under
20 consideration. If it does not pass, then there would be
21 an opportunity for other motions; Member Scott could bring
22 his motion back.

23 MR. ALVARADO: Thank you.

24 MR. BACARISSE: Okay. So we are now at a point
25 where we have a motion and a second to adopt Member

1 Gillman's motion as the substitute motion. Okay? Are we
2 clear members, good? There's no real discussion about
3 that. Okay. So there's no discussion on that particular
4 issue because it's very clear and very narrow, so I will
5 now call the vote on this particular motion, the
6 substitute motion.

7 Member Alvarado?

8 MR. ALVARADO: Nay.

9 MR. BACARISSE: I'm going to take a little more
10 time because I'm writing it down.

11 Member Scott?

12 MR. SCOTT: Aye.

13 MR. BACARISSE: Member Omumu?

14 MS. OMUMU: Aye.

15 MR. BACARISSE: Member Prewitt?

16 MR. PREWITT: Nay.

17 MR. BACARISSE: Member Graham?

18 MR. GRAHAM: Aye.

19 MR. BACARISSE: Member McRae?

20 MS. McRAE: Nay.

21 MR. BACARISSE: Member Gillman?

22 MS. GILLMAN: Aye.

23 MR. BACARISSE: And I vote aye as well, so that
24 is five ayes and three nays.

25 MS. MORIATY: Chairman, if I may, since Member

1 Gillman's motion is now the motion under consideration, I
2 would request that we go into closed session to discuss
3 it.

4 MR. BACARISSE: Very good. We will step into
5 closed session. The time is now 11:41 in the morning, so
6 we will be out for a period of time, I don't know how
7 long. Thank you.

8 MS. MORIATY: Chairman, if we could get you to
9 reread the closed session language, we need to name the
10 statute. I'm sorry, it's very specific.

11 MR. BACARISSE: It is. So we are now going
12 into closed session. It is now, as I had mentioned, 11:41
13 in the morning on June 8, 2023. We'll go into closed
14 session under Texas Government Code Sections 551.071,
15 551.076 and 551.089.

16 For those of you in the audience, I don't know
17 how long we're going to be in closed session, so just hang
18 with us. Thank you.

19 (Whereupon, at 11:41 a.m., the meeting was
20 recessed, to reconvene this same day, Thursday, June 8,
21 2023, following conclusion of the executive session.)

22 MR. BACARISSE: It is now 12:15 p.m. and the
23 Board of the Texas DMV is now back in open session. No
24 action items will be taken up from the closed session that
25 we had and we'll now move forward.

1 I believe we are at the point -- and, Counsel,
2 you will have to make sure I say this correctly -- we have
3 a motion on the floor from Member Gillman and has it
4 received a second yet?

5 MS. MORIATY: I believe it has.

6 MR. BACARISSE: Who was it? Member Graham.

7 MS. MORIATY: It was seconded and voted, and it
8 is now the motion on the floor. We don't need another
9 second; we just need a deliberation and a vote on the
10 merits.

11 MR. BACARISSE: Right, so we have discussion
12 now of Member Gillman's motion.

13 MS. MORIATY: Right. Sorry to be confusing.

14 MR. BACARISSE: That's all right. Thank you.

15 So members, we have a motion and a second, and
16 we are going to open the floor for discussion. Members,
17 just let me recognize you if you have a question or
18 anything.

19 Vice Chair McRae.

20 MS. McRAE: The issue of injury to the public,
21 I think that is the number-one issue here, is that there
22 is potential injury to the public. They had 206 vehicles
23 that we know they had said had received new airbags or
24 cylinders, 250 that were unrelated also had been reported
25 to be fixed with other issues. We had, I think, 360 that

1 we don't know what happened to those.

2 There are 360 potential vehicles still out on
3 the roadways today that could be in harm either by death
4 or by injury. So I think injury to the public is very
5 important, and I think that due to the severity of that, I
6 disagree with your comment, Member Gillman, that injury to
7 the public is minimal.

8 MR. BACARISSE: Speak to me, speak to the
9 chair.

10 MS. McRAE: Chairman.

11 MR. BACARISSE: Thank you.

12 MS. GILLMAN: May I respond? It's
13 deliberation.

14 MR. BACARISSE: Sure, Member Gillman, go ahead.

15 MS. GILLMAN: I would just say that I don't
16 disagree actually that Member McRae is correct that all of
17 those airbags that the customers thought that they were
18 repaired and still are not is horrific, but I don't know
19 how that is different than all the other airbags driving
20 around the state of Texas that have not been exchanged
21 also.

22 And I do understand the difference. The
23 customer thought that they were repaired versus the ones
24 that are driving around with the recall still not
25 complete.

1 I just feel like the burden of the Takata
2 airbag replacement is a shared responsibility and it is
3 devastating what this technician did, it's horrific, but I
4 just don't feel like the dealer here should be subject to
5 termination for that one bad actor because there's so
6 many. Takata airbags do present an injury to all of Texas
7 drivers that have not done the recall.

8 MR. BACARISSE: Members, any other questions?

9 Member Graham.

10 MR. GRAHAM: So I probably will stick to injury
11 or benefit to the public here, because I think that is
12 where sort of this thing hinges. I still struggle with
13 understanding why the ALJs focused so heavily on what
14 happened in the first 90 days without really giving any
15 due consideration to what happened post-cure.

16 I don't get it, because the ALJs say in the
17 record -- they say evidence suggests World Car is
18 currently trying to comply with Mazda's requirements, they
19 say World Car North's addition of the part-for-part policy
20 appears to be good, they say World Car's service
21 department is currently performing well, they say WCN has
22 two high-level employees who appear engaged in the process
23 of ensuring service work is properly done and that re-
24 inspections are conducted.

25 And yet in the findings of fact they completely

1 ignore that and they put all their entire decision on what
2 happened in the first 90 days, and I can only imagine what
3 those first 90 days were like for the dealer, for the
4 employees, for Mazda, but I think there ought to be some
5 consideration given to what the dealer did post-cure.

6 That was where to me you drive the stake in the
7 ground and Mazda says, all right, here's where we are at
8 and you better fix it or you're gone, and the evidence
9 from this record shows that they did, but the ALJs didn't
10 consider it, and that's where I take issue.

11 MR. BACARISSE: Member Scott.

12 MR. SCOTT: Yes. Thank you, Mr. Chairman.

13 On the amendment proposed by Member Gillman, it
14 talks about conclusions of law numbers 15 and 16, and the
15 motion says with the correct interpretation of the
16 statutory factors and the modifications explained below,
17 four of the facts weigh against termination. And weighing
18 against termination, number two is the injury or benefit
19 to the public.

20 So in the course of deliberation, I would just
21 say I disagree with that. I disagree with the fact that
22 the injury or benefit to the public, that factor, weighs
23 against termination. I say that it weighs in favor of
24 termination.

25 MR. BACARISSE: Thank you.

1 MR. PREWITT: Mr. Chairman.

2 MR. BACARISSE: Yes, Member Prewitt.

3 MR. PREWITT: I'd like to make a few comments.

4 I'd like to first address the points at the bottom of
5 page 5 of Member Gillman's motion as it pertains to the
6 decision at hand.

7 Point number one, the dealer's investment and
8 obligations. In my mind it's a sunk cost. They made that
9 investment knowing that they took the risk of business
10 ownership, and while they have invested that money and
11 they owe money, to me that would even make it more
12 imperative that they manage their enterprise in a manner
13 that would have avoided this situation to begin with.

14 Instead it appears to have evidence from the
15 ALJ that mismanagement did happen. There were acts made
16 by an individual that was not of management, but it goes
17 up the chain to management. You have to take
18 responsibility for an enterprise you own and operate,
19 especially when you have the public's safety at risk.

20 Number two, injury or benefit to the public.
21 As we heard in testimony and in the voluminous case we've
22 read, there was an opportunity to repair basically the
23 non-repair of these Takata airbags.

24 It was, again, involving one primary
25 individual, Mr. Winkler, but again, where was the

1 oversight, where was the management, why did so many cars
2 get basically by this process without the knowledge of the
3 ownership of the dealership?

4 Further, one of those individuals at the
5 dealership, Mr. Minatra, was there at a time when
6 statements that were maybe construed as misleading or
7 incorrect to Mazda were made, yet he has not left; he is
8 still at the dealership. So to say that you've changed
9 your team is not totally correct; you still have some of
10 the former teammates there.

11 The adequacy of the dealer's facilities,
12 equipment, parts, I have no argument with the fact that
13 you've made changes; I have no argument whether the dealer
14 is honoring warranties, other than the fact what we have
15 in the record was they were not.

16 Yes, the technician in question, he purportedly
17 made repairs and he didn't. The dealership collected
18 money from Mazda for those repairs, to later find, not by
19 the dealer's own admission but by the discovery of Mazda
20 North, that these repairs had not been made.

21 And so I'm not in the car dealership business;
22 I'm in the trucking business. The members that are
23 supporting this motion are in the car business, so they
24 obviously know that industry better than I do, but in my
25 mind in my business of trucking, if I make a mistake,

1 whether or not anybody dies or not, and the DOT finds out
2 about it and it's a significant enough mistake that occurs
3 over a period of time, they'll yank my license, they'll
4 say your DOT number is now defunct, you're no longer in
5 business. So I have to question why what I have to abide
6 by can't be also abided by another industry that also has
7 governmental oversight.

8 Injury or benefit to the public -- well, let me
9 go back. The final two points that Stacey mentioned,
10 Member Gillman mentioned that are neutral and weigh
11 neither in favor or against termination. One was sales in
12 relation to market; I agree with that.

13 The second one, however, the enforceability of
14 the franchise agreement as neutral, I disagree with. If
15 you're in a franchise agreement, you have a contractual
16 relationship with a franchisor to do what they ask you to.

17 If you don't do that and you violate the franchise
18 agreement, to me it's a fairly black and white case.
19 There can be reasons it wasn't maintained or wasn't done,
20 but if there's recurrent problems with that, it questions
21 whether you can get by with that.

22 And if this, as Member Gillman stated, is a
23 landmark case -- and it's a very tough case, I agree --
24 but the question is if we say things like that are we then
25 saying it's okay for dealers across the state to really

1 don't worry about your franchise agreement, it's writing
2 but it doesn't matter?

3 It does matter. And as produced in the
4 evidence, it seems like we have evidence that was not
5 followed.

6 So as I see it, factors 1 and 2, factor 1 being
7 dealer's sales in relation to sales in the market, I agree
8 that's neutral; factor 2, dealer investment and
9 obligation, I think that's also neutral. Injury and
10 benefit to the public, significant issue, I think that's
11 one we can't ignore.

12 Factor 4, adequacy of dealer facilities,
13 equipment, parts, personnel, again, we had problems with
14 Mr. Winkler, we had problems up the line in management,
15 and that's a problem.

16 Factor 5, whether warranties are being honored
17 or not, we found that that did happen, that they were not
18 being honored and the compliance was not happening. And
19 again, you can say it was one person's fault, but at some
20 point you have to take accountability, you have to be
21 accountable for the actions of your employees because you
22 own that dealership. The employee doesn't own it, you own
23 it. And so to me that sort of sides in favor of the ALJ.

