

TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Friday,
September 12, 2014

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:

Johnny Walker, Chair
Laura Ryan, Vice-Chair
Robert "Barney" Barnwell, III
Luanne Caraway
Blake Ingram
Raymond Palacios
Victor Rodriguez
Marvin Rush
Joseph Slovacek

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
1. CALL TO ORDER	
A. Roll Call and Establishment of Quorum	5
B. Public Comment	none
C. Comments and Announcements from Chairman and Board Members and Executive Director	6
1. Employee recognition: Laura Dennis	
2. Title and Registration Group	
3. Hiring announcements	
4. Proposed 2015 Board Meeting Schedule	
5. Legislative Committee	
2. EXECUTIVE SESSION	10
A. Section 551.071	
B. Section 551.074	
3. ACTION ITEMS FROM EXECUTIVE SESSION	none
4. REPORTS	
A. Executive Director Reports	11
TxDMV-related activities identified as noteworthy, which may include reports.	
1. Houston Regional Service Center Relocation	
2. Bull Creek Property	
3. Centralized Accounting and Payroll/Personnel System (CAPPS) Update	
4. Temporary Permits	
5. Call Center	
6. Credit Card Update	
7. Legislative Appropriations Request Submittal	
8. HB 2394 Study on Feasibility of Titling Trailers	
9. Study on Cost to Process Motor Vehicle Registration and Titling Transactions	
10. TxDOT and TxDMV Interagency Contract	
11. Operational Plans	
B. Legislative Reports	19
1. 83rd Legislative Session Implementation Update	
• HB 2305 Single Sticker	
2. 84th Legislative Session Update	

C.	Internal Audit Updates	28
	1. Audit of the Automobile Burglary and Theft Prevention Authority	
	2. Audit Report on the Implementation of Recommendations P14-14	
	3. Staff Changes	
5.	RESOLUTIONS for INDIVIDUAL CONSIDERATION - CONTESTED CASES	
A.	Consideration of Proposal for Decision Appealing Arbitration Decision Occupations Code, Section 2301.466	32
	13-0010 LIC, New World Car Nissan, Inc. d/b/a World Car Nissan, Complainant v. Nissan North America, Inc.	
B.	Consideration of Proposal for Decision - Transfer of Ownership by Dealer Under Occupations Code, Section 2301.359	53
	13-008 LIC, SOAH Docket No. 608-13-4599 LIC, Budget Leasing, Inc. d/b/a Audi North Austin and Audi South Austin and Ricardo M. Weitz, Hi Tech Imports North, LLC, Hi Tech Imports South, LLC, Hi Tech Imports, LLC, v. Volkswagen Group of Am., Inc. And Porsche Cars North America	
6.	RESOLUTIONS FOR INDIVIDUAL CONSIDERATION - RULES	
A.	Adoption of Rules under Title 43, Texas Administrative Code	
	1. Chapter 215, Motor Vehicle Distribution	102
	Subchapter C, License, Generally	
	New Section 215.88, Criminal Offense and Action on License	
	New Section 215.89, Fitness	
	(Proposal Published May 3, 2014 - 39 Tex. Reg. 4211)	
	2. Chapter 217, Vehicle Titles and Registration	104
	New Subchapter H, Deputies	
	Section 217.111, Deputies	
	Withdraw Sections 217.112-217.116	
	(Proposal Published May 23, 2014 - 39 Tex. Reg. 3974, as New Section 217.111, Purpose and Scope)	
B.	Proposal of Rules under Title 43, Texas Administrative Code	
	1. Chapter 218, Motor Carriers	107

**Rule Review, Government Code
§2001.039**

2.	Chapter 217, Vehicle Titles and Registration Subchapter B, Motor Vehicle Registration Withdraw and Re-Propose, Section 217.44, Registration Reciprocity Agreements	107
7.	BRIEFINGS AND ACTION ITEMS	
A.	Specialty Plate Design	111
	<ul style="list-style-type: none">• Texas Daughters of the American Revolution (Texas GLO) - Non-Vendor Plate	
B.	Key Performance Measures	115
8.	ADJOURNMENT	117

P R O C E E D I N G S

1
2 MS. RYAN: Good morning. My name is Laura
3 Ryan. I am the vice chair of the Board of the Department
4 of Motor Vehicles. Chairman Walker was unable to attend
5 today's meeting, so I'll preside over today's board
6 meeting.

