



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.



TxDMV Board Meeting

9:00 a.m.

Thursday, June 8, 2023

AGENDA
BOARD MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
4000 JACKSON AVE., BUILDING 1, LONE STAR CONFERENCE ROOM
AUSTIN, TEXAS 78731
THURSDAY, JUNE 8, 2023
9:00 A.M.

The presiding officer of the Board will be physically present in the Lone Star Conference Room of Building 1, 4000 Jackson Avenue, Austin, Texas 78731. Some board members may attend via videoconferencing.

Link to June 8, 2023, TxDMV Board Meeting Documents:
<https://www.txdmv.gov/about-us/txdmv-board-meetings>

All agenda items are subject to possible discussion, questions, consideration, and action by the Board of the Texas Department of Motor Vehicles (Board). Agenda item numbers are assigned for ease of reference only and do not necessarily reflect the order of their consideration by the Board. Presentations may be made by the identified staff, Board member, or other personnel as needed. The Board reserves the right to discuss any items in closed session where authorized by the Open Meetings Act.

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1. Roll Call and Establishment of Quorum

2. Pledges of Allegiance - U.S. and Texas

3. Chair's Reports - Chairman Bacarisse
Recognition of Service - Manuel "Manny" Ramirez

4. Executive Director's Reports - Daniel Avitia

A. [Performance Quality Recognition Program \(PQRP\) Award \(County Presentations\)](#)

B. [Awards, Recognition of Years of Service, and Announcements](#)

CONTESTED CASE

5. Proposal for Decision: Franchised Dealer's Protest of Notice of Termination of Franchise; SOAH Docket No. 608-19-6279; Texas Department of Motor Vehicles Docket No. 19-0015-LIC; *All Star Imports Inc. d/b/a World Car Mazda North, Petitioner v. Mazda Motor of North America, Inc., Respondent* - Laura Moriarty (ACTION ITEM)

BRIEFING AND ACTION ITEMS

6. [Contingent Authorization for Camp Hubbard Renewal Project Request for Financing](#) - Chris Hayden (ACTION ITEM)

Authorization of Request for Financing for submission to the Texas Public Finance Authority, contingent on final approval of funding authority in the

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General Appropriations Act

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- A. DPS Troopers Foundation - New Design Proposed under Transportation Code §504.851
 - B. Brushed Metal Grill - New Design Proposed under Transportation Code §504.851
 - C. Texas A&M - Commerce - Crossover Design Proposed under Transportation Code §504.851 and §504.6011
- 175 8. [Advisory Committee Appointments](#) - David Richards (ACTION ITEM)
Appointment of New Advisory Committee Members
9. Projects and Operations Committee Update - Committee Chair John Prewitt (BRIEFING ONLY)
- 182 A. [Camp Hubbard Renewal Project Update](#)
- 185 B. [Accounts Receivable Update](#)
- 186 C. [Credit Cards in the Regional Service Centers \(RSC\)](#)
- 187 D. [FY 2023 Technology Projects](#)
- i. Registration and Title System (RTS)
 - RTS Ecosystem Modernization
 - Tax Assessor-Collectors (TAC) T1 Upgrade
 - TAC Workstation Refresh
 - Texas by Texas (TxT)
 - ii. webDEALER
 - Ongoing webDEALER Enhancements
 - webSALVAGE
 - iii. Motor Carrier Projects
 - Motor Carrier Credentialing System (MCCS) Rewrite
 - Texas International Registration Plan (TxIRP) System Upgrade
 - iv. Call Center Upgrade Phase II
- 193 10. [88th Legislative Session Update](#) - Keith Yawn (BRIEFING ONLY)
11. **Finance and Audit**
- 194 A. [FY 2024 - 2025 Legislative Appropriations and Operating Budget Update](#) - Chris Hayden (BRIEFING ONLY)
- 200 B. [Internal Audit Division Status Update](#) - Salem Chuah (BRIEFING ONLY)
- i. Internal and External Engagements
 - ii. Administrative Reports

CLOSED SESSION

12. The Board may enter into closed session under one or more provisions of

the Texas Open Meetings Act, Government Code Chapter 551, including but not limited to:

Section 551.071 - Consultation with and advice from legal counsel regarding:

- pending or contemplated litigation, or a settlement offer;
- a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Government Code Chapter 551; or
- any item on this agenda; or
- *Lucid Group USA, Inc. vs. Monique Johnston, in her official capacity as Director of the Motor Vehicle Division of the Texas Department of Motor Vehicles, et al.* Case No. 1:22-cv-01116; in the United States District Court for the Western District of Texas, Austin Division.

Section 551.076 - Deliberation Regarding Security Devices or Security Audits.

- the deployment, or specific occasions for implementation, of security personnel or devices; or
- a security audit.

Section 551.089 - Deliberation Regarding Security Devices or Security Audits.

- security assessments or deployments relating to information resources technology;
- network security information as described by Government Code Section 2059.055(b); or
- the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

13. Action Items from Closed Session

14. Public Comment

15. Adjournment

The Board will allow an open comment period to receive public comment on any agenda item or other matter that is under the jurisdiction of the Board. No action will be taken on matters that are not part of the agenda for the meeting. For subjects that are not otherwise part of the agenda for the meeting, Board members may respond in accordance with Government Code §551.042 and consider the feasibility of placing the matter on the agenda for a future meeting.

If you would like to comment on any agenda item (including an open comment under the agenda item for Public Comment), you must complete a speaker's form at the registration table prior to the agenda item being taken up by the Board or send an email to GCO_General@txdmv.gov to register by providing the required information prior to the agenda item being taken up by the Board:

1. a completed [Public Comment Registration Form](#); or
2. the following information:
 - a. the agenda item you wish to comment on;
 - b. your name;
 - c. your address (optional), including your city, state, and zip code; and
 - d. who you are representing.

Public comment will only be accepted in person. Each speaker will be limited to three minutes, and time allotted to one speaker may not be reassigned to another speaker.

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact David Richards by telephone at (512) 465-1423.

I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

CERTIFYING OFFICIAL: Laura Moriaty, General Counsel, (512) 465-5665.



To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Executive Director
Agenda Item: 4.A
Subject: Executive Director's Report - Performance Quality Recognition Program (PQRP) Awards

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

The Texas Department of Motor Vehicles (TxDMV) seeks to provide the board with this year's Performance Quality Recognition Program (PQRP) award recipients.

PQRP recognizes Texas counties for their exemplary customer service and for going above and beyond in providing vehicle title and registration services. Five (5) Texas counties earned Performance Quality Recognition Program awards from TxDMV this year.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

This program recognizes county tax assessor-collectors for outstanding performance and efficiency in processing title and registration transactions. The Performance Quality Recognition Program is a voluntary program available for all Texas county tax assessor-collectors to apply.

There has been a total of seven (7) gold, seven (7) silver, and nineteen (19) bronze recipients since the inception of the program in FY 2017. This recognition focuses on a variety of items based on industry best practices, including:

- Remitting fees on time
- Consistently applying statutes, rules, and policies governing motor vehicle transactions
- Maintaining bonds required by statute or rule
- Performing efficiently and with low error rates
- Processing transactions in a timely fashion
- Having a fraud, waste, and abuse awareness program
- Focusing on customer satisfaction
- Implementing cost-saving measures

Recipients receive a letter and certificate from the Texas Department of Motor Vehicles, as well as an insignia which can be placed on the county's website and shared with the public and other stakeholders to acknowledge this achievement. TxDMV also lists the award recipients on our website.

The award program recognizes tax assessor-collectors at three levels – Gold, Silver, and Bronze.

This year's recipients:

Gold recognition

- Tarrant County – Wendy Burgess, Tax Assessor-Collector

Silver recognition

- Bexar County – Albert Uresti, Tax Assessor-Collector
- McLennan County – Randy H. Riggs, Tax Assessor-Collector

Bronze recognition

- Brazoria County – Kristin R. Bulanek, Tax Assessor-Collector
- Karnes County – Tammy Braudaway, Tax Assessor-Collector

Texans expect and deserve exceptional and efficient customer service. This well-earned achievement is something counties and their residents should be proud.

Board Meeting Date: 6/8/2023
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Executive Director
Agenda Item: 4.B
Subject: Executive Director's Report – Awards, Recognition of Years of Service, Announcements

RECOMMENDATION

Briefing Only. Board Chair and members offer congratulations to employees receiving recognition for an award, reaching a state service milestone, or retirement.

PURPOSE AND EXECUTIVE SUMMARY

The Executive Director announces the name of individuals who retired from the agency and recognizes employees who have reached a state service milestone of 20 years and every five-year increment thereafter. Recognition at the June 8, 2023, Board Meeting for state service awards and retirements include:

- Johnna Weigand – Vehicle Titles and Registration, Wichita Falls Regional Service Center – reached 20 years of state service.
- Marla Rose – Motor Vehicle Division – reached 30 years of state service.
- Glenna Bowman – Finance and Administrative Services – reached 35 years of state service.
- Annette Smelser – Vehicle Titles and Registration – reached 20 years of state service. She will attend the board meeting.
- John Schrier – Enforcement reached 20 years of state service. He will attend the board meeting.
- JoAnn Vasquez – Enforcement reached 25 years of state service. She will attend the board meeting.

The following individuals recently retired from the agency:

- Donna Spratt – Vehicle Titles and Registration, Midland Odessa Regional Service Center – reached 11 years of state service.

FINANCIAL IMPACT

NA

BACKGROUND AND DISCUSSION

NA



To: Texas Department of Motor Vehicles Board
From: Laura Moriaty, General Counsel
Agenda Item: 5
Subject: Proposal for Decision: Franchised Dealer's Protest of Notice of Termination of Franchise; SOAH Docket No. 608-19-6279; Texas Department of Motor Vehicles Docket No. 19-0015-LIC; *All Star Imports Inc. d/b/a World Car Mazda North, Petitioner v. Mazda Motor of North America, Inc., Respondent*

RECOMMENDATION

This contested case is between two license holders. Department staff are prohibited from making a recommendation in this case because the department is not a party to the case.

PURPOSE AND EXECUTIVE SUMMARY

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision (PFD). The Board is required to issue a final order in this case.

This contested case involves All Star Imports Inc. d/b/a/ World Car Mazda North (World Car North)'s protest of the proposed termination of its franchise by Mazda Motor of North America, Inc (Mazda), a distributor.

The issue presented before the Board is whether Mazda established—by a preponderance of the evidence¹ — good cause for termination of its franchise with World Car North, as required in TEX. OCC. CODE §2301.453(g) and §2301.455.

Both parties timely provided notice of their intent to make oral presentation and submitted written materials.

FINANCIAL IMPACT

No significant financial impact to TxDMV.

BACKGROUND AND DISCUSSION

On December 17, 2018, Mazda notified World Car North of its intent to terminate the franchise. On February 15, 2019, World Car North protested Mazda's proposed termination.

On July 9, 2019, the parties participated in mandatory mediation. The Motor Vehicle Division referred this contested case to SOAH on July 19, 2019, and on July 23, 2019, the department issued a Notice of Hearing. An administrative law judge (ALJ) conducted the hearing on the merits on July 19–23, 2021.

¹ TEX. OCC. CODE §2301.453(g) requires the Board to determine whether the party seeking the termination has established by a preponderance of the evidence that there is good cause for the proposed termination. Black's Law Dictionary (11th ed. 2019) defines "preponderance of the evidence" to mean the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

The ALJ closed the record of the administrative hearing on November 8, 2021, after post-hearing briefs were filed and after the ALJ reopened the record to admit exhibit WC-7, the Dealer Agreement. The ALJ issued the PFD on January 6, 2022. The ALJ found that Mazda met its burden to show good cause for the proposed termination of World Car North's franchise and recommended the Board deny World Car North's protest of the proposed termination.

On March 11, 2022, World Car North filed Exceptions to the PFD and the Texas Automobile Dealers Association filed an amicus brief. On April 22, 2022, Mazda filed a Reply to World Car North's Exceptions to the PFD. The ALJ considered the Exceptions, Reply, and amicus brief and issued an Exceptions Letter on August 31, 2022. The ALJ's Exceptions Letter stated the ALJ found no basis to amend the PFD, noting that the focus of the PFD was not on one rogue employee's actions, but on World Car North's slow response after discovering the employee's actions.

The Board has jurisdiction to consider the contested case and enter a final order. In determining whether Mazda established good cause for the termination, Texas law requires the Board to consider:

- 1) seven specific statutory factors,
- 2) all existing circumstances, and
- 3) whether the termination is based solely on the distributor's desire for market penetration.²

The ALJ's analysis of the statutory factors under TEX. OCC. CODE §2301.455 are summarized in the following chart:

Summary of ALJ's Analysis	
Factor	Evidence in Favor of:
Factor 1: Dealer's Sales in Relation to the Sales in the Market – PFD pp. 32-33, 47 <ul style="list-style-type: none"> World Car North is currently on the low-end of the middle of the pack for sales in Texas. This factor neither weighs for or against termination. 	Neutral/ Neither Party
Factor 2: Dealer's Investment and Obligations – PFD pp. 33, 47 <ul style="list-style-type: none"> World Car North's building cost \$1.5 million to construct and was renovated at a cost of \$160,000. World Car North also spent approximately \$85,000 in new signage. World Car North currently owes around \$3 million for a loan on the dealership property. This factor neither weighs for or against termination. 	Neutral/ Neither Party
Factor 3: Injury or Benefit to the Public – PFD pp 34-36, 42-48 <ul style="list-style-type: none"> Takata airbag inflators break down in heat and humidity and can shoot particles through the cabin of a vehicle. These airbag inflators caused hundreds of injuries and multiple fatalities in this way. Mazda recalled vehicles that had Takata airbag inflators installed in them to remove and replace the defective inflators. A World Car North employee created a serious risk of injury to the public when, over the course of several years, he falsely noted that defective Takata airbag inflators had been replaced, while leaving the original inflators in vehicles. 	Termination/ Mazda

² TEX. OCC. CODE §2301.453 and §2301.455.

Summary of ALJ's Analysis	
Factor	Evidence in Favor of:
<ul style="list-style-type: none"> Once Mazda informed World Car North's management about the issue, World Car North's management was lackadaisical in its attempts to resolve the inflator issue. World Car North is in Mazda's San Antonio market. There are currently five Mazda dealerships in the San Antonio market. While there is a possibility of inconvenience to the public if one less Mazda dealer is available to perform warranty work, that inconvenience is outweighed by the risk of harm posed by the serious deficiencies with World Car North's warranty work and the dealership's failure to promptly address those problems. World Car North's continued operation presents a risk of injury such that the public would benefit from the termination. 	
Factor 4: Adequacy of the Dealer's Service Facilities, Equipment, Parts, and Personnel in Relation to those of Other Dealers of New Motor Vehicles of the Same Line-Make – PFD pp. 2, 36, 43, 46, 48 <ul style="list-style-type: none"> World Car North's service facilities, equipment, and parts are adequate. World Car North's personnel are inadequate as compared to other dealers. The recall and repair problems were due to shortcomings with World Car North's personnel and partly attributable to the dealership's failure to hire enough service staff and failure to support or supervise the service department staff. World Car North is the only dealership whose service work must be reviewed daily by Mazda's district service manager. The issue of falsely representing that airbag recall work was done has not occurred at any other Mazda dealership in the Gulf Coast region. While World Car North's service department is currently performing well, there is a significant reason to believe that would change if World Car North's service director left or if Mazda is not regularly reviewing its work. This factor weighs in favor of termination. 	Termination/ Mazda
Factor 5: Whether Warranties are Being Honored by the Dealer – PFD pp. 37, 48 <ul style="list-style-type: none"> Over the course of years, World Car North failed to comply with warranty and recall repairs and submitted false warranty claims. World Car North did not comply with Mazda's tagging requirements for warranty work. This factor weighs in favor of termination. 	Termination/ Mazda
Factor 6: Parties' Compliance with the Franchise, Except to the Extent that the Franchise Conflicts with Occupations Code Chapter 2301 – PFD pp. 38-39, 45-46, 48 <ul style="list-style-type: none"> World Car North submitted false reports of warranty repairs. 	Termination/ Mazda

Summary of ALJ's Analysis	
Factor	Evidence in Favor of:
<ul style="list-style-type: none"> World Car North did not ensure that repairs were properly and professionally performed; nor did World Car North perform work under a service campaign. Mazda's recall manager visited the World Car North dealership as part of a warranty audit. He observed two cars with their original airbag inflators that were marked as re-inspected and allowed to leave World Car North. World Car North breached §§ 14(A)(i), 14(A)(iv), 14(C), 14(F), and 14(G) of the Dealer Agreement. This factor weighs in favor of termination. 	
<p>Factor 7: Enforceability of the Franchise from a Public Policy Standpoint, Including Issues of the Reasonableness of the Franchise's Terms, Oppression, Adhesion, and the Parties' Relative Bargaining Power – PFD pp. 39, 49</p> <ul style="list-style-type: none"> Neither party contends that the dealer agreement is unenforceable. This factor does not have any effect on good cause. 	Neutral/ Neither Party
<p>8. Other Existing Circumstances – PFD pp. 40, 49</p> <ul style="list-style-type: none"> Mazda's concern about World Car North's trustworthiness supports termination. 	Termination/ Mazda
<p>9. Whether the Desire for Market Penetration is the Sole Basis for Termination – PFD p. 32</p> <ul style="list-style-type: none"> The ALJ did not consider this issue; however, the PFD indicates that there are other bases for termination. 	Other bases for termination exist

Board Authority in this Contested Case

1. TEX. OCC. CODE §2301.453 establishes the requirements for a distributor's termination of a franchise.
2. TEX. OCC. CODE §2301.453(g) imposes the burden of proof on the distributor to establish, by a preponderance of the evidence, that there is good cause for the termination of the franchise.
3. TEX. OCC. CODE §2301.455 provides factors the Board must consider when determining whether the distributor established good cause for the proposed franchise termination.
4. TEX. OCC. CODE §2301.709 requires the board to issue a final order in this case.
5. TEX. GOV'T CODE §2001.058(e), allows an agency to change a finding of fact or a conclusion of law made by the ALJ only if the ALJ:
 - a. misapplied or misinterpreted applicable law, agency rules, written policies provided to the ALJ by the agency, or prior administrative decisions,
 - b. relied on a prior administrative decision that is incorrect or should be changed, or
 - c. made a technical error in a finding of fact that should be changed.

The Board must state in writing the specific reason and legal basis for a change made to a finding of fact or conclusion of law.



Attachments

The following documents are attached to this Executive Summary for consideration by the Board:

1. January 6, 2022 SOAH ALJ Proposal for Decision (PFD)
2. March 11, 2022 World Car North's Exceptions to the PFD
3. April 22, 2022 Mazda's Reply to World Car North's Exceptions to the PFD
4. August 31, 2022 SOAH ALJ Exceptions Letter
5. May 18, 2023 World Car North's Board Materials
6. May 18, 2023 Mazda's Board Materials

1. SOAH ALJ Proposal for Decision (PFD)



FILED
608-19-6279
1/6/2022 12:08 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

ACCEPTED
608-19-6279
1/6/2022 12:46:04 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

January 6, 2022

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
4000 Jackson Ave.
Austin, TX 78731

VIA EFILE TEXAS

**RE: Docket No. 608-19-6279.LIC; MVD Docket No. 19-0015-LIC;
All Star Imports Inc. d/b/a World Car Mazda North v. Mazda
Motor of North America, Inc.**

Dear Mr. Avitia:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule which may be found at www.soah.texas.gov

Sincerely,

Rebecca S. Smith
Administrative Law Judge

RS/tt
Enclosure

cc: Jarod Smith, Smyser Kaplan & Veselka, L.L.P., 717 Texas Ave., Suite 2800 Houston, TX 77002-
VIA EFILE TEXAS
Brit Brown, Akerman LLP, 1300 Post Oak Blvd., Suite 2500, Houston, TX 77056 - **VIA EFILE TEXAS**
Marie Medina, Docket Clerk, Texas Department of Motor Vehicle, 4000 Jackson Ave., Austin, TX 78731
(with 1 CD of Hearing on the Merits) - **VIA EFILE TEXAS & INTERAGENCY MAIL**

SOAH DOCKET NO. 608-19-6279.LIC
MVD DOCKET NO. 19-0015-LIC

**ALL STAR IMPORTS INC. d/b/a
WORLD CAR MAZDA NORTH,
Protestant**

V.

**MAZDA MOTOR OF NORTH
AMERICA, INC.,
Respondent**

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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SOAH DOCKET NO. 608-19-6279.LIC
MVD DOCKET NO. 19-0015-LIC

**ALL STAR IMPORTS INC. d/b/a
WORLD CAR MAZDA NORTH,
Protestant**

v.

**MAZDA MOTOR OF NORTH
AMERICA, INC.,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

All Star Imports Inc. d/b/a World Car Mazda North (World Car North), a franchised dealership, filed a protest with the Texas Department of Motor Vehicles (Department or Board)¹ regarding the decision by Mazda Motor of North America, LLC (Mazda) to terminate its dealership agreement for a Mazda dealership in San Antonio, Texas.

After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) finds that Mazda has established good cause to terminate World Car North's dealer agreement in accordance with Code § 2301.455. Accordingly, the ALJ recommends termination of World Car North's franchise.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. These matters are addressed in the findings of fact and conclusions of law without further discussion.

On December 17, 2018, Mazda sent a letter notifying World Car North of its intent to terminate World Car North's dealership agreement. On February 15, 2019, World Car North filed its Notice of Protest with the Department. On July 19, 2019, the Department referred the protest to the State Office of Administrative Hearings (SOAH) for a contested hearing and on July 23, 2019, issued a Notice of Hearing to the parties.

¹ The applicable statutes reference the “board” which, for purposes herein, is the Department and its governing board. Tex. Occ. Code (Code) §§ 2301.002(2), .005(a). The terms Board and Department are used interchangeably in this PFD.

The hearing on the merits was held July 19-23, 2021, before ALJ Rebecca S. Smith. At the hearing, World Car North was represented by its counsel, Jarod R. Stewart and Austin Kreitz. Mazda was represented by its counsel, Brit T. Brown and Benjamin Escobar.

Ten witnesses testified live at the hearing. Mazda presented testimony from (1) Lawrence Chao, Mazda's director of United States sales and retail operations; (2) William Keys, who was the interim general manager of World Car North in early 2018; (3) Stephanie Keener, Mazda's field operations manager; (4) Robert Minatra, World Car North's current general manager; (5) Travis Young, Mazda's recall manager; (6) O. Kevin Vincent, an expert witness; (7) Katelynn Dodd, World Car North's former service manager; (8) Mark Webber, a district service manager for Mazda; and Ahmad "Nader" Zabihian, the owner of World Car North and the other dealership in the World Car group. World Car North also presented testimony from Mr. Zabihian and from (1) Art Kiolbassa the vice president and chief of operations for the World Car group; and (2) Harry Hewitt, World Car North's service director. The parties also presented testimony from the following witnesses in the form of deposition excerpts: Doug Furrer, Mazda's former zone manager for the Gulf Region; David Hart, Mazda's region network operation's manager; and Kari Novak, Mazda's field audit manager. During and after the hearing, the parties had approximately 200 exhibits admitted into evidence.²

The record closed on November 8, 2021, after the parties' post-hearing briefs were filed. Over World Car North's objections, the record was reopened to admit exhibit WC-7, the Dealer Agreement.

² World Car North's exhibits were marked WC-#, and Mazda's exhibits were marked R-#.

II. APPLICABLE LAW

Code chapter 2301 grants the Department statutory authority to regulate franchise relationships between dealers and motor vehicle manufacturers. Among other things, the Code contains limits on a manufacturer's ability to terminate a franchise agreement with a dealership, requiring that any protested termination must first be approved by the Department.³ Specifically, Code § 2301.453 provides:

- (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not terminate or discontinue a franchise with a franchised dealer . . . unless the manufacturer, distributor, or representative provides notice of the termination or discontinuance as required by Subsection (c) and:
 - (1) the manufacturer, distributor, or representative receives the dealer's informed written consent;
 - (2) the appropriate time for the dealer to file a protest under Subsection (e) has expired; or
 - (3) the board makes a determination of good cause under Subsection (g).

In determining whether there is "good cause under Subsection (g)" to approve a franchise termination, the Department must determine, following a hearing, whether the manufacturer has established, by a preponderance of the evidence, that there is good cause for the proposed termination.⁴ Code § 2301.455 lists the factors that inform the Department's good-cause determination. It states:

- (a) Notwithstanding the terms of any franchise, in determining whether good cause has been established under Section 2301.453 . . . the board shall consider all existing circumstances, including:
 - (1) the dealer's sales in relation to the sales in the market;
 - (2) the dealer's investment and obligations;
 - (3) injury or benefit to the public;

³ Code § 2301.453.

⁴ Code § 2301.453(g).

- (4) the adequacy of the dealer's service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;
- (5) whether warranties are being honored by the dealer;
- (6) the parties' compliance with the franchise, except to the extent that the franchise conflicts with this chapter; and
- (7) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power.⁵

If a dealer files a timely protest, then the Department is required to notify the manufacturer, a hearing must be held, and the manufacturer may not terminate the franchise until the Department issues a final decision finding good cause for the termination.⁶

Mazda has the burden of proving, by a preponderance of the evidence, that there is good cause to terminate World Car North's franchise.⁷

III. EVIDENCE

A. The Parties

World Car North is one of twelve World Car dealerships in the San Antonio, Texas, area owned by Ahmad "Nader" Zabihian. World Car North operates subject to an agreement with Mazda (Dealer Agreement).⁸ The World Car group includes a total of three Mazda dealerships, along with several other brands.⁹ Mr. Zabihian testified that his first franchise was a Mazda franchise, so the Mazda brand is very important to him.¹⁰ Mr. Zabihian's personal office has been located at the World Car North location since 2009.¹¹ Art Kiolbassa is the World Car group's vice president and chief of operations. World Car North's current general manager is Robert Minatra,

⁵ Code § 2301.455(a).

⁶ Code § 2301.453(a)(3), (f)(1)-(3).

⁷ Code § 2301.453(g); 1 Tex. Admin. Code § 155.427.

⁸ Ex. WC-7.

⁹ Tr. Vol. 4 at 937.

¹⁰ Tr. Vol. 5 at 1417.

¹¹ Tr. Vol. 5 at 1418.

and Harry Hewitt is its current service director. Mr. Minatra began at World Car North in April 2018. For a few months before that, Bill Keys served as interim general manager.¹²

In 2017, Katelynn “Katie” Dodd, who was in her early twenties, became World Car North’s service manager. She had been a service advisor for one of the World Car Kia dealerships before working for a year and a half or two years at World Car North.¹³ The repair shop did not have a foreman, and Ms. Dodd does not have any kind of mechanic certification.¹⁴ She left her job on August 20, 2018.¹⁵

In April 2018, World Car North only employed one Mazda-certified technician, whose name was David Winkler. Other World Car group Mazda dealerships had Mazda-certified technicians.

World Car North is in Mazda’s San Antonio market, which is part of the district that includes San Antonio, Austin, and Waco. There are currently five Mazda dealerships in the San Antonio market.¹⁶ In 2018, Mark Webber was the district service manager for the district, which contained about ten dealerships.¹⁷ Lawrence Chao was Mazda’s regional general manager for the Gulf Region, which contains the relevant district.¹⁸ At that time, Stephanie Keener was a regional customer service and parts manager, and Doug Furrer was a regional service manager.¹⁹ Travis Young is Mazda’s warranty manager.

¹² Tr. Vol. 2 at 312.

¹³ Tr. Vol. 3 at 662-63.

¹⁴ Tr. Vol. 3 at 665.

¹⁵ Tr. Vol. 3 at 696.

¹⁶ Tr. Vol. 1 at 268.

¹⁷ Tr. Vol. 1 at 93.

¹⁸ Tr. Vol. 1 at 59. Mr. Chao is currently the director of United States sales and retail operations for Mazda.

¹⁹ Tr. Vol. 3 at 696.

B. The Takata Airbag Inflator Recall

In Texas, the franchised dealership, not the manufacturer, performs warranty and recall work.²⁰ After performing warranty work, a Mazda dealership submits a warranty claim through Mazda's online warranty system. After reviewing the form, Mazda pays the claim.²¹ Mazda must rely on the dealership's representations in paying the claim; they are not in the dealership observing the work and there is no easy way for Mazda to verify the work was done.²² Recall work is similar to warranty work in the way it is reported to Mazda and in the way that Mazda relies on the dealership.²³ Mazda may then have to report that recall work to the National Highway Traffic Safety Administration (NHTSA) as having been completed.²⁴

The recall at issue in this case is for the Takata airbag inflator. This recall was the "largest and most complex recall in automotive history," affecting approximately 37 million vehicles across 19 manufacturers and 34 automotive brands.²⁵ The recall began after it was discovered that Takata's airbag inflator, which inflates the airbag in a collision, had defects such that over time, heat and humidity would cause the chemicals within the inflator to break down. The older the chemicals get, the worse the problem becomes; six to nine years after installation is the critical period for airbag degradation. The breakdown leads to more powerful explosions than the box it is contained in is designed to handle, and in a collision the box gets blown apart.²⁶ In other words, during a collision, these broken-down inflators would cause particles to shoot through the cabin, through the airbag, potentially harming the vehicle's occupants. Mr. Chao likened the situation to a grenade going off in the vehicle.²⁷ There were hundreds of injuries and multiple fatalities from

²⁰ Tr. Vol. 1 at 62-63.

²¹ Tr. Vol. 1 at 80.

²² Tr. Vol. 1 at 80-81.

²³ Tr. Vol. 1 at 81.

²⁴ Tr. Vol. 1 at 82.

²⁵ Tr. Vol. 1 at 78.

²⁶ Tr. Vol. 3 at 604-08, 645.

²⁷ Tr. Vol. 1 at 79.

the degraded inflators. The airbag inflator itself is not large; Mr. Chao compared it to the size of a burrito.²⁸ The inflator is installed behind the dash, making it invisible to a driver or passenger.²⁹

Early on, it was clear that the risk was higher in hotter areas, including South Texas. Given the initial shortages of replacement parts, NHTSA prioritized replacing the inflator in hotter regions. San Antonio was in NHTSA's highest priority region.³⁰ NHTSA also prioritized recall repairs based on vehicle models; some models' designs appeared to make them more susceptible to breakdown.³¹ As a manufacturer, Mazda's vehicles were in the middle of the pack in terms of risk.³²

C. The Discovery of Recall Issues at World Car North

In late April 2018, Mr. Webber, who is Mazda's district service manager, received a call from North Park Mazda, a Mazda dealership in San Antonio.³³ North Park Mazda reported that one of their technicians was performing a recall repair on a vehicle (for a "sticky dash") and noticed that the defective Takata airbag inflator had not been replaced, even though World Car North had reported that it had previously done that work.³⁴

When a vehicle comes in for service, the dealership enters its vehicle identification number (VIN) in Mazda's system, which will show any open recalls for that vehicle. In this case, when the technician entered the VIN, the system showed that the Takata recall was closed and that the recall work had been performed by World Car North.³⁵ To perform the "sticky dash" recall, the

²⁸ Tr. Vol. 1 at 79.

²⁹ Tr. Vol. 1 at 80.

³⁰ Tr. Vol. 3 at 609-12.

³¹ Tr. Vol. 3 at 613.

³² Tr. Vol. 3 at 646.

³³ North Park Mazda is a competitor, not part of the World Car group.

³⁴ Tr. Vol. 1 at 82-83; Tr. Vol. 4 at 958.

³⁵ Tr. Vol. 1 at 84-85.

technician had to remove the dash, and with the dash removed, the technician could see whether the old Takata inflator had been replaced.³⁶

After verifying with Mr. Young, the recall manager, that the airbag was the original one, Mr. Webber called Ms. Dodd, the service manager at World Car North, and told her about the discovery.³⁷ Ms. Dodd then let the recently-hired general manager, Mr. Minatra, know that another dealership had found a vehicle that still had its original Takata airbag inflator, even though World Car North had reported the replacement as having been done.

It was discovered that Mr. Winkler was the technician who incorrectly reported that he had replaced the airbag inflator. Mr. Minatra testified that after the discovery, he, Ms. Dodd, and Mr. Winkler had a short meeting.³⁸ Mr. Winkler was verbally counseled, but not otherwise disciplined at that time.³⁹ When asked how the incident had occurred, Mr. Winkler said that he was extremely busy and must have just missed it. No notes were placed in Mr. Winkler's employment file.⁴⁰ Mr. Minatra thought the incident was a one-off occurrence, so he did not investigate it.⁴¹ Nor did he report it to Mr. Kiolbassa, or anyone else higher-up in the World Car group. He only advised Ms. Dodd to review the repair orders to ensure they matched up with what Mr. Winkler was doing. At hearing, Mr. Minatra agreed that repair orders rely on information from the technician; a person reviewing a repair order would not necessarily be able to tell if a technician had falsified it.⁴² He did not expect Ms. Dodd to stand in the service bays and observe the work being done because that was not her job.⁴³

Ms. Dodd told Mr. Webber what Mr. Winkler had said about being busy. Mr. Webber testified that at the time, World Car North was very short-staffed: Ms. Dodd had more than one

³⁶ Tr. Vol. 1 at 86.

³⁷ Tr. Vol 4 at 958-59.

³⁸ Tr. Vol. 2 at 468.

³⁹ Tr. Vol. 2 at 468-69.

⁴⁰ Tr. Vol. 2 at 469.

⁴¹ Tr. Vol. 2 at 471.

⁴² Tr. Vol. 2 at 472.

⁴³ Tr. Vol. 2 at 473.

job, and the dealership only had one certified technician.⁴⁴ He described Ms. Dodd as very honest but very inexperienced; she was “green as green could be.”⁴⁵ She did not have a full grasp of her job. From what he could see, Ms. Dodd was not receiving any training from World Car North.⁴⁶

Mr. Webber notified Mazda management of the incident, specifically Ms. Keener, who was then a regional customer service and parts manager, and Mr. Chao. At the time, he thought the April incident was serious but one-off, an isolated mistake.⁴⁷

But then Mazda was informed of a second incident where Mr. Winkler reported replacing the airbag inflator but the defective part remained in the vehicle. Around May 21, 2018, Mr. Webber received a call from North Park Mazda, the same dealership that found the original inflator in April 2018. They had, once again, removed the dashboard as part of doing work on a “sticky dash” recall and found the original inflator in a vehicle even though World Car North had reported the airbag recall work as complete.

After the discovery of the second vehicle in May 2018, Mr. Minatra met again with Ms. Dodd and Mr. Winkler. This meeting lasted longer than the first, approximately 30 to 45 minutes. As a result of this meeting, Mr. Winkler was given a written warning.⁴⁸ Mr. Winkler provided a similar explanation to the one he gave in April: he was busy and overwhelmed and must have missed it. After hearing that explanation, Mr. Minatra asked Ms. Dodd to examine Mr. Winkler’s workload, but did not otherwise investigate the situation.⁴⁹ Ms. Dodd reviewed Mr. Winkler’s workload and reported to Mr. Minatra that it was not out of the ordinary.⁵⁰

Even after the May discovery, Mr. Winkler was still performing Takata airbag work. In fact, at that time, he was the only technician at World Car North who was certified to do those

⁴⁴ Tr. Vol. 4 at 956.

⁴⁵ Tr. Vol. 4 at 957.

⁴⁶ Tr. Vol. 4 at 958.

⁴⁷ Tr. Vol. 4 at 949.

⁴⁸ Tr. Vol. 2 at 476.

⁴⁹ Tr. Vol. 2 at 477.

⁵⁰ Tr. Vol. 2 at 474.

repairs.⁵¹ Ms. Dodd testified that, immediately after the second incident was discovered, she recommended that Mr. Winkler's employment be terminated, but that recommendation was not accepted because he was World Car North's only Mazda-certified technician.⁵² In late May, World Car North brought in a technician from another World Car store to start the Mazda-certification process so that the dealership would have more than one person who was certified to do certain work.⁵³

Mr. Minatra did not report either the April or May discoveries to Mr. Kiolbassa, his superior in the World Car group.⁵⁴ Mr. Minatra spoke with Mr. Zabihian about the situation in May, after they both received an email from Mr. Webber on May 25, 2018.⁵⁵

This discovery of the second unreplaced inflator alarmed many in Mazda management. Ms. Keener testified that she discussed the issue that day with Mr. Webber and Mr. Furrer, and they arranged for a call with Mr. Zabihian. Mr. Webber went to the dealership, and Ms. Keener and Mr. Furrer called in. She testified that they were very concerned about this second discovery and wanted to make sure that re-inspections and an investigation would occur.⁵⁶ They asked Mr. Zabihian to investigate and then to begin reaching out to customers whose vehicles Mr. Winkler had worked on.⁵⁷

D. The Early Re-inspection Period

Following the May discovery, Mr. Webber worked on creating an initial list of cars that would need re-inspection to ensure the reported airbag inflator replacement had actually occurred. The list, which was based on information from Mazda's warranty department, consisted of every VIN Mr. Winkler had worked on that needed a sticky dash repair and that had been reported as

⁵¹ Tr. Vol. 2 at 478.

⁵² Tr. Vol. 3 at 684. In contrast, Mr. Minatra's testimony did not discuss any recommendation from Ms. Dodd.

⁵³ Tr. Vol. 2 at 541.

⁵⁴ Tr. Vol. 2 at 480.

⁵⁵ Tr. Vol. 2 at 540.

⁵⁶ Tr. Vol. 2 at 389.

⁵⁷ Tr. Vol. 2 at 391.

having the airbag recall work completed. Both vehicles that Mazda was aware of at that point met that description. As part of the process, Mr. Webber copied both Mr. Minatra and Mr. Zabihian on an email he sent at 8:51 a.m. on May 25, 2021, asking Mazda employees to compile the list of vehicles that matched the description.⁵⁸ Mr. Minatra testified that he received this email.⁵⁹

At the end of that day, Mr. Webber emailed Mr. Minatra, Mr. Zabihian, and Ms. Dodd the initial list of vehicles to be inspected.⁶⁰ Ms. Dodd testified that this email included an Excel spreadsheet with a list of the Mazda 6 Takata recall work performed by Mr. Winkler.⁶¹ This original re-inspection list was limited to 132 Mazda 6 vehicles.⁶² In the email, Mr. Webber asked World Car North to let him know the status of each of the vehicles when they got them back in for inspection. After receiving the email, Ms. Dodd did not meet with either Mr. Zabihian or with Mr. Minatra about how to proceed.⁶³

Mr. Webber asked World Car North to get the customers on the list back into the dealership, and to separate out the airbags they removed into their own pile. He testified that he let the dealer take the lead because the dealer had a relationship with the customers.⁶⁴

A short time later, Mr. Webber visited World Car North to look at the removed airbag inflators that he had requested be set aside. During his visit, Ms. Dodd told him that she could not provide him the parts because she did not believe Mr. Winkler did the work. He then went to the parts department, where he saw a significant number of allegedly-removed old airbags that were not labeled with blue tags. Mazda required those tags to keep track of the replaced parts. He asked the parts director why the airbags did not have the blue tags, and the parts manager replied that Mazda had run out of them. Mr. Webber responded that they should staple a repair order to them;

⁵⁸ Ex. R-8.

⁵⁹ Tr. Vol. 2 at 483-84, 486.

⁶⁰ Ex. R-12.

⁶¹ Ex. R-12.

⁶² Tr. Vol. 4 at 952-53.

⁶³ Tr. Vol. 3 at 688.

⁶⁴ Tr. Vol. 4 at 953-54.

they need to be able to identify the parts.⁶⁵ He testified that he had never heard of running out of tags, either before or since. He added that, even if the dealership had run out of tags, it could get some from one of the other Mazda dealerships.⁶⁶ At the time, Mr. Webber did not think that excuse made sense.⁶⁷

On June 9, 2018, Ms. Dodd notified Mr. Minatra that a third vehicle for which Mr. Winkler had falsely reported the airbag recall work as complete had been found. Mr. Minatra does not remember who found the vehicle. Mr. Minatra testified that he told Ms. Dodd they would have to fire Mr. Winkler. According to Mr. Minatra, Mr. Winkler was not working that day, which was a Saturday, and did not show up for work on Monday. He quit before he could be fired.⁶⁸ Until that time, Mr. Winkler continued working on the airbag recall, including performing airbag re-inspections.⁶⁹

On June 13, 2018, Mr. Minatra was copied on another email from Mr. Webber, in which Mr. Webber asked Ms. Dodd for an update on the status of the re-inspection list. Mr. Minatra testified that, when he received the June 13 email, he was unaware that a list had been created. He added that between May 25 and June 13, he did not ask Ms. Dodd or Mr. Webber about the list of vehicles to be inspected. In fact, he testified that during that time, he did not do anything to inquire into the status of the reinspection project.⁷⁰ This is the case even though he also testified that he decided to fire Mr. Winkler the previous weekend for not completing airbag recalls.

After receiving the June 13, 2018 email, Mr. Minatra contacted Ms. Dodd and asked about the list and what progress she had made. He testified that Ms. Dodd showed him a list with notes on it. After briefly going through it, Mr. Minatra emailed Mr. Webber to let him know that he had met with Ms. Dodd and that they were going to get the resources to get it taken care of. Based on

⁶⁵ Tr. Vol. 4 at 960.

⁶⁶ Tr. Vol. 4 at 961.

⁶⁷ Tr. Vol. 4 at 962.

⁶⁸ Tr. Vol. 2 at 492-94. Ms. Dodd remembers Mr. Winkler's departure differently. She testified that she heard a rumor Mr. Winkler was leaving and asked him about it. He said that he was going to work at an independent shop, and she told him to pack up his belongings and leave. Tr. Vol. 3 at 692.

⁶⁹ Tr. Vol. 2 at 492.

⁷⁰ Tr. Vol. 2 at 489.

her notes, which included dates when she called customers, he believed that they had made reasonable progress.⁷¹

Mr. Webber disagreed. He described World Car North's response to the May request for re-inspection as "[b]eyond lackadaisical" and "appalling."⁷² He returned to the dealership 30 days after requesting the reinspection of 132 cars and was told only two inspections had been done. Ms. Dodd told him she was starting at the top of the page and working her way down. Mr. Webber told her that she could not just go one by one; she needed to get all of them in as soon as possible.⁷³

Mr. Webber was not the only Mazda employee who was concerned. Ms. Keener testified that in June, she asked Mr. Webber to accompany her to World Car North. Her team had expressed concerns that the dealership was not taking the issue seriously.⁷⁴ She had been told that World Car North was prioritizing reconditioning used cars for their own inventory over consumer repairs, that only a handful of cars had been inspected, and that there were concerns about the dealership's process.⁷⁵

Ms. Keener also spoke with Ms. Dodd and asked her about the outreach effort.⁷⁶ Ms. Dodd told her that she was the only one conducting the outreach, and that she was overwhelmed from working as both the service manager and the service advisor, both of which were separate full-time jobs. Ms. Dodd handed Ms. Keener the inspection list and told her she was still working on contacting people on the first page. When Ms. Keener expressed concern, Ms. Dodd told her that she was limited because she was told not to leave voicemail messages or send any email messages to these customers.⁷⁷

⁷¹ Tr. Vol. 2 at 487-89.

⁷² Tr. Vol. 4 at 963.

⁷³ Tr. Vol. 4 at 964.

⁷⁴ Tr. Vol. 2 at 393.

⁷⁵ Tr. Vol. 2 at 394.

⁷⁶ Tr. Vol. 2 at 396.

⁷⁷ Tr. Vol. 2 at 397.

Still concerned, Ms. Keener asked to meet with Mr. Zabihiian. Ms. Keener testified that at that meeting, which took place over lunch, Mr. Zabihiian did not express any interest in what she had to say. He listened to her concerns about safety, liability, and having only one person doing the outreach and then said he would take care of it. She described him as “a bit dismissive.”⁷⁸ For his part, Mr. Zabihiian testified that he met with Ms. Keener in June, but that they discussed marketing, not the Takata recall.⁷⁹

Not reassured by this meeting, Ms. Keener contacted Mr. Chao. She told Mr. Chao that she did not feel the re-inspections were being conducted properly, given how serious the concerns were. She also indicated that the dealership was not making progress in contacting customers.⁸⁰ She testified that she and Mr. Chao discussed outreach, re-inspection, and repair. They did not discuss termination in those conversations.⁸¹

After Ms. Keener’s visit, the number of re-inspections increased, and Ms. Dodd received some additional assistance. Toward the end of June or early July, World Car North brought in a service advisor from the World Car Kia dealership to help with the calls.⁸² They later added another service advisor in mid-to-late July and a greeter in late July or early August.⁸³ In mid-June, after Mr. Minatra had a conversation with Mr. Zabihiian, they added loaner vehicles for those customers, set aside some appointments for re-inspection, and started offering free oil changes to get customers to come back in.⁸⁴

Mr. Zabihiian testified that from May 25 until August, he only spoke with Mr. Minatra twice about the Takata recall failure.⁸⁵ The second time, Mr. Minatra raised the issue that they were having difficulty getting the cars in for re-inspection. Mr. Zabihiian suggested offering free

⁷⁸ Tr. Vol. 2 at 399.