24 Factor 6, compliance with the franchise, to the
25 extent that a franchise conflicts with the Occupations

1 Code 2301, World Car North submitted false reports, the
2 warranty repairs. Again, it was an employee that did
3 this, it wasn't management that did this, but management
4 has the responsibility to oversee employees' actions. To
5 me, if you don't then what are you running? I mean, is
6 everybody an independent contractor that does what they
7 want and goes home at the end of the day? I think not.

8 Factor 7, enforceability of the franchise from
9 a public policy standpoint, including issues of the
10 reasonableness of the franchise's terms, oppression and
11 adhesion of the parties' relative bargaining power:

12 Neither party contended that the dealer agreement was
13 unenforceable, and this factor, per the ALJ is a neutral
14 factor, I would agree.

15 The trustworthiness, we've already determined
16 you can't make that stick because of what happens in the
17 future. But in sum, I would just say while I appreciate
18 the impact this decision might have, I also realize we
19 have a responsibility to the public of the state of Texas.

20 That's what we as an agency -- one of our
21 primary, I think, missions is to make sure that things are
22 done properly and correctly in the state to protect our
23 public, and because of that, I think that's one of the
24 primary things I would say I can't support Member
25 Gillman's motion.

1 Thank you.

2 MR. BACARISSE: Members, anyone else.

3 MS. GILLMAN: I have a very quick --

4 MR. BACARISSE: Okay. Let me just see if
5 another member who hasn't spoken yet would like to speak
6 or address this motion.

7 Member Alvarado.

8 MR. ALVARADO: I'll be brief. I disagree with
9 Member Gillman's motion almost entirely. I believe
10 there's too much reliance on the post-cure period, not
11 enough focus on injury and benefit to the public. There's
12 issues with the technician, there's issues with
13 supervisors and management above that, and ownership above
14 that. So most of those items have been discussed in
15 detail, but that's my position on Member Gillman's motion.

16 MR. BACARISSE: Thank you.

17 Members, anyone else?

18 MR. GRAHAM: I'll just touch on a couple of
19 other things, if I may.

20 MR. BACARISSE: Member Graham.

21 MR. GRAHAM: Thank you.

22 I said I wasn't going to come back to these,
23 but I'm going to touch on a couple that I didn't mention.

24 Regarding the adequacy of service facility,
25 equipment, parts, and personnel, obviously they made the

1 determination that facility, equipment and parts were all
2 very good. Personnel was the issue. And in that
3 discussion on personnel, finding of fact 85 says while
4 World Car North's service department is currently
5 performing well, there is significant reason to believe
6 that that would change should Mr. Hewitt depart or if
7 Mazda is not regularly reviewing its work.

8 And then I will follow that with this, which
9 comes from Ford versus Metro. The 3rd Court of Appeals
10 held that when evaluating a termination case, the Board
11 should only look to the franchised dealer's past and
12 current performance and not engage in a speculative
13 evaluation of what kind of relationship a manufacturer and
14 dealer might have in the future.

15 I think that's pretty clear where the ALJs
16 focused on what they think might happen to make a
17 determination in finding of fact -- what is that finding
18 of fact number -- regarding adequacy of service
19 facilities, equipment, parts, and personnel, I think they
20 missed the mark there on that for that reason.

21 I'll touch on one other thing regarding -- I've
22 got so many notes here, I think there's one other previous
23 one I'd like to touch on -- the dealer's investments and
24 obligations. I mean, how is it that the ALJs seemed to
25 recognize that a significant -- I mean, the question on

1 that item is does the dealer, whatever the dealer is, have
2 significant investments and obligations?

3 I mean, that's not a hard question, it's a yes
4 or no question. This dealer has millions of dollars of
5 investments and obligations, yet the ALJs can't seem --
6 it's neutral. I don't know about you, but my millions of
7 investments in my dealerships, that's not neutral; I mean
8 that's significant. So that one I continue to struggle
9 with; I think they got that wrong as well.

10 I know this is a tough case, and I have the
11 utmost respect for my Board members and what we're doing
12 here and we're deliberating this, and I appreciate that
13 very much. Thank you.

14 MR. BACARISSE: Thank you, Member Graham.

15 Member Gillman, would you like to be
16 recognized?

17 MS. GILLMAN: Yes. Thank you, Mr. Chairman.

18 MR. BACARISSE: Certainly.

19 MS. GILLMAN: It is just not -- sadly, it is
20 just not unusual in dealership life to have problems,
21 errors and an employee that goes outside of policy. In
22 our own dealership we did an audit, we found problems, but
23 no one told me about it until the State told me. It was
24 about state inspections. No one told me until the State
25 advised me, and then I was allowed -- then I leaped into

1 action, and that happened last week.

2 And so I find it so difficult when there is a
3 problem, someone that goes around policy, hides it from
4 management -- just like happened to me -- once the dealer
5 was advised, he acted.

6 So I don't see in 30 years this recurrent
7 problem. I feel like it's almost normal that employees
8 hide their errors and try and fix it themselves.
9 This was such a grave problem, I'm so thankful that Mazda
10 alerted the dealer, but in 30 years and until today, I
11 don't see where there has been a recurrent problem.

12 And so for those reasons, I feel like -- and
13 the decision here today, what the Board decides is about
14 giving a dealer the opportunity to cure, and for those
15 reasons, that's why I feel this decision should be
16 flipped.

17 Thank you.

18 MR. BACARISSE: Thank you, Member Gillman. I
19 appreciate your well reasoned and serious thoughts on
20 this, as I do all the members that are here and that have
21 voiced excellent comments. So thank you, members, I just
22 want to say that up front.

23 So at this point we have a motion. Are there
24 any other comments? And we have a second on this motion.
25 Are there any other comments?

1 (No response.)

2 MR. BACARISSE: If not, the motion is to --
3 well, I don't want to misstate it, so Counsel, why don't
4 you state.

5 MS. MORIATY: It's Member Gillman's motion that
6 she read earlier. If we want it reread, we could, but I
7 bet you're good.

8 MR. BACARISSE: I think we all have it
9 published here.

10 MS. MORIATY: So that is the motion that we are
11 now voting on.

12 MR. BACARISSE: Right. Very good. Thank you.
13 So we are voting up or down on this motion.
14 All right? So I will now call the roll.

15 Member Alvarado?

16 MR. ALVARADO: Nay.

17 MR. BACARISSE: Member Scott?

18 MR. SCOTT: Nay.

19 MR. BACARISSE: Member Omumu?

20 MS. OMUMU: Nay.

21 MR. BACARISSE: Member Prewitt?

22 MR. PREWITT: Nay.

23 MR. BACARISSE: Member Graham?

24 MR. GRAHAM: Aye.

25 MR. BACARISSE: Member McRae?

1 MS. McRAE: Nay.

2 MR. BACARISSE: Member Gillman?

3 MS. GILLMAN: Aye.

4 MR. BACARISSE: And I, Bacarisse, vote nay. So
5 we are six nays and two ayes. The motion fails.

6 Is there a member that wishes to make another
7 motion?

8 MS. McRAE: Yes, Chairman. I would like to
9 consult with our general counsel to provide another
10 motion.

11 MR. BACARISSE: Very good. Hold on just a
12 moment. I've got to read my little thing I have to read.
13 Well, we're just going to go --

14 MS. MORIATY: It's just a break.

15 MR. BACARISSE: Thank God. Okay, great.

16 It's now 12:37 in the afternoon and we're going
17 to pause the meeting for a few moments while a member
18 consults with counsel. Thank you.

19 (Whereupon, a brief recess was taken.)

20 MR. BACARISSE: It is now 12:47 p.m., and this
21 is to note that the DMV Board is back in open session.

22 We are at a point now where the chair would
23 entertain another motion on the contested case, and I
24 believe I need to recognize Vice Chair McRae.

25 You have the floor.

1 MS. McRAE: I do. I would like to point out
2 that this motion is Member Scott's original motion. Our
3 general counsel has recommended that I read the motion
4 again. Correct?

5 MS. MORIATY: Yes, let's read it again.

6 MS. McRAE: Okay.

7 MR. ALVARADO: May I have a question? I'm
8 sorry to interrupt.

9 MR. BACARISSE: Member Alvarado, sure.

10 MR. ALVARADO: Is it the exact motion from the
11 original or are you changing it in any way?

12 MS. McRAE: It is the exact motion.

13 MR. ALVARADO: Okay. Thank you.

14 MS. McRAE: Thank you, Chairman.

15 I move the Board adopt the following from the
16 proposal for decision: findings of fact numbers 1 through
17 36, findings of fact numbers 38 through 97, and
18 conclusions of law numbers 1 through 11.

19 I move that the Board modify findings of fact
20 number 37 and 98 from the proposal for decision to read as
21 follows:

22 Finding of fact number 37: In the morning of
23 May 25, 2018, Mr. Webber emailed Mr. Minatra and Mr.
24 Zabihian to tell him that he was compiling an initial list
25 of cars that need an inspection to ensure that the airbag

1 inflator replacement reported by World Car North had
2 actually occurred.

3 Finding of fact number 98: Mazda is concerned
4 about World Car North's trustworthiness.

5 These changes are permissible under Texas
6 Government Code Section 2001.058(e) because there is a
7 technical error in a finding of fact and because the
8 administrative law judge, ALJ, did not properly apply or
9 interpret either Texas Occupations Code 2301.455(a) or a
10 prior court decision involving Metro Ford Truck Sales,
11 Inc. and Ford Motor Company, which I will refer to as
12 Metro Ford.

13 For finding of fact number 37, the change is
14 necessary because the ALJ made a technical error
15 misstating the year as 2021 rather than 2018. The proposed
16 new language for finding of fact number 37 simply corrects
17 that date.

18 Respondent's Exhibit R-08 from the State Office
19 of Administrative Hearings is an email chain which
20 includes the May 25, 2018 email from Mr. Webber to many
21 people, including Mr. Robert Minatra and Nader regarding
22 the initial list of cars that would need re-inspection.
23 The email address for Nader is the email for Mr. Ahmad
24 Nader Zabihiyan, according to finding of fact number 8 from
25 the proposal for decision and Volume 1, pages 101 and 102

1 of the transcripts from the State Office of Administrative
2 Hearings. Mr. Minatra testified about receiving the email
3 dated May 25, 2018, according to Volume 2, pages 463 and
4 481 through 487 of the transcripts from the State Office
5 of Administrative Hearings.

6 The change to finding of fact number 98 is
7 necessary because of the following reasons: the ALJ
8 misinterpreted the court's decision in Metro Ford to mean
9 that a lack of trust between a dealer and a manufacturer
10 is a reason for termination; and number two, the ALJ
11 misinterpreted Texas Occupations Code 2301.455(a)
12 regarding what existing circumstances are relevant for the
13 Board's to consider in deciding whether to terminate a
14 dealer's franchise.

15 As in all relationships, trust between a dealer
16 and a manufacturer is always in flux, growing and
17 declining, and growing again as the dealer and
18 manufacturer work through various issues and events in the
19 course of their relationship. Trust is, therefore, too
20 volatile and fickle to be the basis of a decision to
21 terminate a franchise.