7 In accordance with Transportation Code Section
8 1001.023 and Texas Administrative Code Section 206.21(b),
9 I'm pleased to open the Board Meeting of the Texas
10 Department of Motor Vehicles. It is 8:01 and I'm now
11 calling the Board Meeting for September 12, 2014 to order,
12 and I want to note for the record that the public notice
13 of this hearing, containing all items of the agenda, was
14 filed with the Office of Secretary of State on August 28,
15 2014.

16 Before we begin today's meeting, please place
17 all cell phones and other communication devices in a
18 silent mode. If you wish to address the Board during
19 today's meeting, please complete a speaker's sheet at the
20 registration table. To comment on an agenda item, please
21 complete a yellow sheet and identify the agenda item. If
22 it is not an agenda item, we will take your comments
23 during the public comment portion of the meeting.

24 And now I'd like to have a roll call of the
25 Board members. Board Member Ingram?

1 MR. INGRAM: Present.

2 MS. RYAN: Board Member Palacios?

3 MR. PALACIOS: Here.

4 MS. RYAN: Board Member Rodriguez?

5 MR. RODRIGUEZ: Present.

6 MS. RYAN: Board Member Slovacek?

7 MR. SLOVACEK: Here.

8 MS. RYAN: And let the record reflect that I,
9 Laura Ryan, am here too. We have a quorum.

10 Also, let the record reflect that Chairman
11 Walker and Members Barnwell, Caraway and Rush are absent
12 today.

13 So I don't believe we have any public comment
14 that is not on an agenda item, or if so, I don't have the
15 card. Is that correct? Okay.

16 So we'll move to item C, comments and
17 announcements from chairman, board members and the
18 executive director. With that, I will start with Whitney.

19 MS. BREWSTER: Thank you, Madam Chair, members
20 of the board. For the record, my name is Whitney
21 Brewster, executive director.

22 I just wanted to take a moment to recognize one
23 of our outstanding employees for a job well done. Laura
24 Dennis. Go ahead and stand up, Laura. Laura Dennis
25 received the outstanding IT service and support award at

1 the 2014 Best of Texas Awards Ceremony, hosted by the
2 Texas Digital Government Summit.

3 Just a little bit about Laura. She has led her
4 team through multiple technology demands in a very public
5 facing agency. She and her team have made great strides
6 in application enhancement projects and they're heavily
7 involved in the RTS refactoring effort, as well as single
8 sticker and multiple other projects. I just wanted to
9 take a moment to recognize her for this outstanding
10 achievement and thank her for a job well done. Thank you,
11 Laura.

12 (Applause.)

13 MS. BREWSTER: Madam Chairman, if I may move on
14 to the second item under agenda item 1.C.

15 MS. RYAN: Yes, please.

16 MS. BREWSTER: With consultation from various
17 board members, as well as extensive internal agency
18 discussion, I intend to put together a working group
19 devoted to upcoming issues related to vehicle registration
20 and titling. One of the first items that I would like for
21 this working group to focus on is the different types of
22 deputies, as well as their duties and obligations. Other
23 efforts would be surrounding effective implementation of
24 WebDealer and e-Titles, and a number of other initiatives
25 that the agency would really value some stakeholder input

1 on.

2 This working group would be composed of
3 impacted stakeholder groups, including, but certainly not
4 limited to, tax assessor-collectors, dealers, and that's
5 used, new, salvage, as well as lienholders, insurance
6 companies, et cetera. Formal invitations will go out next
7 week to request participation by these stakeholder groups,
8 with the idea that we would start these meetings in
9 October. So this is just a briefing.