⁷⁹ Tr. Vol. 3 at 907.

⁸⁰ Tr. Vol. 2 at 400.

⁸¹ Tr. Vol. 2 at 401.

⁸² Tr. Vol. 2 at 490-91.

⁸³ Tr. Vol. 2 at 497.

⁸⁴ Tr. Vol. 2 at 503, 546.

⁸⁵ Tr. Vol. 3 at 895.

oil changes, along with some other ideas.⁸⁶ Mr. Zabihiian never asked Mr. Minatra about staffing to contact customers and did not ask for a report during that time.⁸⁷ He was not aware of the number of vehicles that had been inspected by the end of July or of the number of those re-inspected vehicles that had failed.⁸⁸ He never investigated whether more than one technician had not been doing repairs that were reported as being done.

Ms. Keener testified that Mr. Webber had asked World Car North to contact the owners and complete the re-inspections on the initial list by July 30.⁸⁹ She testified that toward the end of July, Mr. Webber expressed concern because only 37 vehicles had been re-inspected, and of those 37, 27 had failed their re-inspection.⁹⁰ She agreed, however, that on July 30, 2018, Mr. Webber sent her an email indicating that World Car North had made a lot of progress on their list.⁹¹

Ms. Keener again approached Mr. Chao with her concerns. She, Mr. Chao, and the other members of the team thought that sending a notice to cure was an appropriate next step. She hoped and believed that the notice to cure would make the dealer take the situation seriously. In the notice, they wanted to outline the measures that were necessary to address the problem.⁹²

E. The Cure Letter and Increased Re-inspections

On August 10, 2018, Mr. Chao and a group from Mazda went to World Car North and hand-delivered Mr. Zabihiian a letter containing the notice to cure (Cure Letter).⁹³ The Cure Letter stated that World Car North was in default of its obligations under the Dealer Agreement and that failure to cure could result in termination. The Cure Letter also set out Mazda's expectations for World Car North: it required World Car North to fully cooperate with Mazda in its efforts to

⁸⁶ Tr. Vol. 3 at 897.

⁸⁷ Tr. Vol. 3 at 900, 903.

⁸⁸ Tr. Vol. 3 at 909.

⁸⁹ Tr. Vol. 2 at 401.

⁹⁰ Tr. Vol. 2 at 402.

⁹¹ Tr. Vol. 2 at 438, Ex. WC-17.

⁹² Tr. Vol. 2 at 406.

⁹³ Tr. Vol. 1 at 100-01; Ex. WC-1.

contact all customers; to prioritize scheduling, inspecting, and repairing the airbag recall; and to take steps to ensure proper completion of recall work, including “providing photographic evidence of the repair made.”⁹⁴ The Cure Letter also stated that Mazda intended to contact each customer directly.

The Cure Letter memorialized some of what Mazda employees had found. It stated that on June 20, 2018, Mazda learned that World Car had only inspected 2 of the 134 vehicles⁹⁵ originally requested to be inspected and noted that as of July 31, 2018, the dealership had completed inspections on only 37 of them. It continued by stating that of those 37 inspected vehicles, the Takata airbag inflator had not been replaced in 27.⁹⁶ The Cure Letter also indicated that Mazda understood World Car North to have told its employees not to leave phone messages or send correspondence because it did not want a paper trail.⁹⁷

Mr. Chao testified that at the August 10, 2018 meeting, he discussed the Cure Letter with Mr. Zabihiyan and the others. He testified that no one at that meeting disagreed with the statements about not leaving a paper trail.⁹⁸ He believed it was important to tell customers why they needed to bring their vehicle in.⁹⁹ He was also concerned that Mr. Zabihiyan had been insufficiently engaged before the August 10 meeting.¹⁰⁰

1. Kiolbassa Gets Involved

On August 14, 2018, Mr. Zabihiyan sent Mr. Chao a letter notifying him that the World Car group’s vice president of operations, Art Kiolbassa, had been put in charge of addressing the situation.¹⁰¹ Mr. Kiolbassa testified that he first learned of the incorrectly-reported airbag inflator

⁹⁴ Ex. R-1.

⁹⁵ The Cure Letter incorrectly stated the number of cars on the re-inspection list. The list contained 132 vehicles, not 134.

⁹⁶ Ex. R-1.

⁹⁷ Ex. R-1.

⁹⁸ Tr. Vol. 1 at 115.

⁹⁹ Tr. Vol. 1 at 117.

¹⁰⁰ Tr. Vol. 1 at 126-27.

¹⁰¹ Ex. WC-28.

recall work on August 13, 2018, when Mr. Zabihiian brought him into his office, showed him the Cure Letter, and talked to him about it.¹⁰² Mr. Zabihiian instructed him to handle the issue.¹⁰³

Mr. Kiolbassa testified that he began by speaking with Ms. Dodd and asking her about her efforts to contact customers. After Ms. Dodd told him it was difficult to contact customers, he decided to make changes.¹⁰⁴ He altered the script to better express the urgency of the situation. At hearing, he could not remember whether the original script Ms. Dodd used specified that the airbag needed re-inspection.¹⁰⁵ He made a few calls, and further updated the script in response to his calls. On one of the calls, he found out that the customers had given the car to their son in Arkansas, so he contacted an Arkansas dealer and told them that a vehicle would be coming in for inspection. He instructed the staff to order additional airbag inflators to have on hand; at that time, World Car North only had six in stock.¹⁰⁶ He also reached out to the World Car group's business development center and had them create a spreadsheet to keep track of who they contacted, the appointment day, and the results.¹⁰⁷ He also began working on a letter to Mr. Chao.¹⁰⁸

On August 17, 2018, Mr. Kiolbassa emailed Mr. Chao and said, among other things, that he had followed up with customers and that those customers had not been contacted by Mazda.¹⁰⁹

In response, Mr. Chao sent Mr. Zabihiian a follow-up letter on August 20, 2018.¹¹⁰ This letter specifically instructed World Car North to stop contacting customers regarding the Takata recall. Mr. Chao stated that Mazda's team would call and email the possibly affected customers.¹¹¹ At hearing, he testified that, due to IT issues, Mazda's outreach did not begin until

¹⁰² Tr. Vol. 4 at 1176.

¹⁰³ Tr. Vol. 4 at 1177.

¹⁰⁴ Tr. Vol. 4 at 1178-79.

¹⁰⁵ Tr. Vol. 4 at 1181.

¹⁰⁶ Tr. Vol. 4 at 1185.

¹⁰⁷ Tr. Vol. 4 at 1188.

¹⁰⁸ Tr. Vol. 4 at 1179-80.

¹⁰⁹ Tr. Vol. 1 at 199; Ex. WC-33.

¹¹⁰ Ex. R-2.

¹¹¹ Tr. Vol. 1 at 130.

August 22, 2018.¹¹² He stated that contacting customers was never their intent; Mazda was taking that on as a matter of last resort because of concern about what message World Car North was sending.¹¹³ In response to questioning about why he disregarded the progress Mr. Kiolbassa reported in the August 17 email, Mr. Chao testified:

I mean, in the context of where we were after over 80 days of not taking any effort, it was great that he made this kind of progress in a short amount of time. But the fact that they had not made any progress in the prior 90 days made me very concerned that this was not necessarily attempts to work together, but it was possibly an attempt to just throw us off and let them continue to deceive the customer that their vehicle was repaired when it wasn't.¹¹⁴

2. August Visit

Mr. Young, Mazda's recall manager, testified that he visited the World Car North facility in the third week of August 2018, as part of a warranty audit. While there, he reviewed the boxes the dealership had on their skid of used Takata inflators. After finding a brand-new inflator on a skid of used inflators, he used the repair order to match it to a VIN. He checked the car's service history using the VIN and determined that a warranty claim had been submitted indicating that the old Takata airbag inflator had been replaced on May 14, 2018. The vehicle was later re-inspected, and it was determined that the recall work had not been performed.¹¹⁵

While he was at the World Car North dealership, Mr. Young noticed an unusually large volume of cars that were coming in for service. He was worried that given that volume, the employees were not double-checking their work. He noted that although the Mazda team asked to inspect the recall repairs, most of the time, the service staff would not call them over to look at the cars. The Mazda team had to request that some vehicles be returned to shop so they could inspect them.¹¹⁶ Of those vehicles that had just been worked on, Mr. Young found two cars in which the original airbag inflator remained on the vehicle.¹¹⁷

¹¹² Tr. Vol. 1 at 201.

¹¹³ Tr. Vol. 1 at 201.

¹¹⁴ Tr. Vol. 1 at 206.

¹¹⁵ Tr. Vol. 2 at 575-78.

¹¹⁶ Tr. Vol. 2 at 583.

¹¹⁷ Tr. Vol. 2 at 584.

3. Changes at World Car North

At hearing, Mr. Kiolbassa described steps he took to ensure a situation like the one involving Mr. Winkler would not happen again. He brought in a technician from another store and worked on training advisors. He worked diligently to get a service manager after Ms. Dodd left, and hired Harry Hewitt.¹¹⁸ Mr. Hewitt, who has worked as a service manager for approximately 15 years at different dealerships, joined World Car North on September 12, 2018.¹¹⁹

Mr. Hewitt testified he implemented a part-for-part policy on recalls.¹²⁰ Under this policy, the technician had to bring the parts department the old part in order to get the new part. This allows the service department to keep track of what was going in and out of the shop. Mr. Hewitt testified he personally dispatches the service technicians and walks around the shop every half hour. He gets the tickets at the end of the day to make sure they have the correct warranty information and a tagged parts stamp on the repair order.¹²¹

Mr. Hewitt testified that there have been no Winkler-type problems since he took over the service department and that those problems are unlikely to occur again because the department now has procedures for everything.¹²² He added that nothing about his management would change if Mazda were to stop requiring photographic proof of repairs and that removal of that requirement would not lead to any problems with repairs.¹²³

Mr. Hewitt described some initial confusion with Mazda's requirement that warranty repairs be photographed and called some of Mazda's requirements, such as taking photographs of

¹¹⁸ Tr. Vol. 5 at 1234.

¹¹⁹ Tr. Vol. 5 at 1369.

¹²⁰ There is some disagreement in the evidence about when the part-for-part policy began. Although Mr. Hewitt testified that he instituted it, World Car North argues that it was implemented earlier. The basis for its argument that it began earlier was testimony from Mr. Minatra and an email from Mr. Webber indicating his understanding that such a policy had been put in place. Tr. Vol. 2 at 544 ("I don't recall exactly when. I know we started talking about the part for part in I want to say, you know, beginning of June, somewhere in that neighborhood; and then we phased it in, you know, after that. I don't remember the exact day[.]"); Ex. R-8.

¹²¹ Tr. Vol. 5 at 1372.

¹²² Tr. Vol. 5 at 1373.

¹²³ Tr. Vol. 5 at 1374.

items that were unrelated to re-inspection or recalls, as a waste of time.¹²⁴ He testified that there were some technological problems with submitting the photos: World Car's system was hacked and sometimes had wi-fi problems, and one technician drove through the car wash with an iPad on the vehicle's roof.¹²⁵ He also indicated that he had problems with email not going through that seemed to be caused by an issue on Mazda's end. Those problems required some photos to be submitted multiple times. On cross examination, he agreed that, shortly after he was hired, he knew how to ensure that the photographs were small enough to not hit Mazda's 40-megabyte capacity limit.¹²⁶ He disagreed with Mr. Webber's testimony that there were errors in half of the email messages.¹²⁷ Mr. Kiolbassa added that when Ms. Dodd left, she had some of the Mazda-required photographs on her phone. They were unable to get those photographs back from her.¹²⁸

4. Chao Email

In October 2018, Mr. Chao sent an email to Ms. Keener and Mr. Furrer about an evaluation of Mazda's audit and findings regarding World Car North.¹²⁹ In the email, Mr. Chao stated, "Let's make sure the findings we've discussed can fit into the Violation Framework that we developed. (Latest draft attached.) I think this is still our best bet in crafting/organizing our arguments." Mr. Chao testified that the Violation Framework was a working document for everyone involved to put their thoughts on the topic in one place.¹³⁰ He testified about what he meant by "this is still our best bet in crafting/organizing our arguments":

So, you know, certainly when you go back to the original Cure Letter back in August, you know, we already had some concerns. We already had our doubts about where this potentially might go. Fast forward to October. We did not have at that point much greater confidence that this may not potentially end up in some kind of a termination proceeding. And so, again, this was about just us getting

¹²⁴ Tr. Vol. 5 at 1376.

¹²⁵ Tr. Vol. 5 at 1377.

¹²⁶ Tr. Vol. 5 at 1404.

¹²⁷ Tr. Vol. 5 at 1378.

¹²⁸ Tr. Vol. 5 at 1237.

¹²⁹ Ex. WC-42.

¹³⁰ Tr. Vol. 1 at 147-78.

clarity amongst ourselves around what we were seeing and how that may potentially result in some sort of ultimate termination.¹³¹

At hearing, Mr. Chao called his choice of words “unfortunate” and apologized for them and said that the document was just a work document that World Car North was blowing out of proportion.¹³²

F. The November Letter

Mr. Chao mailed World Car North another letter on November 14, 2018.¹³³ In this letter, Mr. Chao indicated dissatisfaction with World Car North’s re-inspection performance and said that Mazda employees had difficulty contacting the dealership. The letter specifically required World Car North to provide six dedicated appointment times per day for Mazda to schedule re-inspection appointments and to ensure that the customer’s vehicle is returned within one day of the scheduled appointment with all re-inspections completed and outstanding recall repairs performed. The November 14 letter also required World Car North to submit the following for all Takata recall re-inspections and all other safety recalls: 1) the customer repair order; 2) photographic evidence of the VIN, vehicle odometer mileage, the new part installed in the vehicle, and the old part; and 3) the part that had been replaced.

Mr. Chao testified that in the November letter, he wanted to re-emphasize the need for World Car North to cooperate with them and to show evidence of their work. He stated that these requirements were not put in place to try to bludgeon World Car North or to create a case for termination. Instead, these requirements were put in place because of the extensive and unique safety risk.¹³⁴ The photographic evidence requirement came from discussions with the team about how to verify that a proper repair had been done.¹³⁵ He believes that other manufacturers occasionally require photographic confirmation, although this situation was unique.¹³⁶

¹³¹ Tr. Vol. 1 at 148.

¹³² Tr. Vol. 1 at 214-16.

¹³³ Ex. R-3.

¹³⁴ Tr. Vol. 1 at 132-33.

¹³⁵ Tr. Vol. 1 at 135.

¹³⁶ Tr. Vol. 1 at 136-37.

Mr. Webber and Mr. Furrer were the Mazda employees who spent time ensuring that World Car North was meeting the cure requirements.¹³⁷ Mr. Webber initially tracked the re-inspection progress and other issues and spent multiple hours a day on it.¹³⁸ Among other things, he managed a workbook compiling World Car North's re-inspections. The time Mr. Webber spent on World Car North eventually got to be too overwhelming, and in November 2018, he asked Mr. Furrer to take it over.¹³⁹

Mr. Kiolbassa described his reaction to the November 2018 letter, which he strongly disagreed with. He testified that he put policies in place and hired good people to ensure the issues did not happen again.¹⁴⁰ He disagreed with the letter's statement about calls being unanswered and going to generic voicemail boxes. He testified that their phones were working, and people were answering them.¹⁴¹ He testified that the vehicles that were sitting in the service department for days were vehicles with other problems that necessarily delayed repair.¹⁴² Despite his disagreement, he conveyed to the service manager and advisors the letter's requirement that photographs of all safety recalls, including Takata airbags, be submitted within 48 hours. He also prepared a document to that effect and required the general manager, the service manager, and the service advisors to sign it.¹⁴³ They created a log to keep track of the photographs.¹⁴⁴

He felt that, in the November 2018 letter, Mr. Chao was creating a false narrative and that the letter did not reflect what was actually taking place.¹⁴⁵ He also noted that Mr. Webber, who

¹³⁷ Tr. Vol. 1 at 141.

¹³⁸ Tr. Vol. 1 at 142.

¹³⁹ Tr. Vol. 4 at 965.

¹⁴⁰ Tr. Vol. 5 at 1248.

¹⁴¹ Tr. Vol. 5 at 1249.

¹⁴² Tr. Vol. 5 at 1250-51.

¹⁴³ Tr. Vol. 5 at 1255-56; Ex. WC-53.

¹⁴⁴ Tr. Vol. 5 at 1259.

¹⁴⁵ Tr. Vol. 5 at 1268.

was helpful, suddenly became unhelpful after receiving a telephone call during a meeting.¹⁴⁶ Mr. Kiolbassa described it as being like somebody turned a switch.¹⁴⁷

Mr. Chao agreed that termination had been mentioned in the Cure Letter and was still on the table, but that when he sent the letter, he had not made the decision to terminate. He added that termination is extremely disruptive and not something Mazda does lightly.¹⁴⁸

Mr. Chao eventually decided to terminate the dealer agreement with World Car North. Before deciding to terminate, he conferred with members of his team (including Ms. Keener, Mr. Furrer, and Mr. Webber) as well as other corporate employees.¹⁴⁹ No one objected to the decision to terminate.¹⁵⁰ He added that Mr. Furrer, who was the zone manager, supported termination at that time.¹⁵¹ Mr. Furrer, who no longer works for Mazda, stated in a deposition that he did not support termination.¹⁵²

G. The Termination Letter

Mr. Chao prepared and signed the termination letter, which was dated December 17, 2018, and addressed to Mr. Zabihian.¹⁵³ Mazda sent the letter by certified mail, and Mr. Chao, along with members of his field team, also hand-delivered it to the World Car North dealership on the same day.¹⁵⁴ They had a brief meeting about it.¹⁵⁵ At the meeting, Mr. Chao also presented a proposal to buy out the three World Car group Mazda dealerships, including World Car North, for

¹⁴⁶ Tr. Vol. 5 at 1270.

¹⁴⁷ Tr. Vol. 5 at 1271.

¹⁴⁸ Tr. Vol. 1 at 149.

¹⁴⁹ Tr. Vol. 1 at 66.

¹⁵⁰ Tr. Vol. 1 at 70, 158.

¹⁵¹ Tr. Vol. 1 at 71.

¹⁵² Ex. WC-127 at 120.

¹⁵³ Tr. Vol. 1 at 65, 157-58; Ex. R-4.

¹⁵⁴ Tr. Vol. 1 at 76.

¹⁵⁵ Tr. Vol. 1 at 161.

\$3 million.¹⁵⁶ If Mr. Zabihian accepted the offer, Mazda would waive warranty charge-backs, which totaled approximately \$300,000.¹⁵⁷ Mr. Chao testified that this was a reasonable price, based on the dealerships' financial statements which showed annual losses of between \$3 million to \$5 million over the previous several years.¹⁵⁸ He testified that he thought the buy-out would be a mutually beneficial, amicable way to proceed.¹⁵⁹ Mr. Zabihian responded that his dealerships were not for sale.¹⁶⁰ He testified that he did not think about whether the price offered was fair; the dealerships were not for sale.¹⁶¹

H. The Current Status

Mazda has adapted its Product Quality Management (PQM) system to address the issue of the World Car North recall failures. Mazda created a list of the VINs that were serviced by World Car North and added it to a PQM list. When a dealership in North America enters a VIN on this list into the Mazda system, the dealership receives an email telling them to contact Mazda.¹⁶² This system applies even if the car is brought into a dealership in another state. According to Mr. Young, this alert has been used several times. When alerted to a World Car North vehicle outside of Texas, Mr. Young calls the dealership to tell them what to re-inspect.¹⁶³ Mazda requires those dealerships to send photographs of both the failed and repaired parts.¹⁶⁴

Since the warranty audit was completed in December 2018, roughly 206 Takata recalls from World Car North failed re-inspection, and over 250 non-Takata recalls failed re-inspection.

¹⁵⁶ Tr. Vol. 1 at 161.

¹⁵⁷ Tr. Vol. 1 at 162.

¹⁵⁸ Tr. Vol. 1 at 166.

¹⁵⁹ Tr. Vol. 1 at 167-68.

¹⁶⁰ Tr. Vol. 5 at 1419.

¹⁶¹ Tr. Vol. 5 at 1420.

¹⁶² Tr. Vol. 3 at 800-01.

¹⁶³ Tr. Vol. 3 at 802-03.

¹⁶⁴ Tr. Vol. 3 at 804.

Re-inspection is not complete; approximately 360 vehicles remain on the list of vehicles that need to be re-inspected.¹⁶⁵ Mazda stopped making calls to customers about the airbag recall in 2019.

Mr. Young testified that, as the recall manager, he is unaware of this issue ever occurring at any other dealership.¹⁶⁶ In his deposition Mr. Webber agreed that this issue was unique.¹⁶⁷ Mr. Webber expressed pessimism about World Car North's service:

Q: And absent Mazda monitoring, do you feel from your experience that the dealership has the systems in place to prevent a recurrence?

A. No, because we have to track them all the time. The dealer has never built a system. This is all my work I guess.¹⁶⁸

Mr. Webber also provided the following answers to questions regarding World Car North's performance of recall work:

A. Currently I would say they're equal to other dealers that are doing the same work. I mean, we are checking. You know, they're on par with anybody else as far as the warranty right now, yeah.

Q. Because you're requiring constant work?

A. Yeah, that's what I have to be.

Q. All right. Before your involvement, before Mark Webber came in and set up these requirements for photographs and the PQM list, how was that store's fixed operations compared to the others?

A. It was low. I was really struck by the blue tag issues. I'm not going to lie. That actually sort of surprised me a bunch because it's not something I see at my other dealers. And if you do see it, it's now and then you will look through the warranty things on the returns, and they will be missing a tag here and there. But never an entire pallet of airbag inflators at that time.¹⁶⁹

¹⁶⁵ Tr. Vol. 3 at 840.

¹⁶⁶ Tr. Vol. 2 at 588.

¹⁶⁷ Ex. R-51 at 243.

¹⁶⁸ Tr. Vol. 4 at 976.

¹⁶⁹ Tr. Vol. 4 at 978-79.

Mr. Kiolbassa testified about changes made after the termination letter. For example, he drafted a warranty checklist based on comments from Mazda's warranty audit.¹⁷⁰ Mr. Kiolbassa also filed a police report about Mr. Winkler in 2019.¹⁷¹ He testified that nothing has come of the report; the San Antonio police have not located Mr. Winkler.

Looking back, Mr. Zabihian expressed his belief that neither he nor anyone else in the upper-level of management at the World Car group are responsible for the situation:

Q. Do you believe the service manager, the general manager, or your VP and chief of operations or yourself bear any responsibility for what occurred?

A. For this situation, it was the technician, I believe.

...

Q. So that question I asked, the only people at the dealership that you would consider to be accountable would be the technician and the service manager. Is that your testimony?

A. Whatever happens in the service department, the supervisor should be responsible for it.

Q. And those are the only ones accountable? Do you understand what I'm asking? I'm asking if anybody else in your organization, including yourself, do you consider anyone else to have some accountability for that — for the safe and proper performance of that kind of work?

A. Well, every department has a manager. So practically you're running a dealership. So every department has personnel that their immediate supervisor is managing that department. So I believe that should be the one.¹⁷²

I. World Car North's Business and Facilities

Mr. Zabihian testified that the World Car North building cost \$1.5 million to construct, and World Car recently renovated the building to meet Mazda's current requirement.¹⁷³ He also spent

¹⁷⁰ Tr. Vol. 5 at 1234-35.

¹⁷¹ Tr. Vol. 5 at 1294-95.

¹⁷² Tr. Vol. 5 at 1439, 1441-42.

¹⁷³ Tr. Vol. 5 at 1418.

approximately \$85,000 in new signage.¹⁷⁴ He testified that although there are always some rough periods in a dealership, as of the hearing date, World Car North made a \$1 million profit in 2021, with a similar amount in 2020.¹⁷⁵ World Car North still has about \$3 million in debt, and has invested about \$1.8 million in fixed assets (the building, renovation, the sign, and equipment, and technology).¹⁷⁶

Mr. Zabihian agreed on cross examination that 2019 was the first profitable year World Car North had since 2013.¹⁷⁷ He also agreed that at the time Mr. Chao offered to buy all three dealerships, World Car North had just come off multiple consecutive years of significant losses.¹⁷⁸

Mr. Zabihian testified that termination would affect the 40 people working for the dealership and the 30 people who work in the corporate office located at the dealership. He added that it would also hurt the World Car brand name in San Antonio and its other dealerships. He invested and sacrificed for the company.¹⁷⁹ He testified that the World Car brand, and the lifetime warranty its dealerships offer, are well-known in San Antonio.¹⁸⁰

Mr. Kiolbassa testified that World Car North is currently in the middle of the pack for sales in Texas; it is an average dealership.¹⁸¹

¹⁷⁴ Tr. Vol. 5 at 1419.

¹⁷⁵ Tr. Vol. 5 at 1421.

¹⁷⁶ Tr. Vol. 5 at 1425.

¹⁷⁷ Tr. Vol. 5 at 1437.

¹⁷⁸ Tr. Vol. 5 at 1438.

¹⁷⁹ Tr. Vol. 5 at 1426-27.

¹⁸⁰ Tr. Vol. 5 at 1426-27.

¹⁸¹ Tr. Vol. 5 at 1278.

J. Highly Disputed Factual Issues

1. Was World Car North Aware of Recall Issues Before April 2018?

The parties generally agreed on the general outline of facts set out above, if not the implications from those facts. However, some alleged facts were hotly disputed at hearing, and the evidence on those topics is discussed below. The first issue is whether World Car North was aware before April 2018 of an airbag recall that was reported as completed when the work was not done.

Ms. Dodd testified at hearing that in February 2018, the parts department called her to say that Mr. Winkler was requesting an airbag when the repair order did not indicate that the airbag should be replaced. Ms. Dodd reviewed the repair order and confirmed there was no line for the airbag replacement. She then checked Mazda's warranty repair system, which showed the airbag inflator as having previously been replaced at World Car North. She asked Mr. Winkler how this happened, and he had no explanation. She reached out to Mr. Keys and asked for advice about how to proceed. He told her to just put the new airbag inflator in the vehicle, mark it on the ticket, and move forward. Mazda was billed for the first inflator, but World Car North ate the cost of the second one.¹⁸² She testified that the second installation was on a repair order.¹⁸³ She agreed that she never told Mr. Keys that Mr. Winkler was engaging in fraud; she just described what had happened.¹⁸⁴ For his part, Mr. Keys denied that any such conversation took place.¹⁸⁵ Mr. Kiolbassa testified that he does not know whether Mr. Keys would have brought a single issue of a misreported recall to his attention.¹⁸⁶

Ms. Dodd testified that she told Mr. Minatra about some problems she had with Mr. Winkler when meeting with him after the April 2018 discovery. She does not remember whether she specifically told Mr. Minatra about the airbag inflator that was not replaced.¹⁸⁷

¹⁸² Tr. Vol. 3 at 673-75.

¹⁸³ Tr. Vol. 3 at 674.

¹⁸⁴ Tr. Vol. 3 at 707.

¹⁸⁵ Tr. Vol. 2 at 337.

¹⁸⁶ Tr. Vol. 4 at 1174.

¹⁸⁷ Tr. Vol. 3 at 677, 768.

Mr. Kiolbassa testified that, after Ms. Dodd's testimony, he went back and reviewed repair orders. He could find a February 2018 repair order for 2011 Mazda 6 where the sticky crash pad was replaced, but the repair order does not show any internal billing for an airbag inflator. He did find a repair order in which both a sticky crash pad was replaced and an airbag inflator was internally billed, but that was in June 2018.¹⁸⁸ He did not find any internal billing for an airbag inflator in February 2018.¹⁸⁹ On cross examination, he agreed that according to the repair order, that Mazda 6 seen in February was listed as having previous airbag inflator work performed by Mr. Winkler.¹⁹⁰ He also agreed that the June 2018 repair work could not have been performed by Mr. Winkler because he had already left his employment by then.¹⁹¹

The ALJ finds Ms. Dodd's testimony on this issue to be credible. The fact that Mr. Minatra did not report the April 2018 discovery to anyone higher up suggests that it was not out of the question for Mr. Keys not to report such a thing, either.

2. Were Other World Car North Technicians Involved?

Mazda presented testimony from Mr. Webber that other World Car North technicians' recall work failed later inspection. His testimony was based on a spreadsheet kept by Mazda, which was largely based on reporting directly from World Car North. From this testimony, Mazda argues not just that other technicians at World Car North incorrectly performed recall work, but rather that other technicians falsely reported having completed Takata airbag recall work.

At hearing, it became clear that the spreadsheet contained several errors, including columns and rows being shifted. But perhaps the largest error, World Car North contends, is that the data it provided Mazda was inaccurate. For example, it sometimes used "failed" re-inspection to mean things other than airbags that were marked as replaced but were not. Some of the re-inspections it marked as "failed" were ones in which a temporary replacement was installed, not ones in which an airbag was never replaced at all. Mr. Webber agreed on cross-examination that, after reviewing

¹⁸⁸ Tr. Vol. 5 at 1298-1300; Exs. WC-125, WC-126.

¹⁸⁹ Tr. Vol. 5 at 1365.

¹⁹⁰ Tr. Vol. 5 at 1313.

¹⁹¹ Tr. Vol. 5 at 1315.

the underlying documents, he was able to determine that Mr. Winkler had performed the work on one of the airbag inflators that was listed as a non-Winkler failure. It appeared that a World Car North warranty administrator had entered the incorrect technician ID code.¹⁹²

Thus, World Car North argues that Mazda's summary based on the information the dealership provided is unreliable. Accordingly, in addition to the problem of the shifting lines, the report based on its data cannot be used to show other technicians were involved. The ALJ agrees with World Car North that, given the inconsistencies in the reports, World Car North's entry of the incorrect technician ID code, and the inconsistency in World Car North's use of the word "failed," Mazda did not establish that technicians other than Mr. Winkler left an original airbag inflator in a vehicle but marked the recall work as complete. On the other hand, this spreadsheet did show a significant number of issues with World Car North's recall work and recordkeeping.

3. Was Mazda Using the Failure as a Pretext?

At hearing, Mr. Zabihian testified that he met with Mr. Chao for dinner shortly after receiving the purchase offer and that, at that dinner, Mr. Chao told him that Mazda was trying to reduce the number of dealers in the region.¹⁹³ In response, Mr. Zabihian offered to sell one of the other Mazda dealerships in San Antonio. Mr. Chao replied that he wanted all three.

However, in his August 2020 deposition, Mr. Zabihian had a different story. In his deposition, he testified that before reviewing deposition testimony in this case, he did not understand that Mr. Chao was trying to reduce the numbers of dealers in this district.¹⁹⁴

Mr. Chao testified that Mazda regularly hires a company to perform market studies throughout the Gulf Region.¹⁹⁵ He added that those studies did not play a part in his decision to terminate World Car North's franchise.¹⁹⁶

¹⁹² Tr. Vol. 4 at 1102.

¹⁹³ Tr. Vol. 5 at 1423.

¹⁹⁴ Tr. Vol. 5 at 1431.

¹⁹⁵ Tr. Vol. 1 at 61.

¹⁹⁶ Tr. Vol. 1 at 61.

Evidence suggests that Mazda viewed four, rather than five, to be the ideal number of Mazda dealerships in San Antonio. But there was also evidence that termination was difficult and expensive, and there was certainly evidence that dealing with the situation created at World Car North used a significant amount of Mazda resources, particularly employee time.

The ALJ finds Mr. Zabihian's hearing testimony about Mr. Chao's conversation not credible and does not find that Mazda used the situation with the Takata airbag recall as a pretextual excuse to reduce the total number of dealerships in San Antonio.

IV. ADEQUACY OF TERMINATION NOTICE

Code § 2301.453 provides that a manufacturer cannot terminate a franchise agreement unless written notice is sent to the dealer "stating the specific grounds for the termination or discontinuance."¹⁹⁷ There are no arguments that notice was insufficient, and the ALJ finds that Mazda met the notice requirements.

V. MATERIAL BREACH

Mazda argues that World Car North's material breach of the Dealer Agreement is, standing alone, sufficient to terminate it. Citing to cases, Mazda contends that "[u]nder Texas law, a party's material breach of a contract discharges the counterparty from further performance."¹⁹⁸ While this is an accurate statement of general contract law, termination in this case is controlled by statute. Under that statute, as set out above, compliance with the franchise is only one factor of seven non-exclusive factors to be considered.¹⁹⁹ Mazda's allegations of material breach will be addressed below, with the other factors, but are not sufficient, by themselves, to justify termination.

¹⁹⁷ Code § 2301.453(c). The statute also requires that notice be sent, via registered or certified mail; be received at least sixty days before the effective date of the termination; and that it contain prominent information notifying the dealer of its right to file a protest. World Car North does not contest Mazda's compliance with these elements.

¹⁹⁸ Respondent's Post-Hearing Brief at 22.

¹⁹⁹ Code § 2301.455(a).

VI. ANALYSIS OF STATUTORY GOOD-CAUSE FACTORS

The legislature has directed that Mazda bears the burden of establishing that good cause exists to terminate World Car North's franchise, and that good cause takes into consideration "all existing circumstances."²⁰⁰ Although several of the factors are not seriously in dispute, each statutory factor is addressed below.

A. World Car North's Sales in Relation to the Market

Mazda is not relying on World Car North's sales to justify termination and did not introduce evidence about those sales. Mr. Kiolbassa, testifying for World Car North, stated, "[t]he last reports showed that we were right in the middle of state sales, that we were, you know, ranked I think like number 35 out of 55 dealerships in our [district]. So, you know, we're an average dealership."²⁰¹ Mr. Kiolbassa also testified that the dealership was performing better in 2021 than it did in 2020, and also performed better in 2020 than it did in 2019.²⁰²

In its briefing, Mazda challenges Mr. Kiolbassa's characterization of World Car North's sales.²⁰³ It cites to an exhibit introduced by World Car North that shows the dealership's sales declined from 769 units sold in 2013, to 239 units sold in 2017.²⁰⁴ This same sheet shows a significantly higher sales volume for Mazda dealerships in San Antonio that are not part of the World Car Group.

Given the absence of evidence from Mazda on this point, the ALJ is unable to determine what the chart it cites means or how to reconcile that with Mr. Kiolbassa's testimony about World Car North's placement in the lower end of middle for sales in the state. Perhaps because sales performance was not the basis for the termination decision, there was no evidence or argument about which market should be considered. Nor is the sales performance of other World Car Group

²⁰⁰ Code § 2301.453(g), .455(a).

²⁰¹ Tr. Vol. 5 at 1278.

²⁰² Tr. Vol. 5 at 1277.

²⁰³ Respondent's Response Brief at 21.

²⁰⁴ Ex. WC-103.

Mazda dealerships, which Mazda argues is low, relevant. The ALJ concludes that this factor does not support termination of the dealership. On the other hand, World Car North's sales performance does not strongly argue that termination would limit the availability of vehicles, either.

B. World Car North's Investment and Obligations

The second statutory factor examines the investment and obligations of World Car North's dealership.²⁰⁵ This is also not a factor that Mazda relies on in arguing for termination.

Mr. Zabihian testified that the World Car North building cost \$1.5 million to construct, and World Car recently renovated the building to meet Mazda's current requirements, at a cost of \$160,000.²⁰⁶ He also spent approximately \$85,000 in new signage.²⁰⁷ He testified, too, that the company currently owes around \$3 million for a loan on the property where the dealership is located.

Mazda does not disagree that World Car North has made a significant investment in the business, but argues that under the Code, following termination Mazda would purchase the new vehicle inventory, signs, parts, accessories, and special tools.²⁰⁸ It also argues that World Car North would keep the real estate, which it could either sell or use in another way. It also argues that the investment in the dealership is insufficient to override the other reasons for termination.

As with the previous factor, Mazda has not established that World Car North's investments and obligations supports good cause for termination. But also as with the previous factor, the investments do not strongly argue against it, either.

²⁰⁵ Code § 2301.455(a)(2).

²⁰⁶ Tr. Vol. 5 at 1418.

²⁰⁷ Tr. Vol. 5 at 1419.

²⁰⁸ Code § 2301.465(b) (setting out the payments a manufacturer must make to a terminated dealer).

C. Injury or Benefit to the Public

The third statutory factor requires consideration of any “injury or benefit to the public.”²⁰⁹ This is one of the statutory factors Mazda relies on to show good cause to terminate the franchise.

World Car North argues that termination would injure the public by eliminating the jobs of the 40 World Car North employees²¹⁰ and by reducing the number of Mazda dealerships, thereby reducing the number of certified technicians and locations performing recall and warranty work in San Antonio.

World Car North also argues that “injury” means actual injury and does not include “risk of injury” and that there was no evidence of anyone actually injured by Winkler’s failure to replace an airbag inflator.²¹¹ Finally, World Car North contends that, given the level of performance and review in place at World Car North now, any risk of injury from World Car North’s future performance is low.

The ALJ declines to read “injury” to only mean actual, existing injuries, as opposed to an increased risk of injury. It is not necessary for Mazda to prove that someone was injured by the failure to replace an airbag that a customer thought had been replaced in light of the testimony about the real risks from the original airbag. This is consistent with the caselaw, as well. For example, in *Ford Motor Company v. Motor Vehicle Board of Texas Department of Transportation / Metro Ford Truck Sales*, the court held that evidence supported a finding of injury where the dealership’s actions placed the owners at risk of not receiving important safety information.²¹²

Turning to an analysis of that risk of injury, World Car North currently has two higher-level employees who appear engaged in the process of ensuring that service work is properly done and that the re-inspections are conducted well: Mr. Hewitt and Mr. Kiolbassa. Although the ALJ finds Mr. Kiolbassa’s concern about the situation to be sincere, it is unclear to what extent he will

²⁰⁹ Code § 2301.455(a)(3).

²¹⁰ Tr. Vol. 4 at 1144.

²¹¹ Protestant’s Post-Hearing Brief at 35.

²¹² *Ford Motor Co. v. Motor Vehicle Bd. of Tex. Dep’t of Transp./Metro Ford Truck Sales, Inc.*, 21 S.W.3d 744, 756–57 (Tex. App.—Austin 2000, pet. denied).

remain involved in the details of World Car North's service department, since he has a larger job that involves all twelve dealerships. Likewise, Mr. Webber has testified about his concerns about what would happen should Mr. Hewitt leave World Car North.

The evidence largely suggests that World Car North is currently trying to comply with Mazda's requirements. And World Car North's addition of the part-for-part policy appears to be a good one and seems designed to limit future occurrences.

But problems, and the history of problems, at World Car North extend beyond just the service department. Mr. Minatra, who is still the general manager, did not even check about the status of the re-inspections from the period of May 25 until June 13, even though an additional failure was found during that time. During that time, he regularly spoke with Ms. Dodd, but did not pick up the phone himself or otherwise take action—such as reassigning some of her work to someone else—until he received an email from Mr. Webber asking about progress. The parts department, too, provided unsatisfactory answers to explain why airbags were not tagged when Mr. Webber visited in June 2018.

Mazda also presented some evidence of a lack of urgency and sense of responsibility coming from the top of the World Car group. Mr. Zabihian, when repeatedly given the opportunity to testify that he had some responsibility for what happened at his dealerships, refused to do so.

After considering the arguments and evidence, the ALJ finds that the continued operation of World Car North presents a risk of injury such that the public would benefit from the termination. The slight reduction in the availability to provide warranty work is a potential harm, but one that is outweighed by the risk presented in this case—that there were serious issues with the performance of that warranty work and that those issues were not promptly addressed by the dealership.

Additionally, while World Car North contended that the public would be harmed if its employees lost their jobs from the termination, the ALJ notes that the World Car group would still own two other Mazda dealerships and nine dealerships for other manufacturers. Termination would not necessarily mean its staff could not remain employed.

For these reasons, the ALJ finds that the statutory factor addressing injury or benefit to the public weighs in favor of termination.

D. Adequacy of World Car North’s Service Facilities, Equipment, Parts, and Personnel

Next, the parties must address “the adequacy of the dealer’s service facilities, equipment, parts, and personnel” relative to other Mazda dealers.²¹³ Mazda has not alleged that World Car North’s service facilities, equipment, or parts are inadequate. However, Mazda argues that its service personnel have been substandard.

World Car North argues that Mazda has not established this factor is in its favor because it has not introduced evidence about the service personnel at other Mazda dealerships. It also argues that it currently has highly skilled service technicians and a service manager who Mazda’s witnesses recognize as good.

World Car North focuses only on the changes occurring since the Cure Letter and argues that hypothetical future performance should play no role in the analysis. On the other hand, Mazda focuses on the shortcomings before the Cure Letter and the slow pace of the dealership’s management to respond to the problem.

The ALJ finds that this factor weighs in favor of termination. Although Mazda did not present evidence specifically about other dealers’ service employees, it did present evidence that the situation at World Car North was unique. Mr. Webber testified that he has not had to conduct a daily review of other dealers’ service work.²¹⁴ Although current staffing of World Car North’s service department seems appropriate, that was not the case in 2018. Given that the dealership’s management, except for the service department, is the same as it was in April 2018, there are reasons to believe that issues could arise again if Mazda stopped closely monitoring it.

²¹³ Code § 2301.455(a)(4).

²¹⁴ Ex. R-51 at 243.

E. World Car North's Warranty Service

In demonstrating good cause for termination, the Department must consider “whether warranties are being honored by the dealer.”²¹⁵ As set out above, World Car North has a history of not complying with Mazda's warranties. The background of Mr. Winkler's behavior, and the delay in World Car North's (and the World Car group's) management to address it shows that warranties or recalls were not being honored.

World Car North points to two items to argue that it has honored warranties. First, it argues that the World Car group provides lifetime warranties for its customers. Second, it argues that World Car North worked to resolve the airbag inflator problem.²¹⁶

From the evidence, it seems that World Car North has taken additional steps to honor warranties, but that most of those steps did not occur until after it received the Cure Letter. And although there was evidence about the additional warranty that the World Car group provides, there was no evidence to show it performs well.²¹⁷ Moreover, while the documents Mazda relied on did not show that technicians other than Mr. Winkler were falsely reporting they had replaced airbag inflators, those same documents nonetheless showed that World Car North's technicians and warranty administrator made errors.²¹⁸ Finally, Mr. Webber testified about the large number of untagged airbag inflators he found, in violation of Mazda's warranty policy.

The preponderance of the evidence supports a finding that World Car North has had difficulty honoring its customers' warranties. Therefore, this factor weighs in favor of Mazda's decision to terminate World Car North's franchise.

²¹⁵ Code § 2301.455(a)(5).

²¹⁶ Protestant's Post-Hearing Brief at 49-50.

²¹⁷ Mr. Kiobassa testified that the World Car group does not require the work to be done at a World Car group dealership, but World Car North otherwise presented little evidence about its performance of that warranty. Tr. Vol. 4 at 1146.

²¹⁸ Tr. Vol. 4 at 1102.

F. Compliance with the Franchise

The next statutory factor to be considered in determining good cause for terminating a dealership is “the parties’ compliance with the franchise, except to the extent that the franchise conflicts with [Code chapter 2301].”²¹⁹ Mazda’s arguments about breach are addressed here.

In particular, Mazda alleges that World Car North breached the following provisions in the Dealer Agreement:

1. Section 14(A)(i), which required World Car North to “take all reasonable steps to provide the highest quality of service;”
2. Section 14(A)(iv), which required World Car North to “ensure that customer concerns with Mazda Vehicles are accurately diagnosed and necessary and approved Repairs are properly and professionally performed;”
3. Section 14(C), which required World Car North to “abide by and implement Mazda’s warranty procedures . . . in all respects and . . . comply with all warranty requirements required by law;”
4. Section 14(F), which required World Car North to “perform service campaign and/or corrections for owners or users of all Mazda Products that qualify for such inspections and/or corrections;” and
5. Section 14(G), which required World Car North “to comply and operate consistently with all applicable provisions of federal, state and local laws, ordinances, rules, regulations, consent decrees, and orders affecting Mazda Products and Dealership Operations, including without limitations those relating to safety, emissions control, noise and customer service.”

World Car North argues, citing a case about DPTA and tort claims,²²⁰ that it cannot be responsible for the unforeseeable criminal actions of its employee, and that fraudulent criminal conduct is outside the scope of employment. World Car North does not address whether those actions could lead it to be in breach of a contract, however.

²¹⁹ Code § 2301.455(a)(6).