22 In the Metro Ford case, the court analyzed the
23 statute which became the current Occupations Code
24 2301.455(a) and determined that the statute requires a
25 consideration of existing circumstances rather than

1 speculative evaluation of what kind of relationship a
2 manufacturer and dealer might have in the future.

3 Although the court said that the dealer's
4 admitted efforts to deceive Ford violate basic and
5 fundamental precepts of the relationship between
6 manufacturer and dealer and that Metro will probably not
7 perform according to the terms of its franchise agreement
8 if allowed to remain a dealer, the court did not make its
9 decision on this speculative point.

10 The court emphasized that the undisputed facts
11 alone justified Ford's actions in terminating Metro, so no
12 speculation about the future relationship was necessary to
13 decide the case.

14 Finding of fact number 98 therefore
15 misinterprets the existing circumstances under Texas
16 Occupations Code 2301.455(a) in Metro Ford regarding
17 whether a good cause for terminating a dealership's
18 franchise.

19 Concern about a dealer's trustworthiness is too
20 vague and potentially too temporary to be an additional
21 factor on which to terminate a franchise. As the ALJ
22 herself noted on page 40 of the proposal for decision, the
23 trustworthiness analysis is essentially the same as the
24 injury or benefit analysis under Texas Occupations Code
25 2301.455(a) (3) because it is all about the dealership's

1 initial slow response to the problem.

2 Under a correct interpretation of Texas
3 Occupations Code 2301.455(a), the issue of the
4 dealership's initial slow response to the problem is
5 addressed fully through the analysis of injury to the
6 public required by subsection (a)(3) and does not require
7 the Board to look to a separate vague question of trust as
8 another existing circumstance under subsection (a). It is
9 therefore necessary to modify finding of fact number 98 to
10 remove the ALJ's improper conclusion that concern over
11 trustworthiness is a fact that supports termination
12 separate and apart from the factor of injury to the
13 public.

14 With these modifications, I move as follows:
15 that the Board find that Mazda has met its burden of
16 demonstrating good cause for the termination of World Car
17 North's franchise, that the Board deny World Car North's
18 protest, and that the Board approve the termination of
19 World Car North's franchise.

20 MS. GILLMAN: And Mr. Chairman --

21 MR. BACARISSE: Just a moment.

22 Thank you, Member McRae.

23 Is there a second for this motion?

24 MR. ALVARADO: Second.

25 MR. BACARISSE: Member Alvarado has seconded.

1 Okay, we have a motion and a second.

2 Now, Member Gillman.

3 MS. GILLMAN: May I make a friendly amendment
4 to Member McRae's motion? And I'll need to confer with
5 counsel.

6 MS. McRAE: Does Member McRae accept it?

7 MR. BACARISSE: You have to agree to accept.

8 MS. McRAE: I have to know what it is.

9 MR. BACARISSE: You have to find out what it is
10 first. Isn't that fun?

11 Okay. So we will take a brief recess, please.

12 It is 12:54 p.m., and we'll be in recess for a few
13 moments. Thank you.

14 (Whereupon, a brief recess was taken.)

15 MR. BACARISSE: All right. It is 1:14 in the
16 afternoon, and we are now back from our brief recess, and,
17 Counsel, remind me where we are.

18 MS. MORIATY: I believe Member Gillman has said
19 that she wants to offer a friendly amendment.

20 MR. BACARISSE: Right. Thank you.

21 Member Gillman.

22 MS. GILLMAN: Thank you, Mr. Chairman and
23 Member McRae.

24 My friendly amendment, what I'd like to do is
25 refer the Board to -- because you have my motion in front

1 of you, I'm going to be reading just two sentences from
2 page 1 and then the second paragraph of page 3.

3 So my friendly amendment is that I would like
4 to move that the Board reject finding of fact number 73
5 and to add a new conclusion of law number 9.5. It says
6 10, but I'm making it 9.5. World Car North's investment
7 and obligations weigh against termination.

8 Please go to page 3. On the issue of World Car
9 North's investment and obligations, which the Board must
10 consider under Texas Occupations Code 2301.455(a)(2),
11 finding of fact 16, 19, 70 through 72 show that World Car
12 North has invested \$1.8 million in fixed assets and has \$3
13 million in debt obligations.

14 These are significant numbers. The ALJ
15 misinterpreted Texas Occupations Code 2301.455(a)(2) by
16 holding that this factor weighed neutrally because these
17 numbers are large enough that they should weigh against
18 termination.

19 As a result, it's necessary for the Board to
20 reject finding of fact number 73 and to add new conclusion
21 of law number 9.5 because the factor of investments and
22 obligation weighs against termination in this case.

23 With that, Member McRae, that concludes my
24 friendly amendment, and at this time I think you are
25 allowed to --

1 MR. BACARISSE: I've got it.

2 MS. GILLMAN: Thank you, thank you.

3 MR. BACARISSE: Thank you, Member Gillman.

4 The chair recognizes Member McRae.

5 MS. McRAE: Okay. I do have one question of
6 Member Gillman, if that's okay, Chairman.

7 MR. BACARISSE: Certainly.

8 MS. McRAE: Going back to page 1, what were
9 your changes, your friendly amendment.

10 MS. GILLMAN: I move that the Board reject
11 finding of fact 73.

12 MS. MORIATY: If I may clarify, Chairman?

13 MR. BACARISSE: Please.

14 MS. MORIATY: Member Gillman, these are
15 additions you're making to Member McRae's motion. Right?

16 MS. GILLMAN: Correct.

17 MS. MORIATY: You're not removing anything,
18 we're just adding this on to Member McRae's motion.

19 MS. GILLMAN: Correct.

20 MR. BACARISSE: I don't find finding of fact
21 number 73. I mean, I see it but could somebody remind me,
22 refresh my memory what that finding of fact is?

23 MR. GRAHAM: Sure. I have it right here.

24 MR. BACARISSE: Okay, Member Graham, thank you.

25 MR. GRAHAM: Finding of fact 73 stated -- and

1 this is under the section Statutory Good Cause Factor for
2 World Car North's Investments and Obligations.

3 MR. BACARISSE: Right.

4 MR. GRAHAM: Number 73 reads: This factor
5 neither weighs for or against termination.

6 MR. BACARISSE: Okay. Thank you.

7 MS. McRAE: May I speak?

8 MR. BACARISSE: Member McRae.

9 MS. McRAE: Okay. I will accept the friendly
10 amendment.

11 MR. BACARISSE: In its entirety?

12 MS. McRAE: In its entirety.

13 MR. BACARISSE: Okay. So I have a question as
14 chair. Do we now have a motion before this Board that
15 both is for and against termination?

16 MS. MORIATY: So we have a factor that is
17 weighing against termination, but your final calculus is
18 still weighing for termination.

19 MR. BACARISSE: As Member McRae's motion reads?

20 MS. MORIATY: Right.

21 MR. BACARISSE: Could you explain that? I'm
22 sorry; I want you to be a little bit more fulsome.

23 MS. MORIATY: So we have seven factors, and
24 perhaps there's a part of Member McRae's motion that will
25 need to be clarified in order to make sure that it matches

1 with Member Gillman's motion. Let me get Member McRae's
2 motion in front of me.

3 MR. BACARISSE: Sorry, Laura. Member McRae has
4 asked for a brief consultation time.

5 MS. MORIATY: Sure.

6 MS. McRAE: Just really brief. I have one
7 question.

8 MR. BACARISSE: Great. We'll take a super
9 brief recess. It is now 1:19 p.m.

10 (Whereupon, a brief recess was taken.)

11 MR. BACARISSE: So we are back from our brief
12 recess. It is 1:22 p.m., and as it stands now, Member
13 McRae has accepted the friendly amendment. Am I correct?

14 MS. McRAE: That is correct.

15 MR. BACARISSE: And do you need to clarify what
16 it is or the original motion that Member McRae read out to
17 us, how does the friendly amendment, which has been
18 accepted, fit in there, just so we understand completely.

19 MS. MORIATY: It has changed the way that one
20 factor out of the seven is now weighing. It's changing
21 investment and obligations to weigh against termination.
22 It was originally neutral under the ALJ's holding.

23 So we still have four factors that are weighing
24 in favor of termination, and now we have two factors that
25 are neutral and one factor that is weighing against

1 termination. So your calculus here, four is still the
2 weight of where we're headed. I don't think the outcome
3 changes here; we just have one factor that has changed
4 from neutral to against.

5 MR. BACARISSE: Okay, great.

6 So that friendly amendment has been accepted,
7 and we have a motion and a friendly amendment on the
8 table. Is there any discussion about the amended motion
9 on the table, members?

10 Member Scott, I see you moving, or are you just
11 leaning forward?

12 MR. SCOTT: I had to push this little button.

13 MR. BACARISSE: Oh, yes.

14 MR. SCOTT: In deliberation or discussion can I
15 just make just a comment?

16 MR. BACARISSE: Certainly.

17 MR. SCOTT: My comment has to do with the
18 portion of the motion --

19 MS. MORIATY: Excuse me, Chairman. I'm sorry.

20 MR. BACARISSE: Yes.

21 MS. MORIATY: We need to get a second on the
22 consolidated motion before we start deliberating, just to
23 make sure we have some buy-in.

24 MR. BACARISSE: I'm sorry. I thought that was
25 accepted.

1 So we have a motion with a friendly amendment
2 that has now been put together, so is there a second on
3 that?

4 MS. OMUMU: I'll second it, Mr. Chairman.

5 MR. BACARISSE: So Member Omumu has seconded,
6 so Member Scott, you may go forward at this point. Thank
7 you.

8 MR. SCOTT: Thank you.

9 I just wanted to express my thoughts on the
10 portion of the motion regarding the issue of trust, and
11 the reason that I felt it was important is because I just
12 feel like we should be making decisions, deliberating on
13 the basis of fact and statute, and I feel like the idea of
14 considering trust is just inappropriate because it can
15 come and go.

16 And if we as a board were to leave something in
17 there about trust and you look into the future, you get to
18 a situation where somebody could just unilaterally make a
19 comment or make a statement that I don't trust, and then
20 we would be in a spot where we would give consideration to
21 that thought, and that thought is just that, it's just a
22 thought. It's not a matter of fact, it doesn't have to be
23 supported; it's an emotion, and from a position of our
24 Board, I just think it's inappropriate for us to accept
25 something that's so squishy.

1 MR. BACARISSE: Your point is well made, Member
2 Scott, and as I understand things, that part of what is
3 now Member McRae's motion where we discussed that issue,
4 it comports with what you're saying. So thank you.

5 Member Alvarado, did you have a question?

6 MR. ALVARADO: Thank you.

7 Just to be sure, can you restate the friendly
8 amendment? You don't have to restate the entire motion.

9 MS. GILLMAN: Yes. My friendly amendment is to
10 include with what Member McRae said that the Board reject
11 finding of fact 73 and to add new conclusion of law 9.5,
12 World Car's investment and obligations weigh against
13 termination. And the paragraph I read was the second
14 paragraph on page 3.