10 If I may continue. Hiring announcements, just
11 wanted to take a moment to let those in attendance know
12 that we have moved forward with hiring Jeremiah Kuntz as
13 the new Vehicle Titles and Registration Division director.

14 The board is obviously familiar with Jeremiah and his
15 involvement as the Government and Strategic Communications
16 Division director. Mr. Kuntz is very well aware of the
17 values of this agency, the importance of stakeholder
18 feedback, as well as the huge projects that the agency has
19 going on. I know that he will bring energy and enthusiasm
20 to VTR, and we welcome him in this new position.

21 Obviously, this creates a hole in Government
22 and Strategic Communications. Adam Shaivitz is the
23 interim director and will continue to serve in that
24 capacity until we are able to fill the position. The
25 position is currently posted and is scheduled to close by

1 Monday, the 15th.

2 MS. RYAN: Congratulations.

3 MS. BREWSTER: Madam Chair, that completes my
4 portion.

5 MS. RYAN: Okay. A couple of quick updates.
6 Board members, we've been provided with the schedule for
7 2015. I've been asked to ask that we all look that over.

8 If there's any conflicts known now, I guess get those
9 back to Terri and we'll then communicate and coordinate
10 with Johnny as well to try to get that locked down for our
11 benefit as well as staff's and stakeholders and industry
12 so they can put it on their calendar also.

13 I'd also like to make note that we will not
14 have an October board meeting, so for those that attend
15 regularly, you can update your schedule and calendar
16 there. Our next scheduled board meeting will be held
17 November 14.

18 I'll move on to item 1.C.5. Legislative
19 Committee updates. I believe we planned to have more of
20 an update; we do not, I guess is the update. Joe Slovacek
21 will be chairing that committee.

22 Joe, last update I had is that we were working
23 to put some details together and maybe at the next meeting
24 we'd have more of an update. Do you have anything to add
25 to that?

1 MR. SLOVACEK: No. That's correct.

2 MS. RYAN: That's the most recent update?

3 Okay. So more to come on that matter.

4 With that, with regard to our comments and
5 updates, we will be moving into executive session. We
6 have had a change in the timing that's on the agenda. We
7 will shorten that basically to keep the meeting moving and
8 out of respect for the items that are on the agenda, so we
9 anticipate 30 to 45 minutes. For those of you that are
10 familiar with us, you could probably lean towards the 45
11 minutes, but we will try to keep it to that.

12 So with that, we're going into closed session.

13 It is now 8:09 a.m. on September 12, 2014. We will go
14 into closed session under Texas Government Code Sections
15 551.071 and 551.074. For those of you in the audience, I
16 anticipate being in executive session for approximately 45
17 minutes, and we will reconvene in open session after that.

18 With that, we are recessed from the public meeting and we
19 are going into executive session. Thank you.

20 (Whereupon, at 8:09 a.m., the meeting was
21 recessed, to reconvene this same day, Friday, September
22 12, 2014, following conclusion of the executive session.)

23 MS. RYAN: Good morning again. It's
24 approximately 8:55 a.m. on September 12, 2014, and the
25 Board of the Texas Department of Motor Vehicles is now in

1 open session. We want to note that no action was taken in
2 the closed session.

3 With that, we'll move on to item 4 on the
4 agenda, reports, and I'll turn it over to our executive
5 director.

6 MS. BREWSTER: Thank you, Madam Chair. Again
7 for the record, Whitney Brewster, executive director.

8 I will give a quick update on various items and
9 activities occurring at the agency right now. If there
10 are specific questions that you have, we do have staff in
11 the audience as resources to answer more specific
12 questions.