²²⁰ *Zarzana v. Ashley*, 218 S.W.3d 152 (Tex. App.—Houston [14th Dist.] 2007, pet. struck).

Regardless, the ALJ notes that there was sufficient evidence about breach of contract, even setting aside Mr. Winkler's direct actions. Mazda presented evidence about World Car North's failures to comply with warranty obligations, such as the systematic failure to tag the removed (or allegedly removed) airbag inflators. While the ALJ does not find that anyone in the World Car group's management intended Winkler to do what he did, the fact is that World Car North submitted false reports of warranty repairs. World Car North undisputedly did not, at the time that Winkler was doing the work, ensure that repairs were properly and professionally performed; nor did World Car North perform work under a service campaign. While his acts may have been unexpected, there was no check on them. With only one certified technician and a very young and inexperienced service manager, World Car North did not take steps to ensure "the highest quality of service." Finally, the ALJ notes the testimony of Mr. Young where he described observing two cars with their original airbag inflators that were marked as re-inspected and allowed to leave World Car North after measures were put in place to avoid this from happening.

In sum, Mazda has shown, by a preponderance of the evidence, that World Car North has breached Sections 14(A)(i), 14(A)(iv), 14(C), 14(F), 14(G) of the Dealer Agreement. World Car North's failure to comply with the dealer agreement is a factor that weighs in favor of terminating its franchise.

G. Enforceability and Reasonableness of the Franchise Agreement

The final statutory factor requires the parties to address "the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power."²²¹

Neither party addressed this factor, and neither party contends that the Dealer Agreement is unenforceable. The ALJ does not find that this factor has any effect on good cause.

²²¹ Code § 2301.455(a)(7).

H. Other Relevant Circumstances

Code § 2301.455(a) directs the Department to consider “all existing circumstances,” and the factors listed in that rule are not exclusive. Although not clearly labeling it as an “other relevant circumstance,” Mazda argues that World Car North’s actions have destroyed the trust essential for a relationship between dealer and manufacturer. The ALJ will analyze this argument under “other relevant circumstances.”

Whether phrased as trust or as concerns about safety and honesty, Mazda argues that it should not be forced to remain in a relationship with a dealer it cannot trust to be reliable about safety and honesty. In making this argument, Mazda relies on *Metro Ford*, in which the court upheld a termination based on falsified sales records.²²²

World Car North distinguishes *Metro Ford*, in which the dealership kept two sets of books and created fake sales transactions to take advantage of the manufacturer’s discount pricing program. In this case, World Car North notes that it has not gained financially from the false reporting and that it has spent a significant amount of time dealing with the consequences.

The ALJ notes that, while there is no evidence of anyone in World Car North’s management approving of Mr. Winkler’s actions, there is evidence, as discussed before, about the dealership’s initial slow response to the problem. Whether expressed as a lack of trust, or as something else, the analysis is essentially the same as the injury or benefit analysis set out above in § VI.C. World Car North’s systematic downplaying of the problem, combined with the internal oversight failures, argue in favor of termination.

VII. CONCLUSION

As described above, Mazda has met the burden of demonstrating good cause for the termination of World Car North’s Mazda dealership in San Antonio, Texas. World Car North’s employee contributed to a significant risk of harm over a period of time by falsely reporting Takata airbag recall work as having been completed. When notified of the issue, World Car North’s

²²² Respondent’s Response Brief at 19 (citing *Metro Ford*, 21 S.W.3d at 758).

management was extremely slow to take the issue seriously. The general manager did not ask anyone about re-inspections for several weeks. By the end of the first month, the dealership had completed 2 of 132 requested re-inspections. Even finding more incidents of falsely-reported airbag recall work did not seem to lead to a sense of urgency until Mazda delivered the Cure Letter. The dealership kept its service department understaffed and failed to comply with Mazda's requirements for warranty work. Mazda employees, particularly Mr. Webber, have spent a significant amount of time overseeing World Car North's work, work that Mazda is prohibited from doing itself. These factors outweigh World Car North's sales and investment, the two neutral factors. Accordingly, the ALJ recommends that the Department deny World Car North's protest of the termination.

VIII. FINDINGS OF FACT

Procedural Background

1. On December 17, 2018, Mazda Motor of North America, LLC (Mazda) sent a letter notifying World Car North of its intent to terminate All Star Imports Inc. d/b/a World Car Mazda North (World Car North)'s dealership agreement.
2. February 15, 2019, World Car North filed its Notice of Protest with the Texas Department of Motor Vehicles (Department or Board).
3. On July 19, 2019, the Department referred the protest to the State Office of Administrative Hearings (SOAH) for a contested hearing and issued a Notice of Hearing to the parties on July 23, 2019.
4. On August 7, 2019, the Administrative Law Judge (ALJ) issued Order No. 1, setting the hearing date. Orders adjusting the hearing schedule were issued on August 19, 2020 (Order No. 5) and March 4, 2021 (Order No. 7).
5. The Notice of Hearing and Order Nos. 1, 5, and 7 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted, or an attachment that incorporated by reference the factual matters asserted in the complaint or petition.
6. The hearing on the merits was held July 19-23, 2021, before ALJ Rebecca S. Smith. At the hearing, World Car North was represented by its counsel, Jarod R. Stewart and Austin Kreitz. Mazda was represented by its counsel, Brit T. Brown and Benjamin Escobar.
7. The record closed on November 8, 2021, after the parties' post-hearing briefs were filed. Over World Car North's objections, the record was reopened to admit exhibit WC-7, the Dealer Agreement.

The Parties & the Dealer Agreement

8. World Car North is one of twelve World Car dealerships in the San Antonio, Texas, area owned by Ahmad “Nader” Zabihian. The World Car group includes a total of three Mazda dealerships, along with several other brands.
9. World Car North has a dealer agreement (Dealer Agreement) with Mazda.
10. Section 14(A)(i) of the Dealer Agreement required World Car North to “take all reasonable steps to provide the highest quality of service.”
11. Section 14(A)(iv) of the Dealer Agreement required World Car North to “ensure that customer concerns with Mazda Vehicles are accurately diagnosed and necessary and approved Repairs are properly and professionally performed.”
12. Section 14(C) of the Dealer Agreement required World Car North to “abide by and implement Mazda’s warranty procedures . . . in all respects and the . . . comply with all warranty requirements required by law.”
13. Section 14(F) of the Dealer Agreement required World Car North to “perform service campaign and/or corrections for owners or users of all Mazda Products that qualify for such inspections and/or corrections.”
14. Section 14(G) of the Dealer Agreement required World Car North “to comply and operate consistently with all applicable provisions of federal, state and local laws, ordinances, rules, regulations, consent decrees, and orders affecting Mazda Products and Dealership Operations, including without limitations those relating to safety, emissions control, noise and customer service.”
15. World Car North is in Mazda’s San Antonio market, which is part of the district that includes San Antonio, Austin, and Waco. There are currently five Mazda dealerships in the San Antonio market.

World Car North’s Business and Facilities

16. The World Car North building cost \$1.5 million to construct, and World Car North recently renovated the building to meet Mazda’s current requirements. World Car North also spent approximately \$85,000 in new signage.
17. 2019 was the first profitable year World Car North had since 2013.
18. World Car North had made a \$1 million profit by the hearing date in 2021, with a similar amount in 2020.
19. World Car North has about \$3 million in debt and has invested about \$1.8 million in fixed assets (the building, renovation, signage, equipment, and technology).
20. World Car North employs approximately 40 people.

Takata Airbag Recall

21. The Takata airbag inflator recall was the largest and most complex recall in automotive history, affecting approximately 37 million vehicles across 19 manufacturers and 34 automotive brands, including Mazda.
22. Takata's airbag inflator, which inflates the airbag in a collision, had defects such that over time, heat and humidity would cause the chemicals within the inflator to break down. The broken-down inflators would cause particles to shoot through the cabin, through the airbag, potentially harming the vehicle's occupants. There were hundreds of injuries and multiple fatalities from the degraded inflators.
23. The inflator, which is not large, is installed behind the dash, making it invisible to a driver or passenger.

Discovery of Recall Issues

24. In February 2018, Katelynn Dodd, World Car North's service manager, was notified by the parts department that a technician, David Winkler, was requesting a new airbag inflator for a vehicle even though that repair was not on the work order. Mazda's warranty repair system showed the airbag inflator in that vehicle had previously been replaced at World Car North. After discussing the issue with the acting general manager, Bill Keys, they just had Mr. Winkler replace the airbag inflator and did not charge Mazda for it. Mr. Keys did not report the situation to anyone at the World Car group and did not begin an investigation.
25. In April 2018, a technician at another Mazda dealership in San Antonio was performing a repair on a vehicle and, with the dash removed, noticed that the defective Takata airbag inflator had not been replaced, even though World Car North had reported in Mazda's warranty repair system that it had previously done that work.
26. That dealership contacted Mark Webber, Mazda's district service manager.
27. Mr. Webber called Ms. Dodd and told her about the discovery. Ms. Dodd then let the general manager, Robert Minatra, who had replaced Mr. Keys, know that another dealership had found a vehicle that still had its original Takata airbag inflator, even though World Car North had reported the replacement as having been done.
28. The technician who had reported doing the work on the airbag inflator was again Mr. Winkler. At that time, Mr. Winkler was the only Mazda-certified technician working at World Car North.
29. Mr. Minatra and Ms. Dodd briefly met with Mr. Winkler, who said that he was extremely busy and must have just missed the airbag inflator.
30. Mr. Winkler was verbally counseled, but not otherwise disciplined at that time. No notes were placed in his employment file.
31. Mr. Minatra thought the incident was a one-off occurrence, so he did not investigate it or report it to anyone else in the World Car group.

32. Around May 21, 2018, Mr. Webber received a call from the same dealership that found the original inflator in April 2018. A technician had, once again, removed the dashboard as part of doing work and found the original inflator in a vehicle, even though World Car North had reported the airbag recall work as complete.
33. After the discovery of the second vehicle in May 2018, Mr. Minatra met again with Ms. Dodd and Mr. Winkler. Mr. Winkler provided a similar explanation to the one he gave in April: he was busy and overwhelmed and must have missed it. As a result of this meeting, Mr. Winkler was given a written warning.
34. After hearing Mr. Winkler's explanation, Mr. Minatra asked Ms. Dodd to examine Mr. Winkler's workload, but did not otherwise investigate the situation. Ms. Dodd reviewed Mr. Winkler's workload and reported to Mr. Minatra that it was not out of the ordinary.
35. Even after the May discovery, Mr. Winkler still performed Takata airbag work at World Car North.
36. In late May, World Car North brought in a technician from another World Car group store to begin the Mazda-certification process so that the dealership would have more than one person who was certified to do certain work.

Re-inspection

37. In the morning of May 25, 2021, Mr. Webber emailed Mr. Minatra and Mr. Zabihian to tell them that he was compiling an initial list of cars that would need re-inspection to ensure that the airbag inflator replacement reported by World Car North had actually occurred.
38. At the end of that day, Mr. Webber emailed Mr. Minatra, Mr. Zabihian, and Ms. Dodd an Excel spreadsheet containing the initial list of 132 vehicles to be inspected.
39. In the email, Mr. Webber asked World Car North to let him know the status of each of the vehicles when they got them back in for inspection.
40. Mr. Webber also asked World Car North to separate into their own pile the airbags removed from customers whose vehicles were on the re-inspection list.
41. A short time after sending his email, Mr. Webber visited World Car North to look at the removed airbag inflators that he had requested be set aside. During his visit, Ms. Dodd told him that she could not provide him the parts because she did not believe Mr. Winkler did the work.
42. Mr. Webber then went to the parts department, where he saw a significant number of supposedly removed old airbags that were not labeled with blue tags, which Mazda required to keep track of replaced parts.
43. On June 9, 2018, a third vehicle for which Mr. Winkler had falsely reported the airbag recall work as complete was discovered.
44. Mr. Winkler was not working that day, which was a Saturday, and he quit a few days later. Until that time, Mr. Winkler was performing Takata airbag work, including re-inspections.

45. Between May 25 and June 13, 2018, Mr. Minatra did not do anything to inquire into the status of the re-inspection project, including asking Ms. Dodd or Mr. Webber about the list of vehicles to be inspected.
46. Thirty days after requesting the re-inspection of 132 cars, Mr. Webber was told only two inspections had been done.
47. Ms. Dodd, the service manager, was essentially working more than one full-time job for World Car North in addition to leading the re-inspection customer contact effort.
48. Stephanie Keener, Mazda's regional customer service and parts manager, contacted Lawrence Chao, then Mazda's regional general manager for the Gulf Region. She told Mr. Chao that she did not feel the re-inspections were being conducted properly, given how serious the concerns were. She also indicated that the dealership was not making progress in contacting customers.
49. Toward the end of June or early July, World Car North brought in a service advisor from the World Car Kia dealership to help calling customers. They later added another service advisor in mid-to-late July and a greeter in late July or early August. In mid-June, they added loaner vehicles for customers coming in for re-inspections, set aside some appointments for re-inspection, and started offering free oil changes to get customers to come back in.
50. Originally, Mr. Webber had asked World Car North to contact the owners and complete the 132 re-inspections on the initial list by July 30. By the end of July, only 37 vehicles had been re-inspected. Of those 37 vehicles, 27 had failed their re-inspection, meaning that they still had their original airbag inflator.

The Cure Letter

51. On August 10, 2018, Mr. Chao and a group from Mazda went to World Car North and hand-delivered Mr. Zabihian a letter containing the notice to cure (Cure Letter). The Cure Letter stated that World Car North was in default of its obligations under the Dealer Agreement and that failure to cure could result in termination. The Cure Letter also set out Mazda's expectations for World Car North: it required World Car North to fully cooperate with Mazda in its efforts to contact all customers; to prioritize scheduling, inspecting, and repairing the airbag recall; and to take steps to ensure proper completion of recall work, including "providing photographic evidence of the repair made." The Cure Letter also stated that Mazda intended to contact each affected customer directly.
52. On August 13, 2018, Mr. Zabihian told Art Kiolbassa, the World Car group's vice president of operations, about the airbag issue, showed him the Cure Letter, and instructed him to handle it.
53. Mr. Kiolbassa made improvements to World Car North's re-inspection efforts, but Mr. Chao told him that Mazda was taking over contacting customers.
54. In August 2018, Travis Young, Mazda's recall manager, visited the World Car North dealership as part of a warranty audit. Mr. Young noticed an unusually large volume of cars that were coming in for service. The Mazda team requested to re-inspect some of the

vehicles that had been inspected. Of those vehicles that had just been worked on, Mr. Young found two cars in which the original airbag inflator remained on the vehicle.

- 55. Ms. Dodd left her job at World Car North on August 20, 2018.
- 56. Ms. Dodd was replaced as service manager by Harry Hewitt, who had significant experience.
- 57. World Car North had difficulty fully complying with the photograph requirement. There were technological difficulties on both ends, along with other issues.
- 58. Mazda's frustrations with World Car North continued, resulting in another letter to the dealership in November 2018.
- 59. In November 2018, Mr. Webber felt overwhelmed by the process of tracking and monitoring World Car North's re-inspection and passed it on to another Mazda employee for a while.

Termination

- 60. Mr. Chao decided to terminate World Car North's franchise. He prepared and signed the termination letter, which was dated December 17, 2018. Mazda sent the letter by certified mail, and Mr. Chao, along with members of his field team, also hand-delivered it to the World Car North dealership on the same day.
- 61. At the meeting to deliver the termination letter, Mr. Chao also presented a proposal to buy out the three World Car group Mazda dealerships for \$3 million. If Mr. Zabihian accepted the offer, Mazda would waive warranty charge-backs, which totaled approximately \$300,000.
- 62. Mr. Zabihian rejected that offer.
- 63. Mazda has adapted its Product Quality Management (PQM) system to address the issue of the World Car North recall failures. Mazda created a list of the Vehicle Identification Numbers (VINs) that need re-inspection and added it to a PQM list. When a dealership in North America enters VIN on this list into the Mazda system, the dealership receives an email telling them to contact Mazda.
- 64. When alerted to a World Car North vehicle outside of Texas, Mr. Young calls the dealership to tell them what to do. Mazda requires those dealerships to send photographs of both the failed and repaired parts.
- 65. Since the warranty audit was completed in December 2018, roughly 206 Takata recalls from World Car North have failed re-inspection, and over 250 non-Takata recalls have also failed reinspection. Re-inspection is not complete; approximately 360 vehicles remain on the list of vehicles that need to be re-inspected.
- 66. This issue of falsely representing that airbag recall work was done has not occurred at any other Mazda dealership in the Gulf Coast region.

67. Mr. Zabihian believes that only the technician and service manager are responsible for the situation with the Takata airbag inflators at World Car North.

Statutory Good-Cause Factor: World Car North's Sales in Relation to the Market

68. World Car North is currently on the low-end of the middle of the pack for sales in Texas.
69. This factor neither weighs for or against termination.

Statutory Good-Cause Factor: World Car North's Investment and Obligations

70. World Car North's building cost \$1.5 million to construct, and World Car North recently renovated the building to meet Mazda's current requirements, at a cost of \$160,000.
71. World Car North also spent approximately \$85,000 in new signage.
72. World Car North currently owes around \$3 million for a loan on the property where the dealership is located.
73. This factor neither weighs for or against termination.

Statutory Good-Cause Factor: Injury or Benefit to the Public

74. A World Car North employee, Mr. Winkler, created a serious risk of injury to the public when, over the course of several years, he falsely noted that defective Takata airbag inflators had been replaced, while leaving the original inflators in vehicles.
75. World Car North did not detect the issue until February 2018.
76. Once informed by Mazda about the issue, World Car North management was lackadaisical in its attempts to resolve the inflator issue.
77. Once informed of the second vehicle found by another dealer in May 2018, World Car North continued to allow Mr. Winkler to re-inspect his own work. In fact, for a period of time, that was required: Mr. Winkler was the only Mazda-certified technician on staff.
78. Mr. Minatra, who is still the general manager, did not even check about the status of the re-inspection from the period of May 25 until June 13, 2018, even though an additional failure was found during that time. In that period, he regularly spoke with Ms. Dodd, but did not pick up the phone himself or otherwise take action—such as reassigning some of her work to someone else—until he received an email from Mr. Webber asking about progress.
79. The parts department provided unsatisfactory answers to explain why airbags were not tagged when Mr. Webber visited in June 2018.
80. While there is a possibility of inconvenience to the public if there is one less Mazda dealer available to perform warranty work, that inconvenience is outweighed by the risk of harm posed by the serious deficiencies with World Car North's warranty work and the dealership's failure to promptly address those problems.

81. The continued operation of World Car North presents a risk of injury such that the public would benefit from the termination.

Statutory Good-Cause Factor: Adequacy of World Car North's Service Facilities, Equipment, Parts, and Personnel

82. There are no concerns with World Car North's service facilities, equipment, or parts.
83. The recall and repair problems at issue in this case were due to shortcomings with World Car North's personnel and at least partly attributable to the dealership's failure to hire enough service staff and failure to support or supervise the service department staff.
84. World Car North is the only dealership whose service work has to be reviewed daily by Mr. Webber.
85. While World Car North's service department is currently performing well, there is a significant reason to believe that would change should Mr. Hewitt depart or if Mazda is not regularly reviewing its work.
86. This factor weighs in favor of termination.

Statutory Good-Cause Factor: World Car North's Warranty Service

87. Over the course of years, World Car North's employee Mr. Winkler failed to comply with warranty and recall repairs.
88. Based on Mr. Winkler's representations, World Car North submitted false warranty claims.
89. World Car North did not comply with Mazda's tagging requirements for warranty work.
90. This factor weighs in favor of termination.

Statutory Good-Cause Factor: Compliance with the Franchise

91. Even if it did not realize it, World Car North submitted false reports of warranty repairs.
92. At the time that Mr. Winkler was working, World Car North did not ensure that repairs were properly and professionally performed; nor did World Car North perform work under a service campaign.
93. Mr. Young observed two cars with their original airbag inflators that were marked as re-inspected and allowed to leave World Car North.
94. World Car North has breached §§ 14(A)(i), 14(A)(iv), 14(C), 14(F), and 14(G) of the Dealer Agreement.
95. This factor weighs in favor of termination.

Statutory Good-Cause Factor: Enforceability of the Dealer Agreement

96. Neither party contends that the dealer agreement is unenforceable.
97. This factor does not have any effect on good cause.

Statutory Good-Cause Factor: Other Relevant Circumstances

98. Mazda's concern about World Car North's trustworthiness supports termination.

IX. CONCLUSIONS OF LAW

1. The Department and its governing board have jurisdiction and authority over the subject matter of this case. Tex. Occ. Code ch. 2301.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Occ. Code § 2301.704; Tex. Gov't Code ch. 2003.
3. Notice of the termination was properly provided. Tex. Occ. Code § 2301.453; 43 Tex. Admin. Code § 215.111.
4. World Car North timely filed its notice of protest. 43 Tex. Admin. Code § 215.111.
5. Notice of Hearing was properly provided. Tex. Occ. Code §§ 2301.705, .707; Tex. Gov't Code §§ 2001.051-.052; 43 Tex. Admin. Code § 215.34.
6. The Dealer Agreement is a "franchise" as defined by Texas Occupations Code § 2301.002(15).
7. A manufacturer may not terminate or discontinue a franchise with a franchised dealer unless the manufacturer provides notice of the termination and: (1) the franchised dealer consents in writing to the termination, (2) the appropriate time for the dealer to file a protest has expired, or (3) the Board makes a determination of good cause for the termination. Tex. Occ. Code § 2301.453(a), (g).
8. Mazda has the burden of showing by a preponderance of the evidence that good cause exists for the termination of World Car North's dealership. Tex. Occ. Code § 2301.453(g); 1 Tex. Admin. Code § 155.427.
9. In determining whether Mazda established by a preponderance of the evidence that there is good cause for terminating World Car North's franchise, the Board is required to consider all existing circumstances, including seven statutory factors. Tex. Occ. Code § 2301.455(a).
10. Mazda met its burden of demonstrating good cause for the termination of World Car North's franchise. Tex. Occ. Code § 2301.453(g).

11. World Car North's protest should be denied, and the termination of World Car North's franchise should be approved.

SIGNED January 6, 2022.


REBECCA S. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

2. World Car North's Exceptions to the PFD

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ALL STAR IMPORTS, INC. d/b/a	§	BEFORE THE STATE OFFICE
WORLD CAR MAZDA NORTH	§	
Protestant,	§	
	§	
v.	§	OF
	§	
MAZDA MOTOR OF NORTH	§	
AMERICA, INC.	§	
Respondent.	§	ADMINISTRATIVE HEARINGS

PROTESTANT'S EXCEPTIONS TO PROPOSAL FOR DECISION

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I. Introduction

Involuntary termination of an automobile dealership franchise is an extreme action that rarely occurs in Texas, and has been reserved for egregious cases involving deliberate fraud or abuse on a manufacturer or outright refusals or failures to continue franchise operations.¹ In Texas, a franchise cannot be wiped out of existence simply because the manufacturer wants it to be. Rather, Texas law requires the manufacturer to prove “good cause,” based on “*existing*” circumstances,” to terminate a franchise.

In this case, Mazda seeks to terminate a long-time franchised dealership based on the independent criminal acts of one former dealership employee, which the dealership learned about and addressed in 2018 by replacing the employee, hiring a new supervisor, and implementing a policy that everyone agrees will prevent a repeat of those hidden criminal acts. Accordingly, the Administrative Law Judge (“ALJ”) found that World Car North’s “service department is currently performing well,” that “World Car North currently has two higher-level employees who appear engaged in the process of ensuring that service work is properly done and that the re-inspections are conducted well,” that “current staffing of World Car North’s service department seems appropriate,” that “World Car North is currently trying to comply with Mazda’s requirements,” and that World Car North’s “part-for-part policy appears

¹ Texas has more than 1,250 franchised auto dealerships. Publicly-available opinions show that since 1997, five dealerships have been involuntarily terminated for good cause, for conduct such as (1) admittedly deceiving the manufacturer by abusing its incentive programs, (2) verbal abuse and threats to the manufacturer’s representatives, coupled with failing to sell vehicles and refusing to honor customer warranties, and (3) refusing to install signage required by the manufacturer. See Appendix A. No such conduct is at issue here. And from 1997 back to 1971, when the relevant statute was passed, less than a handful of franchised dealerships were involuntarily terminated based on a finding of good cause. Thus, counsel’s research indicates that fewer than ten Texas dealerships have been involuntarily terminated for good cause during the last 51 years.

to be a good one and seems designed to limit future occurrences.” In other words, as the ALJ’s findings themselves demonstrate, the *existing circumstances* are that World Car North is a good dealership that has addressed the 2018 issues and is performing well.

Nonetheless, the ALJ issued a Proposal for Decision (“PFD”) recommending termination of World Car North’s franchise based on four of the seven enumerated statutory factors. To justify termination, the ALJ (1) focused on World Car North’s alleged deficiencies in the summer of 2018 to the exclusion of the undisputed evidence—and the ALJ’s own findings—that World Car North took actions in 2018 to cure any deficiencies, including after Mazda sent a notice to cure in August 2018, such that the dealership is performing well today; and (2) speculated about what may happen in the future to discount or discard World Car North’s improvements and current good performance.

Texas law requires that *existing* circumstances provide good cause for termination. As a matter of law, a franchised may not be terminated based on *cured past* circumstances and *hypothetical future* circumstances, while ignoring the existing ones.

The PFD’s termination recommendation therefore rests on legal errors. Properly applying Texas law, the ALJ’s own fact findings about the existing circumstances—that the dealership has addressed the prior problems and is performing well—compel the ultimate finding and legal conclusion that there is no good cause to terminate World Car North’s franchise. The ALJ, or the Board, should modify the findings and conclusions to correct the legal errors and uphold World Car North’s protest.

II. Legal Standards

A. Standard of Review

“The Board is charged with regulating the sale and distribution of motor vehicles, administering Chapter 2301, [and] investigating and resolving complaints.” *Hyundai Motor Am. v. New World Car Nissan, Inc.*, 581 S.W.3d 831, 840 (Tex. App.—Austin 2019, no pet.). The Board thus “has the discretion to make ultimate policy determinations”—such as whether particular facts constitute good cause for termination of a franchise—“in the course of carrying out its statutory duties.” See *id.* A finding of ultimate fact “pertaining to compliance with a statutory standard, when that determination is committed by law to the discretion of an agency, has the same legal effect as a conclusion of law.” *Id.* at 838.

An ALJ’s proposal for decision is a recommendation—the Board is “statutorily authorized to modify or reject it” if the ALJ misapplied or misinterpreted Texas law or prior administrative decisions. See *Pierce v. Texas Racing Comm’n*, 212 S.W.3d 745, 751-52, 754 n.7 (Tex. App.—Austin 2006, pet. denied) (citing Tex. Gov’t Code § 2001.058(e)). The Board has complete discretion to change the ALJ’s findings and conclusions and reject the ALJ’s recommendation if the ALJ’s “findings and conclusions reflect a lack of understanding or a misapplication of the existing laws, rules, or policies.” See *Smith v. Montemayor*, 2003 WL 21401591, at **7-8 (Tex. App.—Austin 2003, no pet.) (upholding agency’s changes to ALJ’s findings and conclusions where the agency “determined that the ALJ failed to properly weigh the factors listed in chapter 53 and in the Department’s rules”). The Board must explain its specific reason and the legal basis for each change made. *Granek v. Tex. State Bd. of Med. Examiners*, 172 S.W.3d 761, 780-81 (Tex. App.—Austin 2005, no pet.).

B. Applicable Statutes and Case Law

Mazda bears the burden of proof and persuasion to establish good cause for the proposed termination of World Car North's franchise. Tex. Occ. Code § 2301.453(g). In deciding whether Mazda has met its burden to establish good cause, the Board (and the ALJ) "shall consider all existing circumstances," including seven enumerated factors. Tex. Occ. Code § 2301.455(a)(1)-(7) (emphasis added). This requires an evaluation of "past and current performance." *Ford Motor Co. v. Motor Vehicle Bd. of Tex. Dep't of Transp./Metro Ford Truck Sales, Inc.*, 21 S.W.3d 744, 759 (Tex. App.—Austin 2000, pet. denied) (emphasis added). It also means that the ALJ (and the Board) cannot speculate about the likelihood of future events. *Id.* (decision on good cause cannot be based on "a speculative evaluation of what kind of relationship a manufacturer and dealer might have in the future"); *see also Nissan N. Am., Inc. v. Tex. Dep't of Motor Vehicles*, 592 S.W.3d 480, 503 (Tex. App.—Texarkana 2019, no pet.) (same); *Cecil Atkission Orange, LLC, D/b/a Cecil Atkission Chrysler Jeep Dodge, v. FCA US LLC*, 2016 WL 3457922, at *3 (Tex. SOAH June 17, 2016) (holding that the statute provided a "defined 'end point' to the" good cause inquiry—"the close of the evidentiary record").

III. Argument and Authorities

Of the seven "existing circumstances" enumerated in the statute, the ALJ recognized that three of them do not support termination. The ALJ legally erred by failing to consider these three factors as weighing *against* termination and by creating an eighth factor that will always favor termination, contrary to Texas law. *See infra* III.B & III.C. But most importantly, the ALJ could find that the other four statutory factors support termination only by misconstruing and misapplying the law on "existing circumstances." *See infra* III.A.

- A. The ALJ violated the statutory mandate to base good cause on “existing circumstances” by improperly focusing on cured past conduct and hypothetical future events.
 - i. The ALJ misinterpreted and misapplied the law on factor #3—*injury or benefit to the public* (Exceptions to FOF #74-81).

Even accepting the ALJ’s interpretation of the statute as covering “risk of injury” to the public, the PFD does not identify any *current* risk of injury to the public. See PFD 34-36, 47-48 (FOF #74-81). Nor does the PFD identify any specific benefit to the public from termination, simply stating the public would benefit from termination because of the “risk of injury.” See *id.* The PFD thus fails to address why the “existing circumstances” in the record establish that the third statutory factor weighs in favor of termination. The ALJ’s analysis instead whipsaws from past events (pre-July 2018) that were cured to speculation about the future, at points acknowledging World Car North’s improvements since June 2018 and its good performance today, but then disregarding that evidence based on sheer speculation about future dealership operations and a myopic re-emphasis of past events. E.g., PFD 34-35. Ultimately, the ALJ ignored *everything* after June 2018 in the formal fact findings on this factor, rather than basing good cause on how the dealership is currently performing today or even during the past three-plus years. PFD 47-48 (FOF #74-81). An evaluation of “existing circumstances” cannot disregard what has happened between August 2018 and the close of the record in 2021. The ALJ thus misinterpreted and misapplied the law on this factor.

First, the ALJ’s formal fact findings on this factor cite *exclusively* actions that occurred on or before June 13, 2018. PFD 47-48 (FOF #74-81). The ALJ found “Mr. Winkler[] created a serious risk of injury to the public” in 2018 and earlier. PFD 47 (FOF #74). The ALJ then

made findings regarding when World Car North learned of problems in 2018, what its management immediately did, what certain managers did in May and early-June 2018, and what a Mazda employee found in early June 2018. PFD 47 (FOF #75-79). As a result, the formal findings uniformly speak to the risk of injury in the past tense, concluding with a finding about the risk of injury from these “serious deficiencies with World Car North’s warranty work and the dealership’s failure to *promptly* address those problems.” See PFD 47 (FOF #74-80 (emphasis added)). The ALJ went on to find that on the basis of those issues from several years ago, “the continued operation of World Car North presents a risk of injury such that the public would benefit from the termination.” PFD 48 (FOF #81). But literally nothing in the formal findings of fact preceding #81 identified any *current* risk of injury, leaving the finding that “continued operation” of the dealership presents a risk of injury entirely unsupported factually and, as a result, pure speculation.

In this way, the ALJ’s formal findings on this factor contain no analysis whatsoever of “existing circumstances.” They do not address or even acknowledge the undisputed evidence of what happened in the three-plus years since the 2018 events that were cited as the basis for this conclusion, including World Car North’s efforts in response to Mazda’s cure letters. The ALJ elsewhere recognized (as explained below) that World Car North took numerous curative actions between June 14, 2018 and the close of the evidentiary record in 2021 that addressed the 2018 issues, *see, e.g.*, PFD 34-35, 45-46 (FOF #49, 51-53, 56), 48 (FOF #85), but the ALJ did not include *any* of them in the formal findings of fact on this factor #3, *see* PFD 48. Indeed, underscoring the ALJ’s misplaced focus on the past to the exclusion of the present, the findings simply fault World Car North for not having “*promptly* address[ed]” the 2018 issues.

PFD 47 (FOF #80) (emphasis added); *accord* PFD 35. *See, e.g.*, PFD 45-46 (FOF #49, 51-53, 55-56). The formal findings on factor #3 utterly fail to analyze “existing circumstances.”

Second, this failure to analyze “existing circumstances” as required is all the more flawed because the ALJ found elsewhere in the PFD (not in the factor #3 formal findings) important facts in World Car North’s favor, including that the problem of falsification of repairs was limited to Mr. Winkler, that World Car North took actions to address the problem, and that its performance today shows the problems have been addressed:

- “Mazda did not establish that technicians other than Mr. Winkler left an original airbag inflator in a vehicle but marked the recall work as complete.” PFD 30;
- “World Car North currently has two higher-level employees who appear engaged in the process of ensuring that service work is properly done and that the re-inspections are conducted well: Mr. Hewitt and Mr. Kiolbassa.” PFD 35;
- “The evidence largely suggests that World Car North is currently trying to comply with Mazda’s requirements.” PFD 35;
- “[] World Car North’s addition of the part-for-part policy appears to be a good one and seems designed to limit future occurrences.” PFD 35; and
- “[] World Car North’s service department is currently performing well” PFD 48.

These are the material fact findings pertaining to the “existing” performance of the dealership, and they are all in World Car North’s favor. World Car North requests that the ALJ (or the Board) *add* the above-bulleted findings by the ALJ to the formal findings of fact on factor #3, as Findings of Fact #80A, 80B, 80C, 80D, and 80E. World Car North also requests that the ALJ change Finding of Fact #80 to read: “World Car North has addressed the deficiencies with warranty work from the past.” With those changes based on the ALJ’s own findings, the

formal findings of fact compel the ultimate finding and conclusion that World Car North does not present a risk of injury to the public.

Third, to sidestep the undisputed facts that World Car North made numerous improvements since June 2018 and was performing well today, the PFD alternately engaged in speculation about future events or simply restated the past events as if the post-June 2018 events had not happened—all in violation of Texas law and prior administrative decisions. See PFD 34-35, 47-48 (FOF #74-81, 85). For example, after acknowledging that current management is effective, the ALJ speculated about whether Mr. Kiolbassa and Mr. Hewitt will continue to be involved in the future and what kind of dealership World Car North will be in the future:

- “Although the ALJ finds Mr. Kiolbassa’s concern about the situation to be sincere, it is unclear to what extent he will remain involved in the details of World Car North’s service department, since he has a larger job that involves all twelve dealerships.” PFD 34-35;
- “Likewise, Mr. Webber has testified about his concerns about what would happen should Mr. Hewitt leave World Car North.” PFD 35; and
- “The continued operation of World Car North presents a risk of injury such that the public would benefit from the termination.” PFD 48 (FOF #81).

These three statements are exactly the type of forward-looking prognostication that the court in *Ford Motor Co.* prohibited. 21 S.W.3d at 759. By hypothesizing about what may happen in the future, the ALJ went past the defined end point of the § 2301.455 inquiry—the end of the hearing and close of the record. Such speculation does not evaluate “existing circumstances” and cannot justify a finding good cause, *especially* when it is used precisely to discount or discard the undisputed “existing circumstances.”

Similarly, the ALJ acknowledged World Car North's "current[]" efforts to comply with Mazda's requests and the success of its part-for-part policy as "a good one [that] seems designed to limit future occurrences," but then suggested that a complete answer to this evidence of "existing circumstances" is "problems, and the history of problems" at World Car North that included (1) Robert Minatra's lack of urgency in May and June 2018, and (2) the parts department's unsatisfactory answers about tagging of airbags in June 2018. PFD 35. The ALJ even specified that the "risk of injury" "presented in this case" all rests on the past: "there *were* serious issues with the performance of [] warranty work" prior to June 2018, and "those issues *were not promptly addressed* by the dealership." *Id.* (emphases added). All of these failures to ground the good-cause analysis on "existing circumstances," whether driven by speculation about the future or a focus on 2018 to the exclusion of all subsequent conduct, constitute legal errors in the PFD.

Finally, another, independent legal error in the PFD's factor #3 analysis is that it purports to hold World Car North responsible for a risk of injury to the public based on a former employee's criminal conduct. *E.g.*, PFD 47 (FOF #74). If a customer were to have been injured in an automobile accident due to Mr. Winkler's misconduct, World Car North would not be responsible for that injury under settled Texas law. *See, e.g., Zarzana v. Ashley*, 218 S.W.3d 152, 160 (Tex. App.—Houston [14th Dist.] 2007, pet. struck) (noting that "employers are generally not liable for serious criminal acts of employees that are unforeseeable considering the employee's duties" and finding that fraudulent acts that did not accomplish the object for which the employer hired employee were not within the scope of employment). There is no principled basis upon which to treat a "risk" of injury differently than an actual

injury when considering the “injury or benefit to the public” factor under the statute at issue here. As such, the ALJ misinterpreted and misapplied Texas law by holding World Car North responsible for a risk of injury that the ALJ found was created solely by Mr. Winkler. See PFD 30, 37, 39-40, 47 (FOF #74), 48 (FOF #91).

To correct these misinterpretations and misapplications of law, the ALJ should, in addition to the requests above, replace Finding of Fact #81 with:

- World Car North does not present a current risk of injury to the public, and the public will not benefit from termination of the dealership. This factor does not weigh in favor of termination.

If the ALJ or the Board does not change Findings of Fact #80-81 and add Findings of Fact #80A-80E, and make corresponding changes to correct the legal errors elsewhere in the PFD (at 34-36), the analysis of factor #3 will be based on misinterpretations and misapplications of Texas law.

- ii. **The ALJ misinterpreted and misapplied the law on factor #4—the adequacy of the dealer’s service facilities, equipment, parts, and personnel as compared to other Mazda dealerships (Exceptions to FOF #83-86).**

The ALJ formally found “[t]here are no concerns with World Car North’s service facilities, equipment, or parts,” so the only issue here is the adequacy of World Car North’s service personnel as compared to personnel at other Mazda dealerships. PFD 36, 48 (FOF #82-86). As with the previous factor, the ALJ decided factor #4 by disregarding the “existing circumstances,” instead focusing on what happened in the past and speculating about what might happen in the future.

In particular, the findings of fact used to support the ALJ's finding and conclusion on factor #4 are (1) the dealership had inadequate staffing in 2018, (2) World Car North is the only dealership whose work has to be reviewed daily by Mazda's Mr. Webber², and (3) "there is a significant reason to believe [the current good performance of World Car North's service department] would change should Mr. Hewitt depart or if Mazda is not regularly reviewing its work." PFD 48 (FOF #83-85); *see also* PFD 36. None of that addresses the "existing" adequacy of World Car North's service personnel; it improperly focuses on the past and speculates about the future. *See, e.g., Ford Motor Co.*, 21 S.W.3d at 759. In fact, the PFD specifically finds "current staffing of World Car North's service department seems appropriate," but then disregards that both because "that was not the case *in 2018*" and because "there are reasons to believe that issues *could arise again* if Mazda stopped closely monitoring it." PFD 36 (emphases added). This focus on the past and the future, to the exclusion of the "existing circumstances," is legally flawed, as explained for factor #3. There is no evidence or finding that the dealership's service personnel are currently deficient or have not been performing up to par in the last three-plus years. Indeed, the testimony cited in the PFD confirms that World Car North's personnel are "equal to other dealers" and "on par with anybody else as far as the warranty [work] right now." PFD 25. As such, Findings of Fact #83-86 cannot be used to support a finding of good cause to terminate.

² Mr. Webber's daily review of World Car North's service work began only because it was discovered that Mr. Winkler falsified repairs, but Mr. Winkler was the only one doing so, *see* PFD 30, and has not been employed at World Car North since June 2018.

Further, as with the previous factor, the ALJ did not include in the formal findings of fact the existing circumstances it had found above—e.g., the ALJ’s finding earlier in the PFD that “current staffing of World Car North’s service department seems appropriate”—except to note that “World Car North’s service department is currently performing well,” which the ALJ quickly (and unlawfully) disregarded based on hypothetical future events. PFD 36, 48. The current adequacy of World Car North’s service personnel and staffing is therefore not in question. As such, the ALJ misinterpreted and misapplied the law by focusing on the inadequacy of World Car North’s staffing during a time period more than three years before the close of the record, disregarding the dealership’s staffing changes and the current staff’s good performance for more than three years, and engaging in improper speculation about possible future events.

Yet another legal error in the ALJ’s analysis on this factor #4 is that the plain language of the statute required the ALJ to consider “the adequacy of the dealer’s service facilities, equipment, parts, and personnel *relative to*” other Mazda dealers, which the ALJ admittedly did not do. The ALJ acknowledged that “Mazda did not present evidence specifically about other dealers’ service employees,” but claimed this statutory requirement was satisfied by Mr. Webber’s testimony that he does not daily review other dealers’ service work. PFD 36. That testimony, however, is *not* evidence about the adequacy of World Car North’s service personnel as compared to the service personnel at other Mazda dealerships. Mr. Webber was reviewing World Car North’s service work records because one employee falsified repairs, and that employee is the only one found to have engaged in falsification of repairs. PFD 30 (only Winkler). There is no evidence or finding that Mr. Webber’s review has revealed inadequacies

in the performance of World Car North's service personnel as compared to the service personnel at other Mazda dealerships. Nor is there any evidence in the record about how the existing service personnel at World Car North are performing today as compared to other Mazda dealerships' service personnel, which is the inquiry required by Texas law. Mazda did not meet its burden and the ALJ therefore cannot have found that this factor weighs in favor of termination.

The ALJ or the Board should replace Findings of Fact #85 and #86 as follows:

- World Car North's service department is currently performing well, and current staffing of the service department seems appropriate. World Car North currently has two higher-level employees who appear engaged in the process of ensuring that service work is properly done and that the re-inspections are conducted well: Mr. Hewitt and Mr. Kiolbassa.
- This factor does not weigh in favor of termination.

Without such changes, the analysis of factor #4 misinterprets and misapplies Texas law.

iii. The ALJ misinterpreted and misapplied the law on factor #5—whether warranties are being honored by the dealer (Exceptions to FOF #87-90).

On this factor, the plain language of the statute reaffirms the need to address “existing circumstances” by requiring the ALJ to consider “whether warranties *are* being honored by the dealer,” *i.e.*, a present-tense inquiry about warranty work. And a dealership is not “honoring” warranties only when it turns customers away and requires them to have warranty work done at other dealerships. *See, e.g., Mr. Yamaha, Inc. d/b/a Mr. Motorcycle, Petitioner v. American Suzuki Motor Corp., Respondent*, 2011 WL 577104, at *17 (Tex. SOAH, Feb. 8, 2011) (finding this factor weighed in favor of termination where “the majority of the frame recall warranty

work was done [at another dealership] in New Mexico, resulting in customer complaints against Mr. Motorcycle's failure to complete the Suzuki warranty work").

Yet the ALJ misinterpreted and misapplied the law on factor #5 because the ALJ focused on alleged failures to complete warranty work before August 2018, ignoring entirely the post-August 2018 work that resulted in the "existing circumstances" at the dealership. The ALJ did not (and could not) find that World Car North is not "honoring" warranties today, or at any time since Mr. Winkler's departure. There is not even a suggestion in the PFD (or record) that World Car North has turned away a single customer who needed warranty work. Nor is there any finding by the ALJ that World Car North has failed to complete any warranty work since August 2018.

The findings of fact recited in support of the conclusion on factor #5 demonstrate the ALJ's legal errors. They all focus on *past* deficiencies:

- "The background of Mr. Winkler's behavior, and the delay in World Car North's (and the World Car group's) management to address it shows that warranties or recalls *were not being honored*." PFD 37 (emphasis added);
- "Over the course of years, World Car North's employee Mr. Winkler failed to comply with warranty and recall repairs." PFD 48 (FOF #87);
- "Based on Mr. Winkler's representations, World Car North submitted false warranty claims." PFD 48 (FOF #88)³;
- "World Car North did not comply with Mazda's tagging requirements for warranty work." PFD 48 (FOF #89).

³ This finding also attempts to hold World Car North responsible for the independent criminal acts of a former employee, which is prohibited by Texas law. See *supra*, III.A.i.