15 MR. ALVARADO: Okay.

16 MR. BACARISSE: Members, any other questions on
17 this?

18 Member Alvarado, are you good?

19 MR. ALVARADO: Yes.

20 MR. BACARISSE: All right. No other questions.
21 Yes, Member Gillman.

22 MS. GILLMAN: Mr. Chairman, I have a second
23 friendly amendment.

24 MR. BACARISSE: We're going to take these one
25 at a time. Can we do that? Should we take them all --

1 MS. MORIATY: I'm sorry. She's offering to
2 amend the current motion, so I think we have to deal with
3 her amendment before we can do that.

4 MR. BACARISSE: Fine, fine. Sorry, yes.
5 Right.

6 Okay, sorry. Go right ahead.

7 MS. GILLMAN: Additionally, to support and add
8 to Member McRae's motion, I'd like to -- and I'm going to
9 be reading from bits of page 1 and then the very bottom of
10 page 3 and top of page 4.

11 So from page 1, this is my second friendly
12 amendment. I move that the Board change finding of fact
13 85.

14 MR. BACARISSE: Which is what?

15 MS. GILLMAN: Finding of fact 85, World Car
16 North's service department is currently performing well is
17 my change.

18 And at the bottom of page 3, it is important to
19 note that Metro Ford emphasized only past and current
20 performance; it did not authorize the Board to look at
21 hypothetical predictions about future performance.

22 It's therefore appropriate for the Board to
23 reject the hypothetical predictions such as the ones in
24 the second half of finding of fact number 85, which
25 imagines a fictional future world in which World Car North

1 has less competent service staff.

2 This is not an existing circumstance or a fact
3 but just speculation. A fact is universal; it does not
4 vary from person to person and can be proven or disproven
5 with evidence.

6 It is therefore necessary and appropriate to
7 modify finding of fact number 85 to remove the speculation
8 and preserve only the existing fact. World Car North's
9 service department is currently performing well. This
10 change is necessary because the ALJ incorrectly
11 interpreted Texas Occupations Code 2301.455(a) and Metro
12 Ford, which, when interpreted correctly, forbids the Board
13 from considering speculation of how the dealer might
14 perform in the future.

15 MR. BACARISSE: That's your friendly amendment?

16 MS. GILLMAN: That is all. Yes.

17 MR. BACARISSE: Okay. That's a friendly second
18 amendment. Member McRae?

19 MS. McRAE: I do not accept the friendly
20 amendment.

21 MR. BACARISSE: Number two?

22 MS. McRAE: Number two.

23 MR. BACARISSE: Okay, thank you.

24 Members, are there any other questions about
25 the motion and amendment that is on the floor?

1 (No response.)

2 MR. BACARISSE: If not, I will call for a vote.

3 MS. GILLMAN: Is there any deliberation?

4 MR. BACARISSE: Well, I mean, I asked if there
5 were any questions, and there were no questions.

6 MS. MORIATY: We need to do all amendments at
7 this point, so if you have any further motions to amend,
8 this would be the time before the question is called.

9 MS. GILLMAN: You mean before deliberation?

10 MR. BACARISSE: Well, we're in deliberation.

11 MS. MORIATY: He's heading to a vote, it
12 appears to me.

13 MR. BACARISSE: She rejected your second
14 friendly amendment. I asked the Board if they had any
15 questions, there was silence, which I took to mean no, and
16 so the chair is calling the vote.

17 MS. GILLMAN: Okay.

18 MR. BACARISSE: So do you have another
19 amendment that you'd like to offer?

20 MS. GILLMAN: No, sir.

21 MR. BACARISSE: Okay. Then the chair is -- I'm
22 sorry. Member Alvarado.

23 MR. ALVARADO: The vote you're calling on is on
24 Vice Chair McRae's motion with the accepted friendly
25 motion from Member Gillman?

1 MR. BACARISSE: Yes, exactly. This is the
2 issue that we will vote on now. Right?

3 So I've called the vote. We discussed it
4 previously, so there will be no further discussion. We're
5 just going to vote on Member McRae's motion and her
6 acceptance of the friendly amendment which changes a
7 couple of facts in the motion slightly.

8 Do we need to have that reread or not? Are we
9 good, members? If you want it reread, let me know.

10 (No response.)

11 MR. BACARISSE: Okay, fine. Then I am calling
12 the vote.

13 Member Alvarado?

14 MR. ALVARADO: Nay.

15 MR. BACARISSE: Member Scott?

16 MR. SCOTT: Aye.

17 MR. BACARISSE: Member Omumu?

18 MS. OMUMU: Okay, I have a question. I'm
19 sorry, Mr. Chairman.

20 MR. BACARISSE: Okay.

21 MS. OMUMU: We are voting on Member Scott's
22 original, then Vice Chair McRae's updated. Correct?

23 MR. BACARISSE: Plus the slight friendly
24 amendment that Member Gillman put on there.

25 Should we reread things so that we all know

1 what we're voting on.

2 MS. OMUMU: Please. I'm confused. Thank you,
3 Mr. Chairman.

4 MR. BACARISSE: We're going to stop the vote --
5 we will start the vote over, but at this time I'll ask
6 counsel to read -- sorry -- to read the motion that we
7 will vote on, including the friendly amendment. Thank
8 you. So we all need to know what we're doing here; that's
9 important. That's fine. I think it's good if we get it
10 nailed down.

11 MS. MORIATY: Okay.

12 MR. ALVARADO: Just to interject real quick.

13 MR. BACARISSE: Oh, sure. Go ahead, Member
14 Alvarado.

15 MR. ALVARADO: Tell me if I step out of line
16 here, but I support Member Scott's original motion and
17 Vice Chair McRae's original motion without the friendly
18 amendment, so that was why I voted nay last time.

19 MR. BACARISSE: Okay. So I appreciate that.
20 What we're facing here, though, is a -- well, counsel will
21 read it out and what we are facing and what we will vote
22 on up or down is Member McRae's motion, which is in large
23 part Member Scott's original motion, plus the friendly
24 accepted amendment from Member Gillman. Does that make
25 sense, Member Omumu?

1 MS. OMUMU: [Inaudible].

2 MR. BACARISSE: I see you looking at me. I
3 want to know are we good?

4 MS. OMUMU: [Inaudible].

5 MR. BACARISSE: Okay. Are we ready to roll?

6 MS. MORIATY: I think so.

7 I move that the Board adopt the following from
8 the proposal for decision: findings of fact numbers 1
9 through 36, findings of fact numbers 38 through 72 and 74
10 through 97, and conclusions of law 1 through 11.

11 I move that the Board reject finding of fact 73
12 and modify findings of fact 37 and 98 from the proposal
13 for decision to read as follows:

14 Finding of fact number 37: In the morning of
15 May 25, 2018, Mr. Webber emailed Mr. Minatra and Mr.
16 Zabihian to tell them that he was compiling an initial
17 list of cars that would need re-inspection to ensure that
18 the airbag inflator replacement reported by World Car
19 North had actually occurred.

20 Finding of fact 98: Mazda is concerned about
21 World Car North's trustworthiness.

22 We will also have a new conclusion of law 9.5:
23 World Car North's investment and obligations weigh against
24 termination.

25 These changes are permissible under Texas

1 Government Code 2001.058(e) because there was a technical
2 error in a finding of fact and because the administrative
3 law judge did not properly apply or interpret either Texas
4 Occupations Code 2301.455(a) or a prior court decision
5 involving Metro Ford Truck Sales, Inc. and Ford Motor
6 Company, which I will refer to as Metro Ford.

7 For finding of fact number 37 the change is
8 necessary because the ALJ made a technical error
9 misstating the year as 2021 rather than 2018. The
10 proposed new language for finding of fact 37 simply
11 corrects this date.

12 Respondent's Exhibit R-08 from the State Office
13 of Administrative Hearings is an email chain which
14 includes the May 25, 2018 email from Mr. Webber to many
15 people, including Mr. Robert Minatra and Nader regarding
16 an initial list of cars that would need re-inspection.
17 The email address for Nader is the email address is for
18 Mr. Ahmad Nader Zabihiyan, according to finding of fact
19 number 8 from the proposal for decision and Volume 1,
20 pages 101 through 102 of the transcripts of the SOAH
21 record. Mr. Minatra testified about receiving the email
22 on May 25, 2018 according to Volume 2, pages 463 and 481
23 through 487 of the transcripts from the SOAH hearing.

24 The change to finding of fact 98 is necessary
25 because of the following reasons: the ALJ misinterpreted

1 the court's decision in Metro Ford to mean that a lack of
2 trust between a dealer and a manufacturer is a reason for
3 termination, and the ALJ misinterpreted Texas Occupations
4 Code 2301.455(a) regarding what existing circumstances are
5 relevant for the Board to consider in deciding whether to
6 terminate a dealer's franchise.

7 As in all relationships, trust between a dealer
8 and a manufacturer is always in flux, growing and
9 declining, and growing again as the dealer and
10 manufacturer work through various issues and events in the
11 course of their relationship. Trust is, therefore, too
12 volatile and fickle to be the basis of a decision to
13 terminate a franchise.

14 In the Metro Ford case, the court analyzed the
15 statute which became the current Occupations Code
16 2301.455(a) and determined that the statute requires a
17 consideration of existing circumstances rather than a
18 speculative evaluation of what kind of relationship a
19 manufacturer and dealer might have in the future.

20 Although the court said that the dealer's
21 admitted efforts to deceive Ford violate basic and
22 fundamental precepts of the relationship between a
23 manufacturer and a dealer and that Metro will probably not
24 perform according to the terms of its franchise agreement
25 if allowed to remain a dealer, the court didn't make its

1 decision on this speculative point. The court emphasized
2 that the disputed facts alone justified Ford actions in
3 terminating Metro, so no speculation about the future
4 relationship was necessary to decide the case.

5 Finding of fact number 98 therefore
6 misinterprets the existing circumstances under Texas
7 Occupations Code 2301.455(a) and Metro Ford regarding
8 whether there is good cause for terminating a dealer's
9 franchise. Concern about a dealer's trustworthiness is
10 too vague and potentially too temporary to be an
11 additional factor on which to terminate a franchise.

12 As the ALJ herself noted on page 40 of the
13 proposal for decision, the trustworthiness analysis is
14 essentially the same as the injury or benefit analysis
15 under Texas Occupations Code 2301.455(a) (3) because it is
16 all about the dealership's initial slow response to the
17 problem.

18 Under a correct interpretation of Texas
19 Occupations Code 2301.455(a), the issue of the
20 dealership's slow response to the problem is addressed
21 fully through the analysis of injury to the public
22 required under subsection (a) (3) and does not require the
23 Board to look at a separate vague question of trust as
24 another existing circumstance under subsection (a).

25 It is therefore necessary to modify finding of

1 fact number 98 to remove the ALJ's improper conclusion
2 that concern over trustworthiness is a factor that
3 supports termination separate and apart from the factor of
4 injury to the public.

5 On the issue of World Car North's investment
6 and obligations, which the Board must consider under Texas
7 Occupations Code 2301.455(a)(2), findings of fact number
8 16, 19 and 70 through 72 show that World Car North has
9 invested about \$1.8 million in fixed assets and has \$3
10 million in debt obligations. These are significant
11 numbers. The ALJ misinterpreted Texas Occupations Code
12 2301.455(a)(2) by holding that this factor weighed
13 neutrally because these numbers are large enough that they
14 should weigh against termination.