13 The first item is an update on the Houston
14 Regional Service Center relocation effort. We are on
15 target to move from the Washington Avenue facility to the
16 new Governors Circle facility on October 24. After close
17 of business we will begin that move and intend to reopen
18 Monday, October 27. We know that this is aggressive and
19 we have a tight time frame to accomplish this but we are
20 confident that we can. We have secured a moving company.
21 We are starting to dispose of surplus equipment from the
22 current office space so that there is less to move when
23 the time comes. Additionally, we will move our
24 Enforcement staff from the second floor of the current
25 location starting on October 10 and they will telecommute

1 until the new location is available on October 27.

2 We do have staff regularly traveling to the new
3 facility to answer questions by the owner and the
4 contractor. We also have our IT folks traveling to the
5 office as well to make sure that our technology is in
6 place by opening on October 27.

7 MR. DUNCAN: And I'd just like to point out,
8 Madam Executive Director -- David Duncan, general
9 counsel -- we did finalize the lease extension for the
10 current location with Silver Eagle Distributors. Mr.
11 Slovacek, thank you for your help getting their attention.

12 It was not only finally executed, we also exercised the
13 extension so Silver Eagle is ready to go, and we're going
14 to make that one month lease payment to keep us there
15 until the end of October.

16 MS. BREWSTER: If there aren't any other
17 questions, I'll move on to the second item, Bull Creek.
18 The agency received formal correspondence on August 15
19 from the Texas Department of Transportation to vacate the
20 Bull Creek property by February 13 of 2015. Currently 121
21 Motor Carrier Division employees occupy that space.
22 Obviously, we were very concerned about that announcement
23 about the intent to sell the property and the formal
24 notification to vacate the property.

25 Since that time I have had several

1 conversations, as well as other agency staff. I have had
2 several conversations specifically with Roland Tilden, who
3 is TxDOT's director of real estate and development, the
4 development office. What we have now confirmed is that
5 TxDOT will now ensure that a two-year leaseback option is
6 available to the agency as a condition of the sale of the
7 property so that we will be able to remain in Bull Creek
8 and we will not be required to vacate any earlier than
9 May 31, 2017. Like I said, they are building that as a
10 condition into the sale of the property. So that was good
11 news.

12 This will allow the agency enough time to
13 request the appropriate funding this year from the
14 legislature for that relocation effort, and it will
15 prevent a significant impact on our services. If we had
16 held to that February date, we would have had some serious
17 problems. So it was good news and a good development.

18 If there are no questions on that item, I'll
19 move on to the third item, Centralized Accounting and
20 Payroll Personnel System, CAPPS. I am happy to announce
21 that we have deployed, gone live with CAPPs, and that was
22 on September 2. This system replaces the current
23 Financial Information Tracking System, or FITS, for the
24 processing of requisitions, purchase orders and receiving
25 processes for the agency. CAPPs gives us expanded

1 capabilities and we're excited to be able to move forward
2 with that.

3 The Finance and Administrative Services
4 Division, this is a phased rollout approach. We're
5 bringing on three divisions, each phase for full
6 deployment at the beginning of 2015. And I'm happy to
7 report that this project is on time and on budget, and if
8 the board has any questions, I'd be happy to entertain
9 them on that item.

10 MS. RYAN: What's Linda doing with all her
11 time?

12 MS. BREWSTER: Linda is working on our FY 16-17
13 budget, as well as many other things. It is actually her
14 division, the administrative services side of the house,
15 that's working on the moves that we have going on as well.

16 MS. RYAN: I was playing. I know this is a big
17 efficiency.

18 MS. BREWSTER: Going on to item A.4, I did want
19 to let the board and attendees of this meeting know that
20 we are excited to announce that we're going to be going
21 live September 27 with a new online service, and that is
22 temporary permits will now be available online, and these
23 are one-trip permits, three-day permits, as well as 72-
24 hour and 144-hour permits. Customers can still go into
25 regional service center offices, as well as tax assessor-

1 collectors' offices to get these permits, but we do
2 believe that having them available online is a huge bonus
3 for our customers.