Each of those findings is based on events from the past, 2018 or earlier. The ALJ's only finding about whether warranties "***are*** being honored"—the present-tense inquiry required by the statute—shows that World Car North is presently honoring warranties and has been doing so for the more than three-plus years since Mr. Winkler departed:

- "From the evidence, it seems that World Car North has taken additional steps to honor warranties, but most of those steps did not occur until after it received the Cure Letter." PFD 37.

That World Car North's additional steps to honor warranties occurred after the cure letter is not a basis to discount or discard the dealership's curative actions or honoring of warranties. Indeed, that is the very purpose of a cure letter—to put a party on notice that changes need to be made, so that (as here) changes are made that address the problems in the notice. Any other conclusion would fail to give effect to the important contractual right to cure.

To correct the legal errors identified above, the ALJ or the Board should replace Finding of Fact #90 with:

- World Car North has taken additional steps to honor warranties since the Cure Letter issued in August 2018. There is no evidence that warranties are not being honored by World Car North. This factor does not weigh in favor of termination.

Without these changes, the PFD misinterprets and misapplies Texas law.

- iv. **The ALJ misinterpreted and misapplied the law on factor #6—the parties' compliance with the franchise agreement (Exceptions to FOF #91-95).**

The ALJ's findings on factor #6 duplicate the previous three factors because the ALJ relied on the same past actions from factors #3-5 (Winkler falsifying repairs, inadequate staffing in 2018) for this factor. See PFD 38-39, 48. Accordingly, the same legal errors that plagued the findings on factors #3-5—reliance on past conduct from 2018 alone and discarding

curative actions and existing circumstances—also apply to the findings on factor #6.⁴ On top of all that, the ALJ’s analysis of the parties’ compliance with the franchise agreement failed entirely to consider World Car North’s efforts to cure, which is its contractual entitlement.

In short, nothing in the PFD addresses the “existing circumstances” regarding World Car North’s compliance with the franchise agreement. Notwithstanding the ALJ’s statement that it would “set[] aside Mr. Winkler’s direct actions,” PFD 39, the ALJ’s findings are based on actions from when Mr. Winkler was employed in 2018, before the notice and opportunity to cure, *see* PFD 39, 48. The ALJ’s formal findings expressly rest on “the time that Mr. Winkler was working.” PFD 48 (FOF #92). Mazda sent World Car North two cure letters in 2018, which gave World Car North a right to cure the alleged breaches of the franchise agreement before termination could be warranted. Yet the ALJ, in the formal findings for this factor, did not cite to the evidence of what World Car North did to cure any non-compliance with the franchise agreement, after being put on notice to cure. As such, the ALJ refused to give effect to World Car North’s contractual right to cure and did not properly consider “existing circumstances.” Indeed, a notice to cure would have no purpose if post-notice actions are not taken into account in deciding whether a party has complied with the franchise agreement. That is why the statute requires consideration of “existing circumstances” and not solely actions occurring more than three years before the hearing.

The ALJ or the Board should modify Findings of Fact #94-95 as follows:

⁴ Findings of Fact #91 and #94 also attempt to hold the dealership responsible for the independent criminal acts of a former employee, which is prohibited by Texas law. *See supra*, III.A.i.

- “World Car North took steps to comply with the cure letters and addressed the problems identified by Mazda.”
- “This factor does not weigh in favor of termination.”

Without these changes, the ALJ’s recommendation on factor #6 is based on legal errors.

B. The ALJ misinterpreted and misapplied the law on factors #1, 2, and 7 by disregarding that Mazda has the burden to establish “good cause” (Exceptions to FOF #69, 73, and 97).

Texas law imposes the burden on Mazda to establish good cause for termination and requires consideration of the enumerated factors as part of that showing. See Tex. Occ. Code §§ 2301.453(g), 2301.455(a). The default is *against* termination, if Mazda does not assert reasons for termination and show “by a preponderance of the evidence that there is good cause for the proposed termination.” See *id.* As the ALJ found, Mazda “is not relying on” and “did not introduce evidence about” the first factor (World Car North’s sales), the second factor (World Car North’s investment and obligations) “is also not a factor that Mazda relies on in arguing for termination,” and did not address the seventh factor or challenge the enforceability of the dealer agreement. PFD 32-33, 39, 47 (FOF #68-73), 49 (FOF #96-97). Yet the ALJ found these factors merely neutral, notwithstanding that Mazda had the burden. See *id.* That was legal error: where Mazda neither claims nor presents evidence that a factor supports termination, the fact that Mazda has the burden means the default—*against* termination—remains applicable for that factor. See *Barry v. Medtronic, Inc.*, 230 F. Supp. 3d 630, 639 (E.D. Tex. 2017) (“If there is no evidence on an issue, the party with the burden of proof should lose.”). It is one thing to flag that these factors do not “strongly” weigh against termination, PFD 33, but discounting them as neutral when not even Mazda claims they do not weigh

against termination improperly puts a thumb on the scale in the wrong direction. Properly applying the law, these three factors weigh against termination. Thus, the ALJ or the Board should modify Findings of Fact #69, 73, and 97 to each state that “This factor weighs against termination.”

- C. **The ALJ misinterpreted and misapplied the law by adding a subjective “trust” factor that will be true and favor the manufacturer in every termination case, thereby disregarding the requirement that Mazda establish “good cause” (Exception to FOF #98).**

Mazda’s burden is to establish good cause based on all existing circumstances, including seven enumerated ones. The statute thus allows consideration of other factors, but here the ALJ, by adding as “factor #8” whether the manufacturer trusts the dealership, created one that will apply in every case—since the manufacturer will always mistrust a dealership it seeks to terminate—and will *always* favor termination. This is the opposite of what the statute requires when it places the burden on the manufacturer to make a good-cause showing to change the default against termination, since it would allow the manufacturer simply to make a subjective assertion that it does not trust the dealership and thereby establish a factor weighing in favor of termination before any evidence is considered. In relying on this circumstance as a thumb on the scale in favor of termination, the ALJ misinterpreted and misapplied the statutory text.

The ALJ’s “factor #8” was also legal error here because it resulted in double-counting in favor of Mazda, since according to the ALJ “the analysis [on factor #8] is essentially the same as the injury or benefit analysis.” PFD 40. The facts and analysis used for factor #3 cannot be used twice in favor of termination in this way. That is particularly true because the findings of

fact and conclusions on factor #3 were based on misinterpretations and misapplications of Texas law as described above, meaning the same legal errors also infect the “factor #8” analysis.

Thus, the ALJ or the Board should delete Finding of Fact #98 entirely, or modify it to state that “Mazda’s concern about World Car North’s trustworthiness does not support termination.”

D. When Texas law is properly interpreted and applied, the findings of fact compel the ultimate finding and conclusion that there is no good cause to terminate World Car North (Exceptions to COL #10-11).

Based on the legal errors identified above, the ALJ found that four enumerated statutory factors, plus a new one (manufacturer’s lack of trust), weighed in favor of termination, and that no factor weighed against termination. The ALJ then concluded that “Mazda met its burden of demonstrating good cause,” “World Car North’s protest should be denied,” and “the termination of World Car North’s franchise should be approved.” PFD 49-50 (COL #10-11); *see also* PFD 40-41 (“VII. CONCLUSION”). These conclusions were based on the ALJ’s misinterpretations and misapplications of Texas law and prior administrative decisions in its findings of fact, as explained in detail above.

When Texas law is correctly interpreted and applied to the full set of factual findings made by the ALJ throughout the PFD, the formal findings of fact must be modified as requested above. The modified factual findings, in turn, compel the conclusion that there is no good cause for termination. The ALJ or the Board should modify Conclusions of Law #10 and 11 as follows:

- “Mazda did not meet its burden of demonstrating good cause for the termination of World Car North’s franchise. Tex. Occ. Code § 2301.453(g).”

- “World Car North’s protest should be upheld, and the termination of World Car North’s franchise should be rejected.”

Without these changes, the PFD misinterprets and misapplies Texas law.

Whether there is good cause for termination is a legal conclusion or an “ultimate policy determination” that the Board is empowered to and should make “in the course of carrying out its statutory duties” to administer Chapter 2301 and regulate the distribution of motor vehicles in the State of Texas. See, e.g., *Austin Chevrolet, Inc. v. Motor Vehicle Bd. & Motor Vehicle Div. of Tex. Dep’t of Transp.*, 212 S.W.3d 425, 432 (Tex. App.—Austin 2006, pet. denied) (“Because the legislature gave the Board exclusive jurisdiction to determine the issue of good cause, based on its expertise and experience in making this determination, it was, as a matter of law, uniquely and exclusively qualified to make that determination in this case.”). If the ALJ does not correct the legal errors in the PFD, the Board should.

IV. Conclusion

The ALJ misinterpreted and misapplied Texas law on each of the factors as described above. When the law is correctly interpreted and applied, the findings of fact that flow from a proper application compel the conclusion there is no good cause to terminate World Car North’s franchise. The ALJ and the Board should uphold World Car North’s protest and reject termination.

Dated: March 11, 2022

Respectfully submitted,

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**ATTORNEYS FOR PROTESTANT
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WORLD CAR MAZDA NORTH**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document has been served on all counsel of record via e-mail on March 11, 2022.

/s/ Jarod R. Stewart

Jarod R. Stewart

APPENDIX A

Publicly-Available Franchised Dealership Termination Cases 1997–2022

Involuntary Terminations for Good Cause (5)

Case:	Rationale:
<i>Star Houston, Inc. v. Tex. Dep't of Transp., Motor Vehicle Div.</i> , 957 S.W.2d 102, 111 (Tex. App.—Austin 1997, pet. denied)	Good cause found where dealership breached its franchise agreement by refusing to comply with manufacturer's signage requirements.
<i>Ford Motor Co. v. Motor Vehicle Bd. of Tex. Dep't of Transp./Metro Ford Truck Sales, Inc.</i> , 21 S.W.3d 744 (Tex. App.—Austin 2000, pet. denied)	Good cause found where dealership admittedly abused various dealership programs and deceived the manufacturer about certain sales information.
<i>Lone Star R.V. Sales, Inc. v. Motor Vehicle Bd. of the Tex. Dep't of Transp.</i> , 49 S.W.3d 492 (Tex. App.—Austin 2001, no pet.)	Good cause found where dealership had a history of verbal abuse and threats, the dealership failed to promote the manufacturer's products, the dealership did not meet sales objectives, and the dealership failed to honor warranty obligations.
<i>Mr. Yamaha, Inc. d/b/a Mr. Motorcycle, Petitioner v. American Suzuki Motor Corporation, Respondent</i> , 2011 WL 577104 (SOAH)	Good cause found where dealership had declining and poor sales, refused to do warranty work, had violated the franchise agreement, and where dealership personnel threatened manufacturer personnel with physical assault.
<i>Cecil Atkission Orange, LLC, d/b/a Cecil Atkission Chrysler Jeep Dodge, Complainant v. FCA US LLC, Respondent</i> , 2016 WL 3457922 (SOAH)	Good cause found where, among other things, dealership had extremely low sales, breached the franchise agreement in nine different ways, and the ALJ found that customers were avoiding the dealership.

Involuntary Terminations for Ceasing Operations (2)

Case:	Rationale:
<i>Paramount Southwest Imports Ltd. dba Performance Mazda, Complainant v. Mazda Motor of America, Inc., dba Mazda North American Operations, Respondent, 2010 WL 1617966 (SOAH)</i>	Dealership closed its doors and ceased operating.
<i>Teape LMM, LP d/b/a Teape Mazda, Complainant v. Mazda Motor of America Inc. d/b/a Mazda North America Operations, Respondent, 2009 WL 1813625 (SOAH)</i>	Dealership closed its doors and ceased operating.

APPENDIX B

Proposed Changes to ALJ's Findings and Conclusions

(Text in Black Copied Directly from PFD; World Car's Proposed Changes in Red)

VIII. FINDINGS OF FACT

Procedural Background

1. On December 17, 2018, Mazda Motor of North America, LLC (Mazda) sent a letter notifying World Car North of its intent to terminate All Star Imports Inc. d/b/a World Car Mazda North (World Car North)'s dealership agreement.
2. February 15, 2019, World Car North filed its Notice of Protest with the Texas Department of Motor Vehicles (Department or Board).
3. On July 19, 2019, the Department referred the protest to the State Office of Administrative Hearings (SOAH) for a contested hearing and issued a Notice of Hearing to the parties on July 23, 2019.
4. On August 7, 2019, the Administrative Law Judge (ALJ) issued Order No. 1, setting the hearing date. Orders adjusting the hearing schedule were issued on August 19, 2020 (Order No. 5) and March 4, 2021 (Order No. 7).
5. The Notice of Hearing and Order Nos. 1, 5, and 7 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted, or an attachment that incorporated by reference the factual matters asserted in the complaint or petition.
6. The hearing on the merits was held July 19-23, 2021, before ALJ Rebecca S. Smith. At the hearing, World Car North was represented by its counsel, Jarod R. Stewart and Austin Kreitz. Mazda was represented by its counsel, Brit T. Brown and Benjamin Escobar.
7. The record closed on November 8, 2021, after the parties' post-hearing briefs were filed. Over World Car North's objections, the record was reopened to admit exhibit WC-7, the Dealer Agreement.

The Parties & the Dealer Agreement

8. World Car North is one of twelve World Car dealerships in the San Antonio, Texas, area owned by Ahmad "Nader" Zabihian. The World Car group includes a total of three Mazda dealerships, along with several other brands.

9. World Car North has a dealer agreement (Dealer Agreement) with Mazda.
10. Section 14(A)(i) of the Dealer Agreement required World Car North to “take all reasonable steps to provide the highest quality of service.”
11. Section 14(A)(iv) of the Dealer Agreement required World Car North to “ensure that customer concerns with Mazda Vehicles are accurately diagnosed and necessary and approved Repairs are properly and professionally performed.”
12. Section 14(C) of the Dealer Agreement required World Car North to “abide by and implement Mazda’s warranty procedures . . . in all respects and the . . . comply with all warranty requirements required by law.”
13. Section 14(F) of the Dealer Agreement required World Car North to “perform service campaign and/or corrections for owners or users of all Mazda Products that qualify for such inspections and/or corrections.”
14. Section 14(G) of the Dealer Agreement required World Car North “to comply and operate consistently with all applicable provisions of federal, state and local laws, ordinances, rules, regulations, consent decrees, and orders affecting Mazda Products and Dealership Operations, including without limitations those relating to safety, emissions control, noise and customer service.”
15. World Car North is in Mazda’s San Antonio market, which is part of the district that includes San Antonio, Austin, and Waco. There are currently five Mazda dealerships in the San Antonio market.

World Car North’s Business and Facilities

16. The World Car North building cost \$1.5 million to construct, and World Car North recently renovated the building to meet Mazda’s current requirements. World Car North also spent approximately \$85,000 in new signage.
17. 2019 was the first profitable year World Car North had since 2013.
18. World Car North had made a \$1 million profit by the hearing date in 2021, with a similar amount in 2020.
19. World Car North has about \$3 million in debt and has invested about \$1.8 million in fixed assets (the building, renovation, signage, equipment, and technology).
20. World Car North employs approximately 40 people.

Takata Airbag Recall

21. The Takata airbag inflator recall was the largest and most complex recall in automotive history, affecting approximately 37 million vehicles across 19 manufacturers and 34 automotive brands, including Mazda.
22. Takata's airbag inflator, which inflates the airbag in a collision, had defects such that over time, heat and humidity would cause the chemicals within the inflator to break down. The broken-down inflators would cause particles to shoot through the cabin, through the airbag, potentially harming the vehicle's occupants. There were hundreds of injuries and multiple fatalities from the degraded inflators.
23. The inflator, which is not large, is installed behind the dash, making it invisible to a driver or passenger.

Discovery of Recall Issues

24. In February 2018, Katelynn Dodd, World Car North's service manager, was notified by the parts department that a technician, David Winkler, was requesting a new airbag inflator for a vehicle even though that repair was not on the work order. Mazda's warranty repair system showed the airbag inflator in that vehicle had previously been replaced at World Car North. After discussing the issue with the acting general manager, Bill Keys, they just had Mr. Winkler replace the airbag inflator and did not charge Mazda for it. Mr. Keys did not report the situation to anyone at the World Car group and did not begin an investigation.
25. In April 2018, a technician at another Mazda dealership in San Antonio was performing a repair on a vehicle and, with the dash removed, noticed that the defective Takata airbag inflator had not been replaced, even though World Car North had reported in Mazda's warranty repair system that it had previously done that work.
26. That dealership contacted Mark Webber, Mazda's district service manager.
27. Mr. Webber called Ms. Dodd and told her about the discovery. Ms. Dodd then let the general manager, Robert Minatra, who had replaced Mr. Keys, know that another dealership had found a vehicle that still had its original Takata airbag inflator, even though World Car North had reported the replacement as having been done.
28. The technician who had reported doing the work on the airbag inflator was again Mr. Winkler. At that time, Mr. Winkler was the only Mazda-certified technician working at World Car North.
29. Mr. Minatra and Ms. Dodd briefly met with Mr. Winkler, who said that he was extremely busy and must have just missed the airbag inflator.

30. Mr. Winkler was verbally counseled, but not otherwise disciplined at that time. No notes were placed in his employment file.
31. Mr. Minatra thought the incident was a one-off occurrence, so he did not investigate it or report it to anyone else in the World Car group.
32. Around May 21, 2018, Mr. Webber received a call from the same dealership that found the original inflator in April 2018. A technician had, once again, removed the dashboard as part of doing work and found the original inflator in a vehicle, even though World Car North had reported the airbag recall work as complete.
33. After the discovery of the second vehicle in May 2018, Mr. Minatra met again with Ms. Dodd and Mr. Winkler. Mr. Winkler provided a similar explanation to the one he gave in April: he was busy and overwhelmed and must have missed it. As a result of this meeting, Mr. Winkler was given a written warning.
34. After hearing Mr. Winkler's explanation, Mr. Minatra asked Ms. Dodd to examine Mr. Winkler's workload, but did not otherwise investigate the situation. Ms. Dodd reviewed Mr. Winkler's workload and reported to Mr. Minatra that it was not out of the ordinary.
35. Even after the May discovery, Mr. Winkler still performed Takata airbag work at World Car North.
36. In late May, World Car North brought in a technician from another World Car group store to begin the Mazda-certification process so that the dealership would have more than one person who was certified to do certain work.

Re-inspection

37. In the morning of May 25, 2021, Mr. Webber emailed Mr. Minatra and Mr. Zabihian to tell them that he was compiling an initial list of cars that would need re-inspection to ensure that the airbag inflator replacement reported by World Car North had actually occurred.
38. At the end of that day, Mr. Webber emailed Mr. Minatra, Mr. Zabihian, and Ms. Dodd an Excel spreadsheet containing the initial list of 132 vehicles to be inspected.
39. In the email, Mr. Webber asked World Car North to let him know the status of each of the vehicles when they got them back in for inspection.
40. Mr. Webber also asked World Car North to separate into their own pile the airbags removed from customers whose vehicles were on the re-inspection list.

41. A short time after sending his email, Mr. Webber visited World Car North to look at the removed airbag inflators that he had requested be set aside. During his visit, Ms. Dodd told him that she could not provide him the parts because she did not believe Mr. Winkler did the work.
42. Mr. Webber then went to the parts department, where he saw a significant number of supposedly removed old airbags that were not labeled with blue tags, which Mazda required to keep track of replaced parts.
43. On June 9, 2018, a third vehicle for which Mr. Winkler had falsely reported the airbag recall work as complete was discovered.
44. Mr. Winkler was not working that day, which was a Saturday, and he quit a few days later. Until that time, Mr. Winkler was performing Takata airbag work, including re-inspections.
45. Between May 25 and June 13, 2018, Mr. Minatra did not do anything to inquire into the status of the re-inspection project, including asking Ms. Dodd or Mr. Webber about the list of vehicles to be inspected.
46. Thirty days after requesting the re-inspection of 132 cars, Mr. Webber was told only two inspections had been done.
47. Ms. Dodd, the service manager, was essentially working more than one full-time job for World Car North in addition to leading the re-inspection customer contact effort.
48. Stephanie Keener, Mazda's regional customer service and parts manager, contacted Lawrence Chao, then Mazda's regional general manager for the Gulf Region. She told Mr. Chao that she did not feel the re-inspections were being conducted properly, given how serious the concerns were. She also indicated that the dealership was not making progress in contacting customers.
49. Toward the end of June or early July, World Car North brought in a service advisor from the World Car Kia dealership to help calling customers. They later added another service advisor in mid-to-late July and a greeter in late July or early August. In mid-June, they added loaner vehicles for customers coming in for re-inspections, set aside some appointments for re-inspection, and started offering free oil changes to get customers to come back in.
50. Originally, Mr. Webber had asked World Car North to contact the owners and complete the 132 re-inspections on the initial list by July 30. By the end of July, only 37 vehicles had been re-inspected. Of those 37 vehicles, 27 had failed their re-inspection, meaning that they still had their original airbag inflator.

The Cure Letter

51. On August 10, 2018, Mr. Chao and a group from Mazda went to World Car North and hand-delivered Mr. Zabihian a letter containing the notice to cure (Cure Letter). The Cure Letter stated that World Car North was in default of its obligations under the Dealer Agreement and that failure to cure could result in termination. The Cure Letter also set out Mazda's expectations for World Car North: it required World Car North to fully cooperate with Mazda in its efforts to contact all customers; to prioritize scheduling, inspecting, and repairing the airbag recall; and to take steps to ensure proper completion of recall work, including "providing photographic evidence of the repair made." The Cure Letter also stated that Mazda intended to contact each affected customer directly.
52. On August 13, 2018, Mr. Zabihian told Art Kiolbassa, the World Car group's vice president of operations, about the airbag issue, showed him the Cure Letter, and instructed him to handle it.
53. Mr. Kiolbassa made improvements to World Car North's re-inspection efforts, but Mr. Chao told him that Mazda was taking over contacting customers.
54. In August 2018, Travis Young, Mazda's recall manager, visited the World Car North dealership as part of a warranty audit. Mr. Young noticed an unusually large volume of cars that were coming in for service. The Mazda team requested to re-inspect some of the vehicles that had been inspected. Of those vehicles that had just been worked on, Mr. Young found two cars in which the original airbag inflator remained on the vehicle.
55. Ms. Dodd left her job at World Car North on August 20, 2018.
56. Ms. Dodd was replaced as service manager by Harry Hewitt, who had significant experience.
57. World Car North had difficulty fully complying with the photograph requirement. There were technological difficulties on both ends, along with other issues.
58. Mazda's frustrations with World Car North continued, resulting in another letter to the dealership in November 2018.
59. In November 2018, Mr. Webber felt overwhelmed by the process of tracking and monitoring World Car North's re-inspection and passed it on to another Mazda employee for a while.

Termination

60. Mr. Chao decided to terminate World Car North's franchise. He prepared and signed the termination letter, which was dated December 17, 2018. Mazda sent the letter by certified mail, and Mr. Chao, along with members of his field team, also hand-delivered it to the World Car North dealership on the same day.
61. At the meeting to deliver the termination letter, Mr. Chao also presented a proposal to buy out the three World Car group Mazda dealerships for \$3 million. If Mr. Zabihian accepted the offer, Mazda would waive warranty charge-backs, which totaled approximately \$300,000.
62. Mr. Zabihian rejected that offer.
63. Mazda has adapted its Product Quality Management (PQM) system to address the issue of the World Car North recall failures. Mazda created a list of the Vehicle Identification Numbers (VINs) that need re-inspection and added it to a PQM list. When a dealership in North America enters VIN on this list into the Mazda system, the dealership receives an email telling them to contact Mazda.
64. When alerted to a World Car North vehicle outside of Texas, Mr. Young calls the dealership to tell them what to do. Mazda requires those dealerships to send photographs of both the failed and repaired parts.
65. Since the warranty audit was completed in December 2018, roughly 206 Takata recalls from World Car North have failed re-inspection, and over 250 non-Takata recalls have also failed reinspection. Re-inspection is not complete; approximately 360 vehicles remain on the list of vehicles that need to be re-inspected.
66. This issue of falsely representing that airbag recall work was done has not occurred at any other Mazda dealership in the Gulf Coast region.
67. Mr. Zabihian believes that only the technician and service manager are responsible for the situation with the Takata airbag inflators at World Car North.

Statutory Good-Cause Factor: World Car North's Sales in Relation to the Market

68. World Car North is currently on the low-end of the middle of the pack for sales in Texas.
69. This factor ~~neither~~ weighs ~~for or~~ against termination.

Statutory Good-Cause Factor: World Car North's Investment and Obligations

70. World Car North's building cost \$1.5 million to construct, and World Car North recently renovated the building to meet Mazda's current requirements, at a cost of \$160,000.
71. World Car North also spent approximately \$85,000 in new signage.
72. World Car North currently owes around \$3 million for a loan on the property where the dealership is located.
73. This factor ~~neither weighs for or~~ against termination.

Statutory Good-Cause Factor: Injury or Benefit to the Public

74. A World Car North employee, Mr. Winkler, created a serious risk of injury to the public when, over the course of several years, he falsely noted that defective Takata airbag inflators had been replaced, while leaving the original inflators in vehicles.
75. World Car North did not detect the issue until February 2018.
76. Once informed by Mazda about the issue, World Car North management was lackadaisical in its attempts to resolve the inflator issue.
77. Once informed of the second vehicle found by another dealer in May 2018, World Car North continued to allow Mr. Winkler to re-inspect his own work. In fact, for a period of time, that was required: Mr. Winkler was the only Mazda-certified technician on staff.
78. Mr. Minatra, who is still the general manager, did not even check about the status of the re-inspection from the period of May 25 until June 13, 2018, even though an additional failure was found during that time. In that period, he regularly spoke with Ms. Dodd, but did not pick up the phone himself or otherwise take action—such as reassigning some of her work to someone else—until he received an email from Mr. Webber asking about progress.
79. The parts department provided unsatisfactory answers to explain why airbags were not tagged when Mr. Webber visited in June 2018.
80. World Car North has addressed the deficiencies with warranty work from the past. ~~While there is a possibility of inconvenience to the public if there is one less Mazda dealer available to perform warranty work, that inconvenience is outweighed by the risk of harm posed by the serious deficiencies with World Car North's warranty work and the dealership's failure to promptly address those problems.~~

- 80A. Mazda did not establish that technicians other than Mr. Winkler left an original airbag inflator in a vehicle but marked the recall work as complete.
- 80B. World Car North currently has two higher-level employees who appear engaged in the process of ensuring that service work is properly done and that the re-inspections are conducted well: Mr. Hewitt and Mr. Kiolbassa.
- 80C. The evidence largely suggests that World Car North is currently trying to comply with Mazda's requirements.
- 80D. World Car North's addition of the part-for-part policy appears to be a good one and seems designed to limit future occurrences.
- 80E. World Car North's service department is currently performing well.
81. World Car North does not present a current risk of injury to the public, and the public will not benefit from termination of the dealership. This factor does not weigh in favor of termination.~~The continued operation of World Car North presents a risk of injury such that the public would benefit from the termination.~~

Statutory Good-Cause Factor: Adequacy of World Car North's Service Facilities, Equipment, Parts, and Personnel

82. There are no concerns with World Car North's service facilities, equipment, or parts.
83. The recall and repair problems at issue in this case were due to shortcomings with World Car North's personnel and at least partly attributable to the dealership's failure to hire enough service staff and failure to support or supervise the service department staff.
84. World Car North is the only dealership whose service work has to be reviewed daily by Mr. Webber.
85. ~~While~~ World Car North's service department is currently performing well, and current staffing of the service department seems appropriate. World Car North currently has two higher-level employees who appear engaged in the process of ensuring that service work is properly done and that the re-inspections are conducted well: Mr. Hewitt and Mr. Kiolbassa. ~~there is a significant reason to believe that would change should Mr. Hewitt depart or if Mazda is not regularly reviewing its work.~~
86. This factor does not weigh in favor of termination.

Statutory Good-Cause Factor: World Car North's Warranty Service

87. Over the course of years, World Car North's employee Mr. Winkler failed to comply with warranty and recall repairs.
88. Based on Mr. Winkler's representations, World Car North submitted false warranty claims.
89. World Car North did not comply with Mazda's tagging requirements for warranty work.
90. World Car North has taken additional steps to honor warranties since the Cure Letter issued in August 2018. There is no evidence that warranties are not being honored by World Car North. This factor does not weigh in favor of termination.

Statutory Good-Cause Factor: Compliance with the Franchise

91. Even if it did not realize it, World Car North submitted false reports of warranty repairs.
92. At the time that Mr. Winkler was working, World Car North did not ensure that repairs were properly and professionally performed; nor did World Car North perform work under a service campaign.
93. Mr. Young observed two cars with their original airbag inflators that were marked as re-inspected and allowed to leave World Car North.
94. World Car North took steps to comply with the cure letters and addressed the problems identified by Mazda. World Car North has breached §§ 14(A)(i), 14(A)(iv), 14(C), 14(F), and 14(G) of the Dealer Agreement.
95. This factor does not weigh in favor of termination.

Statutory Good-Cause Factor: Enforceability of the Dealer Agreement

96. Neither party contends that the dealer agreement is unenforceable.
97. This factor ~~does not have any effect on good cause~~ weighs against termination.

Statutory Good-Cause Factor: Other Relevant Circumstances

- ~~98. Mazda's concern about World Car North's trustworthiness supports termination.~~

IX. CONCLUSIONS OF LAW

1. The Department and its governing board have jurisdiction and authority over the subject matter of this case. Tex. Occ. Code ch. 2301.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Occ. Code § 2301.704; Tex. Gov't Code ch. 2003.
3. Notice of the termination was properly provided. Tex. Occ. Code § 2301.453; 43 Tex. Admin. Code § 215.111.
4. World Car North timely filed its notice of protest. 43 Tex. Admin. Code § 215.111.
5. Notice of Hearing was properly provided. Tex. Occ. Code §§ 2301.705, .707; Tex. Gov't Code §§ 2001.051-.052; 43 Tex. Admin. Code § 215.34.
6. The Dealer Agreement is a “franchise” as defined by Texas Occupations Code § 2301.002(15).
7. A manufacturer may not terminate or discontinue a franchise with a franchised dealer unless the manufacturer provides notice of the termination and: (1) the franchised dealer consents in writing to the termination, (2) the appropriate time for the dealer to file a protest has expired, or (3) the Board makes a determination of good cause for the termination. Tex. Occ. Code § 2301.453(a), (g).
8. Mazda has the burden of showing by a preponderance of the evidence that good cause exists for the termination of World Car North's dealership. Tex. Occ. Code § 2301.453(g); 1 Tex. Admin. Code § 155.427.
9. In determining whether Mazda established by a preponderance of the evidence that there is good cause for terminating World Car North's franchise, the Board is required to consider all existing circumstances, including seven statutory factors. Tex. Occ. Code § 2301.455(a).
10. Mazda ~~did not meet~~ met its burden of demonstrating good cause for the termination of World Car North's franchise. Tex. Occ. Code § 2301.453(g).
11. World Car North's protest should be ~~denied~~ upheld, and the termination of World Car North's franchise should be ~~approved~~ rejected.

3. Mazda's Reply to World Car North's Exceptions to the PFD

SOAH DOCKET NO. 608-19-6279.LIC
 MVD DOCKET NO. 19-0015-LIC

ALL STAR IMPORTS, INC., d/b/a WORLD CAR MAZDA NORTH,	BEFORE THE STATE OFFICE
Protestant,	
v.	OF
MAZDA MOTOR OF NORTH AMERICA, INC.	
Respondent	
	ADMINISTRATIVE HEARINGS

ACCEPTED
 608-19-6279
 4/22/2022 2:39:51 pm
 STATE OFFICE OF
 ADMINISTRATIVE HEARINGS
 Carol Hale, CLERK

**RESPONDENT MAZDA MOTOR OF NORTH AMERICA, INC.'S RESPONSE TO
 PROTESTANT'S EXCEPTIONS TO PROPOSAL FOR DECISION**

Mazda Motor of North America, Inc. ("Mazda") submits this response to Protestant's exceptions, requesting the Proposal for Decision's submission to the Motor Vehicle Board without change. In support, Mazda would show:

Introduction

All Star Imports, Inc. d/b/a World Car Mazda North ("World Car") characterized its exceptions as a legal challenge. The Occupations Code, World Car argues, obligated the ALJ to weigh evidence based on its recency, whereas the Proposal for Decision ("Decision") emphasized the importance. World Car explained its contention as follows:

Texas law requires that *existing circumstances provide good cause for termination*. As a matter of law, a franchised [dealer] may not be terminated based on *cured past* circumstances and *hypothetical future* circumstances, while ignoring the existing ones.¹

¹ Protestant's Exceptions to Proposal for Decision (the "Exceptions") p. 2 (emphasis original).

To be sure, the Occupations Code requires the Board to “consider all existing circumstances” to determine whether a distributor has good cause to terminate the franchise.² However, the Code affords the Board and ALJ broad discretion to weigh the credibility and importance of the evidence. The Occupations Code:

1. Does not require the Board or ALJ to tally the good cause factors on a scorecard. Thus one factor can support a finding of good cause.
2. Does not require the Board to excuse the dealer’s breach of material provisions of the franchise agreement.
3. Does not require the Board to ignore the past breach of the public’s trust simply because the dealer modified its conduct before the hearing.

World Car’s exceptions rely on two fallacies: (1) the Decision is based on conjecture, and (2) World Car established it cured the problems that resulted in the falsification of hundreds of life-saving repairs. Yet, World Car identifies no speculative findings. Instead, it advocates for modifying and adding findings of fact (“FOF” or “findings”) to incorporate facts World Car alleged but did not prove, like its claim that it cured its breach of material breaches of the franchise agreement.

The Decision is based on the evidence and does not rely on projected or anticipated information. World Car’s exceptions challenge the ALJ’s decision to weigh the evidence favoring termination more heavily than the evidence of World Car’s corrective measures. The result is justified considering hundreds of World Car’s customers left the dealership believing World Car had repaired their airbag system. The Decision acknowledged World Car’s actions to comply with Mazda’s request to inspect and repair the recalled vehicles. But it also noted World Car’s

² Tex. Occ. Code § 2301.455(a).

foot-dragging and ineffective management, which was injurious to the public. It exposed hundreds of consumers and their families to defective airbag inflators—many of which remain unaccounted for.

Brief of Authorities

I. The Board’s right to change an ALJ’s decision is limited.

In advocating for modifications in the findings and conclusions of law (“COL” or “conclusions”), World Car confused the legal standards used in evaluating a proposal for decision and a Board order. Specifically, World Car focused on the standard courts use in assessing the Board’s final order in adopting a proposal for decision. The correct standard is the one that applies to the Board in evaluating a proposal for decision and deciding whether to adopt or modify the ALJ’s findings and conclusions.

“In conducting the hearing, the ALJ acts with ‘all the board’s power and authority,’ including the power to ‘make findings of fact and conclusions of law’ and ‘issue a proposal for decision and recommend a final order.’”³ The Board and, through statutorily delegated power, the ALJ have exclusive discretion to determine the weight of the evidence for each factor and whether the distributor has shown good cause.⁴

Section 2001.058(e) of the Government Code restricts the Board’s power to change any findings of fact or conclusions of law. The limitations allow changes to findings or conclusions only if the Board determines:

³ Tex. Occ. Code Ann. § 2301.704(b)(7) – (8); *Nissan N. Am., Inc. v. Tex. Dep’t of Motor Vehicles*, 592 S.W.3d 480, 485 (Tex. App.—Texarkana 2019, no pet.).

⁴ Tex. Gov’t Code Ann. § 2001.174; *Nissan N. Am., Inc.*, 592 S.W.3d at 485–86; *Austin Chevrolet, Inc. v. Motor Vehicle Bd. & Motor Vehicle Div. of Tex. Dep’t of Transp.*, 212 S.W.3d 425, 432 (Tex. App.—Austin 2006, pet. denied).

- (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c) [of Section 2001.058], or prior administrative decisions;
- (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
- (3) that a technical error in a finding of fact should be changed.⁵

Under Section 2001.058(e), the Board must explain its specific reason and legal basis for each change with particularity. To comply with Section 2001.058(e), the Board must articulate a rational connection between an underlying agency policy and the altered finding of fact or conclusion of law.⁶

The Board's burden is heaviest when it changes findings concerning adjudicative facts, like the facts a jury would consider.⁷ The legal standard bars the Board from reweighing the evidence and making a finding not supported by the evidence.⁸ In adopting the limitations, courts recognize:

The hearing examiner is better suited to make such determinations than is an agency head or board reviewing the hearing examiner's proposed decision because the hearing examiner has heard the evidence and has observed the demeanor of the witnesses. *Id.* In addition, a hearing examiner who is an ALJ with the State Office of Administrative Hearings (SOAH) and not employed by the agency is a "disinterested hearings officer."⁹

⁵ Tex. Gov't Code Ann. § 2001.058(e).

⁶ *Sanchez v. Texas State Bd. of Med. Exam'rs*, 229 S.W.3d 498, 515 (Tex. App.—Austin 2007, no pet.)(quoting *Levy v. Texas State Bd. of Med. Exam'rs*, 966 S.W.2d 813, 815 (Tex. App.—Austin 1998, no pet.)).

⁷ *New World Car Nissan, Inc.*, 581 S.W.3d at 838.

⁸ *Id.*

⁹ *Flores v. Employees Ret. Sys. of Tex.*, 74 S.W.3d 532, 539 (Tex. App.—Austin 2002, pet. denied)

Because credibility determinations are necessary, the legislature and courts recognize “an ALJ is better suited to [make such determinations] than an agency or board reviewing a [proposal for decision].”¹⁰

World Car alleges only one type of error in the Decision: the ALJ did not properly apply or interpret applicable law. According to World Car, the ALJ misunderstood the meaning of “existing circumstances.” World Car’s interpretation is too narrow and not supported by controlling legal authorities. Further, World Car misconstrues the substance of its challenge. It is not arguing legal error. Instead, World Car’s Exceptions complain about the weight the Decision places on the falsification of repairs and the consequences on the distribution system. It contends that its efforts, which were slow and inadequate, merit more weight. But the weight of evidence and credibility is left to the ALJ’s discretion, so the Decision has no legal error.

II. The Occupations Code confers broad discretion to the ALJ to consider and weigh World Car’s acts and omissions that occurred before and after World Car discovered Mr. Winkler’s falsifications.

The Occupations Code confers substantial discretion on the Board and the ALJ when considering all existing circumstances and determining good cause. Indisputably, one of the most critical considerations is furthering Chapter 2301’s purpose:¹¹

The distribution and sale of motor vehicles in this state vitally affects the general economy of the state and the public interest and welfare of its citizens. This chapter shall be liberally construed to accomplish its purposes, including the exercise of the state’s police power to ensure a sound system of distributing and selling motor vehicles through:

¹⁰ *New World Car Nissan, Inc.*, 581 S.W.3d at 838.

¹¹ *Ford Motor Co. v. Motor Vehicle Bd. of Tex. Dep’t of Transp./Metro Ford Truck Sales, Inc.*, 21 S.W.3d 744, 754 (Tex. App.—Austin 2000, pet. denied)

(1) licensing and regulating manufacturers, distributors, converters, and dealers of motor vehicles; and

(2) enforcing this chapter as to other persons *to provide for compliance with manufacturer's warranties and to prevent fraud, unfair practices, discrimination, impositions, or other abuse of the people of this state.*¹²

The law is settled. The Board and ALJ are authorized to evaluate the full range of performance based on the evidence existing when the evidentiary record is closed.¹³ World Car's argument that the evidence of most recent performance merits the great weight is nothing new. Metro Ford made the same argument to the Austin Court of Appeals. The Board found good cause to terminate the franchise because the dealer had falsified information to obtain wholesale price discounts.¹⁴ When Ford discovered the falsifications, it instructed the dealer to stop submitting false information. The dealer complied and claimed the Board erroneously found good cause. The Austin Court of Appeals rejected the dealer's argument:

Metro argues that the evidence shows that it ceased applying for CPA in the name of a customer other than the actual customer when instructed by Ford to change its practices in April 1994. ***Metro contends that there is no evidence to show that it has violated Ford policy since that time; therefore, Metro argues that the Board abused its discretion by ordering termination based on past wrongs.***

We find Metro's argument to be without merit. Section 5.02(b)(5) mandates a consideration of "existing circumstances," not a speculative evaluation of what kind of relationship a manufacturer and dealer might have in the future. See Tex.Rev.Civ. Stat. Ann. art. 4413(36), § 5.02(b)(5). The Board is authorized to evaluate the dealer's past and current performance with regard to sales, service, warranties, and compliance with franchise agreements. *See id.* Nothing in section

¹² Tex. Occ. Code Ann. § 2301.001 (emphasis added); *see Metro Ford Truck Sales, Inc. v. Ford Motor Co.*, No. 95-137 and 95-567, at p. 16 (Texas Motor Veh. Bd. Jan. 16, 1998).

¹³ *Cecil Atkisson Orange, LLC v. FCA USA LLC*, SOAH No. 608-15-4315.LIC, p. 5 (Jun. 17, 2016).

¹⁴ *Ford Motor Co. v. Motor Vehicle Bd. of Tex. Dep't of Transp./Metro Ford Truck Sales, Inc.*, 21 S.W.3d 744, 754 (Tex. App.—Austin 2000, pet. denied)

5.02(b)(5) supports Metro's interpretation. Even assuming the section does contain an element of prognostication, Metro's argument still fails because its pattern of CPA program abuse and admitted efforts to deceive Ford violate basic and fundamental precepts of the relationship between a manufacturer and a dealer and reasonably support a conclusion that Metro will probably not perform according to the terms of its franchise agreement if allowed to remain a dealer. ***The undisputed facts alone justify Ford's actions in terminating Metro. We overrule Metro's final issue concerning termination.***¹⁵

The *Metro Ford* decision demonstrates unequivocally that a material breach of the dealer agreement is enough support to find good cause for termination. It also reaffirms the Board and the ALJ's broad discretion in weighing the importance and credibility of the evidence. World Car proposition of law that its evidence of a cure requires greater weight than the falsification of recall repairs is wrong.

SOAH followed the appellate court's guidance, which allows termination of the franchise even after the dealer corrected its conduct. Considering a similar argument—that the Board may not authorize termination if the dealer has corrected its operational problems—ALJ Craig Bennett stated:

In considering all relevant information, though, the ALJ does not believe that ***more recent performance information is necessarily entitled to more weight.*** Instead, it is simply additional information for the Board to consider when evaluating all circumstances. ***That a dealer may have improved its performance and met standards after being given notice of intended termination should not excuse many years of past poor performance by the dealership.*** While the Board may consider such improved performance, such consideration would not necessarily preclude good cause for termination or modification of the franchise. Rather, all existing circumstances should be considered-and those existing circumstances include the dealership's sales and service history before any recent performance improvements. Therefore, the ALJ makes his recommendation based

¹⁵ *Metro Ford*, 21 S.W.3d at pp. 758-59.

upon all of the existing information and circumstances as demonstrated in the evidentiary record.¹⁶

The evidence, case law, and Board orders support the Decision. The evidence showed years of poor management and reluctance to address David Winkler's fraud. It also showed that World Car would have gladly ignored the risk of personal injury to which its service department exposed customers without Mazda's unrelenting pressure. World Car's conduct, especially after it knew of three falsifications and Mazda knew of only two created an incurable breach of trust, a valid consideration under Section 2301.455.¹⁷

III. World Car is responsible for Mr. Winkler's Actions.

World Car argues that termination is unfair because Mr. Winkler falsified repairs without World Car's knowledge and points to the common law doctrine of intervening cause arising from independent criminal acts as its excuse.¹⁸ The analysis suffers from at least two fallacies. First, in the event of injuries arising from a falsified repair, World Car would undoubtedly be responsible. Second, this is not a negligence action. Instead, it is a hybrid contract action evaluated under Section 2301.455. Under the rubric of good cause, World Car cannot excuse its breaches of contract by blaming Mr. Winkler, the employee to whom World Car delegated its performance of its obligations to the consumer and Mazda.

¹⁶ *Bates Nissan, Inc. v. Nissan North Amer., Inc.*, SOAH No. 608-14-3211.LIC, p. 7 (SOAH Apr. 8, 2016), adopted by Final Order (Jun.1, 2017).

¹⁷ *Metro Ford Truck Sales, Inc. v. Ford Motor Co.*, No. 95-137 & 96-567, p.31, and FOF Nos. 18 and 24 (Tex. Motor Veh. Bd. Jan. 16, 1998); *Ford Motor Co. v. Motor Vehicle Bd. of Tex. Dep't of Transp./Metro Ford Truck Sales, Inc.*, 21 S.W.3d 744, 758 (Tex. App.—Austin 2000, pet. denied).

¹⁸ World Car has argued it has no responsibility for Mr. Winkler's actions because it contends that they were criminal. The view explains why World Car was not motivated to re-inspect and repair cars. It mistakenly believed it was not financially responsible for any personal injuries that could result from Mr. Winkler's conduct.