15 As a result, it is necessary for the Board to
16 reject finding of fact number 73 and to add a new
17 conclusion of law number 9.5 because the factor of
18 investments and obligations weighs against termination in
19 this case.

20 With these modifications, I move as follows:
21 that the Board find that Mazda has met its burden of
22 demonstrating good cause for the termination of World Car
23 North's franchise, that the Board deny World Car North's
24 protest, and that the Board approve the termination of
25 World Car North's franchise.

1 MR. BACARISSE: Thank you, Laura.

2 So members, that is what we are voting on, up
3 or down, yay or nay, you can express your vote in this
4 way. I am calling the question, as I had already done.

5 Member Alvarado?

6 MR. ALVARADO: I supported the original motion
7 from member Scott and Vice Chair McRae. With the friendly
8 amendment I no longer support the change, so for that
9 reason, I have to vote nay.

10 MR. BACARISSE: Okay. Member Scott?

11 MR. SCOTT: Aye.

12 MR. BACARISSE: Member Omumu?

13 MS. OMUMU: Aye.

14 MR. BACARISSE: Member Prewitt?

15 MR. PREWITT: Aye.

16 MR. BACARISSE: Member Graham?

17 MR. GRAHAM: Nay.

18 MR. BACARISSE: Member McRae?

19 MS. McRAE: Aye.

20 MR. BACARISSE: Member Gillman?

21 MS. GILLMAN: Nay.

22 MR. BACARISSE: And Bacarisse votes aye. Five
23 to three. Thank you.

24 The next item on our agenda we are going to
25 skip around on, and we're going to move to agenda item

1 number 12 which is closed session. It is now 1:41 p.m. on
2 June 8, 2023, and we'll go into closed session under Texas
3 Government Code Sections 551.071, 551.076 and 551.089.

4 For those of you in the audience, I anticipate
5 being in closed session for approximately, what, 40
6 minutes, 45 minutes, Laura? Forty-five minutes. We'll
7 reconvene in open session after that.

8 And with that, we are now recessed from the
9 public meeting and we're going into closed session.

10 (Whereupon, at 1:41 p.m., the meeting was
11 recessed, to reconvene this same day, Thursday, June 8,
12 2023, following conclusion of the executive session.)

13 MR. BACARISSE: It is now 2:12 p.m., and the
14 Board of the Texas DMV is now back in open session. No
15 action items will be taken up from the closed session.

16 We will now move on to the agenda item 6.

17 MR. HAYDEN: Good afternoon, Chairman
18 Bacarisse, Vice Chair McRae, Board members, and Executive
19 Director Avitia.

20 For the record, I am Chris Hayden, deputy chief
21 financial officer, and I'm here to present an action item
22 before you today. It is a recommendation to approve the
23 request for financing to the Texas Public Finance
24 Authority, also known as TPFA, for the Camp Hubbard
25 renewal project, contingent upon gubernatorial approval of

1 funding.

2 The TPFA requires that the TxDMV send a packet
3 to the TPFA for consideration for financing. The packet
4 consists of a letter from Executive Director Avitia to the
5 TPFA director, including an affirmation that the bond
6 proceeds will only be used for state governmental
7 purposes.

8 The next item in the packet is the resolution
9 from the TxDMV Board authorizing the request for
10 financing, to be signed by the chair, the vice chair, and
11 the general counsel. Included in the resolution is a
12 statement that says this is subject to final approval of
13 the financing by the governor and the General
14 Appropriations Act, with the understanding that the TPFA
15 would take no action on the item if not approved by the
16 governor. It also identifies the project cost of \$143
17 million, plus the cost of issuance and any other related
18 administrative costs.

19 Lastly, the resolution authorizes the executive
20 director and the chief financial officer to sign, deliver,
21 and act on behalf of the TxDMV for the financing of the
22 project in coordination with TPFA.

23 The next item is a project description which
24 includes a history of the campus, including TxDOT signing
25 over 11 acres to TxDMV on January 12 of this year, the

1 appropriation of \$6.2 million for design of the new
2 facilities in the prior legislative session, and entering
3 into an agreement with the Texas Facilities Commission,
4 working with the design firm Marmon Mok for the demolition
5 of buildings, construction of a new office building, and
6 the renovation of an existing building.

7 The next item included in the packet is a
8 project budget which provides the budget of the design and
9 construction phases and is broken down by budget
10 categories.

11 And lastly, in the packet the item includes a
12 payout schedule of the project and how it will be expended
13 by month. Currently the project is expected to begin to
14 have expenditures in January of 2024, all the way through
15 December of 2026, is when the last payment is expected to
16 take place.

17 That is the contents of the packet that will be
18 sent to the TPFA. This packet, with the Board
19 authorization, would be submitted to TPFA shortly.

20 This concludes my prepared remarks, and I'm
21 available to answer any questions you may have.

22 MR. BACARISSE: Thank you, Mr. Hayden.

23 Any questions for Mr. Hayden, members?

24 (No response.)

25 MR. BACARISSE: I just have a curiosity

1 question. The old Texas Highway Department building
2 that's on campus, is that still TxDOT property or was that
3 part of what got signed over to DMV?

4 MR. HAYDEN: That's on our side; that's part of
5 our property.

6 MR. BACARISSE: And do we plan to preserve or
7 renovate that structure?

8 MR. HAYDEN: Potentially at some point but not
9 in this part of the project.

10 MR. BACARISSE: Not the first stage, whatever.
11 Okay, great. Thank you.

12 Members, any other questions?

13 (No response.)

14 MR. BACARISSE: Mr. Hayden, thank you. Super
15 deal.

16 MR. HAYDEN: Thank you.

17 MR. GRAHAM: Does that have an action item?

18 MR. BACARISSE: Yeah.

19 MR. GRAHAM: I'll make a motion, Mr. Chairman.

20 MR. BACARISSE: Go ahead, sure, Mr. Graham.

21 MR. GRAHAM: I move the Board accept staff's
22 recommendation and approve the resolution authorizing the
23 department to request and effect financing to the Texas
24 Public Finance Authority for the Camp Hubbard renewal
25 project, subject to the governor's approval of the

1 appropriation for the project.

2 MR. BACARISSE: Thank you.

3 Is there a second for this motion?

4 MR. PREWITT: I'll second it, Mr. Chairman.

5 MR. BACARISSE: Member Prewitt.

6 And any further discussion?

7 (No response.)

8 MR. BACARISSE: Laura, any public comments on
9 this item, or Aline?

10 MS. MORIATY: No public comments, sir.

11 MR. BACARISSE: Okay. All right, great. Thank
12 you.

13 I'll call the vote, please.

14 Member Alvarado?

15 MR. ALVARADO: Aye.

16 MR. BACARISSE: Member Gillman?

17 MS. GILLMAN: Aye.

18 MR. BACARISSE: Member Graham?

19 MR. GRAHAM: Aye.

20 MR. BACARISSE: Vice Chair McRae?

21 MS. McRAE: Aye.

22 MR. BACARISSE: Member Omumu?

23 MS. OMUMU: Aye.

24 MR. BACARISSE: Member Prewitt?

25 MR. PREWITT: Aye.

1 MR. BACARISSE: Member Scott?

2 MR. SCOTT: Aye.

3 MR. BACARISSE: And I, Chairman Bacarisse, vote
4 aye as well. It's unanimous. Thank you.

5 Agenda item number 7, we have specialty plates
6 today. We'll now move to that item, and Patricia
7 Ueckert -- sorry; I do that all the time.

8 MS. UECKERT: That's okay, no worries.

9 MR. BACARISSE: You can mispronounce my name
10 just for fun. The floor is yours, Ms. Ueckert.

11 MS. UECKERT: Good afternoon, Chairman
12 Bacarisse, members, Executive Director Avitia. My name is
13 Tricia Ueckert, and I'm the director of the Operations
14 Section in the Vehicle Titles and Registration Division.

15 This is agenda item 7, which can be found on
16 page 171 of your Board book. The action item before you
17 is a request for Board approval or denial of three
18 specialty plate designs in accordance with the Board's
19 statutory authority.

20 The following proposed plate designs are from
21 My Plates, the state's specialty license plate marketing
22 vendor, and were posted for public comment in March of
23 2023.

24 DPS Troopers Foundation, a new plate design, is
25 proposed under Transportation Code 504.851; 1,015 people

1 liked this design, and 260 did not.

2 Brushed Metal Grill, a new plate design, is
3 proposed under Transportation Code 504.851; 1,030 people
4 liked this design, and 388 did not.

5 And finally, Texas A&M University Commerce is a
6 crossover plate design; it's proposed under Transportation
7 Code 504.851 and 504.6011; 567 people liked this design,
8 and 482 did not.

9 This concludes my presentation on this action
10 item, and I'm available to take any questions you may
11 have.

12 MR. BACARISSE: Thank you, Ms. Ueckert.

13 Members, any questions?

14 (No response.)

15 MR. BACARISSE: If not, I will now entertain a
16 motion on agenda item number 7.

17 MS. McRAE: Chairman, I'd like to make a
18 motion, please.

19 MR. BACARISSE: Yes, ma'am, Member McRae.

20 MS. McRAE: I move that the Board approve the
21 specialty plate designs, as presented by staff.

22 MR. BACARISSE: And is there a second for that
23 motion?

24 MS. OMUMU: I'll second it, Mr. Chairman.

25 MR. BACARISSE: Member Omumu, thank you.

1 And any further discussion on this?

2 (No response.)

3 MR. BACARISSE: Laura, any public comments?

4 MS. MORIATY: No public comments, sir.

5 MR. BACARISSE: Thank you.

6 IN that case, I will call for the vote.

7 Member Alvarado?

8 MR. ALVARADO: Aye.

9 MR. BACARISSE: Member Gillman?

10 MS. GILLMAN: Aye.

11 MR. BACARISSE: Member Graham?

12 MR. GRAHAM: Aye.

13 MR. BACARISSE: Vice Chair McRae?

14 MS. McRAE: Aye.

15 MR. BACARISSE: Member Omumu?

16 MS. OMUMU: Aye.

17 MR. BACARISSE: Member Prewitt?

18 MR. PREWITT: Aye.

19 MR. BACARISSE: Member Scott?

20 MR. SCOTT: Aye.

21 MR. BACARISSE: And I, Member Bacarisse, vote

22 aye as well. It's unanimous. Thank you.

23 Agenda item number 8, we're going to turn it
24 over to David Richards for some discussion about advisory
25 committee appointments.

1 MR. RICHARDS: Thank you, Mr. Chairman,
2 members, Executive Director Avitia. My name is David
3 Richards, an associate general counsel in the Office of
4 General Counsel here at the agency.

5 I'm presenting to you today agenda item number
6 8, which pertains to advisory committee appointments.
7 Under the law, Transportation Code 1001.031, the Board is
8 required to establish from time to time advisory
9 committees, as well as set forth certain requirements for
10 members to serve.

11 One of those is knowledge about the advisory
12 committee and the subject matter that the advisory
13 committee is responsible for or interest in, or both. We
14 try to pick from diverse backgrounds across the state,
15 various geographical regions, so we get a good balance of
16 individuals to serve.

17 As you know, the legislature has just
18 adjourned, there are bills that have been passed and
19 they'll be signed into law. With many of those there will
20 be rules, so we rely very heavily on our advisory
21 committee members interests and expertise in certain
22 subject matter areas.

23 As you know, we have four advisory committees
24 now. The purpose of this particular agenda item -- it's
25 an action item -- is to ask your approval for the list

1 provided by your executive director. Each of these
2 individuals has been fully vetted by not only Executive
3 Office but by the Office of General Counsel and the
4 division directors that would be responsible for those
5 particular areas.

6 We have the Customer Service and Protection
7 Advisory Committee, one new applicant, his name is Matthew
8 Nance; he's the general counsel for the Office of Consumer
9 Credit Commissioner. His boss served very admirably on
10 the CPAC committee previously, and he's moved on and has
11 retired, so we'd highly recommend Mr. Nance.

12 The second one, we have one member for the
13 Motor Carrier Regulation Advisory Committee, Jackie Polk,
14 she's with Lee TranServices, Inc.; she's the president of
15 that company.

16 MVIRAC or Motor Vehicle Industry Regulation
17 Advisory Committee, a very important advisory committee
18 you've created, we have three new applicants. Those
19 likewise have been fully vetted. The first one is Bentley
20 Durant of Classic Chevrolet, he's legal counsel for the
21 Chevrolet dealership; Tony Hall who is with Carvana, he's
22 a government relations, former TxDMV employee in the
23 Vehicle Titles and Registration Division; and then
24 finally, Mr. Hall has also applied for the Vehicle Titles
25 and Registration Advisory Committee as well. All good

1 candidates.

2 As you recall, we do, as I stated previously,
3 look at these candidates, we vet them, we try to get a
4 diverse background across the state. They have to have
5 knowledge of and interest in the subject matter. We
6 believe after our vetting that all of these individuals
7 would qualify in that respect.

8 I am asking that the Board approve the
9 recommendations of the list that's in your Board books
10 starting on page 175 for service on the advisory
11 committees that I just mentioned.

12 Because this is a fluid dynamic type process,
13 we have advisory committee members coming on and off these
14 advisory committees. We're constantly looking for
15 members. This is a slate that we brought to you obviously
16 today; we're going to bring you another list in August at
17 your Board meeting because we still have holes to fill.

18 The maximum number is 24 under your rules as
19 far as membership goes, and the top number we have right
20 now, if you approve this list, is 20 on the MVIRAC. So
21 we're going to continue to reach out, and we'd appreciate
22 your vote for the recommendation of these individuals.

23 That concludes my remarks, and I'll be happy to
24 answer any questions.

25 MR. BACARISSE: Thank you.

1 Members, any questions for Mr. Richards?

2 MS. GILLMAN: Yes.

3 MR. BACARISSE: Member Gillman.

4 MS. GILLMAN: Can you please repeat the names?

5 MR. RICHARDS: All of them or just a particular
6 committee?

7 MS. GILLMAN: Your proposed.

8 MR. RICHARDS: Okay. I'm sorry.

9 MS. GILLMAN: There were only two. Right?

10 MR. RICHARDS: Oh, there are several, there are
11 five: Matthew Nance, he's the general counsel of OCCC;
12 Jackie Polk, she has applied for the Motor Carrier
13 Regulation Advisory Committee; Bentley Durant is the first
14 one of the Motor Vehicle Industry Regulatory Advisory
15 Committee; Tony Hall, the second; and then the third one
16 for that one is Michael Provost, he's a law enforcement
17 member with Houston PD. The final one is Tony Hall again,
18 the Vehicle Titles and Registration Advisory Committee,
19 and he's with Carvana.

20 MS. GILLMAN: Thank you.

21 MR. RICHARDS: And one other thing. Since we
22 combined the Customer Service and Protection Advisory
23 Committee with the CPAC, we'll need a vote on all of those
24 members that will make up that new advisory committee.

25 MR. BACARISSE: Great. Thank you.

1 Any other questions for Mr. Richards?

2 (No response.)

3 MR. BACARISSE: I would now entertain a motion
4 on agenda item 8.

5 MR. ALVARADO: Chairman, I'd like to make a
6 motion, if that's okay.

7 MR. BACARISSE: Member Alvarado.

8 MR. PREWITT: I'll second, Mr. Chairman.

9 MR. BACARISSE: Well, hold on. I love your
10 enthusiasm.

11 (General laughter.)

12 MR. PREWITT: Thank you.

13 MR. ALVARADO: I'm going to move that the Board
14 appoint to serve as advisory committee members the
15 individuals who are presented as potential members and
16 potential new members in the Board book materials dated
17 June 8, 2023.

18 MR. BACARISSE: And I have you down as a
19 second, Mr. Prewitt. Is that still the case?

20 MR. PREWITT: Yes, you do.

21 MR. BACARISSE: Okay, good.

22 Any further discussion?

23 (No response.)

24 MR. BACARISSE: Any public comments?

25 MS. MORIATY: No public comments, sir.

1 MR. BACARISSE: Thank you.

2 I'll now call the vote.

3 Member Alvarado?

4 MR. ALVARADO: Aye.

5 MR. BACARISSE: Member Gillman?

6 MS. GILLMAN: Aye.

7 MR. BACARISSE: Member Graham?

8 MR. GRAHAM: Aye.

9 MR. BACARISSE: Vice Chair McRae?

10 MS. McRAE: Aye.

11 MR. BACARISSE: Member Omumu?

12 MS. OMUMU: Aye.

13 MR. BACARISSE: Member Prewitt?

14 MR. PREWITT: Aye.

15 MR. BACARISSE: Member Scott?

16 MR. SCOTT: Aye.

17 MR. BACARISSE: And I, Chair Bacarisse, vote
18 aye as well. Thank you. It's unanimous.

19 Now we'll move to agenda item 9, and that's a
20 Projects and Operations Committee update from Chair
21 Prewitt.

22 MR. PREWITT: Thank you, Chairman Bacarisse,
23 Executive Director Avitia, members.

24 Yesterday, Vice Chair McRae, Members Alvarado,
25 Gillman, Scott, and I participated in the Projects and

1 Operations Committee meeting and received briefings from
2 department staff. There were no action items on the
3 agenda. This can be found starting on page 182 of your
4 Board book.

5 The first agenda item is agenda item 9.A, which
6 is the Camp Hubbard renewal project update. This is a
7 briefing only. Ann Pierce, the department's director of
8 Administrative Services provided an update on the status
9 of the Camp Hubbard renewal project. The new building
10 design project initially kicked off in early May of 2022
11 and is progressing towards finalizing the Phase I design
12 process.

13 Since the last briefing, the department
14 continued to meet and hold discussions with the core team
15 members, which are Texas Department of Motor Vehicles,
16 Texas Facilities Commission, and Marmon Mok, which is the
17 architect for this project.

18 Marmon Mok has previously done work for the
19 state, most notably the Texas Department of Transportation
20 new facility. At this meeting, as well as facility
21 security, information technology experts, and staff from
22 across the department all met to solicit feedback and
23 determine the unique needs for our future building.

24 Recent meetings focused on four areas which are
25 as follows: one, special audio and visual needs for the

1 boardroom and other conference rooms, including the
2 possible reuse of some of our current equipment; two,
3 facilities, warehouse, fleet, imaging, inventory and
4 security needs, including day-to-day security, emergency
5 response, and appropriate separations of different areas;
6 three, information technology needs and timing, planning,
7 coordination and implementation, and finally, four, other
8 facilities related projects that overlap, including
9 warranty transfers and bidding requirements.

10 This concludes the Camp Hubbard renewal project
11 update. Ann is here to answer any questions on this item.

12 Are there any questions?

13 (No response.)

14 MR. PREWITT: Thank you, Mr. Chairman.

15 Agenda item 9.B is an accounts receivable
16 update. This also is a briefing only.

17 Eric Horn, the department's director of
18 Accounting, provided an update on the progress of the
19 accounts receivable A/R system. Following the completion
20 of the A/R study by Gartner in August of 2022, Texas
21 Department of Motor Vehicles issued a request for
22 information to gather additional details from vendors on
23 the costs of recommended software options.

24 The RFI process led to the selection of
25 Microsoft Dynamics 365 Business Central as the platform

1 for the A/R system. Texas Department of Motor Vehicles
2 staff met with representatives from Microsoft and the
3 Texas Department of Information Resources to discuss the
4 scope of the project, how Business Central's capabilities
5 meet Texas Department of Motor Vehicles unique
6 requirements, and the estimated cost and timeline for
7 implementation.

8 Upon approval of the project, Texas Department
9 of Motor Vehicles staff began the procurement phase in two
10 steps which are first, the procurement of the Microsoft
11 Dynamics 365 Business Central licenses. A request for
12 quote was sent to interested DIR approved bidders and
13 awarded in January 2023.

14 Number two was deliverables-based information
15 technology services contract for implementation. Under
16 this the Texas Department of Motor Vehicles staff began
17 drafting the statement of work for implementation of an
18 A/R system in accordance with DIR's process.

19 In November '22, DIR approved the draft, so in
20 March 2023 provided a list of approved vendors to solicit
21 bids, and finally, bids were received in May 2023, and are
22 currently under evaluation by Texas Department of Motor
23 Vehicles staff.

24 Once a vendor is selected for implementation
25 and the contract is approved by DIR, the project is

1 expected to begin in fiscal year 2023 and be completed in
2 fiscal year 2024.

3 That concludes the accounts receivable update,
4 Mr. Chairman. Mr. Horn is here to answer any questions on
5 this item. Are there any questions?

6 MR. BACARISSE: I see none. Keep going.

7 MR. PREWITT: Seeing none, okay.

8 Agenda item 9.C is the credit cards in the
9 regional service centers. This is a briefing only.

10 Eric Horn, once again, the departments director
11 of Accounting, also provided an update on the progress of
12 implementing an over-the-counter credit card payment
13 process at each of the 16 regional service center
14 locations across the State of Texas that currently only
15 accept cash, checks, and money orders for services
16 provided to the public.

17 Texas Department of Motor Vehicles proposed
18 this project to the Texas Department of Information
19 Resources in 2022, and it was approved using the Texas.gov
20 payment portal. Texas Department of Motor Vehicles
21 currently uses the Texas.gov payment portal for all
22 services offered online.

23 Onboarding with DIR's vendor Tyler Technologies
24 began in fiscal year 2023, then credit card swipe devices
25 were procured for each location. Initial testing of the

1 devices has been successful, although programming updates
2 to both the Registration and Title System and Texas
3 International Registration Plan System are necessary
4 before earning certification from the Comptroller's Office
5 to move into production.

6 Both programming efforts are on track to be
7 completed in August of this year, and the credit card
8 capabilities are planned to be deployed to the Austin RC
9 first.