World Car cites *Zarzana v. Ashley*¹⁹ for the proposition that World Car can escape liability for Mr. Winkler's conduct. The case is not helpful to World Car's argument. In that case, the employee was selling inspection stickers at a repair shop that did not perform state inspections. Thus, the employee was not acting in the course and scope of employment. "To hold an employer vicariously liable for the misconduct of its employee, a plaintiff must prove: (1) an agency relationship existed between the employee and the employer, (2) the employee committed the act, and (3) the act was in the course and scope of the employee's authority."²⁰ All elements are present in connection with Mr. Winkler's actions because World Car specifically charged him with replacing defective inflators.

From a contractual perspective, the same result follows. World Car promised to (1) "take all reasonable steps to provide the highest quality of service," (2) "ensure that customer concerns with Mazda vehicles are accurately diagnosed and necessary and approved repairs are properly and professionally performed," (3) "abide by and implement Mazda's warranty procedures ... in all respects and ... comply with all warranty requirement required by law," (4) perform service campaign and/or corrections for owners or users of all Mazda Products that qualify for such inspections and/or corrections," and (4) "to comply and operate consistently with all applicable provisions of federal, state and local laws, ordinances, rules, regulations consent decrees, and orders affecting Mazda Products and Dealership Operations, including without limitations those relating to safety, emissions control, noise and customer service."²¹

¹⁹ 218 S.W.3d 152 (Tex. App.—Houston [14th Dist.], pet. Struck).

²⁰ *Zarzana v. Ashley*, 218 S.W.3d at 159.

²¹ Dealer Agreement pp. 14-15 (WC-17).

The evidence demonstrated that World Car breached the Dealer Agreement as a matter of law. Mr. Winkler falsified hundreds of repairs, and World Car submitted hundreds of warranty claims for reimbursement that did not comply with Mazda's requirements. Whether World Car knew or did not know of the falsifications as they occurred is irrelevant. It selected Mr. Winkler, assigned him the work, and let it go wholly unsupervised.

Also, the argument ignores World Car's continuous and systematic management failures in its service and warranty departments. It did not train or supervise its employees. The Code does not excuse a dealer from responsibility for a pattern and practice of deception carried out by its employees.

Whether World Car effectively cured the problems that allowed Mr. Winkler to deceive hundreds of customers is an open question. World Car did not implement any quality assurance procedures to determine whether its technicians performed recall repairs. And even after it allegedly implemented a part-for-part policy, vehicles left its service bays under the false representation that World Car had replaced defective inflators. Its actions were material breaches of the franchise agreement and Code.

IV. World Car's Exceptions seek changes in and additions of adjudicative facts.

World Car proposes specific revisions and additions to the findings and conclusions. Notably, the revisions do not address legal errors. Instead, the modifications address World Car's disagreement with the ALJ's credibility determinations and weighing of the evidence.

A. Sales in relation to the market: FOF No. 69:

World Car's sales performance is low to average compared to other dealers in Texas—a fact World Car does not dispute.²² The ALJ determined World Car's sales did not weigh for or against termination. The evidence supports the finding. World Car is not a leading dealer, and its absence would not disrupt the sale or service of Mazda vehicles in San Antonio.²³ During the interim period bounded by its termination and replacement, the other dealers in San Antonio could adequately serve the market. Consequently, the evidence supports the finding.

B. Investment and obligations: FOF Nos. 70-73.

Under the Occupations Code, Mazda would purchase World Car's new vehicle inventory, signs, parts, accessories, and special tools.²⁴ World Car would keep its real estate, which it can sell or re-purpose. Considering the harm World Car caused its customers, and its material breach of the Dealer Agreement, World Car's investment in the store is insufficient to overcome the dominant reasons for terminating its franchise. World Car's termination will reduce the risk of injury to the public without unjustly affecting World Car's financial standing. Undoubtedly it will continue operating its 11 other franchised dealerships knowing it must honor its service obligations. Consequently, there is no factual or legal reason to modify findings nos. 70-73.

C. Injury or benefit to the public: FOF Nos. 74-81.

The Decision correctly summarizes the harm consumers suffered from Mr. Winkler and World Car's falsification of airbag repairs. To this day, no one knows how many defective parts

²² Decision FOF No. 68.

²³ See Tex. Occ. Code § 2301.001 (Code's purpose is "to ensure a sound system of distributing and selling motor vehicles").

²⁴ Tex. Occ. Code Ann. § 2301.465.

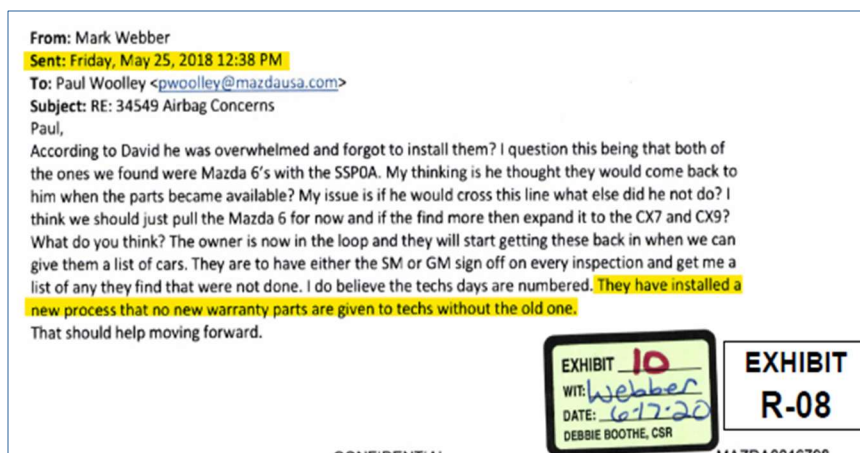
are still in service. World Car resisted correcting the problem through the program of quick and effective re-inspections Mazda requested, which the Decision accurately describes in findings nos. 74-79. Those are also findings World Car does not dispute.

Instead, World Car wants to emphasize its version of the facts by changing the weight and importance of the evidence concerning corrective actions. Significantly, World Car's argument relies on the future activities of two key employees: Harry Hewitt and Art Kiobassa. Mazda disagrees with World Car's claim that Messrs. Hewitt and Kiobassa can ensure technicians repair cars correctly. Reliance on individual employees instead of management systems does not guaranty consist, satisfactory performance.

World Car adopted no new management systems. It did not retrain key employees who oversee the claims submission process. Nor did it train its service advisors in Mazda's procedures designed to ensure technicians executed repairs correctly. The only system change World Car claims it made is its part-for-part policy. But the evidence raised serious questions about its implementation.

World Car told Mazda it had implemented the part-for-part policy after Mazda learned of the second falsification through North Park Mazda:²⁵

²⁵ R-08.



Yet, on June 12, 2018, Mr. Winkler reported he repaired a vehicle, replacing both airbag inflators.²⁶ The vehicle returned as a PQM car on February 5, 2019, and failed World Car's inspection.²⁷ Similarly, when Young visited World Car in August 2018, he found a new inflator with the defective inflators designated for return to Takata.²⁸ The evidence raised serious questions about World Car's trustworthiness and the effectiveness of its actions.

The only evidence World Car offered to support the claim of prompt implementation of the part-for-part policy was its self-serving assertions. The evidence from its inspection records shows it had not implemented the policy as of May 25, 2018. These were mere assurance World Car made to Webber to alleviate his concerns. *Harry Hewitt, hired on September 12, 2018, testified that he was responsible for implementing the part-for-part policy.*²⁹ There is no evidence other than self-serving testimony to show the policy is in place.

²⁶ (R-66) (refer to VIN 1YVHZ8DH8C5M11865).

²⁷ Refer to R-39, VIN 1YVHZ8DH8C5M11865

²⁸ (Tr. 575/11 – 578/13).

²⁹ (Tr. 1370/15 – 17; 1371/20 – 1372/1).

World Car had no interest in understanding and correcting the problems in its warranty and service departments. So, it readily claimed Mr. Winkler, a rotten apple, was the source of all the problems. World Car conveniently forgets it ignored Mazda's instruction to re-inspect all prior recall repairs when vehicles arrived at its service department for re-inspection. Had it done as Mazda asked, it would have information concerning the extent of falsifications.

Mazda discovered other technicians falsified repairs during the April 2016 – June 2018 period. *According to World Car's submissions*, David Alvarado, Henry Gonzalez, and Marc Kelly submitted false claims. Mazda learned of these additional technicians through World Car's inspection.³⁰ How did World Car respond to the information? World Car argued that its submissions were vague and untrustworthy.

Mazda does not know the extent of the falsification by other technicians because World Car did not adhere to Mazda's requirements. Mazda instructed World Car to inspect all recalls performed on the PQM cars.³¹ World Car ignored the instruction and limited its inspections to Winkler repairs.³² World Car avoided uncovering the full extent of its contractual and statutory violation. As explained by Mr. Hewitt, World Car has not inspected cars in a way that allows for determining the extent of falsifications.³³

Not knowing the cause and extent of its problems, World Car argues it cured its deficiencies by hiring Harry Hewitt. Hewitt is an incomplete solution. Kiobassa testified he would not let Hewitt depart easily. Yet, Hewitt quit taking other employment during March,

³⁰ (Tr. 995/21 – 996/7; 997/2 – 4; 999/6 – 20; 1000/13 – 19; 79/7 – 16).

³¹ (R-1).

³² (Tr 1406/4 – 7).

³³ (Tr 1406/8 – 11).

April, and May 2020.³⁴ Mr. Hewitt's departure shows the weakness in World Car's solution of depending on the competence and integrity of two individuals instead of systems. Reliance on Mr. Kiobassa is no better. Mr. Kiobassa manages World Car's portfolio of dealerships, so he does not have time to monitor the service and warranty processes.

The Decision recognizes the risk of relying on two individuals for the integrity of service and warranty work. Recognition of the risk is not speculation.³⁵ The ALJ did not speculate about what may happen if Messrs. Hewitt or Kiobassa left. Instead, Decision recognizes that basing a remedy on two individuals results in an unreliable system.

D. Adequacy of service facilities, equipment, parts, and personnel: FOF Nos. 82-86.

World Car focused its Exceptions on whether it effectively cured its breaches and adequately addressed the deficiencies in its service department. As with all its exceptions, World Car contends it fixed its problems, which it believes take precedence over the falsified repairs and the dangers it created. For the reasons set forth above, Messrs. Hewitt and Kiobassa are incomplete solutions, and the Code tasks the ALJ with weighing the evidence. There is no error in the ALJ's findings and conclusions.

³⁴ Tr. 1392/10 – 25, 1409/15 – 17.

³⁵ Mazda presented evidence of widespread problems in the service and warranty departments. Its audit of the World Car's warranty and recall work performed between November 2017 and August 2018 showed over 850 instances in which World Car did not comply with Mazda's warranty policy. (R-29). The audit showed that World Car's system could not identify when World Car has not adhered to the guidelines it agreed to follow. *See Atkission*, SOAH 608-15-4315 at p. 36 (warranty audits can demonstrate a dealer's service department is performing poorly).

E. Warranty service: FOF Nos. 87-90:

World Car proposes modifying finding no. 90. It identifies two grounds: (1) the most recent facts trump historical performance, and (2) the only way to dishonor warranties is to turn away customers. Both grounds are flawed.

Efforts to remedy long-standing problems after a distributor has issued a notice of termination will “not excuse years of past poor performance.”³⁶ Moreover, SOAH always considers historical evidence; the statute does not require an ALJ to discount the importance of the evidence because of its age. Here World Car’s poor practices endangered hundreds of drivers and other vehicle occupants. World Car participated in trying to correct the problem of its creation only because of Mazda’s continuing demand. That evidence is not entitled to less weight than World Car’s actions after Mazda demanded corrections. The evidence showed that many of the cars for which World Car falsified repairs remain in service and, even after being told, continued to permit cars to leave the service bay under false representations of the completed repair. More to the point, World Car has no evidence that it effectively cured the problems in its service and warranty departments.

World Car notes it did not turn away customers and thus suggests it honored warranties. But it ignores that its actions were much more harmful than refusing service. Had World Car refused to repair vehicles, the customers would have known to take their vehicles to other dealerships. Mr. Winkler’s insidious actions were extremely harmful. Over a period of years, World Car enabled his deceit resulting in World Car’s service advisor informing hundreds of customers that World Car had replaced the dangerously defective inflators in their vehicles.

³⁶ *Bates Nissan, Inc. v. Nissan North Amer., Inc.*, SOAH No. 608-14-3211.LIC, p. 7 (SOAH Apr. 8, 2016), adopted by Final Order (Jun.1, 2017).

World Car's argument is nonsense; a dealer cannot comply with the Code by claiming it repaired a car when it did not.

In passing, World Car claims the Decision does not account for World Car's contractual right to cure. But it fails to address that it did not cure its defaults by Mazda's deadlines. Nor can World Car avoid Texas law that allows Mazda to seek contract termination because of a material breach.³⁷ Neither the Code nor the Dealer Agreement obligates the Board to turn a blind eye to the falsification of repairs that affected hundreds of customers and continued for years.

F. Compliance with the franchise: FOF No. 94.

World Car wants to change finding no. 94 to delete the indisputable fact that it breached the franchise agreement and substitute a finding that it cured its default. As a matter of law, World Car breached the franchise agreement. It delegated its obligation to repair defective inflators to Mr. Winkler, who did not fix the vehicles.

Also, Mazda disputed that World Car cured its breaches. World Car did not act on Mazda's May 2018 request to World Car for immediate action. World Car delayed calling customers; when it called, World Car minimized the severity of the problem. So, Mazda determined World Car was unwilling to assign repairs a high priority and started contacting customers directly. More to the point, World Car did not cure its default.

Because the parties offered conflicting evidence, the ALJ made a credibility assessment. The evidence supports the determination that World Car breached the franchise agreement.

³⁷ *4922 Holdings, LLC v. Rivera*, 625 S.W.3d 316, 326 (Tex. App.—Houston [14th Dist.] 2021, pet denied).

G. Enforceability of the dealer agreement: FOF No. 97.

Finding no. 97 is not erroneous. No one alleged that the dealer agreement violated the Occupations Code. Thus, all ALJ correctly used the dealer agreement in evaluating whether World Car breached the agreement.

H. Other relevant factors: FOF No. 98.

World Car acknowledges that the Board and ALJ are not limited to seven statutory factors when evaluating good cause for termination. World Car based its exception on the false premise that mistrust is always a factor in the termination. That is not true. Most termination proceedings arise from a dealer's poor sales and service performance or unwillingness to invest in its business. In relational trust, *Metro Ford* and World Car are the exceptions. These are cases involving questions of trust directly. Metro Ford lied about customer qualification for incentive pricing. World Car submitted hundreds of claims for warranty and recall repairs it did not perform. The actions compromised customer safety. Thus, abuse of trust was a central issue in the termination decision.

Moreover, World Car sought to blame David Winkler and Katey Dodd for the falsified repairs. Its dealer principal took no personal initiative to study and correct the pervasive problems in its service and warranty department. Any reasonable person familiar with the record of this case would choose another dealer to service its car; thus, trust is a uniquely important issue in the case.

I. Conclusions of law nos. 10 and 11.

Mazda met its burden of proof showing it has good cause for termination of the franchise. World Car's mismanagement allowed Mr. Winkler to falsify hundreds of repairs endangering. The evidence and law support the ALJ's Decision fully.

Requested Relief

For these reasons, Mazda requests the Decision's submission to the Board without modifications.

Respectfully submitted,

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/s/ Brit T. Brown

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of April 2021, a true and correct copy of this instrument is being served via email on Protestant's counsel.

Jarod R. Stewart
SMYSER KAPLAN & VESELKA, L.L.P.
700 Louisiana, Suite 2300
Houston, Texas 77002

/s/ Brit T. Brown

Brit T. Brown

4. SOAH ALJ Exceptions Letter



State Office of Administrative Hearings

Chief Administrative Law Judge

August 31, 2022

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
4000 Jackson Ave. Austin, TX 78731

VIA EFILE TEXAS

RE: Docket No. 608-19-6279.LIC; MVD Docket No. 19-0015-LIC; All Star Imports Inc. d/b/a World Car Mazda North v. Mazda Motor of North America, Inc.

Dear Mr. Avitia:

The undersigned Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) in this matter on January 6, 2022. After reviewing the exceptions, response, and amicus brief filed in this matter, the ALJ sees no basis to amend the PFD. The issues raised in the exceptions were largely addressed at hearing and in the original briefing. The ALJ will note that, contrary to the exceptions and amicus brief, much of the PFD was not focused solely on the actions of one rogue employee, but rather on the Protestant's slow response after discovering those actions. The PFD is ready for your review.

Rebecca Smith

Presiding Administrative Law Judge

Exceptions Letter
August 31, 2022
Page 2 of 2

cc:

Jarod Smith, Smyser Kaplan & Veselka, L.L.P., 717 Texas Ave., Suite 2800 Houston, TX 77002- **VIA EFILE TEXAS**

Brit Brown, Akerman LLP, 1300 Post Oak Blvd., Suite 2500, Houston, TX 77056 - **VIA EFILE TEXAS**

Marie Medina, Docket Clerk, Texas Department of Motor Vehicle, 4000 Jackson Ave., Austin, TX 78731 - **VIA EFILE TEXAS**

5. World Car North's Board Materials

Excerpts from the ALJ's Proposal for Decision (PFD)

- “World Car North’s service department is currently performing well” PFD 48
- “World Car North currently has two higher-level employees who appear engaged in the process of ensuring that service work is properly done and that the re-inspections are conducted well” PFD 34
- “[C]urrent staffing of World Car North’s service department seems appropriate” PFD 36
- “Mazda did not establish that technicians other than Mr. Winkler left an original airbag inflator in a vehicle but marked the recall work as complete.” PFD 30
- “ALJ does not find that anyone in the World Car group’s management intended Winkler to do what he did” PFD 39
- “World Car North’s addition of the part-for-part policy appears to be a good one and seems designed to limit future occurrences.” PFD 35
- “World Car North has taken additional steps to honor warranties ... after it received the Cure Letter.” PFD 37
- “Mazda has not alleged that World Car North’s service facilities, equipment, or parts are inadequate.” PFD 36
- “There are no concerns with World Car North’s service facilities, equipment, or parts.” PFD 48
- “The World Car North building cost \$1.5 million to construct, and World Car North recently renovated the building to meet Mazda’s current requirements.” PFD 42
- “World Car North had made a \$1 million profit by the hearing date in 2021, with a similar amount in 2020.” PFD 42

**Testimony of Doug Furrer,
Mazda Motor of North America Zone Manager for Service (Former)**

Hearing Record, WC Ex. 127, pg. 120 lines 2-18

Q. [D]id you believe, as of December 17th, 2018, that the dealership's not submitting all of those photos or documents meant that the franchise should be terminated?

A. I do not believe the franchise should be terminated. They were making, they were making gains. They were making improvements. And I think they kept replacing people until they got maybe the right one in there. I mean, you've got to have the right person and somebody that's accountable. And I think they went through a couple.

Q. Having the right people in place is more important than having all of the pictures in place, right?

A. I agree. I agree.

Hearing Record, WC Ex. 127, pg. 26 line 7 through pg. 27 line 12

Q. Okay. So you understood that the process of requiring documentation to be sent in was instituted because there was one technician at World Car North that didn't do the work that was reported as done?

A. That is correct.

Q. Okay. Were you aware that that technician was terminated by the dealership?

A. Don't know how he left or left on his own. There was a couple of stories that, that probably went around that he left on his own or he was terminated. I don't -- at the, at the beginning when they, when they, when we started checking this, they went back and looked at -- I don't know how many repair orders there were -- but several repair orders on the recalls to see if they all had been completed, and it turned out to be under one technician's number, or one technician.

- Q. Okay. But at any rate, you understood that in June 2018, that technician no longer worked for the dealership?
- A. That is correct. That is correct. And I think it was June. I don't remember the date. I know that he, he was no longer at that store.
- Q. Well, if your investigation showed that all of these repairs that weren't done were assigned to that one technician, when that technician is no longer employed by the dealership, that is curing that particular problem, right?
- A. Absolutely. I would say that that's been corrected, absolutely. Because we found nothing, found no other technician skipping any recalls or claiming recalls that, that were not completed.

Hearing Record, WC Ex. 127, pg. 28 line 20 through pg. 29 line 5

- Q. But as far as you were concerned as the zone manager for service, the right thing to do to address this was to not have that, that technician work at the dealership anymore.
- A. That is correct.
- Q. And based on all of your review of all of these materials, you never saw that anyone else other than this one technician did anything like that in terms of false reporting or saying that he did a repair when he didn't do it.
- A. That is correct.

Hearing Record, WC Ex. 127, pg. 40 lines 4-10, pg. 40 line 15 through pg. 41 line 16

- Q. Okay. So could you read those two sentences?
- A. Certainly. They have installed a new process that no new warranty parts are given to techs without the old one. That should help moving forward.
- Q. Okay. Do you agree with Mr. Webber that that change in policy would help moving forward?
- A. Yes.

....

Q. [Y]ou said you thought it would help with accountability for the techs?

A. That is correct. The tech would be more accountable to, to -- I think what they did find early on was that there were no old parts, or what happened to the old parts. And so this would certainly help that, answer that question and help make the technician more accountable.

Q. Right. So if the technician is replacing, for example, a Takata airbag inflator, if the technician is not permitted to receive the new part until the technician actually physically hands in the old part, that would prevent something like Mr. Winkler from happening, where he reports a repair is completed when it isn't, right?

A. I believe so. I believe that would help a lot.

Q. Okay. So, Mr. Furrer, if the dealership has, no longer employing the technician or the service manager and it has new people in those roles and there's no -- and there's the new part-for-part policy, do you think there's any likelihood of a repeat of this situation happening, based on all of those changes?

A. I would say probably not.

Q. So --

A. I mean, if the, if the technician is gone, I think -- and that was the only technician that was found doing it, then pretty much the problem has been resolved.

**Testimony of Mark Webber,
Mazda Motor of North America District Manager for Service**

Hearing Record, Transcript Vol. 4 at pg. 1073 lines 7-17

Q. And out of all the Mazda employees on your side, you would be considered boots on the ground closest to the dealership in terms of the service and parts department; right?

A. Yes, that is correct.

Q. You have the most interaction?

A. Yeah, we talk to them the most. You're right.

Q. You have the most interaction and dealings with the dealership personnel in the service department and also the general manager of the store; right?

A. Yeah, that is correct.

Hearing Record, Transcript Vol. 4 at pg. 978 lines 14-21

Q. I want to focus on World Car North. How do you view that store's fixed operations specifically as to warranty recalls compared with what you consider a good operation?

A. Currently I would say they're equal to other dealers that are doing the same work. I mean, we are checking. You know, they're on par with anybody else as far as the warranty right now, yeah.

**Hearing Record, Transcript Vol. 4 at pg. 1106 lines 6-13
and line 24 through pg. 1107 line 4**

Q. And since Harry Hewitt became the service manager, World Car Mazda North service department has performed at a district average level; right?

A. Yeah. Oh, yeah. And sometimes they've exceeded that. Sometimes they're above the district, sometimes they're below; right? It depends on when we're looking at the questions. But, yeah, I'd say definitely at least average.

....

Q. All right. But summing up, Mr. Hewitt and Mr. Kiolbassa and Ron, the service advisor that you're aware of, you would consider them all good at what they do and probably average or maybe above average?

A. Yeah, I would definitely consider that, I agree.

-----Original Message-----

From: Mark Webber <mwebber2@mazdausa.com>

To: Stephanie Keener <SSanner@mazdausa.com>; Tim Hartsaw (chartsaw@rogerbeasley.com) <chartsaw@rogerbeasley.com>; Scott Schafer <SSchafer@mazdausa.com>; Todd Burke <Tburke@msxi.com>

Sent: Thu, Jul 1, 2021 11:47 am

Subject: Weekly Ranking Report with June and QTD MBEP Metrics

Good Morning Team,

I hope you all had an excellent June close. This week's Ranking Report is a June Final with current MBEP data. Note All MBEP metrics will be finalized on July 15th.

This week's BVM is your May average RO value for cars 0-7 years of age that live in your SOA.

Just a reminder, you still have until July 9th to get any missed recalls back in for repairs.

If you need assistance with any of these key performance indicators, please let me know.

JUNE

MISSSED RECALLS

Dealer Name	
AS OF 6.30	MISSSED
NORTH PARK	0%
UNIVERSITY MAZDA	0%
GEORGETOWN	3%
INGRAM PARK	4%
SOUTH	5%
WORLD CAR NORTH	6%
CENTRAL	7%
Maximum	9.9%
WORLD CAR NB	11%
GARLYN SHELTON	14%
WORLD CAR SA	50%

MBEP PERCENTAGE

Dealer Name	JUNE
	Current
GEORGETOWN	99.2%
CENTRAL	59.0%
NORTH PARK	53.6%
INGRAM PARK	38.9%
District	35.5%
WORLD CAR NORTH	33.7%
SOUTH	32.0%
REQUIRED	25.0%
UNIVERSITY MAZDA	24.3%
GARLYN SHELTON	11.9%
WORLD CAR SA	1.9%
WORLD CAR NB	0.4%

EFFORT TO CHECK-IN

Dealer Name	JUNE
RED = DOWN MOM	Current
GEORGETOWN	98.5%
NORTH PARK	92.0%
NATIONAL	91.6%
WORLD CAR NORTH	89.8%
CENTRAL	89.4%
INGRAM PARK	88.9%
DISTRICT	88.2%
SOUTH	83.6%
UNIVERSITY MAZDA	78.1%
WORLD CAR NB	76.2%
GARLYN SHELTON	75.0%
WORLD CAR SA	56.2%

MBEP TRAINING

Dealer Name	QTD
	CURRENT
CENTRAL	100%
SOUTH	100%
WORLD CAR NORTH	100%
GEORGETOWN	100%
UNIVERSITY MAZDA	100%
NORTH PARK	98%
INGRAM PARK	92%
REQUIRED	90%
GARLYN SHELTON	73%
WORLD CAR SA	23%
WORLD CAR NB	17%

BRAND VALUE METRIC AVERAGE RO VALUE

Dealer Name	MAY
RED = DOWN MOM	2021
GARLYN SHELTON	\$ 247.48
NORTH PARK	\$ 225.91
INGRAM PARK	\$ 198.02
REGION AVERAGE	\$ 193.18
WORLD CAR NB	\$ 184.88
SOUTH	\$ 180.27
GEORGETOWN	\$ 165.64
CENTRAL	\$ 146.72
UNIVERSITY MAZDA	\$ 146.02
WORLD CAR NORTH	\$ 131.20
WORLD CAR SA	\$ 92.09

RECORD HEALTH

Dealer Name	JUNE
	Current
SOUTH	95.3%
CENTRAL	94.9%
GEORGETOWN	92.9%
NORTH PARK	92.6%
District	92.6%
UNIVERSITY MAZDA	90.5%
Region	89.7%
WORLD CAR NORTH	88.8%
GARLYN SHELTON	86.7%
INGRAM PARK	85.7%
WORLD CAR SA	85.4%
WORLD CAR NB	85.3%
REQUIRED	80.0%

TREATED as VALUED

Dealer Name	JUNE
RED = DOWN MOM	Current
GEORGETOWN	99.1%
NORTH PARK	96.8%
NATIONAL	94.1%
INGRAM PARK	93.0%
CENTRAL	90.8%
DISTRICT	90.2%
UNIVERSITY MAZDA	89.7%
WORLD CAR NORTH	88.2%
SOUTH	86.4%
WORLD CAR NB	79.1%
GARLYN SHELTON	78.7%
WORLD CAR SA	43.8%

OSAT

Dealer Name	JUNE
	FINAL
WORLD CAR SA	10.0
WORLD CAR NORTH	9.8
GEORGETOWN	9.6
UNIVERSITY MAZDA	9.5
GARLYN SHELTON	9.3
NORTH PARK	9.3
District	9.3
CENTRAL	9.2
WORLD CAR NB	9.2
SOUTH	9.2
INGRAM PARK	9.1

FIX IT RIGHT

Dealer Name	JUNE
	FINAL
GARLYN SHELTON	100.0%
WORLD CAR SA	100.0%
UNIVERSITY MAZDA	100.0%
SOUTH	98.3%
GEORGETOWN	98.3%
INGRAM PARK	97.1%
NORTH PARK	96.7%
Goal	96.1%
WORLD CAR NORTH	95.0%
CENTRAL	94.6%
WORLD CAR NB	88.9%

SURVEY HEALTH

Dealer Name	JUNE
	Current
WORLD CAR SA	100.0%
GARLYN SHELTON	96.5%
UNIVERSITY MAZDA	96.4%
WORLD CAR NB	96.1%
GEORGETOWN	95.9%
SOUTH	95.6%
NORTH PARK	95.1%
District	95.1%
Region	94.9%
CENTRAL	94.5%
WORLD CAR NORTH	92.6%
INGRAM PARK	91.0%
REQUIRED	85.0%

TIME TO COMPLETE

Dealer Name	JUNE
RED = DOWN MOM	Current
GEORGETOWN	94.3%
NATIONAL	93.8%
NORTH PARK	85.2%
WORLD CAR NORTH	82.4%
UNIVERSITY MAZDA	79.5%
INGRAM PARK	79.1%
CENTRAL	77.5%
DISTRICT	75.6%
GARLYN SHELTON	63.9%
SOUTH	56.7%
WORLD CAR NB	50.0%
WORLD CAR SA	50.0%

LIKELIHOOD TO RETURN

Dealer Name	JUNE
	FINAL
WORLD CAR SA	100%
WORLD CAR NORTH	98%
GEORGETOWN	96%
UNIVERSITY MAZDA	95%
GARLYN SHELTON	93%
SOUTH	93%
INGRAM PARK	92%
NORTH PARK	92%
District	92%
CENTRAL	91%
WORLD CAR NB	87%

PARTS PERCENTAGE

Dealer Name	JUNE
	Current
WORLD CAR NORTH	31.0%
NORTH PARK	23.9%
Regional	20.7%
National	20.7%
CENTRAL	20.4%
SOUTH	20.4%
District Average	20.4%
GEORGETOWN	20.3%
WORLD CAR SA	17.0%
GARLYN SHELTON	15.8%
UNIVERSITY MAZDA	14.6%
INGRAM PARK	14.0%
WORLD CAR NB	10.7%

GOOD VALUE FOR COST

Dealer Name	JUNE
RED = DOWN MOM	Current
GEORGETOWN	93.1%
INGRAM PARK	87.1%
WORLD CAR NORTH	82.4%
NORTH PARK	82.2%
UNIVERSITY MAZDA	82.1%
DISTRICT	81.3%
NATIONAL	79.3%
CENTRAL	79.2%
SOUTH	79.2%
GARLYN SHELTON	71.2%
WORLD CAR SA	60.0%
WORLD CAR NB	50.0%

MARK WEBBER
DSM, ST, Dist 2
T: 281-676-2831 • M: 505-506-0528
mwebber2@mazdausa.com

Mazda North American Operations
17220 Katy Freeway, Suite 175, Houston, TX 77094
www.MazdaUSA.com

SOAH No.
608-19-6279.LIC

WC 120

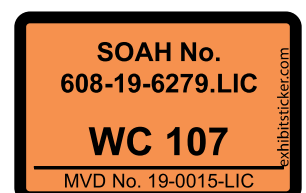
MVD No. 19-0015-LIC

WARRANTY PARTS TURN IN PROCEDURE

- TECHNICIAN REQUEST WARRANTY PART. TECHNICIAN MUST BRING DEFFECTIVE PART TO EXCHANGE FOR REPLACEMENT PART.
- PARTS WILL APPLY PARTS WARRANTY RETURN STAMP ON BACK OF "HARD COPY" AS PER *Mazda WARRANTY PARTS POLICY AND PROCEDURE*. PARTS WILL WRITE DOWN CASUAL PART NUMBER, DATE, AND SIGNATURE.
- PARTS WILL PRINT VERIFICATION OF PARTS BILLED IN OPTION 2 (DISPLAY/PRINT INVOICES (VOID OPTION))> REPAIR ORDER #(R)> ENTER KEY TO DISPLAY PARTS> PRINT SCREEN. ALL PARTS MUST BE TAGGED USING THIS PROCEDURE.
- PARTS WILL PUT WARRANTY RETURN PARTS IN STAGING AREA TO BE MOVED INTO WARRANTY BINS UPSTAIRS. ALL WARRANTY PARTS MUST BE MOVED FROM STAGING AREA TO WARRANTY BINS BY END OF EACH DAY.
- ON THE 15TH AND THE LAST DAY OF EACH MONTH, PARTS WILL PRINT WARRANTY SCRAP REPORT IN KDEALER FOR KIA, AND AS THE CLAIM IS PAID INDIVIDUALLY IN WEB REPORT SYSTEMS FOR MAZDA.
- PARTS WILL GO THRU WARRANTY SCRAP REPORT, MATCHING IT TO PARTS IN WARRANTY BINS. PARTS WILL WRITE DOWN SCRAP AFTER DATES ON WARRANTY PARTS TAGS.
- WHEN NEXT WARRANTY SCRAP REPORT IS RUN, PARTS WILL SCRAP PARTS THAT ARE AT WARRANTY SCRAP DATE. WARRANTY SCRAP PARTS TO BE SCRAPPED ARE FROM THE PRIOR COINCIDING MONTHLY PERIOD. EXAMPLE: IF WARRANTY PARTS SCRAP REPORT IS RUN ON NOVEMBER 15TH, PARTS WILL VERIFY AND SCRAP WARRANTY PARTS FROM OCTOBER 15TH WARRANTY SCRAP REPORT.
- PARTS MANAGER WILL VERIFY PARTS TO BE SCRAPPED AGAINST PRIOR COINCIDING BI-MONTHLY WARRANTY PARTS SCRAP REPORT BEFORE SCRAPPING.
- ALL WARRANTY PARTS SCRAP REPORTS ARE TO BE FILED FOR ONE YEAR.
- ONCE ONE YEAR IS UP, WARRANTY PARTS SCRAP REPORT CAN BE REPLACED BY MOST CURRENT WARRANTY PARTS SCRAP REPORT.
- IN THE RARE CASE PARTS IN WARRANTY SCRAP BINS DO NOT SHOW UP ON WARRANTY SCRAP REPORT, PARTS MUST FIRST VERIFY WITH WARRANTY ADMINISTRATOR IF WARRANTY CLAIM HAS BEEN PAID. PARTS MAY BE SCRAPPED 120 DAYS AFTER WARRANTY PAY DATE.

ANY WARRANTY CHARGE BACK DUE TO FAILURE TO FOLLOW WARRANTY PARTS POLICY
CAN RESULT IN TOTAL CHARGE BACK BEING DEBITED FROM PARTS TOTAL GROSS PROFIT

*****ALL TECHNICIANS MUST TURN IN THE FAILED PART PRIOR TO
RECEIVING REPLACEMENT PART – PART FOR PART - *****



World Car Mazda North

12115 IH 35 N., San Antonio, TX 78233

August 14, 2018

Mazda North American Operations
c/o Lawrence Chao
Gulf Region
17220 Katy Freeway suite 175
Houston, TX 77094

Certified RR# 70180680000008178815
RE: Notice to Cure reply

Dear Mr. Chao,

I am in receipt of your letter of August 10, 2018. The number of accusations leveled against All Star Imports, Inc. are too numerous to count and responding to each would, I believe, be counter-productive.


Mazda's use of the Takata airbags does require significant efforts to correct. In working through the recall issues, we did rely upon a Mazda-Certified Technician and that reliance was misplaced. However, this was an isolated instance that we have been endeavoring to correct since it was discovered. I would hope that our long history of adherence to Mazda Sales and Service policies will give you some assurance that this was in fact isolated. Given the massive recall operations, I suspect this not the sole error Mazda has seen in this process. It is a massive undertaking that will necessarily involve some mistakes, but I believe that cooperation and communication with Mazda will yield the best results for our customers moving forward.

Please know that addressing your concerns is our highest priority. As you have been made aware I have appointed Art Kiobassa, my VP of Operations, to personally address and correct the error. I would ask that you allow him the ability to do his appointed tasks and coordinate with him moving forward.

It is our intention to continue to i) fully cooperate with Mazda's efforts, ii) prioritize our service schedules to accommodate impacted customers and, iii) take all steps necessary to ensure future open recalls are handled in a proper manner.

Please communicate directly with Art Kiobassa regarding your action items. You have his contact information. In the meantime, please know we are directly and diligently addressing your concerns.

With regards,


Ahmad Zabihian
Dealer Principal / World Car Mazda North

Cc: Tom Donnelly- Retail Operations, MNAO

SOAH No.
608-19-6279.LIC

WC 028

MVD No. 19-0015-LIC

exhibitssticker.com

From: Lawrence Chao [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0624CFF9DEF94C8CAE6008591116AB1F-LAWRENCE CH]
Sent: 8/18/2018 8:22:04 PM
To: art kiolbassa [artkilo@aol.com]; Doug Furrer [dfurrer2@mazdausa.com]
CC: Stephanie Keener [SSanner@mazdausa.com]; David Hart [DHart@mazdausa.com]
Subject: RE: safety recall
Attachments: World Car Mazda North - Cure Letter Follow-up.pdf

Art,

Please see the attached. A copy of this letter will also be mailed to Nader.

LAWRENCE CHAO
Mgr, Region General Gulf
T: 281-274-1501 • M: 408-406-5202
lchao@mazdausa.com

Mazda North American Operations
17220 Katy Freeway, Suite 175, Houston, TX 77094
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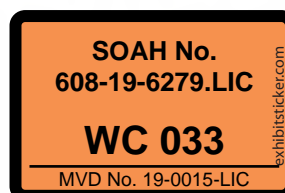


From: artkilo@aol.com [mailto:artkilo@aol.com]
Sent: Friday, August 17, 2018 6:43 PM
To: Lawrence Chao <lchao@mazdausa.com>; Doug Furrer <dfurrer2@mazdausa.com>
Subject: safety recall

Lawrence,

This letter is in regards to the safety campaign. I wanted to convey to you some of the initiatives I have taken, mostly based on some of the comments we received. Per your, as well as Doug's comments, I ceased contacting people Monday evening after our discussion. I forwarded a list of people that I had contacted, along with the results of those contacted to Doug. I did not make any calls on Tuesday, as well as Wednesday to customers affected by this recall. I spent most of those days attending to the audit teams needs, as well as my daily duties. On Thursday afternoon, I reviewed the amount of people who had come in for the recall and found where the ones that we looked at, were the ones that I had made contact with, along with another walk-in. Late that Thursday afternoon, and based on the results of my efforts on Monday, I made the decision to contact a few people and see if they had been notified by Mazda. I contacted a few people on the list that I knew to ask them if they had been contacted by Mazda. They had not been. Based on the results I had from Monday, I, along with two assistants, using a script I had prepared when I made the calls on Monday, started contacting a few more people asking them if they had been contacted by Mazda, as well as giving them the reason for our call. On the same list I was initially provided with, we contacted, that Thursday and today, 16 people. Of the 16 people we contacted and talked with, none of them told us they had been contacted

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MAZDA0016372

by Mazda. Of those same 16 people, we were able to make 11 appointments. The other 5, listed below, had various reasons for not being able to make an appointment at that time.

The list of people contacted and appointments made are as follows;

Maurice Sims 5M18039 210 878-7249 appt 8/17
Jesse Reed 5M32504 210 380-1555 appt 8/17 made in Little Rock, AK with son at McLarty Mazda
Gloria Dean 5M35964 210 762-2456 appt made, while customer was here with other Mazda in for service
Johnny Santamaria M54481 210 602-5899 appt 8/17
Starla Ray Penico M33540 801 867-3241 appt 8/17
Diana Flores M40141 210 425-8753 appt 8/24
Gloria Dejesus M04838 210 710-8607 appt 8/17
Susan Bonita M08631 210 858-6450 appt 8/17
Lori McClung M15757 210 213-6627 appt 8/17
Susan Weaver M42829 210 313-8626 appt 8/20
John Brown M42829 210 584-1629 appt 8/20

The list of other people we spoke with, that could not schedule at the time we talked with them were;

Simon Acevedo M32062 210 459-0862
Gurkan Bekar M17601 210 240-4059
Peter Rothschild M34056 225 892-0227
Matthew Thiessen M08377 210 749-1493
Stephanie Drodty M37229 210 218-9175

Additionally, another 13 people were called, where a message was left on their phone and we did not have an opportunity to talk with. A message was left by one of my two assistants to contact them personally with a phone number left on their voicemail.

Brian Croom M04449 210 885-0745
Gerard Mora M18793 210 325-3748
Joseph Flores M16868 210 827-8621
Connie Ross M09639 225 933-4311
Sandra Freeman M22982 952 484-5104
Rudy Aguero M18007 210 517-8115
Richard Fray M00539 210 557-6496
Ron Echols M29059 210 654-1907
Peter Kimball M15916 210 834-1271
James Dgungu M28952 210 337-1819
Margaret Garcia M09432 210 831-9961
Edna Benedetti M40249 210 862-9873
Virginia Loftis M08631 210 858-6450

Based on the success of our calls, we were able to make 11 appointments out of the 16 people we talked with, with the majority of them being taken care of quickly. I am unaware of how many people came in today (8/17) but will look at that tomorrow,

In reviewing your letter, as well as personally realizing the importance and urgency of seeing this situation through, I cannot see why we cannot work together to accomplish our mutual goal of seeing that our mutual customers are taken care of and safe. Based on our success rate, working on this for a few hours and making 29 calls, it is evident that a joint effort would be beneficial to completing this in a more timely fashion.

Many of these people have relationships with World Car Mazda North, and communicating with them by people stationed here would tend to lend to a more favorable outcome. If it is still of your opinion that Mazda, along with possibly sub-contractors could provide better results in a more efficient and timely manner, please email me back with your request for me to stop doing what I have demonstrated and accomplished thus far. If I do not hear from you, I'll presume

that you are in agreement that we can work together, are pleased with our results thus far and collectively, can get this matter done in a more timely and efficient manner.

I look forward to hearing from you.

Art Kiolbassa

*zoom-zoom*

Mr. Zabihian,

As a follow-up to my cure letter, dated August 10, 2018, I wanted to clarify Mazda Motor of America, Inc., d/b/a Mazda North American Operations' ("MNAO") intentions with respect to customer contact. As I indicated to you in my letter, and I have discussed with you personally, MNAO would be directly contacting the Takata Recall customers to provide various repair options. MNAO's Gulf Region Zone Manager, Doug Furrer, has also spoken to both you and Art in your service department and you have both agreed to not reach out to these customers. Despite our understanding, you have continued to reach out to these customers and require an actual written letter instructing you to not contact these customers.

Therefore, please be advised that per this letter MNAO is instructing you to no longer contact Takata Recall customers that were previously serviced by David Winkler. It is MNAO's opinion that your efforts and MNAO's efforts are not only duplicative, but confusing to the customer and may actually make the situation worse. Accordingly, please be advised that in connection with the cure, you should immediately cease actively reaching out to the Takata Recall customers serviced by Mr. Winkler and allow MNAO to contact these customers and provide options accordingly. While we are not relieving you of your duty to service the customers if they visit your dealership or contact you on their own, nor relieving you of any past misconduct, we are instructing you to not actively reach out to contact those customers.

Regards,

A handwritten signature in black ink, appearing to be 'L. Chao'.

Lawrence Chao
Region General Manager
Mazda North American Operations Gulf Region

Mazda North American Operations
Gulf Region
17220 Katy Freeway, Suite 175
Houston, TX 77094
T (281) 274-1500

**Testimony of Travis Young,
Mazda Motor of North America Manager of Recalls**

Hearing Record, Transcript Vol. 3 at pg. 885 lines 10-23

Q. You're aware that Mazda told the dealership to stop making phone calls in August 2018; correct?

A. That is correct.

Q. All right. And then your team began making phone calls a little later in August; correct?

A. I believe so. I don't remember the exact date. Yes.

Q. For your team, the general rule is to make three attempts to contact a customer; correct?

A. As a guideline, yes.

Q. And your team stopped reaching out to customers at all in January 2019; isn't that correct?

A. For the initiative that we were involved in doing, yes.

**Testimony of Kevin Vincent, Mazda Motor of North America
Hired Expert Witness**

Hearing Record, Vol. 3 at pg. 647 lines 19-24 and pg. 648 lines 11-15

Q. Well, you certainly don't think that three phone calls by Mazda was sufficient to address the issue for those vehicle owners; right?

A. I do not believe -- unless they actually reached all the customers in those three phone calls, I do not believe that is sufficient.

....

Q. Sure. And you think that three phone calls without reaching the customer, if Mazda stopped doing it after that, that would be a mistake for those customers; right?