10 Following successful implementation in Austin,
11 Texas Department of Motor Vehicles staff plan to deploy
12 credit card capabilities to the remaining regional service
13 center locations, beginning with Houston Regional Service
14 Center, throughout 2024.

15 This concludes the update on credit cards in
16 the regional service centers. Mr. Horn is still here to
17 answer any questions. Are there any questions?

18 MR. BACARISSE: Members?

19 (No response.)

20 MR. BACARISSE: No. We're good. Thank you.

21 MR. PREWITT: And finally, on the agenda item
22 9.D, this is for the 2023 technology projects. Kudos to
23 all the departments within DMV working on these projects,
24 they are many and varied, but I think the technology
25 projects takes the cake as far as just the sheer number

1 and volume of what we're trying to achieve.

2 Will Hilton, the department's deputy chief
3 information officer, provided an update on ten of the high
4 priority projects and initiatives the department's
5 Information Technology Services Division oversees.

6 At this time I'll turn it over to Will to
7 update the Board on each of these projects and
8 initiatives.

9 MR. HILTON: Good afternoon, Chairman
10 Bacarisse, Vice Chair McRae, members of the Board,
11 Director Avitia. For the record, I am Will Hilton, deputy
12 chief information officer for the Texas Department of
13 Motor Vehicles.

14 Yesterday I presented a briefing on the
15 department's technology projects other Projects and
16 Operations Committee. This was a briefing item only, and
17 no recommendations were made. They'll begin on page 187
18 of your materials.

19 My update included an description and status
20 update of ten priority projects, as he mentioned, the
21 projects and initiatives overseen by the Information
22 Technology Services Division.

23 The projects and initiatives reviewed include
24 Registration and Title Systems, or RTS projects and
25 initiatives, including the RTS ecosystem modernization,

1 the tax assessor-collector, or TAC T-1 upgrade, TAC
2 workstation refresh, and Texas by Texas, which was closed.

3 Also, I included webDEALER projects and
4 initiatives including statewide webDEALER adoption or SWA
5 Phase II, webSALVAGE, and then motor carrier projects and
6 initiatives including Motor Carrier Credentialing Systems,
7 or MCCS rewrite, Texas International Registration Plan, or
8 TxIRP upgrade, and then the call center upgrade Phase II,
9 which was also closed.

10 I'm available to answer any questions the Board
11 may have on any of those.

12 MR. BACARISSE: Members, are there any
13 questions for Will?

14 (No response.)

15 MR. BACARISSE: Seeing none, good. Thank you.

16 MR. HILTON: You're welcome.

17 MR. PREWITT: Mr. Chairman, this concludes the
18 report from the Projects and Operations Committee update.

19 MR. BACARISSE: Thank you, Member Prewitt.

20 We'll now move to agenda item number 10, which
21 is our legislative update, and we'll hear from Keith Yawn.

22 Nothing happening up there, right, Keith?

23 MS. McRAE: Keith's been bored.

24 (General laughter.)

25 MR. YAWN: Good afternoon. My name is Keith

1 Yawn, director of Government and Strategic Communications
2 for the department.

3 Agenda item 10 is an update on legislative
4 activity since the last Board meeting, and there has been
5 some. The legislature completed the 88th Regular Session
6 on May 29. As you know, a legislative session is an
7 all-hands-on-deck activity for the department because we
8 do not bring in extra resources for the increased
9 workload.

10 This was my first session with the department,
11 and I greatly appreciate the effort put in by the entire
12 department to showcase the knowledge and expertise of our
13 staff.

14 I especially appreciate the efforts of my own
15 team, the Government Relations team, without whom we would
16 not have been as successful as we were this session.
17 Everyone stepped up and made sure we did everything we
18 could to serve as a consistent and reliable resource to
19 legislative offices, while maintaining regular operations
20 and customer service levels.

21 The department tracked 531 individual pieces of
22 legislation this year, completed analysis of 413 of those,
23 and reported 162 fiscal impact estimates. The legislature
24 passed 70 bills that impacted either core or
25 administrative department operations.

1 The majority of these bills make changes to the
2 statutory authorizations or requirements for core
3 department programs, including bills related to vehicle
4 registration processes, title transactions, licensing
5 activities, and 17 bills creating new specialty license
6 plates, and some of those bills contain more than one
7 specialty plate.

8 At this time, 12 of those 70 bills impacting
9 the department have been signed by the governor. The
10 governor's veto period ends on June 18, at which time we
11 will have a final count of which bills we will need to
12 implement.

13 The good news is that most of the bills will
14 not be difficult to implement. We are still developing
15 implementation plans for enacted bills, but at this time
16 15 appear to require no active implementation efforts, and
17 another 24 can likely be implemented with minor updates or
18 changes within a single division.

19 Many others, such as new specialty plates, have
20 existing processes in place to manage the implementation
21 efficiently and within existing resources. This leaves
22 only a small number of bills requiring more intensive
23 implementation efforts, so I'll go through a couple of
24 those now.

25 Senate Bill 505 creates a new additional

1 registration fee of \$200 per year for certain fully
2 electric vehicles. This bill has been signed by the
3 governor and will apply to registrations beginning
4 September 1 of this year. The department is working on
5 related system programming changes and will be providing
6 notice of the new fee to impacted individuals and the
7 general public.

8 Senate Bill 224 addresses recent increases in
9 catalytic converter theft and related crimes. The Motor
10 Vehicle Crime Prevention Authority, or MVCPA, is the
11 central administrator for the bill's implementation.

12 The bill charges MVCPA with developing and
13 implementing a multi-agency catalytic converter crime
14 detection and prevention plan which is due by the end of
15 this year.

16 The bill also increases an existing automotive
17 insurance policy fee by one dollar to fund MVCPA grants to
18 local law enforcement for efforts related to catalytic
19 converter crime.

20 The governor has also signed this bill, and the
21 legislature provided specific appropriation authority for
22 the implementation of the bill's provisions, including
23 four new full-time equivalent positions for MVCPA.

24 The next bills I'll mention are still awaiting
25 final action by the governor.

1 House Bill 3297 eliminates safety inspections
2 for non-commercial vehicles but retains emissions
3 inspections in those counties where they are required.
4 This change takes effect January 1 of 2025 and will
5 require revisions to computer systems and policies to
6 allow for registration of certain vehicles without a
7 safety inspection while still collecting an inspection
8 replacement fee. We will be working with the Texas
9 Department of Public Safety and the Texas Commission on
10 Environmental Quality to implement these changes.

11 House Bill 433 reduces the number of vehicles
12 needed to be designated as a commercial fleet from 25 to
13 12. This allows customers with smaller fleets to access
14 more streamlined or extended registration options.

15 House Bill 718 replaces paper temporary tags,
16 one-trip, and 30-day permits with metal license plates.
17 This was the big bill for us this session. The change
18 from paper to metal will take place during the summer of
19 2025, so two years from now.

20 The related implementation requires an
21 expansion of the use of existing metal plates, the
22 creation of several new types of metal plates, development
23 of a new plate inventory management system, and the
24 reworking of numerous registration and licensing
25 processes, including a statutory change in the bills

1 defaulting license plates to remain with a vehicle at the
2 time of transfer.

3 This is a significant change from current
4 operations, and we will be working closely with tax
5 assessor-collectors, dealers, and law enforcement on
6 rulemaking and process changes related to the
7 implementation.

8 Rule adoptions have their own due date of
9 December of 2024 to allow stakeholders time to understand
10 the new processes and adjust their own internal operations
11 as necessary by the final implementation deadline in 2025.

12 We did receive specific appropriations to
13 address the implementation and ongoing operations required
14 by this bill, including more than 40 new full-time
15 equivalent employees allocated throughout the department.

16 This project represents the largest of the
17 legislative implementation work we will undertake this
18 interim and will require extensive ongoing collaboration
19 with all our external stakeholders and state agency
20 partners to be successful.

21 Finally, Senate Bill 247 repeals the specialty
22 license plate for honorary consuls, a change requested
23 originally by the U.S. State Department. This was also,
24 as you'll recall, a recommended change this Board approved
25 last October as part of our Board recommended packet.

1 Deputy Chief Financial Officer Chris Hayden
2 will be providing information on the final appropriation
3 and budget items in just a minute, including a number of
4 specific department projects funded in the General
5 Appropriations Act for the next biennium.

6 Department staff are working on the various
7 implementation plans, timelines, and budgets for both
8 policy and budget projects to set a path to accomplish all
9 this work by their various deadlines. We will have more
10 information on those plans and the progress of individual
11 efforts to provide to you during future meetings.

12 Mr. Chairman, this concludes my prepared
13 remarks, and I'd be happy to take any questions.

14 MR. BACARISSE: Thank you. If I may take a
15 moment of privilege and just express my appreciation to
16 you and your team and everyone in this agency who worked
17 so hard in this legislative session to supply the members
18 with all the data that they needed in order to make the
19 decisions they made.

20 I think that every legislative session is
21 challenging, this one certainly, as many else have been
22 the same, but you and all of you here at the DMV really
23 shone well, and I think you've added quite a bit of
24 confidence that the members of the legislature have for
25 this agency.

1 And I want to thank you for your
2 professionalism, your hard work, and your responsiveness
3 to the legislative members and their staffs. It's
4 herculean but it pays off, so thank you to everybody that
5 was a part of that.

6 Members, anything else? Member Gillman?

7 MS. GILLMAN: Ditto.

8 (General laughter.)

9 MR. BACARISSE: I heard you take a breath over
10 there.

11 MS. GILLMAN: Ditto.

12 MR. BACARISSE: Okay. Thanks a lot, I
13 appreciate it.

14 MR. YAWN: Thank you.

15 MR. BACARISSE: You bet.

16 So, as was just promo'd there, we're going to
17 have a little Finance and Audit budget update, so Chris
18 Hayden is going to come back and give us some highlights
19 there.

20 The podium is yours.

21 MR. HAYDEN: Hello again. For the record, I'm
22 Chris Hayden, deputy chief financial officer, and as Keith
23 said, I'm going to talk about more on the financial side
24 for the '24-25 biennium for the legislative session. This
25 will be a pretty high level overview and then I'll let you

1 know that we'll also be coming back in August with a
2 detailed 2024 operating budget.

3 The Conference Committee was voted out by both
4 the House and Senate on May 29. The Appropriations Bill
5 was sent to the Governor's Office yesterday, and as Keith
6 said, the veto deadline is in a couple of weeks, so all
7 these items I'm going over are pending governor's final
8 approval and signature.

9 So just a couple of the highlights I wanted to
10 say: The '24-25 budget is \$653 million, including base
11 appropriations of \$560.2 million and Article 9
12 supplemental contingency appropriations of 90.3-.

13 So some of the items I wanted to highlight are
14 the Phase I RTS replacement that was adopted. Two
15 additional RSCs, one each in Dallas and Houston, so that
16 was also adopted. The aforementioned Camp Hubbard renewal
17 project was also adopted by the Conference Committee. And
18 also 46 additional FTEs in our exceptional items request,
19 and then on top of that, 50 additional FTEs as part of
20 contingency appropriations, for a total of 96 for approved
21 legislation.

22 Some other things I wanted to point out is we
23 have additional funding for MVCPA to bring it in line with
24 the statute and the biennial revenue estimate, and we also
25 received a contingency appropriation for approved

1 legislation.