A. Yes.

From: Lawrence Chao [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0624CFF9DEF94C8CAE6008591116AB1F-LAWRENCE CH]
Sent: 10/12/2018 2:48:51 PM
To: Stephanie Keener [SSanner@mazdausa.com]; Doug Furrer [dfurrer2@mazdausa.com]
Subject: FW: WC update
Attachments: World Car Summary of Items.xlsx
Location: HQ Huddle Room 10D.07
Start: 10/12/2018 4:00:00 PM
End: 10/12/2018 4:30:00 PM
Show Time As: Tentative

Please get this call started in case I'm late. I have a candidate interview until 11am.

Let's do a time check at the start of the call to get an understanding of what we can cover in the time allowed. I don't think we're going to be able to get through a complete review of everything.

Let's make sure the findings we've discussed can fit into the Violation Framework that we developed. (Latest draft attached). I think this is still our best bet in crafting/organizing our arguments.

Thanks!

LC

-----Original Appointment-----

From: Kari Novak
Sent: Wednesday, October 10, 2018 3:44 PM
To: Kari Novak; Guillermo Alvarez; Deborah Lacy; Lawrence Chao; Stephanie Keener; Doug Furrer; Mark Webber; Paul Woolley; Travis Young
Subject: WC update
When: Friday, October 12, 2018 9:00 AM-9:30 AM (UTC-08:00) Pacific Time (US & Canada).
Where: HQ Huddle Room 10D.07

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MVD DOCKET No. 19-0015-LIC

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3/14/2022 12:36:20 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

ALL STAR IMPORTS, INC., § BEFORE THE STATE OFFICE
d/b/a WORLD CAR MAZDA §
NORTH, §
Protestant, §
v. § OF
§
MAZDA MOTOR OF NORTH § ADMINISTRATIVE HEARINGS
AMERICAN, INC., §
Respondent §

BRIEF OF AMICUS CURIAE
TEXAS AUTOMOBILE DEALERS ASSOCIATION

TEXAS AUTOMOBILE DEALERS ASSOCIATION

Karen Phillips
State Bar No. 04487400
1108 Lavaca Street, Suite 800
Austin, TX 78701
Telephone: 512-476-2686
Fax: 512-476-5854
kphillips@tada.org

INTEREST OF AMICUS CURIAE

As a statewide association representing the interests of its over 1250 franchised motor vehicle and heavy duty truck member dealers, the Texas Automobile Dealers Association (TADA) submits this amicus curiae brief to address the issue of whether the actions of one employee give rise to a good cause determination resulting in the termination of a franchise and the policy of such an outcome for future good cause determinations.

The membership of TADA employs over 97,000 employees throughout the State of Texas in nearly 300 cities and towns with a payroll of approximately \$7 billion and an average annual salary per direct employee of \$72,332.

The behavior of one employee who was disciplined per the dealership's policy and for which the dealership derived no benefit or unjust enrichment, does not rise to the good cause requirement for a franchise termination by statute, agreement, or equity.

As expected and correct, the dealership expended their monies to remedy the employee's unethical actions and continues to follow through with corrective and customer notice action, beyond even Mazda's notification activity.

A review of the salient facts provides an understanding as to why there is not good cause by Mazda Motor of North America, Inc. (Mazda) nor the State of Texas

to base a franchise termination of World Car Mazda North (W.C. Mazda North) upon the mendacious actions of one Mazda-certified technician, Mr. David Winkler.

BACKGROUND

As discussed by the Administrative Law Judge in the Proposal for Decision (PFD), the franchised dealership, not the manufacturer, performs warranty and recall work in Texas. (PFD at 4)

As the largest and most complex recall in U.S. history, and as discussed in the December 22, 2020, "Update on the State of the Takata Airbag Recalls," ("Update") an independent report issued pursuant to the authority of the National Highway Traffic Safety Administration (NHTSA) and agreed to by Takata, the Takata airbag inflator recall affected an estimated 67 million¹ defective airbag inflators across nineteen vehicle manufacturers. Over 50 million defective Takata airbag inflators are accounted for as of December, 2020, according to the "Update." ("Update" at 2)

This same "Update" found, when conducting its research, that "vehicle owners want to be contacted by local franchised dealers. . . when dealers are engaged in the recall process, affected vehicle manufacturers have seen consistently higher recall

¹ The August 10, 2018, letter from Mr. Chao states "37" million; however, current information places the number of Takata inflator airbag recalls at 67 million.
The 67 million includes approximately 6 million General Motors vehicles that NHTSA determined on November 23, 2020, must be included in the Takata recalls. Completion percentages used in the report do not include the 6 million General Motors vehicles. ("Update" Fmt 1 at 2)

Unfortunately for all, Mr. Winkler did not perform. Not only did he not perform, he abused his position and authority and mislead and deceived people relying upon him.

Given the benefit of presumed human error and the dealership's policy for employees as well as Mr. Winkler's three-year repair history, he was able to take advantage of his employer; however, once the dealership considered the errors to be more than human error and appeared to be intentional, bringing customers back to the dealership for re-inspection and putting in place new employees and policies became a focus for the dealership, in addition to Mr. Winkler's dismissal.

CONCLUSION

There are significant facts that merit against this termination action.

The actions of a single employee with a three-year repair history who was given the presumption of innocence for a mistake and for which the dealership's employee policy was followed, do not merit the termination of a franchise, especially when the dealership: (1.) did not know about such actions; (2.) did not condone such actions; (3.) did not derive a benefit from such actions; (4.) continues to correct such actions; and, (5.) is expending its own assets to correct such actions.

New and more experienced managers were added to oversee the service department and dealership.

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A new parts policy requiring the technician to bring the old part before receiving the new part was implemented.

To bring customers back to the dealership for re-inspection, loaner vehicles and free oil and filter changes were offered. Follow-up postcards were sent and contacts were made to customers as well.

No technician was found to have falsified a report except for Mr. Winkler, and when his actions became known as more than a one-off, he absconded before he could be fired; however, a police report was filed, but to no avail.

The actions of this one employee do not justify a termination of a franchise. The result of such a termination is a disservice to the community as well as to the other employees.

Is a dealership to fire any employee who makes a mistake going forward or risk losing their franchise? Is an error by an employee never to be tolerated at a dealership? If the dealership had the benefit of hindsight or a crystal ball, Mr. Winkler would never have been hired, even though he was Mazda-certified and passed a background check.

If the PFD is adopted, it sends the message that a manufacturer or distributor can terminate a dealer for unknown and later discovered actions of an employee, regardless of the dealership's corrective action.

11

Mr. Winkler is no longer an "existing circumstance" for good cause consideration with respect to W.C. Mazda North—his service ended in June, 2018. TADA respectfully requests that W.C. Mazda North's protest be upheld and the Board reject the proposed termination as no good cause for termination has been shown.

Dated: March 11, 2022

Respectfully submitted,

TEXAS AUTOMOBILE DEALERS ASSOCIATION

By: /s/ Karen Phillips
 Karen Phillips
 State Bar No. 04487400
 1108 Lavaca Street, Suite 800
 Austin, TX 78701
 Telephone: 512-476-2686
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kphillips@tada.org

Attorney for Amicus Curiae
 Texas Automobile Dealers Association

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6. Mazda's Board Materials

I. INTRODUCTION

The Takata airbag inflator recalls are the largest and most complex vehicle recalls in U.S. history. There are currently 19 affected vehicle manufacturers with an estimated 46 million unrepaired defective airbag inflators under recall in approximately 34 million U.S. vehicles. The words “grenade” and “ticking time bomb” accurately convey the lethal potential of these defective inflators.¹ To date, at least 13 people in the U.S. have died from injuries inflicted by defective Takata airbag inflators. In these fatalities, the Takata airbag inflator, instead of properly inflating to cushion the victim and prevent injury, has detonated in an explosion that tore apart its steel inflator housing and sprayed high-velocity metal shards at the victim. The victims have died from blunt head trauma, severance of the spine at the neck or extreme blood loss from lacerations to the chest, neck or face. Hundreds more have been seriously injured by the same kinds of metal shards shooting out from exploding Takata airbag inflators housed inside steering wheels or passenger-side airbag compartments. These are urgent safety recalls; and the combination of over a dozen affected vehicle manufacturers, tens of millions of affected vehicles and the severity of potential death or serious injury is unprecedented.

The U.S. Department of Transportation’s National Highway Traffic Safety Administration (“NHTSA”) has issued Coordinated Remedy Orders directing affected vehicle manufacturers to replace all defective Takata airbag inflators in U.S. vehicles. Most vehicle manufacturers have publicly pledged their commitment to maximizing the completion of recall repairs to the fullest extent possible.

This report assesses the present state of the Takata recalls. Repair completion rates vary widely by vehicle manufacturer, reflecting uneven historical efforts to tackle the complex task at hand. While some vehicle manufacturers have, for some time, dedicated significant resources and multi-pronged strategies to complete repairs with successful results, many manufacturers have only recently begun to pursue such efforts and some others continue to trail behind.

This report further details the research, innovative approaches and coordination efforts across the vehicle manufacturing industry that the Monitor, working closely with NHTSA, has provided pursuant to the authorities set out in the Coordinated Remedy Orders. NHTSA and the Monitor have engaged with the Takata recalls’ numerous stakeholders to develop and test strategies now demonstrated by pertinent data to increase significantly recall completion rates. As affected vehicle manufacturers have embraced these strategies and enhanced their own independent efforts, their completion rates have substantially improved. Repair rates have doubled or even tripled. Several affected vehicle manufacturers are also more quickly meeting or even exceeding completion milestones set by NHTSA.

¹ “Takata airbags”, “Takata inflators” and “Takata airbag inflators” all refer to airbag inflators manufactured and produced by Takata.

Finally, this report looks forward, describing recent initiatives the vehicle manufacturing industry itself has started to apply to the monumental task of removing these dangerous, defective items from all affected U.S. vehicles. From canvassing door-to-door to find vehicle owners, to conducting mobile repairs at homes and places of business, to increasing engagement with local automotive dealers and independent repair facilities, to improving vehicle owner data, many vehicle manufacturers have begun to recognize significant opportunities for improvement and are confronting the challenges head on, working together to develop industry-wide solutions.

II. THE DEFECT

An airbag inflator is a metal canister, often made of steel, which holds inside an explosive chemical propellant. As shown in Figure 1 below, inflators are commonly housed in the steering wheel on the driver's side of a vehicle and, depending on the vehicle type, in various other locations in both the driver's and passenger's area, including the passenger dashboard. In an airbag inflator that functions normally, the chemical propellant begins to burn upon activation by an electrical spark initiated as vehicle sensors detect a collision. When functioning properly, the chemical propellant burns in a fast and controlled manner, quickly emitting a gas through vents in the canister out into the airbag, which inflates to cushion the vehicle occupant.

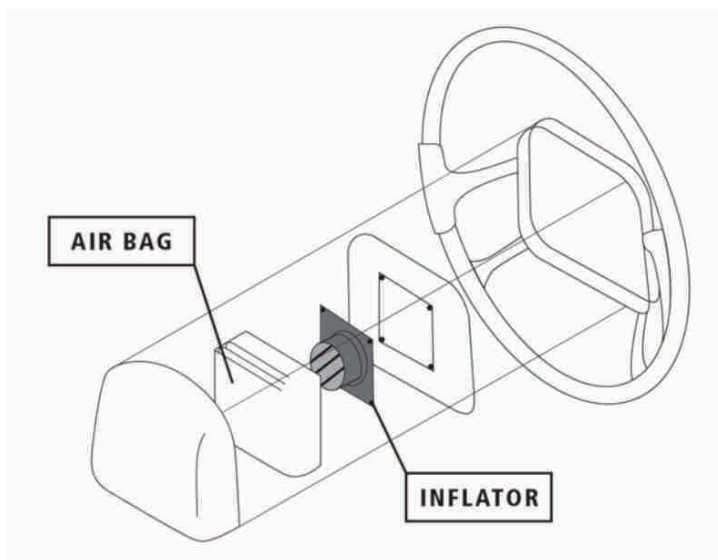


Figure 1: Diagram Showing Placement of Airbag and Inflator in a Steering Column

The danger posed by defective Takata airbag inflators stems from the tendency of the chemical propellant used in those defective inflators to burn in an uncontrolled manner—too fast and with too much explosive force. The metal canister cannot contain the explosion and breaks apart into sharp metal shrapnel that sprays out through the airbag and toward occupants of the vehicle. To many occupants who have experienced the explosion of a defective Takata airbag inflator, it is as if a bomb detonated in their vehicle. Figure 2 contains photographs of various vehicles in the aftermath of such an explosion. Figure 3 contains photographs of the metal shrapnel that shoots out of the disintegrating defective airbag inflators.



Figure 2: Photographs of Vehicles with an Exploded Driver-Side or Passenger-Side Defective Takata Airbag Inflator

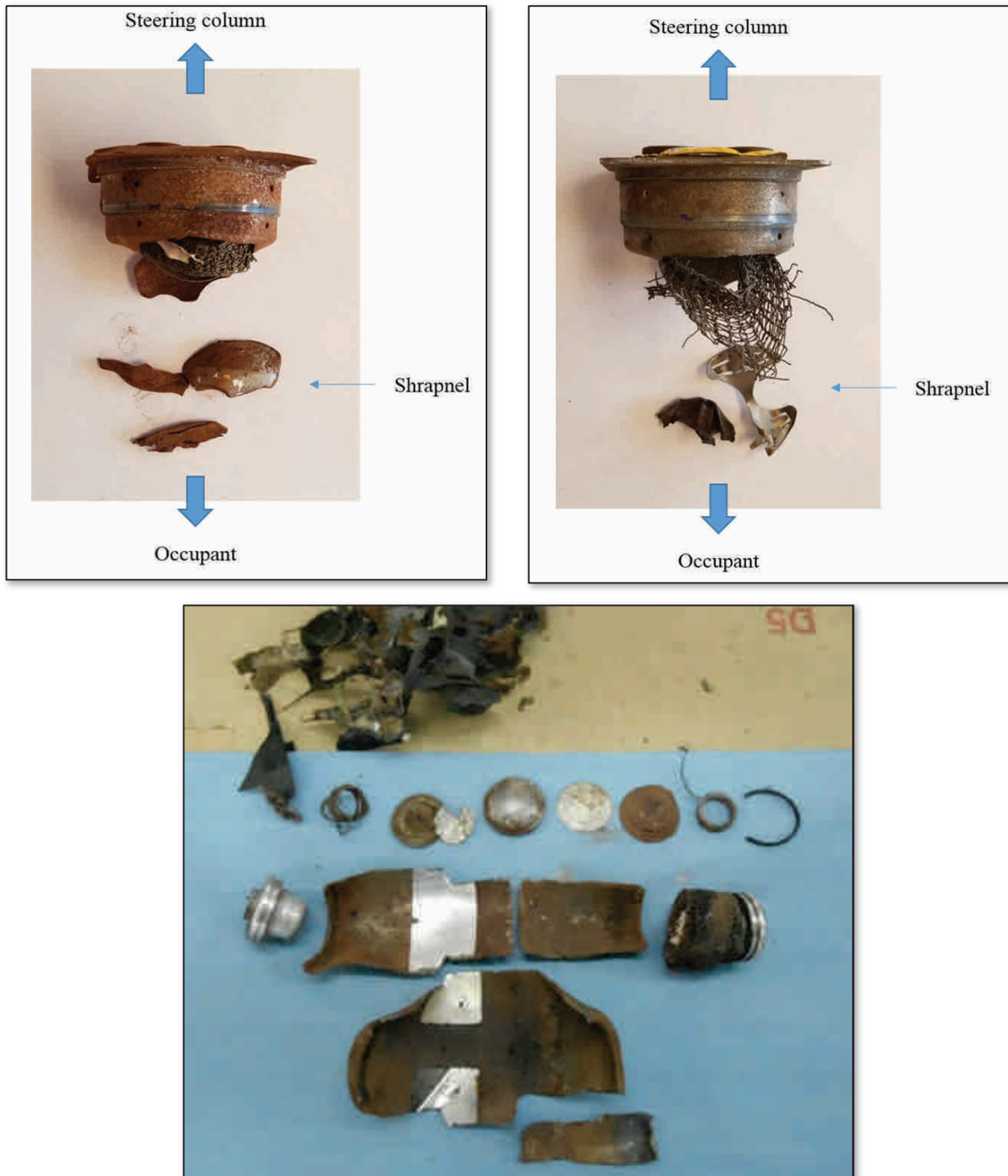


Figure 3: Photographs of Disintegrated Defective Takata Airbag Inflator Shrapnel Following Explosion

The precise cause of the chemical propellant's accelerated burn rate in defective Takata inflators is the tendency of the chemical—Phase Stabilized Ammonium Nitrate (“PSAN”)—to degrade over time when exposed to high absolute humidity² and high temperature thermal cycling.³ Takata is the only major airbag inflator manufacturer to have used PSAN as its chemical propellant. Defective Takata PSAN airbag inflators exposed to climates with high temperatures and high absolute humidity for long periods of time are more likely to explode, killing or injuring vehicle occupants. The Takata recalls encompass both driver-side and passenger-side airbag inflators that contain non-desiccated PSAN.⁴

While all defective Takata inflators are dangerous, there are certain subsets of inflators that are more likely to explode and kill or injure vehicle occupants. For example, testing of recalled inflators has indicated that inflators in a specific class of vehicles—referred to in the industry as “Alpha” vehicles—may have explosion rates of 50% or higher. In other words, there is at least a one-in-two chance that, if a vehicle of this type is in an accident in which the airbag deploys, then the airbag inflator will explode like a grenade. The inflators in these vehicles were exposed to high levels of humidity during Takata's production process that accelerated the PSAN's degradation.

² Absolute humidity is the amount of water vapor content in the air, calculated as grams of water vapor per cubic meter of air. Southern coastal regions of the United States typically experience the highest levels of absolute humidity. Testing suggests that regions with high absolute humidity pose the highest risk of a defective Takata inflator exploding during deployment. Using this testing, NHTSA has defined three zones that separate the United States and territories based on relative risk. Zone A, the highest risk zone, also known as the high absolute humidity or “HAH” zone, includes Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands (Saipan) and the U.S. Virgin Islands.

³ Third Amendment to the Coordinated Remedy Order, dated December 9, 2016 (hereinafter “ACRO”) at ¶ 9, *In re: Coordinated Remedy Program Proceeding*, Dkt. No. NHTSA-2015-0055 (available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/final_public_-_third_amendment_to_the_coordinated_remedy_order_with_annex_a-corrected_12.16.16.pdf), attached as Appendix A. See also Expert Report of Harold R. Blomquist, Ph.D. (hereinafter “Blomquist Report”), *In re EA15-001, Air Bag Inflator Rupture* (available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/expert_report-hrblomquist.pdf). Thermal cycling is repeated exposure to temperature changes. In a testing environment, it can be simulated by exposing inflators to high and low temperatures at relatively high rates of change.

⁴ A desiccated PSAN inflator includes a desiccant compound that absorbs ambient moisture. The desiccant serves to slow or potentially eliminate the degradation of PSAN over time, possibly mitigating the risk of inflator explosion. A non-desiccated PSAN inflator does not include a desiccant to absorb moisture. While a limited subset of desiccated inflators are currently under recall, most desiccated inflators are not. Takata must continue testing these inflators in an effort to demonstrate their safety to NHTSA by December 31, 2019. If Takata is unable to demonstrate the safety of desiccated PSAN inflators by December 31, 2019, NHTSA may require additional desiccated inflators to be recalled.

III. REPORTED FATALITIES AND INJURIES

Thus far, defective Takata airbag inflators have caused 13 confirmed fatalities in the United States, involving people from all walks of life.

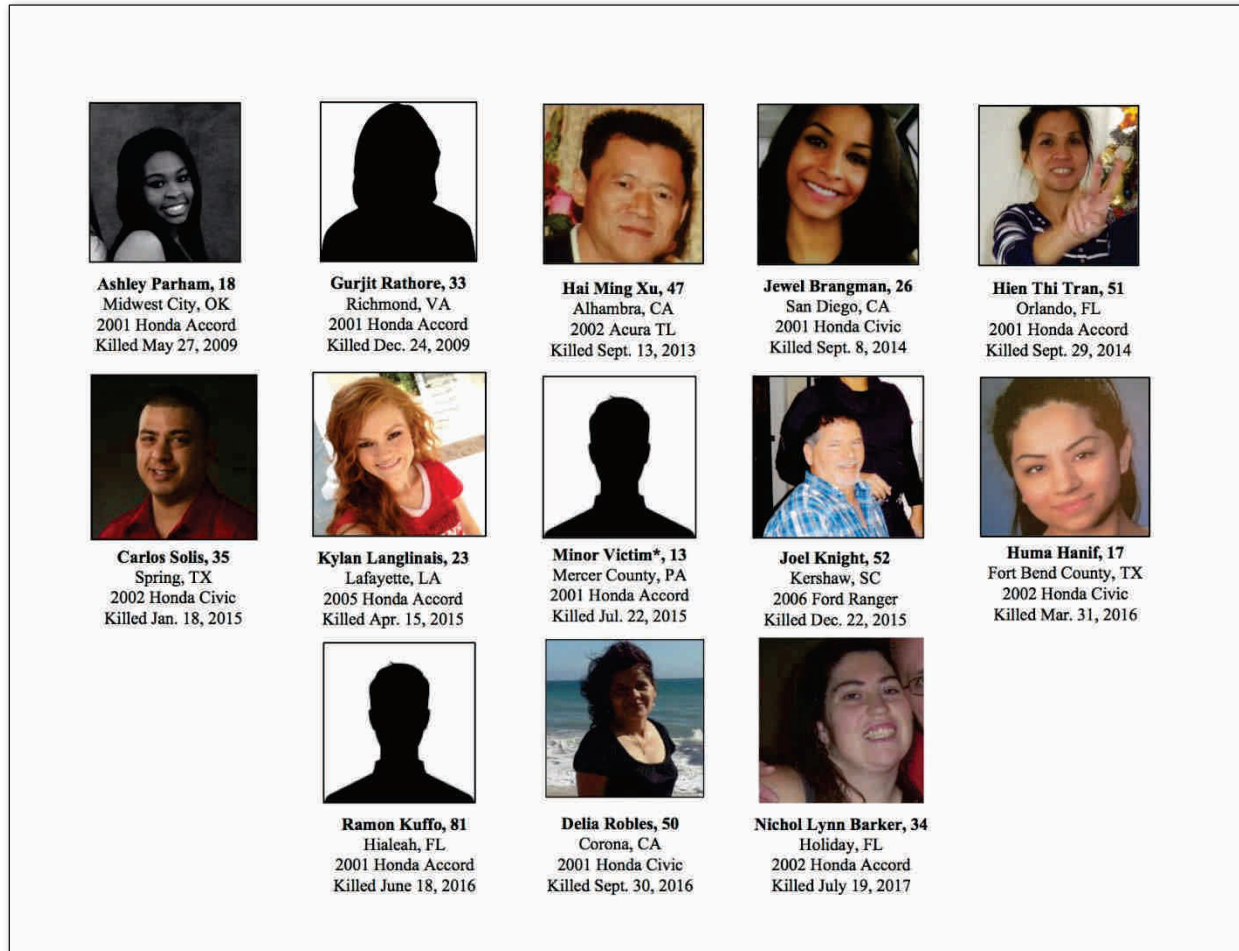


Figure 4: Confirmed Takata Airbag Inflator Fatalities

The 13 confirmed fatalities occurred in California (3), Florida (3), Texas (2), Louisiana (1), Oklahoma (1), Pennsylvania (1), South Carolina (1) and Virginia (1).

- Ashley Parham, an 18 year-old woman, died on May 27, 2009, in Oklahoma after her 2001 Honda Accord bumped into another vehicle in a parking lot, causing her Takata airbag inflator to explode. Ms. Parham died at the scene of the accident as a result of metal shrapnel puncturing an artery in her neck.
- Gurjit Rathore, a 33 year-old woman, died on December 24, 2009, in Virginia after a mail truck struck her 2001 Honda Accord, causing her Takata airbag inflator to explode. Ms. Rathore died after metal shrapnel pierced her neck and chest.
- Hai Ming Xu, a 47 year-old man, died on September 13, 2013, in California after his 2002 Acura TL struck a wall, causing his Takata airbag inflator to explode. The injuries caused by the shrapnel were so extensive that police responding to the scene initially thought Mr. Xu had been shot in the face.
- Jewel Brangman, a 26 year-old woman, died in California after the 2001 Honda Civic she was driving struck another vehicle on September 7, 2014, causing her Takata airbag inflator to explode. Metal shrapnel pierced Ms. Brangman's neck, severing her carotid artery.
- Hien Thi Tran, a 51 year-old woman, died in Florida after her 2001 Honda Accord was involved in a minor collision on September 29, 2014, causing her Takata airbag inflator to explode. Ms. Tran sustained injuries from metal shrapnel striking her face, neck and chest, ultimately leading to her death.
- Carlos Solis, a 35 year-old man, died on January 18, 2015, in Texas after his 2002 Honda Civic collided with an oncoming vehicle while turning into an apartment complex, causing his Takata airbag inflator to explode. Metal shrapnel severed Mr. Solis's neck, killing him at the scene of the accident.
- Kylan Langlinais, a 22 year-old woman, died in Louisiana after her 2005 Honda Civic crashed into a utility pole on April 15, 2015, causing her Takata airbag inflator to explode. Ms. Langlinais died four days after the accident as a result of metal shrapnel piercing her right carotid artery.
- A 13 year-old child died on July 22, 2015, in Pennsylvania after the 2001 Honda Accord the child was driving struck a tree, causing the Takata airbag inflator to explode. Despite this crash being relatively minor, the child died as a result of injuries sustained from metal shrapnel.
- Joel Knight, a 52 year-old man, died on December 22, 2015, in South Carolina after his 2006 Ford Ranger struck a cow on the road, causing his Takata airbag inflator to explode. Metal shrapnel struck Mr. Knight's neck and spine, killing him.
- Huma Hanif, a 17 year-old girl, died on March 31, 2016, in Texas after her 2002 Honda Civic was involved in a low-speed collision, causing her Takata airbag

inflator to explode. Ms. Hanif was killed by a metal fragment that punctured an artery in her neck.

- Ramon Kuffo, an 81 year-old man, died on June 18, 2016, in Florida after a strike from his hammer caused the Takata airbag inflator to explode in the 2001 Honda Accord he was attempting to repair. Mr. Kuffo died of blunt head trauma.
- Delia Robles, a 50 year-old woman, died on September 30, 2016, in California after her 2001 Honda Civic was involved in a low speed collision, causing her Takata airbag inflator to explode. Ms. Robles was killed by shrapnel that penetrated her chest.
- Nichol Lynn Barker, a 34 year-old woman, died on July 19, 2017, in Florida after her 2002 Honda Accord was struck by another vehicle, causing her Takata airbag inflator to explode. Ms. Barker died of blunt head trauma.

Short of death, there have been hundreds of confirmed injuries from defective Takata inflators across 27 U.S. states and territories. In addition, laboratory testing of Takata airbag inflators retrieved from recalled vehicles has identified inflators from 33 U.S. states and territories which, when tested, exploded. Figure 5 below shows the broad geographic reach of explosions of defective Takata inflators—illustrating the locations of inflators that have exploded both in vehicles (“field incidents”) and when retrieved and tested in a laboratory (“lab incidents”). As the map indicates, while incidents have been concentrated in higher risk HAH areas, many have also occurred in other regions.

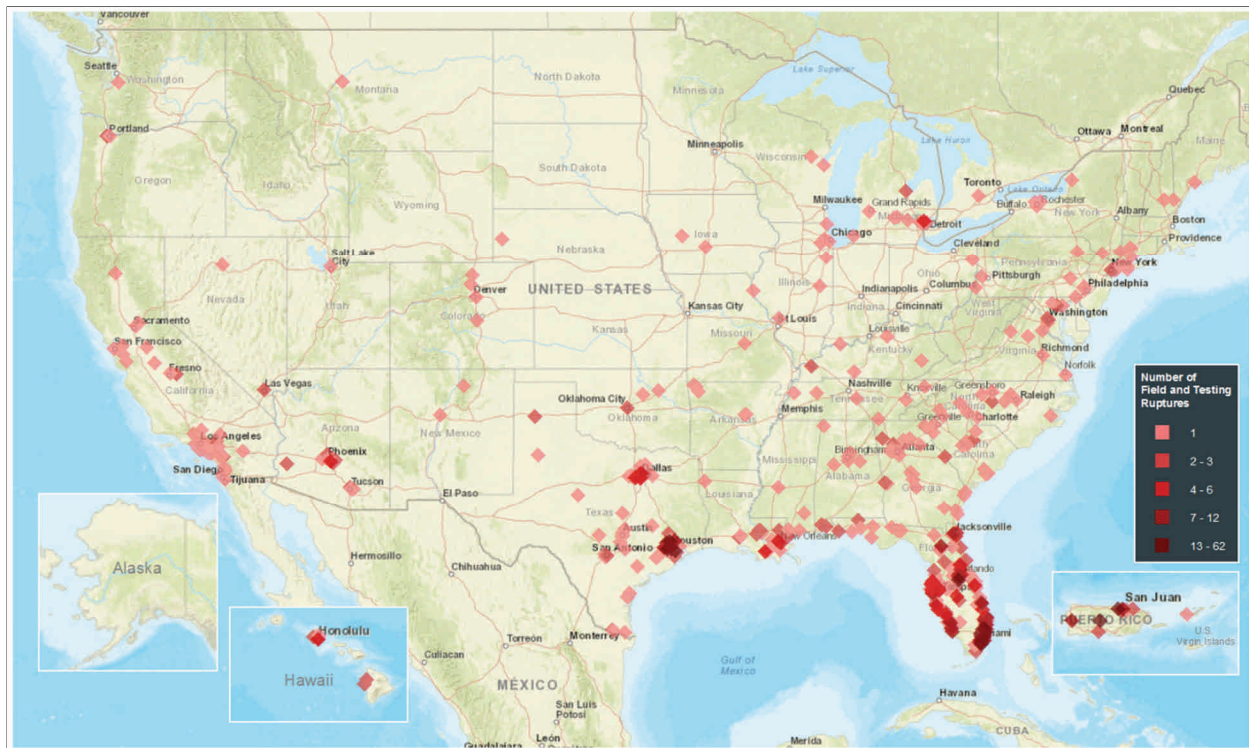


Figure 5: Map of U.S. Field and Lab Incidents Involving Defective Takata Airbag Inflators as of October 9, 2017

In many cases, surviving victims of Takata inflator explosions have become permanently disabled or disfigured. Stephanie Erdman, an Air Force Lieutenant from Florida, was driving her 2002 Honda Accord when the Takata airbag inflator in her vehicle exploded following a collision. Though Ms. Erdman's passenger suffered only minor scrapes and bruises, Ms. Erdman was permanently blinded when metal shrapnel flew out of the driver-side airbag inflator and pierced her right eye and cheek. Ms. Erdman has undergone multiple surgeries and therapies. On November 20, 2014, Ms. Erdman testified about the incident before the United States Senate Committee on Commerce, Science and Transportation. This is just one of many examples of victims who have suffered serious injuries as a result of defective Takata inflator explosions.



**Figure 6: Injuries Inflicted on Stephanie Erdman
by Defective Takata Airbag Inflator**

1 Q. Yeah. Since that conclusion of that audit, has
2 reinspection resulted in identification of more vehicles
3 that were allegedly repaired but, in fact, were not?

4 A. Yes.

5 Q. Okay. Do you know -- do you have a
6 recollection of the current statistics on that?

7 A. I do. Roughly 206 Takata recalls have failed
8 reinspection, and I believe over 250 nonTakata recalls
9 have failed reinspection.

10 Q. And you're still not complete with
11 reinspection?

12 A. No, we are not.

13 Q. In fact, how many vehicles are on the PQM list?

14 A. The PQM list, as it stands right now, there are
15 roughly 360 VINs left on that list.

16 Q. To complete reinspection?

17 A. To complete reinspection.

18 MR. ESCOBAR: Now, let's go to the next
19 numbered row and column that starts with 342. And that
20 carries on to the second page, Mark. So if you could
21 bring both pages up and complete the box that has the
22 342 in it.

23 Q. (BY MR. ESCOBAR) Now, when we see, 342
24 technician entries here, we see "Technician punch time"
25 issues, in layman's terms explain what that means.

Board Meeting Date: 6/8/2023

ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Chris Hayden, Deputy Chief Financial Officer
Agenda Item: 6
Subject: Camp Hubbard Renewal Project Requests for Financing

RECOMMENDATION

Action Item. Recommendation to approve a Request for Financing to the Texas Public Finance Authority for the Camp Hubbard Renewal Project, contingent on gubernatorial approval of funding.

PURPOSE AND EXECUTIVE SUMMARY

This item will provide board authorization of a Request for Financing (Request) to the Texas Public Finance Authority (TPFA) for the Camp Hubbard Renewal Project (Project), contingent on gubernatorial approval of funding. The Request includes a cover letter addressed to the TPFA, a resolution to be adopted by the TxDMV board authorizing submittal of the Request, a project description, project budget, and construction expenditure schedules.

The resolution includes a provision that both the executive director and chief financial officer of the Department may separately and individually sign and deliver any necessary documents to effect the financing and provide the Project, cooperate with the Authority and its consultants to prepare an Official Statement in connection with the sale of the Obligations, and take any other action necessary to assist in such sale.

FINANCIAL IMPACT

The estimated cost of the project is \$143,000,000, exclusive of debt service. The funding authorization for the Project also provides for "additional amounts as may be necessary to fully implement the project, including the costs of issuance and related administrative costs associated with issuing the bonds." Any unexpended balances remaining as of the end of FY 2024 may be carried forward to FY 2025.

BACKGROUND AND DISCUSSION

On May 29, 2023, the 88th Legislature approved funding of \$143,000,000 (exclusive of debt service) for the Camp Hubbard Renewal Project, subject to the Texas Governor's approval.

This project is a complex, multi-phase renovation, demolition and construction effort that requires both short-term and long-term financing to effectively manage the department's cash flows and fund balances. To that end, the department is requesting debt financing from the Texas Public Finance Authority (TPFA), to include short-term obligations, bonds, either or both for up to \$143,000,000, plus the costs of issuance and related administrative costs, if any, which will be determined at the time of issuance.

A resolution from the TxDMV board to request financing is required to initiate the process with TPFA.



June 8, 2023

Mr. Lee Deviney
Executive Director
Texas Public Finance Authority
William P. Clements Building, Suite 411
P.O. Box 12906
Austin, Texas 78711-2906

Re: Request for Financing Approval

Dear Mr. Deviney,

The Texas Department of Motor Vehicles (“TxDMV” or “Department”) submits this formal request for financing with all required documents for the Camp Hubbard Renewal Project (“Project”) in the amount totaling \$143,000,000.00 (the “Request”), pursuant to Chapter 1232 of the Texas Government Code, specifically Section 1232.102, and Chapter 1001, Subchapter F, of the Texas Transportation Code. By the submittal of this Request, I hereby certify that any bond proceeds that may result from this Request will be used only for state government purposes.

As required as part of this Request, TxDMV’s board adopted a resolution giving the Department authority to request debt financing on June 8, 2023, for the Project, as authorized in House Bill 1, 88th Legislature, Regular Session. The appropriation is specifically set forth in Rider 11, Article VII, Texas Department of Motor Vehicles, in the Texas General Appropriations Act. This Request is being submitted to your agency at this time in order to initiate the funding process and obtain financing as expeditiously as possible should the project be approved, with the understanding that the appropriation is currently contingent on final approval by the Texas Governor.

The Fiscal Year 2024-25 Texas General Appropriations Act does not require written approval by the Texas Governor or Texas Legislative Budget Board for this Request; however, we find it appropriate to copy their relevant staff on this Request for awareness and transparency of the Project progress. If all required approvals are met, the Department requests funding for the Project be available for work to begin in November of 2023.

Thank you in advance for your agency’s consideration of this Request. If you have any questions or need any additional information or documentation at this time, please do not hesitate to contact me at (512) 465-3001, or via email at daniel.avitia@txdmv.gov, or Glenna Bowman, Chief Financial Officer, at (512) 465-4125, or via email at glenna.bowman@txdmv.gov.

Sincerely,

Daniel Avitia
Executive Director
Texas Department of Motor Vehicles

Enclosures

Cc: Blake Calvert, Office of the Texas Governor
Thomas Galvan, Texas Legislative Budget Board

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES**A RESOLUTION AUTHORIZING A REQUEST FOR FINANCING
AND THE EXECUTION AND DELIVERY OF DOCUMENTS
REQUIRED TO AFFECT SUCH FINANCING**

Whereas, the Texas Public Finance Authority (“**Authority**”) is authorized to issue revenue bonds to finance the cost of certain projects for the use and benefit of the Texas Department of Motor Vehicles (“**Department**”) pursuant to Chapter 1232 of the Texas Government Code, Chapter 1001, Subchapter F, of the Texas Transportation Code, and House Bill 1, Texas General Appropriations Act, Article VII, Rider 11 (“**Camp Hubbard Renewal Project**”), 88th Legislature, Regular Session, (collectively, the “**Authorizing Law**”).

Whereas, the Department desires and intends to request the Authority to finance the cost of the Camp Hubbard Renewal Project as permitted by the Authorizing Law;

Whereas, the Department desires to initiate the funding process for the Camp Hubbard Renewal Project subject to the Texas Governor’s approval of the project’s funding authority under House Bill 1, Texas General Appropriations Act, 88th Legislature, Regular Session, and thus requests that if the Governor does not approve the appropriation for the project that the Authority take no action upon the Request for Financing and return same to the Department;

Whereas, the Department recognizes that in order to finance the cost of the Camp Hubbard Renewal Project, the Authority may issue short term obligations, bonds, either or both (“**Obligations**”) in an aggregate principal amount sufficient to finance project costs in the estimated amount of \$143,000,000.00, plus the costs of issuance and related administrative costs, if any, which will be determined at the time of issuance; and

Whereas, the form of a Request for Financing, dated as of June 8, 2023 (the “**Request for Financing**”), from the Department to the Authority, which includes a detailed description of the Camp Hubbard Renewal Project to be financed for the Department (the “**Project**”) and a proposed expenditure schedule, was presented to the Board of the Texas Department of Motor Vehicles that will be submitted to the Authority.

NOW THEREFORE BE IT RESOLVED by the Board of the Texas Department of Motor Vehicles that:

Section 1. The purpose of the financing is to provide funds sufficient to complete the Project, and the financing thereof is appropriate at this time. Accordingly, the execution and delivery of the Request for Financing to the Authority pursuant to the Authorizing Law is hereby ratified, approved and confirmed.

Section 2. The executive director and the chief financial officer of the Department are hereby separately and individually authorized, empowered, and directed to:

- a. sign and deliver any and all documents necessary or desirable to affect the financing and provide the Project, which documents may include but not be limited to a Memorandum of Understanding and a Lease Agreement between

- the Department and the Authority;
- b. cooperate with the Authority and its consultants to prepare an Official Statement in connection with the sale of the Obligations; and
 - c. take any other action necessary to assist in such sale.

Section 3. All actions not inconsistent with provisions of this Resolution heretofore taken by the Department, its officers, employees, agents, or consultants, directed toward the financing of the Project and the issuance of the Obligations, is hereby ratified, approved and confirmed.

Section 4. The officers and employees of the Department shall take all action in conformity with the Authorizing Law to effect the issuance of the Obligations and complete the Project as provided in the Lease Agreement and to take all action necessary or desirable or in conformity with the Authorizing Law for carrying out, giving effect to, and consummating the transactions contemplated by the Memorandum of Understanding, the Lease Agreement, the Obligations, and the Request for Financing, including without limitation, the execution and delivery of any closing documents in connection with the closing of the Obligations.

Section 5. The recitals set forth at the beginning of this Resolution are incorporated in their entirety herein.

Section 6. This Resolution was adopted at a meeting open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551 of the Texas Government Code.

Section 7. This Resolution is effective immediately up adoption.

ADOPTED by the affirmative vote of a majority of the Board of the Texas Department of Motor Vehicles present and voting on this 8th day of June, 2023.

Charles Bacarisse, Chair
Board of the Texas Department of
Motor Vehicles

Attested: _____
Tammy McRae, Vice Chair
Board of the Texas Department of
Motor Vehicles

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Certification

I, Laura Moriatty, hereby certify that the foregoing Resolution is a true, correct, and complete copy of the Resolution adopted by the Board of the Texas Department of Motor Vehicles on June 8, 2023.

Laura Moriatty
General Counsel
Texas Department of Motor Vehicles

SWORN AND SUBSCRIBED TO before me this _____ day of _____, 2023.

Notary Public

Texas Department of Motor Vehicles Camp Hubbard Renewal Project Project Description

The Texas Department of Motor Vehicles (TxDMV) state headquarters facility is located on the fifteen-acre Camp Hubbard Campus in central Austin. From 1936 to 2022, the campus was owned by the Texas Department of Transportation (TxDOT). Beginning in 2009, when TxDMV was created by the Texas Legislature, the Camp Hubbard campus housed both TxDOT and TxDMV operations.

On January 12, 2023, pursuant to Senate Bill 1349 (85th Legislature, 2017) and Minute Order 116257 passed by the Texas Transportation Commission on June 23, 2022, the northern most eleven acres of the property and seven existing buildings were legally transferred to TxDMV. The title deed citing TxDMV ownership of the property was filed with the Travis County Clerk on January 13, 2023.

In 2021, the 87th Legislature appropriated \$6,187,500 to TxDMV to pursue plans for construction of new facilities on the campus (HB 2, 87th Legislature, Regular Session), and the department entered into an interagency agreement with the Texas Facilities Commission (TFC) to procure architectural and design services for new office buildings.

Marmon Mok was selected by TFC and TxDMV in March 2022 as the most qualified design firm and began programming and masterplan work for future campus improvements in May 2022. The approved masterplan envisions demolition of four existing buildings, construction of one new office building and renovation of an existing 5-story office building to meet current and future workspace needs.

A new 144,000 square foot office building is planned to provide workspace for twelve of the fourteen TxDMV divisions, housing a workforce of 380 employees. The proposed building is roughly a “z” shape configuration that is predominantly three stories with a portion on the south side that contains a one-story warehouse. In addition to the warehouse, the first floor contains both employee common areas and public spaces, including a main lobby and board hearing room to accommodate public meetings. On the second and third floors, the northeast and southwest legs of the “z” are large open office floors that are designed to encourage flexible, collaborative and hybrid workspace with core spaces and shared meeting and amenity spaces located within the central diagonal leg of the “z”.

The upper floors would be clad in glazed curtain wall systems with primary orientation to the east and west. The first floor incorporates a large format masonry unit of modular terra cotta rainscreen product, a nod to the existing brick masonry that is predominant on the current campus, enhancing the blending of the new building with the remaining renovated building. A three-story all-glass façade on the central diagonal leg of the “z” that faces southeast will be a focal point for the primary building entrance, prominent to arriving visitors. This entrance will also incorporate louvered screen walls, a large hardscape plaza, and landscaped planting areas.

The existing five-story 110,000 square foot Camp Hubbard 6 (CH6) building will permanently house the remaining two of the fourteen department divisions, representing a workforce of 274 TxDMV employees and contractors, and will also provide necessary swing space for employees during the demolition and construction of the new building. This existing building is sited with its main public entry facing north towards the location of the new office building. A covered walkway connecting the two buildings will run along the east face of the new office building. The primary characteristics of the exterior design include brick, vertical ribbed metal panels, linear ribbon windows and steel window awnings.

TXDMV Camp Hubbard Renewal Design & Construction Budgets

Budget:

Original Budget:	\$	6,187,500.00	IAC with DMV for Design
Changes:	\$	143,000,000.00	88th Legislature funding for Construction
Final Budget:	\$	149,187,500.00	

<i>Pro Forma %</i>		DESIGN BUDGET	% of total	CONSTRUCTION BUDGET	TOTAL	% of total	% of constr.
1%	Project Analysis	\$ -	0.00%	\$ -	\$ -	0.00%	
	Programming	\$ -	0.00%	\$ -	\$ -	0.00%	
	Space Management Analysis	\$ -	0.00%	\$ -	\$ -	0.00%	
8%	Land	\$ 13,071.00	0.21%	\$ -	\$ 13,071.00	0.01%	
	Environmental Analysis (ESA I)	\$ 3,875.00	0.06%	\$ -	\$ 3,875.00	0.00%	
	Archaeology study	\$ 8,696.00	0.14%	\$ -	\$ 8,696.00	0.01%	
	Title Search	\$ 500.00	0.01%	\$ -	\$ 500.00	0.00%	
12%	Tech Services and Costs	\$ 5,693,152.00	92.01%	\$ 7,900,000.00	\$ 13,593,152.00	9.11%	10.77%
	Architect/Engineer	\$ 4,948,782.00	79.98%	\$ 1,500,000.00	\$ 6,448,782.00	4.32%	5.11%
	Project Manager - In House	\$ 250,000.00	4.04%	\$ 5,000,000.00	\$ 5,250,000.00	3.52%	4.16%
	3rd Party Review & Estimator	\$ 285,000.00	4.61%	\$ -	\$ 285,000.00	0.19%	0.23%
	Site Utility Survey/Engineering	\$ 99,320.00	1.61%	\$ -	\$ 99,320.00	0.07%	0.08%
	Geotech	\$ 28,800.00	0.47%	\$ -	\$ 28,800.00	0.02%	0.02%
	Commissioning Agent	\$ -	0.00%	\$ 900,000.00	\$ 900,000.00	0.60%	0.71%
	FF&E - Design	\$ -	0.00%	\$ 500,000.00	\$ 500,000.00	0.34%	0.40%
	Environmental (Abatement design)	\$ 50,000.00	0.81%	\$ -	\$ 50,000.00	0.03%	0.04%
	Site Survey	\$ 31,250.00	0.51%	\$ -	\$ 31,250.00	0.02%	0.02%
	Miscellaneous	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
4%	Site Improvements	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
	Demolition	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
	Grading	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
	Utilities & Utility Connections	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
	Landscape	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
	Other Misc. Site Improvements	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
60%	Building Construction	\$ -	0.00%	\$ 127,200,337.00	\$ 127,200,337.00	85.26%	
	Contractor	\$ -	0.00%	\$ 126,200,337.00	\$ 126,200,337.00	84.59%	
	Phase 1	\$ -	#DIV/0!	\$ 16,743,066.22	\$ 16,743,066.22	11.22%	
	Phase 2	\$ -	#DIV/0!	\$ 9,524,207.47	\$ 9,524,207.47	6.38%	
	Phase 3	\$ -	#DIV/0!	\$ 95,435,425.12	\$ 95,435,425.12	63.97%	
	Phase 4	\$ -	#DIV/0!	\$ 3,296,428.11	\$ 3,296,428.11	2.21%	
	Phase 5	\$ -	#DIV/0!	\$ 1,201,210.08	\$ 1,201,210.08	0.81%	
	Construction Material Testing	\$ -	0.00%	\$ 700,000.00	\$ 700,000.00	0.47%	0.55%
	HVAC Test Adjust Balance	\$ -	0.00%	\$ 300,000.00	\$ 300,000.00	0.20%	0.24%
8%	FF&E (incl purchasing)	\$ -	0.00%	\$ 7,000,000.00	\$ 7,000,000.00	4.69%	5.55%
	Furnishings	\$ -	0.00%	\$ 7,000,000.00	\$ 7,000,000.00	4.69%	5.55%
	Equipment	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
	Signs & Signage	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
	Other Miscellaneous FF&E	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
1%	Miscellaneous	\$ 101,200.00	1.64%	\$ 700,000.00	\$ 801,200.00	0.54%	0.63%
	Telecommunications	\$ 100,000.00	1.62%	\$ 600,000.00	\$ 700,000.00	0.47%	0.55%
	Printing	\$ 1,200.00	0.00%	\$ -	\$ 1,200.00	0.00%	0.00%
	Moving Costs	\$ -	0.00%	\$ 100,000.00	\$ 100,000.00	0.07%	0.08%
	Interest	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
	Other Misc	\$ -	0.00%	\$ -	\$ -	0.00%	0.00%
6%	Contingency	\$ 380,077.00	6.14%	\$ 199,663.00	\$ 579,740.00	0.39%	0.46%
100%		\$ 6,187,500.00	100.00%	\$ 143,000,000.00	\$ 149,187,500.00	100.00%	
		\$ 6,187,500.00		\$ 143,000,000.00	\$ 149,187,500.00		
		\$ -		\$ -	\$ -		
	Original Budget			Budget Changes	Final Budget		

**Texas Department of Motor Vehicles
Camp Hubbard Renwal Project
New Construction
As of 5/31/2023**

Month	FY 2024	FY 2025	FY 2026	FY 2027
SEPT	-	7,347,330.00	5,569,298.00	489,302.00
OCT	-	3,855,330.00	5,569,298.00	464,302.00
NOV	-	2,642,330.00	5,569,298.00	464,302.00
DEC	-	7,944,298.00	5,569,298.00	460,302.00
JAN	139,000.00	8,318,298.00	6,044,298.00	-
FEB	139,000.00	5,694,298.00	10,544,298.00	-
MAR	139,000.00	5,669,298.00	5,619,298.00	-
APRIL	139,000.00	5,594,298.00	5,619,298.00	-
MAY	689,000.00	5,569,298.00	5,699,319.00	-
JUNE	3,247,330.00	5,569,298.00	1,287,809.00	-
JULY	3,347,330.00	5,569,298.00	1,287,809.00	-
AUG	4,272,330.00	5,569,298.00	1,287,809.00	-
Total	12,111,990.00	69,342,672.00	59,667,130.00	1,878,208.00

FY 2024												
Project	Total Budget	Paid as of 05/30/2023	Remaining Budget	December-23	January-24	February-24	March-24	April-24	May-24	June-24	July-24	August-24
Camp Hubbard Renewal - Construction	143,000,000	-	143,000,000	\$ -	\$ 139,000.00	\$ 139,000.00	\$ 139,000.00	\$ 139,000.00	\$ 689,000.00	\$ 3,247,330.00	\$ 3,347,330.00	\$ 4,272,330.00
Total	143,000,000	-	143,000,000	-	139,000.00	139,000.00	139,000.00	139,000.00	689,000.00	3,247,330.00	3,347,330.00	4,272,330.00

\$ - Prior Adjusted Draws

0.0% Percent Drawn

FY 2025

Budget Remaining after August-24	September-24	October-24	November-24	December-24	January-25	February-25	March-25	April-25	May-25	June-25	July-25	August-25
\$ 130,888,010.00	\$ 7,347,330.00	\$ 3,855,330.00	\$ 2,642,330.00	\$ 7,944,298.00	\$ 8,318,298.00	\$ 5,694,298.00	\$ 5,669,298.00	\$ 5,594,298.00	\$ 5,569,298.00	\$ 5,569,298.00	\$ 5,569,298.00	\$ 5,569,298.00
130,888,010	7,347,330.00	3,855,330.00	2,642,330.00	7,944,298.00	8,318,298.00	5,694,298.00	5,669,298.00	5,594,298.00	5,569,298.00	5,569,298.00	5,569,298.00	5,569,298.00

FY 2026												
Budget Remaining after August-25	September-25	October-25	November-25	December-25	January-26	February-26	March-26	April-26	May-26	June-26	July-26	August-26
\$ 61,545,338.00	\$ 5,569,298.00	\$ 5,569,298.00	\$ 5,569,298.00	\$ 5,569,298.00	\$ 6,044,298.00	\$ 10,544,298.00	\$ 5,619,298.00	\$ 5,619,298.00	\$ 5,699,319.00	\$ 1,287,809.00	\$ 1,287,809.00	\$ 1,287,809.00
61,545,338	5,569,298.00	5,569,298.00	5,569,298.00	5,569,298.00	6,044,298.00	10,544,298.00	5,619,298.00	5,619,298.00	5,699,319.00	1,287,809.00	1,287,809.00	1,287,809.00

FY 2027													
Budget Remaining after August-26	September-26	October-26	November-26	December-26	January-27	February-27	March-27	April-27	May-27	June-27	July-27	August-27	Budget Remaining after August-27
\$ 1,878,208.00	\$ 489,302.00	\$ 464,302.00	\$ 464,302.00	\$ 460,302.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
1,878,208	489,302.00	464,302.00	464,302.00	460,302.00	-	-	-	-	-	-	-	-	-

Board Meeting Date: 6/8/2023
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Patricia Ueckert, Vehicle Titles and Registration Division Operations Section Director
Agenda Item: 7
Subject: Specialty Plate Designs

RECOMMENDATION

Action Item. The Vehicle Titles and Registration (VTR) Division seeks board approval or denial for three plate designs submitted for your consideration. Each plate design is from the marketing vendor, My Plates.

PURPOSE AND EXECUTIVE SUMMARY

DPS Troopers Foundation and Brushed Metal Grill are new plate designs. Texas A&M University-Commerce is a crossover plate design.

FINANCIAL IMPACT

Costs incurred by the department related to the My Plates program and an \$8 administrative fee per plate are recouped from the My Plates vendor. Revenue generated from the sale of vendor specialty license plates is split between the state (General Revenue Fund) and My Plates. The details of the revenue splits can be found in Section IV (State/Contractor Revenue Sharing) of the Specialty License Plate Marketing contract.

BACKGROUND AND DISCUSSION

Statutory authority for the board to approve vendor specialty license plates and invite the public's comment on proposed vendor plate designs is in Texas Transportation Code §504.851(g) and (g-1) (1). Statutory authority for a sponsor of a specialty license plate under Texas Transportation Code Chapter 504, Subchapter J, to contract with the private vendor authorized under Texas Transportation Code §504.851 for the marketing and sale of the specialty license plate is in Texas Transportation Code §504.6011. Statutory authority for the board to approve non-profit organization specialty license plates and invite the public's comment on proposed plate designs is in Texas Transportation Code §504.801. The board's approval criteria are clarified in Texas Administrative Code §217.45 Specialty License Plates, Symbols, Tabs, and Other Devices, and §217.52 Marketing of Specialty License Plates through a Private Vendor.

The vendor contract (Statement of Work paragraph #2, Marketing Services) specifies that following the board's contingent approval of a plate, the vendor must get at least 200 commitments within six months of the approval for a plate to be produced (*existing* plates must also maintain 200 registrations to stay in the program). My Plates' procedure is to first offer a plate to the public to register their interest. Following the board's contingent approval, My Plates then offers a plate online for prepaid orders and confirms when 200 prepaid orders are achieved.

TxDMV's procedure is to invite comments on all proposed plates ahead of the board's review. The department's intent is to determine if there are any unforeseen public concerns about a plate design. The department publishes a 10-day

“like/dislike/comment-by-email” survey, called an eVIEW, on its website. Although the survey counts the public’s “likes” and “dislikes,” it is unscientific and not used as an indicator of a plate’s popularity.

Each plate design listed below was presented to the public in a March 2023 eVIEW. No negative comments were received. The count of the public’s “like/dislikes” are noted below with each design.

DPS Troopers Foundation	NEW	
1015 people liked this design and 260 did not		
Brushed Metal Grill	NEW	
1030 people liked this design and 388 did not		
Texas A&M University-Commerce	CURRENT	CROSSOVER
567 people liked this design and 482 did not		

DPS Troopers Foundation (New)



Brushed Metal Grill (New)





Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Texas A&M University-Commerce (Crossover)



Board Meeting Date: 6/8/2023

ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: David Richards, Associate General Counsel
Agenda Item: 8
Subject: Advisory Committee Appointments
Appointment of New Advisory Committee Members

RECOMMENDATION

Action Item. Recommend that the Texas Department of Motor Vehicles Board (board) appoint the individuals from the list of potential members presented by the executive director as members of the Customer Service and Protection Advisory Committee, the Motor Carrier Regulation Advisory Committee, the Vehicle Titles and Registration Advisory Committee, and the Motor Vehicle Industry Regulation Advisory Committee.

PURPOSE AND EXECUTIVE SUMMARY

To implement Transportation Code §1001.031, which requires the board to establish one or more advisory committees to make recommendations to the board or the executive director.

FINANCIAL IMPACT

No financial impact.

BACKGROUND AND DISCUSSION

The Sunset Advisory Commission recommended (Recommendation 1.7) that the board establish advisory committees to provide expertise for rulemaking and other issues.

The board established four advisory committees by rule. The rules establishing these advisory committees, as well as their purpose and structure, were adopted by the board at the August 8, 2019, board meeting and the April 13, 2023, board meeting.

The board is required to appoint members to an advisory committee by selecting them from a list of potential members provided by the executive director. Also, the board is required to appoint members who have knowledge about the work of the advisory committee and who represent a broad range of viewpoints about the work of the advisory committee. An advisory committee that advises TxDMV or the board regarding an industry or occupation that is regulated or directly affected by TxDMV must be composed of members who provide a balanced representation between the industry or occupation and the consumers of services provided by TxDMV, the industry, or the occupation. To the extent practical, the board must ensure representation of members from different geographical regions of the state.

The board has previously selected members for the Motor Carrier Regulation Advisory Committee, the Vehicle Titles and Registration Advisory Committee, and the Motor Vehicle Industry Regulation Advisory Committee. The Customer Service

and Protection Advisory Committee is a new committee, created from a consolidation of the Customer Service Advisory Committee and the Consumer Protection Advisory Committee.

The presented list of potential members for the Customer Service and Protection Advisory Committee combines the previously vetted members approved by the board to serve on the Consumer Protection Advisory Committee and the Customer Service Advisory Committee, with the addition of Matthew Nance, who is a new potential public member who has not previously served on either committee.

The appointment of the potential new members of the Motor Vehicle Industry Regulation Advisory Committee would add one law enforcement representative, one independent dealer representative, and one franchise dealer representative to the committee.

The appointment of the potential new member to the Motor Carrier Regulation Advisory Committee would add one transportation compliance representative to the committee.

The appointment of the potential new member to the Vehicle Titles and Registration Advisory Committee would add one independent dealer representative to the committee.



Roles of the Four Advisory Committees

1. The **Customer Service and Protection Advisory Committee** will make recommendations on topics related to improving and enhancing customer service by the department including the following: infrastructure, new customer service initiatives, policy and process improvements, and technology; topics on investigation and enforcement issues including the following: vehicle titles and registration fraud; lemon law; the warranty performance program; and various other topics affecting consumers.
2. The **Motor Carrier Regulation Advisory Committee** will make recommendations on topics related to motor carrier registration and motor carrier regulation.
3. The **Motor Vehicle Industry Regulation Advisory Committee** will make recommendations on topics related to regulation of the motor vehicle industry.
4. The **Vehicle Titles and Registration Advisory Committee** will make recommendations on topics related to vehicle titles and registration.

No.	Potential Members	GeoRegion	County	Employer	License Affiliation
1	Matthew Nance	11	Travis	Office of Consumer Credit Commissioner - Deputy General Counsel	Public
2	Laird Doran	06	Harris	The Friedkin Group - Vice President & Senior Counsel	Affiliated with Franchise Dealer/Distributor
3	Christopher Gaston	06	Harris	Texas Gulf Coast Auto Title - Title Clerk	Auto Title Service
4	William Smith	06	Harris	Monument Chevrolet - Owner	Franchise Dealer
5	Christopher Wall	03	Victoria	Keating Auto Group - General Counsel	Franchise Dealer
6	Dorothy Brooks	11	Travis	Texas Trucking Association/Southwest Movers Association (SMA) - Director of Operations	Motor Carrier / Mover Representative
7	Susan Sutton	06	Harris	Texas Motor Transportation Consultants LLC - Senior Title Administrator	Motor Carrier Consultant
8	Ford Wagner	10	Comal	Texas Auto Carriers, Inc. - COO	Motor Carrier Operations - Others
9	Traci McCullah	06	Harris	Westar Moving & Storage, Inc. - Vice President	Moving & Storage
10	Russell Hayter	10	Hays	Retired - Insurance Industry	Public
11	Raymond "Ray" Olah	11	Travis	Retired - Office of the Attorney General, Assistant Attorney General	Public
12	Ruben Gonzalez	05	El Paso	El Paso County - Tax Assessor Collector	Tax Assessor-Collector
13	Cheryl Johnson	06	Galveston	Galveston County - Tax Assessor Collector	Tax Assessor-Collector
14	Lori King	11	Mills	Mills County - Tax Assessor-Collector	Tax Assessor-Collector
15	Kristen Hoyt	10	Comal	Comal County - Tax Assessor-Collector	Tax Assessor-Collector
16	Bruce Stidham	04	Grayson	Grayson County - Tax Assessor Collector	Tax Assessor-Collector
17	John Ames	04	Dallas	Dallas County - Tax Assessor Collector	Tax Assessor-Collector
18	Jeanette Rash	02	Montgomery	Milam St Auto Storage, Inc./ Cannino West, Inc. - President	Towing Company
19	Tina Carter	11	Travis	Travis County Tax Office - Motor Vehicle Supervisor	Tax Assessor - Collector

No.	Potential Member	GeoRegion	County	Employer	License Affiliation
1	Jackie Polk	02	Angelina	Lee TranServices, Inc. - President	Transportation Compliance

No.	Members	GeoRegion	County	Employer	License Affiliation
1	Donna Willis	07	Lynn	Lynn County - Tax Assessor Collector	Also Owner - Fleet Operations - Others
2	Dana Moore	11	Williamson	Southwest Movers Association - Director of Policy and Government Relations	Motor Carrier / Mover Representative
3	Rudy Hille	04	Johnson	Transportation Compliance Services USA - Compliance Specialist	Motor Carrier Consultant
4	Gina Zavala	06	Harris	Texas Motor Transportation Consultant LLC - Office Manager	Motor Carrier Consultant
5	Kevin Lee Althoff	11	Coryell	Althoff Farms, Inc. - President (Self-employed)	Motor Carrier Operations - Others
6	Patrick Sean Connelly	10	Bexar	Suarez Bros Crane and Heavy Haul LLC - Vice President/Partner	Motor Carrier Operations - Others
7	John Hallmark	02	Montgomery	Hallmark Transport Services Corp - Owner	Motor Carrier Operations - Others
8	Mitch Henderson	08	Smith	Self-employed - CEO	Motor Carrier Operations - Others
9	Neil Wayne Roberts	04	Tarrant	Raider Express, Inc. - Fleet Director	Motor Carrier Operations - Others
10	Ford Earl Wagner	10	Comal	Texas Auto Carriers, Inc. - COO	Motor Carrier Operations - Others
11	John Walker	06	Harris	J H Trucking - President	Motor Carrier Operations - Others
12	Carl Byerley	08	Bowie	UrTruck LLC - Owner	Motor Carrier Operations - Others
13	Mat Taylor McClure	05	Midland	Frontier Tubular - Transportation Manager	Motor Carrier Operations - Self
14	Traci Lynne McCullah	06	Harris	Westar Moving & Storage, Inc. - Vice President	Moving & Storage
15	William Scott Green	02	Angelina	Angelina Manufacturing - General Manager	Public
16	Karl Phillip Radde	02	Madison	Southern Comfort Homes - President/GM	Public

No.	Potential Member	GeoRegion	County	Employer	License Affiliation
1	Thomas Durant	04	Tarrant	Classic Chevrolet Inc. - COO/General Counsel	Attorney for Franchise Dealer
2	Tony Hall	11	Travis	Carvana - Senior Manager, Government Affairs	Independent Dealer Representative
3	Michael Provost	06	Fort Bend	City of Houston/Houston Police Department - Sergeant	Law Enforcement

No.	Members	GeoRegion	County	Employer	License Affiliation
1	Laird Doran	06	Harris	The Friedkin Group - Vice President & Senior Counsel	Affiliated with Franchise Dealer/Distributor
2	Lloyd "Buddy" Ferguson	11	McLennan	Barack Ferrazzano Kirschbaum & Nagelberg, LLP - Partner	Attorney for Manufacture/Distributor
3	Franklin Sims	01	Taylor	Freedom Motors - Owner	Converter - Wheelchair Accessible
4	Michael "Mike" Sullivan	06	Harris	Group 1 Automotive - Director Governmental and Public Affairs	Franchise Dealer
5	Scott Stark, MVIRAC First Vice Chair	11	Travis	South Point Hyundai, Genesis of Austin, South Point Dodge Chrysler Jeep and Ram - President/Owner	Franchise Dealer
6	Stephen Prather, Sr.	06	Harris	Retired -	Franchise Dealer
7	Trey Sralla, MVIRAC Second Vice Chair	12	Clay	Eddie Hill's Fun Cycles - General Manager	Franchise Dealer - Motorcycles
8	Christopher Donnelly	02	Montgomery	Donnelly Auto Group - President/Managing Member	Independent Dealer
9	Jimmy Vitela	02	Montgomery	Northstar Auto Group/Vitela Investment, LLC - CEO	Independent Dealer
10	Rita Edwards	08	Hopkins	Edwards Used Cars - Office Manager, Title Clerk, Finance Manager, Bookkeeper, Sales	Independent Dealer
11	Kalien Thomas	04	Ellis	Frontera Truck Parts & Equipment, Inc. - Office Manager	Independent Dealer
12	Julio Gonzalez	04	Dallas	Dallas Police Department - Lieutenant of Police	Law Enforcement
13	Michael Bradburn, Sr.	11	Bell	Travis County Constable Precinct 3 - Corporal	Law Enforcement
14	Russell Hayter	10	Hays	Retired - Insurance Industry	Public
15	William Murphy	10	Kerr	Self-employed - Owner	Public
16	Ernest Elam	11	Travis	Texas Recreational Vehicle Association - Executive Director	Recreational Vehicle Representative - Franchise Dealers
17	David Blassingame, MVIRAC Presiding Officer	04	Dallas	Autoflex Leasing & Blassingame Consulting - Special Projects Coordinator and Owner of Consulting Company	Vehicle Lessor Consultant

No.	Potential Member	GeoRegion	County	Employer	License Affiliation
1	Tony Hall	11	Travis	Carvana - Senior Manager, Government Affairs	Independent Dealer Representative

No.	Members	GeoRegion	County	Employer	License Affiliation
1	Tawna Kuni	04	Denton	IAA - Senior Manager, Title Operations	Auction
2	Keith Millard	02	Nacogdoches	Mike Perry Motor Company - Used Vehicle Sales Manager	Franchise Dealer
3	James Paschall	10	Bexar	Red McCombs Automotive - Title Department Supervisor	Franchise Dealer
4	Ivan Nino	05	El Paso	Flash Auto Title Registration Inc. - Manager	Full Service Deputy
5	Dana Moore	11	Williamson	Southwest Movers Association - Director of Policy and Government Relations	Motor Carrier / Mover Representative
6	Christal Vincent	07	Potter	Southwestern Public Service - Fleet Operations Supervisor	Motor Carrier Operations - Self
7	Robert "Bobby" Roberti, VTRAC Presiding Officer	04	Denton	Wells Fargo Advisors - Financial Advisor	Public
8	Faron Smith, VTRAC Second Vice Chair	10	Comal	Caretaker - Assembled Vehicles Industry	Public
9	David Fontenot	11	Travis	Warren Salvage Company - President	Salvage Dealer
10	Shay Luedeke, VTRAC First Vice Chair	11	Bell	Bell County - Tax Assessor-Collector	Tax Assessor-Collector
11	Kristi Torres	09	Hidalgo	Hidalgo County Tax Office - Supervisor, Auto Department	Tax Assessor-Collector
12	Jackie Polk	02	Angelina	Lee TranServices, Inc. - President	Transportation Compliance



To: Texas Department of Motor Vehicles Board
From: Chris Hayden, Deputy Chief Financial Officer and
Ann Pierce, Assistant Division Director, Finance & Administrative Services
Agenda Item: 9.A
Subject: Camp Hubbard Renewal Project Update

RECOMMENDATION

Briefing item. Provides updates on the Camp Hubbard Renewal Project.

PURPOSE AND EXECUTIVE SUMMARY

Provide a briefing on the status of the Camp Hubbard Renewal planning project. See attached.

FINANCIAL IMPACT

Not Applicable.

BACKGROUND AND DISCUSSION

The 87th Legislature approved funding of \$6.2 million for the planning and design (Phase I) of the Camp Hubbard Renewal Project. This briefing provides information on the on-going steps to complete the planning and design phase.

Phase II – the redesign and construction phase, will begin upon the completion of Phase I. Funding of \$143 million for Phase II, completion of renewal and construction, is included in HB 1, General Appropriations Act. The funding for completing Phase II is subject to gubernatorial approval.

Camp Hubbard Renewal Project Update

Item 9.A

June 7, 2023



Texas Department *of* Motor Vehicles

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Project Overview and Status

- The Camp Hubbard Planning and Design (Phase I) continues to move toward finalizing estimates and integrating design elements needs prior to initiating Phase II, the demolition, renovation and construction, upon funding approval.
- In order to ensure efficient use of funds, timing schedules, and a smooth transition and flow of activities, the department has conducted multiple meetings with Marmon Mok, the Texas Facilities Commission, and staff. Highlights include:
 - Board and Conference Room Audio/Visual Needs Coordination – discuss special audio and visual needs for the Board Room and other conference rooms. Included the re-use of equipment in new locations.
 - Warehouse, Storage and Security Needs Coordination – determine facilities, warehouse, fleet, imaging, inventory and security needs. included day-to-day security, emergency response and appropriate separations of different areas.
 - Technology Needs, Concerns and Project Overlap Coordination – on-going meetings with Marmon Mok, TFC, and external/internal staff to ensure information technology needs and timing are planned, coordinated, and efficiently implemented.
 - Project Overlaps and Planning - on-going meetings with Marmon Mok, TFC, and staff to ensure other facilities related projects that overlap are addressed. These discussion include warranty transfers and bidding requirements.



Board Meeting Date: 6/8/2023
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Eric Horn, Director of Accounting Operations
Agenda Item: 9.B
Subject: Accounts Receivable Update

RECOMMENDATION

Briefing item with no recommendation.

PURPOSE AND EXECUTIVE SUMMARY

This item provides an update on the Accounts Receivable system funded by the 87th Legislature.

FINANCIAL IMPACT

This project is funded with \$3.5 million in supplemental appropriations (HB 2, 87th Legislature, RS).

BACKGROUND AND DISCUSSION

The department received \$3.5 million in supplemental appropriations in HB2 of the 87th legislative session for the deployment of an Accounts Receivable (A/R) system to ensure revenue collections are tracked accurately and consistently across the department. TxDMV contracted with Gartner, Inc. in February 2022, to complete the first phase of the project, which was a study of the current decentralized process and to determine recommendations for available software that will best fit the department's needs. Additionally, Gartner recommended TxDMV pursue a Request for Information (RFI) with the vendor community to convey TxDMV's unique system requirements and to obtain more precise cost information for each solution. TxDMV completed the RFI process in September 2022 and elected to pursue an A/R system using the Microsoft Dynamics 365 Business Central platform.

Following the selection of the system platform, staff from the Finance and Administrative Services (FAS) Division and Information Technology Services Division (ITSD) collaborated with the Department of Information Resources (DIR) to initiate the procurement process. The procurement process was divided into two steps:

Step 1: Microsoft Dynamics Business Central Licenses

- TxDMV staff met with representatives from DIR and Microsoft in November 2022 to discuss the scope of the project. DIR and Microsoft approved the procurement of the licenses in January 2023.
- A request for quote was sent to interested DIR-approved bidders and awarded in January 2023.

Step 2: Deliverables-Based Information Technology Services (DBITS) Contract for Implementation

- TxDMV staff began drafting a Statement of Work (SOW) for implementation of an A/R system in accordance with DIR's process in November 2022.
- DIR approved the draft SOW in March 2023 and provided a list of approved vendors to solicit bids.
- Bids were received in May 2023 and are currently under evaluation by TxDMV staff.

Once a vendor is selected and the contract is approved by DIR, the project is expected to begin in FY23 and be completed in FY 2024.

Board Meeting Date: 6/8/2023
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Eric Horn, Director of Accounting Operations
Agenda Item: 9.C
Subject: Credit Cards in the Regional Service Centers (RSC)

RECOMMENDATION

Briefing item with no recommendation.

PURPOSE AND EXECUTIVE SUMMARY

This item provides an update on the Credit Cards in the Regional Service Centers (RSC) project.

FINANCIAL IMPACT

This project is sourced with available funding in the Automation System capital budget for Fiscal Year (FY) 2023 and 2024.

BACKGROUND AND DISCUSSION

This project is a collaborative effort among the Finance and Administrative Services (FAS) Division, Information Technology Services Division (ITSD), Motor Carrier Division (MCD) and the Vehicle Titles and Registration (VTR) Division to implement an over-the-counter credit card payment process at each of the 16 Regional Service Centers (RSC).

Highlights:

- TxDMV began the Texas.gov payment portal services onboarding process in FY23 through the Department of Information Resources (DIR) and their vendor Tyler Technologies.
- Payment Card Industry (PCI) compliance and attestation has been completed.
- Credit card swipe devices have been procured and received for each RSC location.
- Additional procurements for swipe device stands are ongoing and anticipated to be completed by August 2023.
- Programming updates to the Registration and Title System (RTS) are being completed by ITSD staff and are anticipated to be moved into production in August 2023.
- Programming updates to the Texas International Registration Plan (TxIRP) system, which is utilized for apportioned registration transactions, are being completed by third-party vendor Explore Data and are anticipated to be moved into production in August 2023.
- Initial connectivity testing of swipes devices to Texas.gov was successful. Additional testing, pending necessary programming updates, and certification from the Comptroller's office is required prior to moving into production.

TxDMV staff plan to deploy credit card capabilities at the Austin RSC in August 2023. The remaining locations, beginning with the Houston RSC, will be deployed throughout FY 2024.



To: Texas Department of Motor Vehicles Board
From: Will Hilton, Deputy Chief Information Officer
Agenda Item: 9.D
Subject: FY 2023 Technology Projects

RECOMMENDATION

Briefing only – No recommendation.

PURPOSE AND EXECUTIVE SUMMARY

To brief the Projects and Operations Committee on the current active projects including project descriptions, status, budget, and end dates.

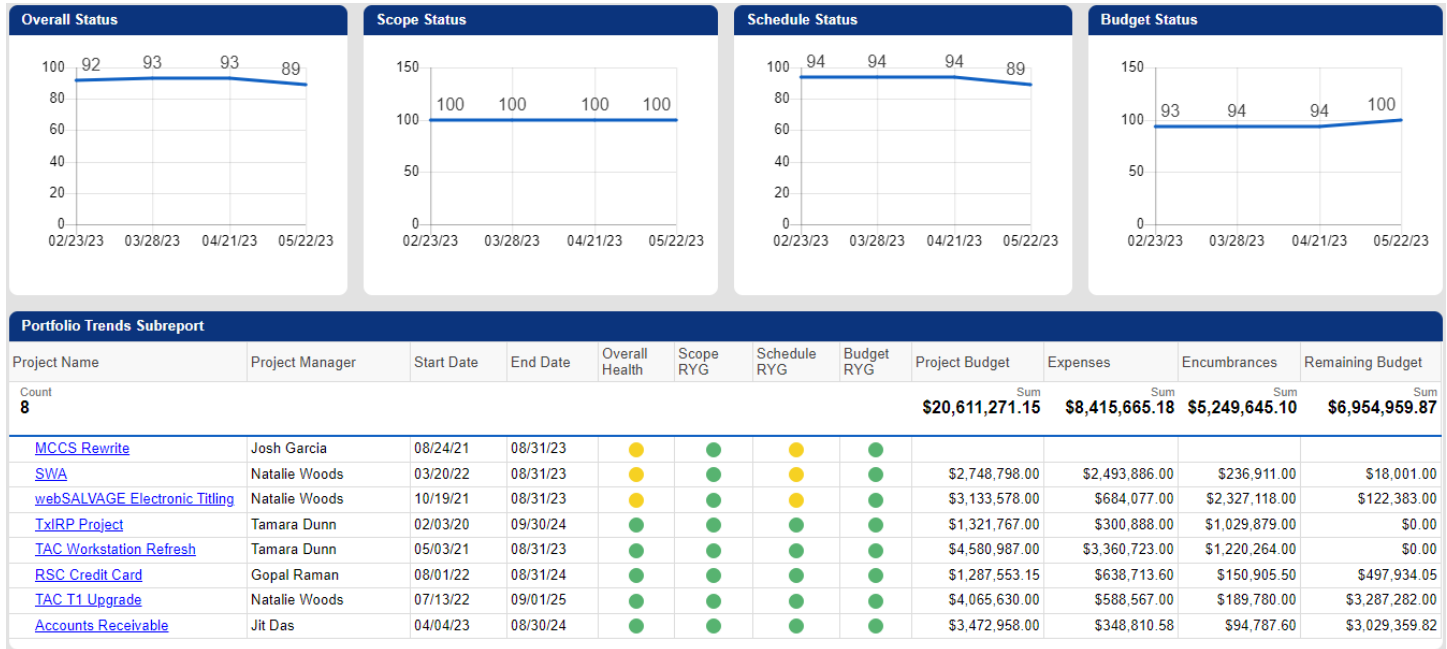
FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

This briefing includes a summary of ten of the high-priority projects and initiatives overseen by the Information Technology Services Division (ITSD), including an updated status, budget, and completion date.

The project portfolio dashboard is presented on the following page. Five of the ITSD Project Management Office (PMO) managed projects have a “green” status and are progressing in alignment with their planned scope, schedule, and budgets. Three of the projects are in “yellow” status due to schedule issues that are being resolved. More details as to why projects are in yellow are provided in the individual project briefings. Two projects included in this briefing, that will not be on the dashboard below, have been completed and approved for closure.



Registration and Title System (RTS) Projects and Initiatives

RTS Ecosystem Modernization

RTS was originally designed and built by the Texas Department of Transportation in the mid-1990s to process vehicle registration and title transactions. RTS has undergone continuous rebuilding, upgrades, and process improvements over time to maintain primary system functionality. While the system is stabilized for continued near-term use, advancements in technology and application development, as well as the workload demands of a growing state, are rendering this system obsolete. In the years since RTS was placed in service, the cost of maintaining the system has increased while the department's ability to adapt and change its use to better serve the evolving needs of the motoring public and state regulatory structures has decreased. For these reasons, the department must begin the process of replacing RTS and its associated applications.

Phase One will include the following major deliverables and be completed by the end of the 2024-2025 fiscal biennium:

- Updates to existing systems.
- Assessment of the existing RTS ecosystem and development of a transition plan.
- Assessment and evaluation of available technology solutions.
- Documentation for Quality Assurance Team (QAT) review and approval.
- Development of procurement documents.

Phase Two is expected to begin in fiscal year 2026 and will include implementation and buildout of the replacement ecosystem following the plans developed in Phase One.

Project Status:

- Software updates of existing systems have been started and are in progress.
- Statement of Work (SOW) drafts are being developed for both the internal and external assessments of the RTS environment.
- Awaiting final approval of LAR budget from 88th Legislative Session.

Project End Date: Phase One end date Aug 2025

Tax Assessor Collector (TAC) T1 Upgrade Project

Current network circuit technology servicing most of the county tax assessor-collector (TAC) offices is outdated, using older T1 technology. This technology is not reliable, leading to frequent losses of connectivity for our TAC partners and impacting the department's and the TACs' ability to provide good customer service to our constituents. These types of circuits are being phased out by the major service providers, including TxDMV's vendor AT&T. This project will execute the upgrade of current T1 connections to metro-ethernet. This conversion will increase circuit reliability and increase network speeds for our county TAC partners. In conjunction with the fiber upgrade, the current routing and switching equipment at the county TAC locations will be upgraded to newer equipment with LTE (cellular) capabilities. A second networking route will be established in locations where cellular is available and reliable to act as a failover in the event the fiber route became disabled. The TAC T1 Upgrade Project is a multi-phased effort. The project is in its first phase with an objective to upgrade county offices from T1 circuits to AT&T Metro Ethernet for 286 AT&T in-region sites. Network routers and switches will also be upgraded for these offices as part of phase one. Subsequent phases will transition the remaining county offices.

Project Status:

- Phase I: Upgrade to fiber of in-region (286 sites) AT&T Metro Ethernet is underway. So far 96% of circuit orders (235/244) for sites are complete or have been cancelled (~10).
- Phase II: Currently hiring contractors to perform equipment installations for upgrading routers, switches, and firewalls. Job postings were complete, and resumes are being reviewed for interviews. Target start date is 6/15.
- Phase III: Identified locations that need new circuits, analyzed the associated costs, and currently in the planning phase to get the circuits ordered.
- The project overall health is green. The project is on time and within scope, schedule, and budget.

Project End Date: Phase One end date, October 2023

TAC Workstation Refresh Project

TxDMV provides workstation and printer equipment to the county tax assessor-collector (TAC) offices enabling them to provide vehicle and titling services on the department's behalf. In accordance with industry best practices and Department of Information Resources (DIR) guidelines, this equipment should be replaced every five years. ITSD is moving to an operational deployment strategy by which 20% of the equipment is replaced each year, with 25% of that amount deployed each quarter. The intent of this project is to deploy 50% of the equipment, establishing the operational processes and procedures to transition from a projectized deployment to an operational initiative. Specifically, we will deliver new workstations and printers initially to Austin, San Antonio, Pharr, Corpus Christi, and some of Houston.

Project Status:

- The Austin and San Antonio regions have been completed.
- The refresh for Pharr is in progress. Work will be completed in June and the schedule is currently under development.
- By the end of May, over 130 TAC offices will be refreshed with over 1,699 pieces of equipment deployed.
- The project overall health is green. The project is on time and within scope, schedule, and budget.

Project End Date: August 2023

Texas by Texas (TxT)

The Texas-by-Texas project has provided the constituents of Texas a secure, mobile-friendly platform to do business with multiple state agencies using a single user account (single sign-on). TxT serves as a personal and portable government assistant for customers. It allows customers to create an account, link to vehicles, and establish a

personalized profile with stored payment information, transaction history, preferences, and other features. Users can choose to receive text and email renewal reminders which helps Texans renew their vehicle registration more efficiently.

Project Status:

- Electronic Renewal notice Opt-in (ERNO) Phase II, TxT enhancements and integration with TxDMV systems were implemented in February 2023.
- E-mail notifications for impacted customers were completed in March 2023.
- The project is complete and was approved for closure on April 25, 2023. The project was on time and within scope, schedule, and under budget.

Project End Date: Spring 2023

webDEALER Projects and Initiatives

Statewide webDEALER Adoption (SWA) Phase II

Senate Bill 604, passed during the 86th Texas Legislative Session, required that webDEALER, the department's web-based system for processing title applications, be made available to all state of Texas motor vehicle dealers. To facilitate an increase in application throughput, maximize workflow, streamline processes, and, most importantly, encourage the participation of new users, the Statewide webDEALER Adoption project was initiated. Phase I of the project was completed in June of 2021 and included the highest priority tickets that provided webDEALER enhancements to Texas motor vehicle dealers. Phase II of the project is currently being executed and will implement the remaining priority tickets to improve the system for Texas motor vehicle dealers.

Project Status:

- The project is in the execution phase and development is 85% complete.
- Competing priorities and resource constraints to work on fraud enhancements and parallel projects have caused a delay in completing SWA tickets.
- Project overall health is yellow because the level of effort estimated to complete all remaining tickets will take more time than the scheduled project end date. The project is within scope and within budget.

Project End Date: August 2023

webSALVAGE

The webSALVAGE project will expand throughput of electronic titling processes in webSALVAGE and the issuance/transfer of electronic titles. webSALVAGE will allow the electronic submission of title applications by insurance companies and Texas salvage motor vehicle dealers for hail-damaged vehicles, unrecovered thefts, and other non-salvage vehicles directly to county tax offices and will facilitate issuance of electronic titles to the submitting entities. The issuance of electronic titles will facilitate subsequent electronic transfer of title and required reporting for Texas salvage motor vehicle dealers. The project will expedite processing time and title issuance by eliminating manual processes for stakeholders and internal staff, reducing contract costs for the department, expanding system integrations, eliminating fraud associated with paper titles, and reducing theft and fraud associated with rebuilt vehicles.

Project Status:

- Project is in execution phase and phase one deliverables are being worked on.
- Overall application development is 20% complete with applicable deliverables currently in user acceptance testing for the upcoming 23.3 release.
- Planning is being finalized for deliverables for the 23.4 release to get development to 40% completion.

- Phase two and phase three deliverables are dependent on completion of preceding phases.
- Phase four (identity validation) is in planning and solution proposals for identity verification are being evaluated.
- Competing priorities and resource constraints to work on fraud enhancements and parallel projects have caused a delay in completing webSALVAGE deliverables.
- The project overall health is yellow due to the project being behind schedule, however, the projected end date will be adjusted to account for the deviation from the original schedule to complete work on fraud enhancements. The project is within scope and within budget.

Project End Date: August 2023

Motor Carrier Projects and Initiatives

Motor Carrier Credentialing System (MCCS) Rewrite

The Motor Carrier Credentialing System Rewrite project will replace the existing legacy MCCS system with a modern, reliable application supported by an external vendor. The project will reduce the operational risk to the department using improved technologies and ensure long-term support and operability.

Project Status:

- The project is currently in the procurement phase.
- The SOW was completed and distributed to potential respondents.
- Submissions are expected to be complete with TxDMV Purchasing by June 1, 2023 with vendor selection expected to be by June 22, 2023.
- Project overall health is yellow because of delays in SOW review that have impacted the schedule. The project is within scope and within budget.

Project End Date: August 2023

Texas International Registration Program (TxIRP) Upgrade

The Texas International Registration Program Upgrade project will improve the TxIRP online user experience and reduce Out-of-Service (OOS) fraud. The project will improve user experiences through website responsiveness for mobile devices, add automated financial capabilities, and improve reporting.

Project status:

- Project is in execution phase and application is 30% complete.
- The project overall health is green. The project is on time and within scope, schedule, and budget.

Project End Date: September 2024

Call Center Upgrade Phase II

The objective of Phase II of the Call Center Upgrade project is to implement a modern post call survey tool that will improve customer interaction quality with the department. The tool will collect actionable customer feedback, uncover the root cause of good or bad experiences, and track and measure customer satisfaction using industry best practices.

Project Status:

- The tool was implemented for Consumer Relations Division, Motor Carrier Division and Vehicle Titles and Registration division as of December 13, 2022.

- The project is complete and was approved for closure on April 25, 2023. The project was on time and within scope, schedule, and under budget.

Project End Date: December 2022

Board Meeting Date: 6/8/2023
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Keith Yawn, Government & Strategic Communications Division Director
Agenda Item: 10
Subject: 88th Legislative Session Update

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

Government and Strategic Communications staff will provide an overview of legislative activity related to department operations from the 88th Regular Legislative Session.

FINANCIAL IMPACT

No impact.

BACKGROUND AND DISCUSSION

The 88th Texas Legislature convened in regular session on January 10, 2023, and adjourned on May 29, 2023. Legislators filed more than 8,000 pieces of legislation for consideration by the House and Senate chambers, including the General Appropriations Act (biennial statewide budget) and the supplemental appropriations bill. Department staff tracked more than 500 individual bills, including more than 100 with direct impacts to the department's core operational programs. Throughout the session, staff served as subject matter experts to House and Senate committees and individual legislators developing final language for legislation.

This agenda item includes an overview of specific bills passed by the legislature that have major impact to department operations or policies. Many bills are still under review by the Governor. The veto period ends on June 18, 2023.

**Texas Department of Motor Vehicles**

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Board Meeting Date: 6/8/2023
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Chris Hayden, Deputy Chief Financial Officer
Agenda Item: 11.A
Subject: FY 2024 – 2025 Legislative Appropriations and Operating Budget Update

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

To provide a briefing on the Fiscal Year 2024-2025 Legislative Appropriations and Operating Budget and the recommended appropriations and decisions from the Conference Committee on HB 1 (General Appropriations Act).

FINANCIAL IMPACT

See attached.

BACKGROUND AND DISCUSSION

On May 29, 2023, the 88th Legislature passed a FY 2024-2025 budget of \$653.5 million for the department.

The passed version includes funding for TxDMV's Exceptional Items, as well as an increase for Motor Vehicle Crime Prevention Authority (MVCPA) appropriations and contingency appropriations. See attached.

All funding is subject to line-item gubernatorial veto.

FY 2024-2025 Legislative Appropriations and Operating Budget Update

Item 11.A

June 8, 2023



Texas Department *of* Motor Vehicles

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HB 1 Conference Committee Recommendations

On May 29, 2023, the 88th Legislature passed a FY 2024-2025 budget of **\$653.5 million for the department.**

Highlights include:

- Phase 1 of RTS replacement
- Two additional RSCs - one in Dallas; one in Houston
- The Camp Hubbard Renewal Project
- 46 additional FTEs for exceptional items and 50 additional FTEs for contingency appropriations
- Additional funding for MVCPA to bring it in-line with statute and the Biennial Revenue Estimate
- Contingency appropriations to implement approved legislation

HB 1 is still subject to line-item veto by the Governor.