2 So I'll go through those real quick. So RTS
3 Phase I, to remind you all, was 6.8- for the biennium; the
4 expansion of the regional services centers is \$3.5 million
5 for the biennium; Camp Hubbard renewal was \$143 million;
6 additional authorized FTEs for the biennium is \$3.7
7 million; and the additional MVCPA funding received was
8 \$14.3 million. And as I mentioned, that's 46 new FTEs in
9 our base appropriations bill.

10 In addition there are three contingency
11 appropriations for bills that Keith had mentioned. The
12 first one is House Bill 718, which was sent to the
13 governor but has not been signed, that's for \$35 million.

14 The second bill was Senate Bill 224, catalytic converter
15 bill, and that is for \$55 million and that was signed by
16 the governor. And lastly, Senate Bill 505, the electric
17 vehicle registration, and that's for \$214,000, and that
18 was signed by the governor.

19 So all in all, we have \$90.3 million in
20 contingency appropriations for the '24-25 biennium, and so
21 that's also 50 additional FTEs, 46 FTEs for House Bill
22 718, with the majority of those being in Enforcement, and
23 then finally, there's four FTEs in Senate Bill 224 for
24 MVCPA.

25 And a couple other items that I wanted to point

1 out that the Conference Committee budget includes. There
2 is \$2.6 million appropriated to the Texas Department of
3 Criminal Justice for the production of additional license
4 plates for Texas DMV. And then lastly, TxDMV is required
5 to produce a long-range facility plan regarding RSCs and
6 submit the plan no later than December 1, 2024, to the
7 Legislative Budget Board.

8 And again, we will be coming back in August to
9 present a more detailed level of the budget once it's
10 finalized by the signature of the governor, and I'm
11 available to answer any questions you may have.

12 MR. BACARISSE: Members, any questions for Mr.
13 Hayden? Member Scott.

14 MR. SCOTT: Could you go over for me the change
15 in the funding of the MVCPA?

16 MR. HAYDEN: Yes, sir. So the MVCPA additional
17 funding is 14.3- for the biennium, was the increase over
18 the baseline, and if you see the new baseline budget for
19 the MVCPA is just at \$49 million for the biennium in our
20 base bill, and then there's an additional \$55 million
21 that's part of the contingency appropriation.

22 MR. SCOTT: But wasn't there a change in the
23 way that the money flows through, gets into MVCPA? No?

24 MR. HAYDEN: No. Well, the difference is
25 before we weren't appropriated all the revenue that came

1 into by statute, and so now the rider provides the ability
2 to increase the budget based on the actual revenue that
3 comes in for MVCPA.

4 MR. SCOTT: Okay. That's what I thought.

5 MR. HAYDEN: It's supposed to be 20 percent of
6 the fee.

7 MR. SCOTT: Yeah, that's what I was kind of
8 curious about.

9 And how many more FTEs did MVCPA get?

10 MR. HAYDEN: Six FTEs was for the baseline
11 exceptional item request, and then there's also four FTEs
12 associated with Senate Bill 224.

13 MR. SCOTT: So where will those people be
14 located?

15 MR. HAYDEN: At this point I don't have the
16 answer for that.

17 MR. SCOTT: Thank you.

18 MR. BACARISSE: I think you can probably bring
19 that little stat back in August. Right?

20 MR. HAYDEN: Yes, sir.

21 MR. BACARISSE: You'll have more detail by
22 then.

23 MR. SCOTT: Appreciate it, thank you.

24 MR. HAYDEN: Thank you.

25 MR. BACARISSE: Anything else for Mr. Hayden?

1 (No response.)

2 MR. BACARISSE: Thank you. Great stuff.
3 Appreciate it.

4 MR. HAYDEN: Thank you.

5 MR. BACARISSE: Agenda item 11.B, we'll hear
6 from our internal auditor, Salem Chuah.

7 MR. CHUAH: Good afternoon, Chairman Bacarisse,
8 Board members, Executive Director Avitia. For the record,
9 my name is Salem Chuah. I'm the director of the Internal
10 Audit Division for the department.

11 Item 11.B is a briefing item to provide you
12 with an update on the Internal Audit Division's
13 activities, including internal engagements, external
14 engagements, and administrative items.

15 On page 202 of your Board materials there's a
16 graphic showing the status of all of our engagements. We
17 currently have three internal engagements. The first one
18 is the risk assessment, and our objective is to identify
19 areas of high risk within the department to include in the
20 fiscal year 2024 Internal Audit Plan.

21 We're meeting with each division this month to
22 go over the population or inventory of risks, and then
23 we'll meet with the Executive Director's Office, as well
24 as planning to meet with each one of you all Board
25 members. Our fiscal year 2024 Internal Audit Plan will be

1 presented to the Board for approval in the August Board
2 meeting.

3 Our second internal engagement is the audit of
4 selected regional service centers, RSCs. This audit is in
5 the planning phase. We've selected four RSCs to audit;
6 that's Houston, Dallas, El Paso, and Abilene. This
7 selection ensures that we have a good representation of
8 the RSC size, as well as geographic location.

9 Some questions we hope to address in this audit
10 are: what does the average workload look like for the
11 customer service representatives, so having that
12 background and piece in the audit; what tools are used by
13 management to enhance and maintain culture; are bonded
14 title applications processed correctly and uniformly
15 across the RSCs; what is our current process for gathering
16 customer feedback; and what are customers, including
17 dealers, saying about their experience at the RSCs.

18 We expect to move into field work on this audit
19 in the coming weeks, and this audit is scheduled to be
20 completed in the fall.

21 Our third internal engagement is the hiring
22 process audit, which is in the field work phase. Some of
23 the questions we will address in this audit include: are
24 eligibility documents verified; what is the process for
25 re-verifying those documents if applicable; are background

1 checks completed; what are the average days to receive the
2 results based on our sample size; are reference checks
3 conducted; are qualified candidates interviewed; and are
4 the hiring steps logical. We expect to complete this
5 audit in late July.

6 For external engagements, the Comptroller of
7 Public Accounts completed its desk audit on dual or
8 multiple employment. They released their report last
9 month.

10 The objective of this desk audit was to ensure
11 that agencies and employees follow state law and
12 regulations concerning dual or multiple employment,
13 including appropriate overtime pay and to make sure that
14 the benefits do not exceed those for one single employee.

15 The audit scope was a three-year period from
16 September 1 of 2016 to August 31 of 2019. The Comptroller
17 selected approximately 26,000 state employees on which
18 they conducted testing. That included 82 DMV employees.
19 There were no findings in this audit.

20 In regards to administrative reports and items,
21 May was Internal Audit Awareness Month, which is
22 celebrated every year to promote the internal auditing
23 profession. It serves as a time to raise awareness of the
24 role that internal auditors play in evaluating and
25 improving an organization's internal controls, risk

1 management process, and governance structure.

2 We recognize that sometimes internal audit may
3 have a different perspective on handling a process, for
4 instance, or different interpretation of policies.

5 Internal audit may even propose changes to the status quo
6 or different ways of doing things which is a change that
7 may not always be comfortable.

8 But as a third line of defense for
9 organizations and the independent function due to our
10 reporting structure, internal audit is also an important
11 partner with divisions as we try to minimize our
12 organization from compliance risks, reputational risks,
13 financial risks.

14 This year we hosted a virtual lunch and learn
15 where approximately 20 employees joined us for an
16 interactive polling session and then learned about the
17 Internal Audit Division team and the services that we
18 provide to the organization. We look forward to hosting
19 another session perhaps later this calendar year.

20 We're also working on a request for
21 qualifications, RFQ, for a qualified vendor to perform
22 performance and information technology audit and advisory
23 services. This RFQ is needed because our contract -- the
24 current contract we have in place is going to expire at
25 the end of August. Going through this RFQ will allow us

1 to continue to use specialized expertise and also augment
2 our staff when needed to carry out the internal audit plan
3 that we'll have in place.

4 And I did have one slide there. I don't know
5 if we could pull that up; that was the little quiz that we
6 did. People called it a quiz in learning about the
7 Internal Audit Division function.

8 And then the last point that I have -- there's
9 also a slide there -- lastly I wanted to share that I
10 attended the Government Finance Officers Association 2023
11 annual conference, along with Glenna Bowman, our chief
12 financial officer, as you see here. I did get her
13 permission for this slide, so on record.

14 The conference had over 4,000 attendees and it
15 was held in Portland, Oregon. There were some from Texas
16 state agencies as well. I attended sessions on
17 leadership, payment card industry, compliance, financial
18 statement disclosures, accounting, and auditing topics.

19 This concludes my status update. I'm happy to
20 take any questions.

21 MR. BACARISSE: Any questions for Salem,
22 members?

23 (No response.)

24 MR. BACARISSE: I know you have somebody with
25 you here this afternoon. Right?

1 MR. CHUAH: Yes, sir, chairman.

2 MR. BACARISSE: I see Jason, too.

3 MR. CHUAH: We have several folks here, our new
4 intern who will be with us.

5 MR. BACARISSE: Please introduce.

6 MR. CHUAH: I do not have talking points on
7 that.

8 MR. BACARISSE: Name, rank and serial number.
9 (General laughter.)

10 MR. CHUAH: Yes. He's from the University of
11 Texas at El Paso, and he's majoring in accounting.

12 MR. BACARISSE: Fantastic. You know, I had a
13 great internship in the government before my senior year
14 in college, so it screwed me up totally for the rest of my
15 life, and I love and appreciate government service, so I
16 hope the same for you. Glad you're here. Welcome.

17 Thank you, Salem.

18 MR. CHUAH: Thank you, Chairman. Thank you,
19 Board members.

20 MR. BACARISSE: Thank you. Good stuff.
21 Internships are critical, they're great.

22 Okay, members, I'd entertain a motion to
23 adjourn.

24 MR. GRAHAM: So moved.

25 MS. McRAE: Second.

1 MR. BACARISSE: Okay. I've got to write it
2 down. Sorry, hang in there; you've got to vote. I think
3 Alvarado is voting already. I can't write this fast.

4 Okay, Alvarado is a nod.

5 Gillman?

6 MS. GILLMAN: Aye.

7 MR. BACARISSE: Graham?

8 MR. GRAHAM: Aye.

9 MR. BACARISSE: McRae?

10 MS. McRAE: Aye.

11 MR. BACARISSE: Omumu?

12 MS. OMUMU: Aye.

13 MR. BACARISSE: Prewitt?

14 MR. PREWITT: Aye.

15 MR. BACARISSE: Scott?

16 MR. SCOTT: Aye.

17 MR. BACARISSE: And I'm aye. It is now 2:56
18 p.m., and we are adjourned. Thank you.

19 (Whereupon, at 2:56 p.m., the meeting was
20 adjourned.)

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MEETING OF: TxDMV Board
LOCATION: Austin, Texas
DATE: June 8, 2023

I do hereby certify that the foregoing pages,
numbers 1 through 183, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Nancy H. King before the
Texas Department of Motor Vehicles.

DATE: June 16, 2023

/s/ Nancy H. King
(Transcriber)

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