Recommended Exceptional Items

The Conference Committee's recommended budget includes the following:

TxDMV Exceptional Item	FY 2024	FY 2025
RTS Replacement Phase One	\$ 6,750,000	\$ -
Expand Regional Service Centers	\$ 2,474,389	\$ 1,004,022
Camp Hubbard Renewal *	\$ 143,000,000	\$ -
Additional Authorized FTEs	\$ 1,857,560	\$ 1,857,560
MVCPA Funding	\$ 6,964,210	\$ 7,288,503
TOTALS	\$ 161,046,159	\$ 10,150,085

*Does not include debt service

- Included in the recommended exceptional item are 46 FTEs:
 - 8 FTEs are for the expansion of the Regional Service Centers
 - 32 FTEs are additionally authorized for various program activities
 - 6 FTEs are for MVCPA activities



Recommended Contingency Appropriations

The Conference Committee's recommended budget includes the following contingency appropriations:

Contingency Appropriation	FY 2024	FY 2025
House Bill 718 – temporary tag changes	\$ 35,000,000	\$ -
Senate Bill 224 – catalytic converter theft prevention	\$ 24,667,262	\$ 30,378,803
Senate Bill 505 – electric vehicle registration	\$ 214,440	\$ -
TOTALS	\$ 59,881,702	\$ 30,378,803

- Included in the contingency appropriations are 50 FTEs for the implementation of legislation:
 - 46 FTEs for House Bill 718
 - 4 FTEs for Senate Bill 224



Other Items of Interest

The Conference Committee's recommended budget includes the following:

- \$2.6 million appropriated to the Texas Department of Criminal Justice for the production of additional license plates for TxDMV.
- Requires TxDMV to produce a long-range facilities plan regarding RSCs and submit the plan no later than December 1, 2024 to the Legislative Budget Board.



Board Meeting Date: 6/8/2023
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Salem Chuah, Internal Audit Division Director
Agenda Item: 11.B
Subject: Internal Audit Division Status Update

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

This status update provides information on current Internal Audit Division (IAD) activities including internal engagements, external engagements, and administrative items.

FINANCIAL IMPACT

None.

BACKGROUND AND DISCUSSION

Internal Engagements

IAD has three ongoing internal engagements: the risk assessment in preparation for the FY 2024 Internal Audit Plan, an audit on selected Regional Service Centers (RSCs), and an audit on the hiring process.

The enterprise-wide risk assessment to identify risk areas to include in the FY 2024 Internal Audit Plan is in the planning phase. IAD is meeting with every division to identify and rate risk areas within the Department. Risks are evaluated based on operational, financial, compliance, and reputational impact as well as process maturity and mitigating controls. The risk assessment is expected to be completed in July 2023.

The audit of selected RSCs is in the planning phase. IAD validated the use of the Organizational Culture Assessment Instrument, selected the four (4) RSCs to audit, obtained information on how to test transactions, and prepared customer survey questions. IAD is wrapping up the planning phase and will move into fieldwork later this month. The audit is expected to be completed in Fall 2023.

The hiring process audit is in the fieldwork phase. IAD selected a sample of employees and tested if the employment verification process was followed, whether background checks were completed, and whether eligible candidates were interviewed. IAD also benchmarked the hiring process to determine opportunities for improvement. The audit is expected to be completed in July 2023.

External Engagements

The Comptroller of Public Accounts (CPA) completed its desk audit on dual/multiple employment compliance and released its report on May 2, 2023. The objective was to ensure agencies and employees follow state law and

regulations concerning dual or multiple employment, including appropriate overtime pay in accordance with federal law and to ensure benefits provided to a person employed by more than one agency do not exceed the benefits provided for a single full-time employee, such as insurance, leave, and lifetime service credit. The scope was employees who had potential dual or multiple employment from September 1, 2016, to August 31, 2019.

CPA audited 82 TxDMV employees and had no findings on our employees.

Administrative Reports

Internal Audit Awareness Month is celebrated every May to promote the significance of the internal auditing profession within organizations. It serves as a time to raise awareness of the crucial role internal auditors play in evaluating and improving an organization's internal controls, risk management process, and governance structure. This year, IAD held a Lunch & Learn where attendees participated in an interactive polling session and learned about the IAD team and the services IAD provides to the organization.

IAD is working on a Request for Qualifications (RFQ) for a qualified vendor to perform performance and information technology audit and advisory services. This RFQ is needed as our current contract is expiring at the end of the fiscal year. This RFQ will allow IAD to use specialized expertise and augment its staff.

The IAD Director attended the Government Finance Officers Association's 2023 Annual Conference which included sessions on leadership, Payment Card Industry compliance, financial statement disclosures, accounting, and auditing. IAD staff also attended training from the State Auditor's Office and the Association of Certified Fraud Examiners.

Internal Audit Division Status

Internal Engagements



Planning

- FY 2024 Risk Assessment
- Regional Service Centers Audit



Fieldwork

- Hiring Process Audit



Reporting

N/A



Completed

N/A

External Engagements



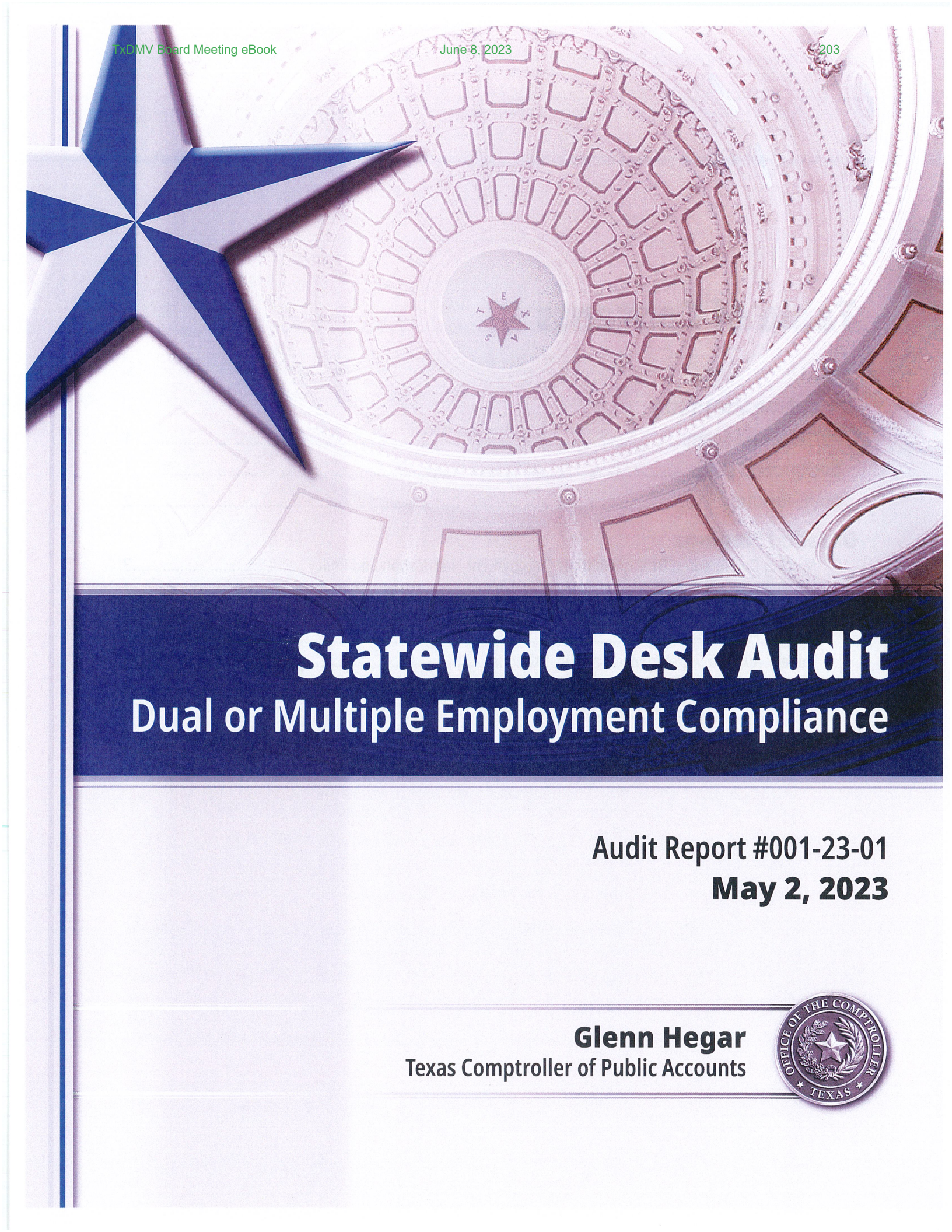
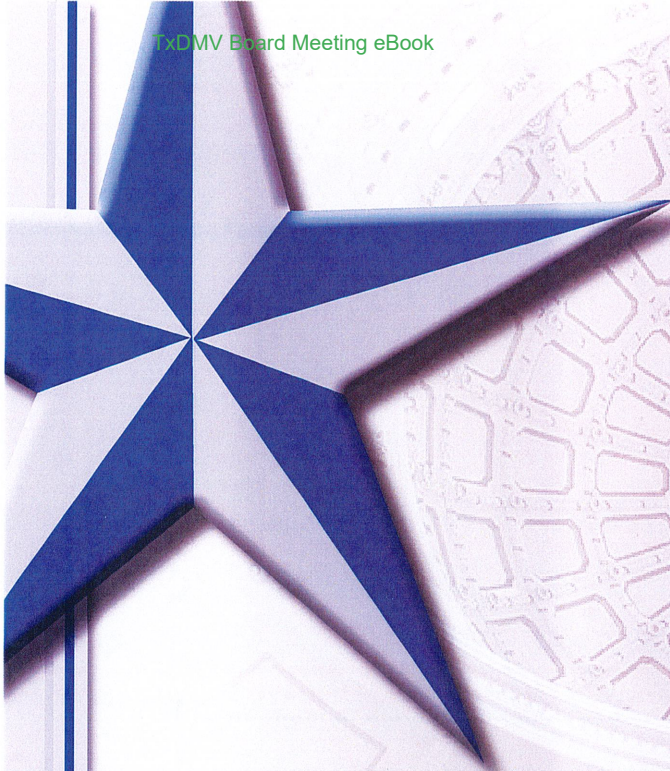
In-Progress

N/A



Completed

- Comptroller of Public Accounts: Dual/Multiple Employment Desk Audit



Statewide Desk Audit

Dual or Multiple Employment Compliance

Audit Report #001-23-01
May 2, 2023

Glenn Hegar
Texas Comptroller of Public Accounts





Executive Summary

Purpose and Scope

The Comptroller of Public Accounts (Comptroller's office) performed a desk audit of dual or multiple employment compliance and overtime eligibility at state agencies (agencies) and institutions of higher education (institutions).

The objectives of this audit were to ensure agencies and employees follow state law and regulations concerning dual or multiple employment, including appropriate overtime pay for eligible employees in accordance with the [Fair Labor Standards Act \(FLSA\), 29 United States Code, Sections 201 to 219 \(PDF\)](#), and to ensure benefits provided to a person employed by more than one agency do not exceed the benefits provided for a single full-time employee, such as insurance, leave and lifetime service credit.

Using ad hoc analysis reports from the Uniform Statewide Payroll/Personnel System (USPS), the Standardized Payroll/Personnel Reporting System (SPRS) and the Human Resource Information System (HRIS), auditors identified employees who had potential dual or multiple employment from Sept. 1, 2016, to Aug. 31, 2019. This desk audit was conducted in accordance with Texas Government Code, Section 403.071.

The audit scope included analyzing employment data for employees who work for two or more state employers, and reviewing supporting documentation and dual/multiple employment information from 159 agencies' and institutions' internal systems to determine if:

- Employees are eligible for overtime pay in accordance with the FLSA.
- Employees notified the employing entities about the dual/multiple employment status.
- Communication/agreement between employing entities occurred to coordinate work schedules, to determine which entity is responsible for paying overtime, and to ensure the employees are paid or credited with all the time worked over 40 hours per week.
- Employers are maintaining separate leave records for these purposes.
- Employees are not receiving benefits that exceed the benefits provided for a single full-time employee.

Background

The state of Texas is considered a single employer for purposes of FLSA, so all the time worked in a week by an employee employed at more than one agency or institution must be considered when computing overtime. Accordingly, if the dually employed employee is subject to FLSA provisions at one of the employers, the employee is FLSA-covered under all employments.



Detailed Findings

Missing Documented Dual or Multiple Employment Notification and Policy

When an employee seeks dual or multiple employment, the employee must inform the current and potential employing entities before accepting an additional employment with the second entity. The current employer must inform the employee of the requirements, and is also responsible for contacting the second entity to coordinate work schedules and ensure the employee is paid or credited for all the time worked over 40 hours per week. See [Texas Government Code, Section 667.007](#) and [Texas Payroll/Personnel Resource – Dual or Multiple Employments](#).

The supporting documentation provided by the agencies and institutions selected for the audit showed that of the 472 employees, only 64 employees had a documented dual or multiple employment notification form or internal system information on file. See [Table 2](#) for detailed information.

Additionally, four entities had neither a dual employment policy nor a documented dual notification form or related internal system information.

As a result of this audit, some agencies and institutions stated they would inform current and future employees about the existing internal systems and forms for reporting dual employment; some agencies and institutions created business processes and formed dual employment task forces; and some agencies and institutions updated their dual employment policies and procedures and revised their dual employment forms. Additionally, some entities informed their employees about the financial consequences of failing to report dual or multiple employments.

Recommendation/Requirement

Agencies and institutions should establish an official method to document employee notifications of potential second employment, such as a form or an internal system, and should have their human resource and/or payroll departments follow up on these notifications by contacting the existing or potential dual employer. They should also establish a policy to ensure their employees are aware of the requirements and will complete the dual employment notification form/internal system information when applicable.

Missing Proof of Cooperation and/or Agreement

When an employee notifies their current employer that they are or will be dually or multiply employed, the current agency should contact the potential employer(s). Both employers should communicate to determine which agency or institution is responsible for ensuring the employee is properly compensated according to the FLSA overtime provisions. See [Texas Government Code, Section 667.006](#).



Auditors also noted that the same employee had retired from an institution in 2012, then returned to state employment in 2014, subsequently receiving \$23,986.28 longevity payments in error from the institution the employee joined in 2014. The employee also received erroneous longevity payments from the second institution, in an amount yet to be calculated. Employees who retire from state employment on or after June 1, 2005, are ineligible for longevity pay on reemployment with the state. Both employers intend to recover the longevity overpayment.

Recommendation/Requirement

Agencies and institutions with dually employed employees should collaborate to ensure those employees do not receive benefits, including leave accruals, that exceed the benefits provided for a single full-time employee. Agencies and institutions should also ensure employees are paid appropriately for overtime.

Incorrect HRIS Reporting

Six institutions failed to correctly report 68 instances of personnel information for dually employed employees to HRIS. There were 59 instances of incorrect FLSA indicators in HRIS. The incorrect FLSA indicators could impact eligibility for overtime payments. In seven instances, the comptroller objects reported to HRIS were incorrect. Additionally, there was one incorrect termination date and one instance of a new hire reported to HRIS in error.

The Comptroller's office collects and maintains payroll and personnel information on all state employees. The information is used to report statistics to legislative and oversight bodies, media and the public. Institutions must report personnel and payroll events to HRIS as outlined in [34 Texas Administrative Code Section 5.41\(h\)-\(j\)](#).

Recommendation/Requirement

Institutions of higher education must ensure all payroll and personnel transactions are reported to HRIS correctly and in a timely manner. The data submitted to HRIS must be made in the manner, frequency and form required by the Comptroller's office.



Agency #	Agency Name	# Employees Audited
352	Bond Review Board	2
356	Texas Ethics Commission	12
359	Office of Public Insurance Counsel	2
360	State Office of Administrative Hearings	1
362	Texas Lottery Commission	33
364	Health Professions Council	1
401	Texas Military Department	548
403	Texas Veterans Commission	36
405	Department of Public Safety	328
407	Texas Commission on Law Enforcement	5
409	Commission on Jail Standards	3
411	Texas Commission on Fire Protection	2
448	Office of Injured Employee Counsel	30
450	Department of Savings and Mortgage Lending - Semi-Independent	9
451	Texas Department of Banking - Semi-Independent	9
452	Texas Department of Licensing and Regulation	59
454	Texas Department of Insurance	138
455	Railroad Commission of Texas	48
456	Texas State Board of Plumbing Examiners	7
457	Texas State Board of Public Accountancy - Semi-Independent	8
458	Texas Alcoholic Beverage Commission	37
460	Texas Board of Professional Engineers and Land Surveyors - Semi-Independent	6
466	Office of Consumer Credit Commissioner - Semi-Independent	10
469	Credit Union Department - Semi-Independent	3
473	Public Utility Commission of Texas	14
475	Office of Public Utility Counsel	5
476	Texas Racing Commission	6
477	Commission on State Emergency Communications	6
479	State Office of Risk Management	16
481	Texas Board of Professional Geoscientists	2
503	Texas Medical Board	45
504	State Board of Dental Examiners	31
506	University of Texas M. D. Anderson Cancer Center	437
507	Texas Board of Nursing	15
508	Texas Board of Chiropractic Examiners	5
514	Texas Optometry Board	2
515	Texas State Board of Pharmacy	19



Agency #	Agency Name	# Employees Audited
723	University of Texas Medical Branch at Galveston	191
724	University of Texas at El Paso	88
727	Texas A&M Transportation Institute	173
729	University of Texas Southwestern Medical Center	235
730	University of Houston	260
731	Texas Woman's University	237
732	Texas A&M University - Kingsville	115
733	Texas Tech University	342
734	Lamar University - Beaumont	92
735	Midwestern State University	26
737	Angelo State University	34
738	University of Texas at Dallas	185
739	Texas Tech University Health Sciences Center	241
742	University of Texas of the Permian Basin	52
743	University of Texas at San Antonio	229
744	University of Texas Health Science Center at Houston	392
745	University of Texas Health Science Center at San Antonio	144
746	University of Texas Rio Grande Valley	118
749	Texas A&M University at San Antonio	68
750	University of Texas at Tyler	97
751	Texas A&M University - Commerce	80
752	University of North Texas	319
753	Sam Houston State University	76
754	Texas State University	261
755	Stephen F. Austin State University	83
756	Sul Ross State University	22
757	West Texas A&M University	59
758	Texas State University System	2
759	University of Houston - Clear Lake	47
760	Texas A&M University - Corpus Christi	114
761	Texas A&M International University	58
763	University of North Texas Health Science Center at Fort Worth	76
764	Texas A&M University - Texarkana	25
765	University of Houston - Victoria	19
768	Texas Tech University System	41
769	University of North Texas System	54
770	Texas A&M University - Central Texas	38

**Table 2: Audit Results by State Agencies and Institutions**

Agency #	Agency Name	Audit Results	Agency Response
302	Office of the Attorney General	<ul style="list-style-type: none"> OAG did not have a documented dual notification for three employees. OAG did not coordinate with the other entities for three employees. 	The agency agreed with the findings.
304	Comptroller of Public Accounts	CPA did not coordinate with the other entities for two employees.	The agency agreed with the finding.
306	Texas State Library and Archives Commission	TSLAC did not coordinate with the other entity for one employee.	The agency agreed with the finding.
307	Secretary of State	<ul style="list-style-type: none"> SOS did not have a documented dual notification for one employee. SOS did not coordinate with the other entity for one employee. 	The agency agreed with the findings.
320	Texas Workforce Commission	<ul style="list-style-type: none"> TWC did not have a documented dual notification for six employees. TWC did not coordinate with the other entities for six employees. 	The agency agreed with the findings.
332	Texas Department of Housing and Community Affairs	<ul style="list-style-type: none"> TDHCA did not have a documented dual notification for three employees. TDHCA did not coordinate with the other entities for three employees. 	The agency agreed with the findings.
405	Texas Department of Public Safety	TXDPS did not coordinate with the other entities for 22 employees.	The agency did not provide a response.
458	Texas Alcoholic Beverage Commission	<ul style="list-style-type: none"> TABC did not coordinate with the other entity for one employee. No dual employment policy. 	The agency agreed with the findings.
460	Texas Board of Professional Engineers and Land Surveyors - Semi-Independent	PELS did not coordinate with the other entities for two employees.	The agency agreed with the finding.
506	University of Texas M.D. Anderson Cancer Center	<ul style="list-style-type: none"> The institution did not have a documented dual notification for 44 employees. The institution did not coordinate with the other employing entities for 44 employees. 	The institution agreed with the findings.
508	Texas Board of Chiropractic Examiners	<ul style="list-style-type: none"> TBCE did not have a documented dual notification for one employee. TBCE did not coordinate with the other entity for one employee. 	The agency agreed with the findings.
529	Health and Human Services Commission	<ul style="list-style-type: none"> HHSC did not have a documented dual notification for nine employees. HHSC did not coordinate with the other entities for nine employees. 	The agency agreed with the findings.



Agency #	Agency Name	Audit Results	Agency Response
714	University of Texas at Arlington	<ul style="list-style-type: none"> The institution did not have a documented dual notification for 17 employees. The institution did not coordinate with the other entities for 17 employees. 	The institution agreed with the findings.
715	Prairie View A&M University	<ul style="list-style-type: none"> The institution did not have a documented dual notification for one employee. The institution did not coordinate with the other entity for one employee. 	The institution agreed with the findings.
717	Texas Southern University	<ul style="list-style-type: none"> The institution did not have a documented dual notification for 12 employees. The institution did not coordinate with the other entities for 12 employees. One employee received longevity pay in error because they were a return-to-work retiree, potentially earned accruals for two FTEs and is potentially due overtime pay. The institution reported 48 incorrect FLSA indicators to HRIS. 	The institution agreed with the findings.
720	University of Texas System	<ul style="list-style-type: none"> The institution did not have a documented dual notification for four employees. The institution did not coordinate with the other entities for four employees. 	The institution agreed with the findings.
721	University of Texas at Austin	<ul style="list-style-type: none"> The institution did not have a documented dual notification for 20 employees. The institution did not coordinate with the other entities for 20 employees. 	The institution agreed with the findings.
723	University of Texas Medical Branch at Galveston	<ul style="list-style-type: none"> The institution did not have a documented dual notification for four employees. The institution did not coordinate with the other entities for four employees. 	The institution agreed with the findings.
724	University of Texas at El Paso	<ul style="list-style-type: none"> The institution did not have a documented dual notification for four employees. The institution did not coordinate with the other entities for four employees. 	The institution agreed with the findings.
727	Texas A&M Transportation Institute	The institution did not report termination for one employee to HRIS.	The institution agreed with the finding.
729	University of Texas Southwestern Medical Center	The institution did not coordinate with the other entities for five employees.	The institution agreed with the finding.



Agency #	Agency Name	Audit Results	Agency Response
743	University of Texas at San Antonio	<ul style="list-style-type: none"> The institution did not have a documented dual notification for 38 employees. The institution did not coordinate with the other entities for 38 employees. 	The institution agreed with the findings.
744	University of Texas Health Science Center at Houston	<ul style="list-style-type: none"> The institution did not have a documented dual notification for 19 employees. The institution did not coordinate with the other entities for 19 employees. 	The institution agreed with the findings.
745	University of Texas Health Science Center at San Antonio	<ul style="list-style-type: none"> The institution did not have a documented dual notification for 27 employees. The institution did not coordinate with the other entities for 27 employees. 	The institution agreed with the findings.
746	University of Texas Rio Grande Valley	<ul style="list-style-type: none"> The institution did not coordinate with the other entities for three employees. No dual employment policy. 	The institution agreed with the finding.
749	Texas A&M University - San Antonio	<ul style="list-style-type: none"> The institution did not have a documented dual notification for one employee. The institution did not coordinate with the other entity for one employee. 	The institution agreed with the findings.
750	University of Texas at Tyler	<ul style="list-style-type: none"> The institution did not have a documented dual notification for six employees. The institution did not coordinate with the other entities for six employees. No dual employment policy. 	The institution agreed with the findings.
752	University of North Texas	<ul style="list-style-type: none"> The institution did not have a documented dual notification for seven employees. The institution did not coordinate with the other entities for seven employees. 	The institution agreed with the findings.
753	Sam Houston State University	<ul style="list-style-type: none"> The institution did not have a documented dual notification for five employees. The institution did not have an agreement between entities for five employees. 	The institution agreed with the findings.
754	Texas State University	<ul style="list-style-type: none"> The institution did not have a documented dual notification for 12 employees. The institution did not coordinate with the other entities for 12 employees. 	The institution agreed with the findings.
756	Sul Ross State University	The institution did not coordinate with the other entities for two employees.	The institution agreed with the finding.
757	West Texas A&M University	<ul style="list-style-type: none"> The institution did not have a documented dual notification for five employees. The institution did not coordinate with the other entities for five employees. 	The institution agreed with the findings.

Board Policy Documents

Governance Process (10/13/11)

Strategic Planning (10/13/11)

Board Vision (4/7/16)

Agency Boundaries (9/13/12)

Texas Department of Motor Vehicles TxDMV Board Governance Policy

1. PURPOSE

The directives presented in this policy address board governance of the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. The TxDMV Board Governance Policy shall be one that is comprehensive and pioneering in its scope.

3. POLICY

3.1. TxDMV Board Governing Style

The Board shall govern according to the following general principles: (a) a vision for the agency, (b) diversity in points of view, (c) strategic leadership, providing day-to-day detail as necessary to achieve the agency vision, (d) clear distinction of Board and Executive Director roles, (e) collective decision making, (f) react proactively rather than reactively and with a strategic approach. Accordingly:

3.1.1. The Board shall provide strategic leadership to TxDMV. In order to do this, the Board shall:

3.1.1.1. Be proactive and visionary in its thinking.

3.1.1.2. Encourage thoughtful deliberation, incorporating a diversity of viewpoints.

3.1.1.3. Work together as colleagues, encouraging mutual support and good humor.

3.1.1.4. Have the courage to lead and make difficult decisions.

3.1.1.5. Listen to the customers and stakeholders needs and objectives.

3.1.1.6. Anticipate the future, keeping informed of issues and trends that may affect the mission and organizational health of the TxDMV.

3.1.1.7. Make decisions based on an understanding that is developed by appropriate and complete stakeholder participation in the process of identifying the needs of the motoring public, motor vehicle industries,

and best practices in accordance with the mission and vision of the agency.

- 3.1.1.8. Commit to excellence in governance, including periodic monitoring, assessing and improving its own performance.
- 3.1.2. The Board shall create the linkage between the Board and the operations of the agency, via the Executive Director when policy or a directive is in order.
- 3.1.3. The Board shall cultivate a sense of group responsibility, accepting responsibility for excellence in governance. The Board shall be the initiator of policy, not merely respond to staff initiatives. The Board shall not use the expertise of individual members to substitute for the judgment of the board, although the expertise of individual members may be used to enhance the understanding of the Board as a body.
- 3.1.4. The Board shall govern the agency through the careful establishment of policies reflecting the board's values and perspectives, always focusing on the goals to be achieved and not the day-to-day administrative functions.
- 3.1.5. Continual Board development shall include orientation of new Board members in the board's governance process and periodic board discussion of how to improve its governance process.
- 3.1.6. The Board members shall fulfill group obligations, encouraging member involvement.
- 3.1.7. The Board shall evaluate its processes and performances periodically and make improvements as necessary to achieve premier governance standards.
- 3.1.8. Members shall respect confidentiality as is appropriate to issues of a sensitive nature.

3.2. TxDMV Board Primary Functions/Characteristics

TxDMV Board Governance can be seen as evolving over time. The system must be flexible and evolutionary. The functions and characteristics of the TxDMV governance system are:

- 3.2.1. Outreach
 - 3.2.1.1. Monitoring emerging trends, needs, expectations, and problems from the motoring public and the motor vehicle industries.
 - 3.2.1.2. Soliciting input from a broad base of stakeholders.

3.2.2. Stewardship

3.2.2.1. Challenging the framework and vision of the agency.

3.2.2.2. Maintaining a forward looking perspective.

3.2.2.3. Ensuring the evolution, capacity and robustness of the agency so it remains flexible and nimble.

3.2.3. Oversight of Operational Structure and Operations

3.2.3.1. Accountability functions.

3.2.3.2. Fiduciary responsibility.

3.2.3.3. Checks and balances on operations from a policy perspective.

3.2.3.4. Protecting the integrity of the agency.

3.2.4. Ambassadorial and Legitimizing

3.2.4.1. Promotion of the organization to the external stakeholders, including the Texas Legislature, based on the vision of the agency.

3.2.4.2. Ensuring the interests of a broad network of stakeholders are represented.

3.2.4.3. Board members lend their positional, professional and personal credibility to the organization through their position on the board.

3.2.5. Self-reflection and Assessment

3.2.5.1. Regular reviews of the functions and effectiveness of the Board itself.

3.2.5.2. Assessing the level of trust within the Board and the effectiveness of the group processes.

3.3. Board Governance Investment

Because poor governance costs more than learning to govern well, the Board shall invest in its governance capacity. Accordingly:

3.3.1. Board skills, methods, and supports shall be sufficient to ensure governing with excellence.

- 3.3.1.1. Training and retraining shall be used liberally to orient new members, as well as maintain and increase existing member skills and understanding.
- 3.3.1.2. Outside monitoring assistance shall be arranged so that the board can exercise confident control over agency performance. This includes, but is not limited to, financial audits.
- 3.3.1.3. Outreach mechanisms shall be used as needed to ensure the Board's ability to listen to stakeholder viewpoints and values.
- 3.3.1.4. Other activities as needed to ensure the Board's ability to fulfill its ethical and legal obligations and to represent and link to the motoring public and the various motor vehicle industries.
- 3.3.2. The Board shall establish its cost of governance and it will be integrated into strategic planning and the agency's annual budgeting process.

3.4. Practice Discipline and Assess Performance

The Board shall ensure the integrity of the board's process by practicing discipline in Board behavior and continuously working to improve its performance. Accordingly:

- 3.4.1. The assigned result is that the Board operates consistently with its own rules and those legitimately imposed on it from outside the organization.
 - 3.4.1.1. Meeting discussion content shall consist solely of issues that clearly belong to the Board to decide or to monitor according to policy, rule and law. Meeting discussion shall be focused on performance targets, performance boundaries, action on items of Board authority such as conduct of administrative hearings, proposal, discussion and approval of administrative rule-making and discussion and approval of all strategic planning and fiscal matters of the agency.
 - 3.4.1.2. Board discussion during meetings shall be limited to topics posted on the agenda.
 - 3.4.1.3. Adequate time shall be given for deliberation which shall be respectful, brief, and to the point.
- 3.4.2. The Board shall strengthen its governing capacity by periodically assessing its own performance with respect to its governance model. Possible areas of assessment include, but are not limited to, the following:
 - 3.4.2.1. Are we clear and in agreement about mission and purpose?

- 3.4.2.2. Are values shared?
- 3.4.2.3. Do we have a strong orientation for our new members?
- 3.4.2.4. What goals have we set and how well are we accomplishing them?
- 3.4.2.5. What can we do as a board to improve our performance in these areas?
- 3.4.2.6. Are we providing clear and relevant direction to the Executive Director, stakeholders and partners of the TxDMV?
- 3.4.3. The Board Chair shall periodically promote regular evaluation and feedback to the whole Board on the level of its effectiveness.

Texas Department of Motor Vehicles Strategic Planning Policy

1. PURPOSE

The directives presented in this policy address the annual Strategic Planning process at the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. TxDMV Strategic Planning Policy attempts to develop, document and expand its policy that is comprehensive in its scope in regards to the strategic planning process of the Board and the Department beyond that of the state strategic planning process.

3. POLICY

3.1. TxDMV Board Strategic Planning

This policy describes the context for strategic planning at TxDMV and the way in which the strategic plan shall be developed and communicated.

- 3.1.1. The Board is responsible for the strategic direction of the organization, which includes the vision, mission, values, strategic goals, and strategic objectives.
- 3.1.2. TxDMV shall use a 5-year strategic planning cycle, which shall be reviewed and updated annually, or as needed.
- 3.1.3. The 5-year strategic plan shall be informed by but not confined by requirements and directions of state and other funding bodies.
- 3.1.4. In developing strategic directions, the Board shall seek input from stakeholders, the industries served, and the public.
- 3.1.5. The Board shall:
 - 3.1.5.1. Ensure that it reviews the identification of and communication with its stakeholders at least annually.
 - 3.1.5.2. Discuss with agency staff, representatives of the industries served, and the public before determining or substantially changing strategic directions.

- 3.1.5.3. Ensure it receives continuous input about strategic directions and agency performance through periodic reporting processes.
- 3.1.6. The Board is responsible for a 5-year strategic plan that shall identify the key priorities and objectives of the organization, including but not limited to:
 - 3.1.6.1. The creation of meaningful vision, mission, and values statements.
 - 3.1.6.2. The establishment of a Customer Value Proposition that clearly articulates essential customer expectations.
 - 3.1.6.3. A Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis, to be updated annually.
 - 3.1.6.4. An assessment of external factors or trends (i.e., customer needs, political factors, economic factors, industry trends, technology factors, uncertainties, etc.)
 - 3.1.6.5. Development of the specific goals and objectives the Department must achieve and a timeline for action.
 - 3.1.6.6. Identification of the key performance indicators to measure success and the initiatives that shall drive results.
 - 3.1.6.7. Engage staff at all levels of the organization, through the executive director, in the development of the strategic plan through surveys, interviews, focus groups, and regular communication.
 - 3.1.6.8. Ensure the strategic planning process produces the data necessary for LBB/GOBPP state required compliance while expanding and enhancing the strategic plan to support the needs of the TxDMV. The overall strategic plan shall be used as a tool for strategic management.
- 3.1.7. The Board delegates to the Executive Director the responsibility for **implementing** the agency's strategic direction through the development of agency wide and divisional operational plans.

Texas Department of Motor Vehicles TxDMV Goals and Objectives

1. PURPOSE

The information presented in this policy addresses the goals and key objectives of the Board of the Texas Department of Motor Vehicles (TxDMV) as they relate to the mission, vision, and values of the TxDMV.

2. SCOPE

The scope of this policy is to define the desired state the TxDMV Board is working to achieve. This policy is designed to be inspirational in outlining the desired state of the agency that supports the TxDMV Board vision and meeting agency goals.

3. TxDMV MISSION

To serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.

4. TxDMV VISION

The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

5. TxDMV VALUES

To earn the trust and faith of all citizens of Texas with transparency, efficiency, excellence, accountability, and putting stakeholders first.

- 5.1. Transparency** – Being open and inclusive in all we do.
- 5.2. Efficiency** – Being good stewards of state resources by providing products and services in the most cost-effective manner possible.
- 5.3. Excellence** – Working diligently to achieve the highest standards.
- 5.4. Accountability** – Accepting responsibility for all we do, collectively and as individuals.
- 5.5. Stakeholders** – Putting customers and stakeholders first, always.

6. TxDMV GOALS

6.1. GOAL 1 – Performance Driven

The TxDMV shall be a performance driven agency in its operations whether it is in customer service, licensing, permitting, enforcement or rule-making. At all times the TxDMV shall mirror in its performance the expectations of its customers and stakeholder by effective, efficient, customer-focused, on-time, fair, predictable and thorough service or decisions.

6.1.1. Key Objective 1

The TxDMV shall be an agency that is retail-oriented in its approach. To accomplish this orientation TxDMV shall concentrate the focus of the agency on:

- 6.1.1.1. Delivering its products and services to all of its customers and stakeholders in a manner that recognizes that their needs come first. These needs must be positively and proactively met. TxDMV works for and with its customers and stakeholders, not the other way around.
- 6.1.1.2. Operating the agency's licensing and registration functions in a manner akin to how a private, for-profit business. As a private, for-profit business, TxDMV would have to listen to its customers and stakeholders and implement best practices to meet their needs or its services would no longer be profitable or necessary. Act and react in a manner that understands how to perform without a government safety net and going out of business.
- 6.1.1.3. Simplify the production and distribution processes and ease of doing business with the TxDMV. Adapting and maintaining a business value of continuous improvement is central to TxDMV operations and processes.
- 6.1.1.4. All operations of the TxDMV shall stand on their own merits operationally and financially. If a current process does not make sense then TxDMV shall work within legislative and legal constraints to redesign or discard it. If a current process does not make or save money for the state and/or its customers or stakeholders then TxDMV shall work within legislative and legal constraints to redesign or discard it. TxDMV shall operate as efficiently and effective as possible in terms of financial and personnel needs. Divisions should focus on cost savings without sacrificing performance. Division directors are accountable for meeting these needs and applicable measures. All division directors are collectively responsible for the performance of TxDMV as a whole.
- 6.1.1.5. Focus on revenue generation for transportation needs as well as the needs of its customers.
- 6.1.1.6. Decisions regarding the TxDMV divisions should be based on the overriding business need of each division to meet or provide a specific service demand, with the understanding and coordination of overarching agency-wide needs.

- 6.1.1.7. Developing and regularly updating a long-range Statewide Plan describing total system needs, establishing overarching statewide goals, and ensuring progress toward those goals.
- 6.1.1.8. The TxDMV shall establish a transparent, well-defined, and understandable system of project management within the TxDMV that integrates project milestones, forecasts, and priorities.
- 6.1.1.9. The TxDMV shall develop detailed work programs driven by milestones for major projects and other statewide goals for all TxDMV divisions.
- 6.1.1.10. The TxDMV, with input from stakeholders and policymakers, shall measure and report on progress in meeting goals and milestones for major projects and other statewide goals.

6.2. GOAL 2 – Optimized Services and Innovation

The TxDMV shall be an innovative, forward thinking agency that looks for ways to promote the economic well-being and development of the industries it serves as well as the State of Texas within the legislative boundaries that have been established for the agency.

6.2.1. Key Objective 1

The TxDMV shall achieve operational, cultural, structural and financial independence from other state agencies.

- 6.2.1.1. Build the TxDMV identity. This means that TxDMV shall make customers aware of what services we offer and how they can take advantage of those services.
- 6.2.1.2. Build the TxDMV brand. This means that TxDMV shall reach out to the stakeholders, industries we serve and the public, being proactive in addressing and anticipating their needs.
- 6.2.1.3. Determine immediate, future, and long term facility and capital needs. TxDMV needs its own stand-alone facility and IT system as soon as possible. In connection with these needs, TxDMV shall identify efficient and effective ways to pay for them without unduly burdening either the state, its customers or stakeholders.
- 6.2.1.4. All regulations, enforcement actions and decision at TxDMV shall be made in a timely, fair and predictable manner.

6.2.2. Key Objective 2

Provide continuous education training on business trends in the industry with a particular emphasis on activities in Texas.

6.2.3. Key Objective 3

Provide continuous outreach services to all customers and stakeholders to access their respective needs and wants. This includes helping frame legislative or regulatory issues for consideration by other bodies including the legislature.

6.2.4. Key Objective 4

Examine all fees to determine their individual worth and reasonableness of amount. No fee shall be charged that cannot be defended financially and operationally.

6.3. GOAL 3 – Customer-centric

The TxDMV shall be a customer-centric agency that delivers today's services and decisions in a positive, solution-seeking manner while ensuring continuous, consistent and meaningful public and stakeholder involvement in shaping the TxDMV of tomorrow.

6.3.1. Key Objective 1

The TxDMV shall seek to serve its customer base through a creative and retail oriented approach to support the needs of its industries and customers.

6.3.2. Key Objective 2

The TxDMV shall develop and implement a public involvement policy that guides and encourages meaningful public involvement efforts agency-wide.

6.3.3. Key Objective 3

The TxDMV shall develop standard procedures for documenting, tracking, and analyzing customer complaint data. Successful problem resolution metrics should be monitored to support continuous improvement activities that shall permanently improve customer facing processes.

6.3.4. Key Objective 4

The TxDMV shall provide a formal process for staff with similar responsibilities to share best practices information.

6.3.5. Key Objective 5



The TxDMV shall provide central coordination of the Department's outreach campaigns.

6.3.6. Key Objective 6

The TxDMV shall develop and expand user friendly, convenient, and efficient website applications.

6.3.7. Key Objective 7

TxDmv shall timely meet all legislative requests and mandates.

Agency Operational Boundaries as Defined by Department Policies of the TxDMV Board (Board)

The Board is responsible for the policy direction of the agency. The Board's official connection to the day-to-day operation of the Texas Department of Motor Vehicles (TxDMV) and the conduct of its business is through the Executive Director of the TxDMV (ED) who is appointed by the Board and serves at its pleasure. The authority and accountability for the day-to-day operations of the agency and all members of the staff, except those members who report directly to the Board, is the sole responsibility of the ED.

In accordance with its policy-making authority the Board has established the following policy boundaries for the agency. The intent of the boundaries is not to limit the ability of the ED and agency staff to manage the day-to-day operations of the agency. To the contrary, the intent of the boundaries is to more clearly define the roles and responsibilities of the Board and the ED so as to liberate the staff from any uncertainty as to limitations on their authority to act in the best interest of the agency. The ED and staff should have certainty that they can operate on a daily basis as they see fit without having to worry about prior Board consultation or subsequent Board reversal of their acts.

The ED and all agency employees shall act at all times in an exemplary manner consistent with the responsibilities and expectations vested in their positions. The ED and all agency employees shall act in a manner consistent with Board policies as well as with those practices, activities, decisions, and organizational circumstances that are legal, prudent, and ethical. It is the responsibility of the ED to ensure that all agency employees adhere to these boundaries.

Accordingly, the TxDMV boundaries are as follows:

1. The day-to-day operations of the agency should be conducted in a manner consistent with the vision, mission, values, strategic framework, and performance metrics as established by the Board. These elements must not be disregarded or jeopardized in any way.
2. A team-oriented approach must be followed on all enterprise-wide decisions to ensure openness and transparency both internally and externally.
3. The agency must guard against allowing any financial conditions and decision which risk adverse fiscal consequences, compromise Board financial priorities, or fail to

show an acceptable level of foresight as related to the needs and benefits of agency initiatives.

4. The agency must provide timely, accurate, and honest information that will afford the Board, public, stakeholders, executive branch and the legislature the best ability to evaluate all sides of an issue or opportunity before forming an opinion or taking action on it. Any information provided that is intentionally untimely, inaccurate, misleading or one-sided will not be tolerated.
5. The agency must take all reasonable care to avoid or identify in a timely manner all conflicts of interest or even the appearance of impropriety in awarding purchases, negotiating contracts or in hiring employees.
6. The agency must maintain adequate administrative policies and procedures that are understandable and aid in staff recruitment, development and retention.
7. The agency must maintain an organizational structure that develops and promotes the program areas from an enterprise-wide perspective. No organizational silos or sub-agencies will be allowed. We are the TxDMV.
8. The agency must empower its entire staff to deliver a positive customer experience to every TxDMV customer, stakeholder or vendor to reduce their effort and make it easier for them to do business with the TxDMV.
9. The agency must at all times look to flattening its organizational structure to reduce cost as technology advances allow.
10. Agency staff shall anticipate and resolve all issues timely.
11. The agency must maximize the deployment and utilization of all of its assets – people, processes and capital equipment – in order to fully succeed.
12. The agency must not waste the goodwill and respect of our customers, stakeholders, executive branch and legislature. All communication shall be proper, honest, and transparent with timely follow-up when appropriate.
13. The agency should focus its work efforts to create value, make sure that processes, programs, or projects are properly designed, budgeted and vetted as appropriate with outside stakeholders to ensure our assumptions are correct so positive value continues to be created by the actions of the TxDMV.
14. The ED through his or her staff is responsible for the ongoing monitoring of all program and fiscal authorities and providing information to the Board to keep it apprised of all program progress and fiscal activities. This self-assessment must result in a product that adequately describes the accomplishment of all program

goals, objectives and outcomes as well as proposals to correct any identified problems.

15. In advance of all policy decisions that the Board is expected to make, the ED will provide pertinent information and ensure board members understand issues/matters related to the pending policy decision. Additionally, the ED or designee will develop a process for planning activities to be performed leading up to that particular policy decision and the timeframe for conducting these planning activities. It is imperative that the planning process describes not only when Board consideration will be expected but also when prior Board consultation and involvement in each planning activity will occur.
16. In seeking clarification on informational items Board members may directly approach the ED or his or her designee to obtain information to supplement, upgrade or enhance their knowledge and improve the Board's decision-making. Any Board member requests that require substantive work should come to the Board or Committee Chairs for direction.
17. The agency must seek stakeholder input as appropriate on matters that might affect them prior to public presentation of same to the Board.
18. The agency must measure results, track progress, and report out timely and consistently.
19. The ED and staff shall have the courage to admit a mistake or failure.
20. The ED and staff shall celebrate successes!

The Board expects the ED to work with agency staff to develop their written interpretation of each of the boundaries. The ED will then present this written interpretation to the Board prior to discussion between the Board and ED on the interpretation. The Board reserves the right to accept, reject or modify any interpretation. The intent is that the Board and the ED will come to a mutually agreeable interpretation of agency boundaries that will then form the basis of additional written thought on the part of the ED and staff as to how these boundaries will influence the actions of the agency.