4 Any questions on that item?

5 (No response.)

6 MS. BREWSTER: Okay. Item 4.A.5, the call
7 center. I just wanted to inform the board that the
8 purchase order for the call center implementation was
9 recently canceled. The EPMO, Enterprise Project
10 Management Office, IT, Motor Carrier Division and Consumer
11 Relations Division staff will be conducting several
12 lessons learned sessions this month, with the idea that we
13 will use those lessons learned as we go through the
14 procurement process to bring on a vendor to provide
15 these services. We do believe that we will have
16 sufficient funds in the remaining budget to complete this
17 project, and all of the hardware and software that we did
18 procure as part of the original call center deployment
19 will be able to be reused.

20 MS. RYAN: So it will impact timing but not
21 financial.

22 MS. BREWSTER: Yes, ma'am.

23 Item A.6, the credit card effort. As the board
24 knows, there was a significant effort to move TxPROS on to
25 the Texas.gov process which is required by law. We are

1 now moving forward with moving our other applications that
2 utilize credit cards to the Texas.gov application. We
3 were able to successfully deploy MCCS, the Motor Carrier
4 Credentialing System, on September 18, and we are moving
5 forward, as I said, bringing all of our other applications
6 into compliance.

7 Item A.7, our Legislative Appropriations
8 Request. The agency did submit its Legislative
9 Appropriations Request to the Legislative Budget Board, as
10 required, on August 18. The board approved a biennial
11 appropriations request of \$298.6 million. The board
12 authorized the agency to submit that, with consultation
13 from the board chairman if there were any modifications to
14 that. I believe that you received an explanation of those
15 changes, but they were related specifically to Legislative
16 Budget Board directed changes. So the final
17 appropriations request was \$300.2 million, slightly higher
18 than the \$298.6- that the board approved.

19 I also wanted to inform the board that the
20 agency did meet the required September 1 date for
21 submission of the trailer study, the study on the
22 feasibility of titling trailers, as was required by HB
23 2394. If you'll recall, you received a briefing on that
24 and we worked with the Projects and Operations Committee
25 on modifications to that. We did receive approval from

1 the full board to finalize that with consultation with the
2 Projects and Operations Committee, and then to submit it,
3 and I'm happy to report that we did submit that on August
4 29 and you will see in your board materials the final
5 version that was submitted.

6 Item 4.A.9, study on cost to process motor
7 vehicle registration and titling transactions. Since the
8 last board meeting, the final three counties of the nine
9 originally scoped in the cost study of vehicle
10 registration and titling transactions was completed.
11 These were Wheeler, El Paso and Brewster.

12 One thing that I would like to inform the board
13 of is that in order to more fully understand the
14 complexities and the needs of counties as they pertain to
15 full service deputies and other issues, the decision was
16 made to bring on additional counties into the study. Bear
17 and Travis counties use full service deputies extensively,
18 and as such, we did think it would be a good idea to
19 include a study of those counties and their use of full
20 service deputies. Also, because of the sheer size and
21 number of transactions going through its offices, the
22 decision was made to also bring on Harris County. And all
23 three counties have been notified and they are looking
24 forward to working with TTI, Texas Transportation
25 Institute, on its study.

1 One thing the board should be aware of is that
2 bringing on these additional counties will cost about
3 \$22,000, and also it will require additional time.
4 Instead of November 24, which is when the original report
5 was scheduled to be due, it will now be delivered on
6 January 23. This adjusts the timeline by nine weeks.
7 This adjustment also takes into account that all of the
8 site visits will be completed by the end of October.

9 Are there any questions on that item?

10 (No response.)

11 MS. BREWSTER: Item 4.A.10, the TxDOT and TxDMV
12 interagency contract. At the July board meeting you were
13 briefed on the draft interagency agreement between TxDMV
14 and TxDOT. At that time the board authorized me to
15 finalize the MOU, with consultation from the chairman, and
16 then to execute that contract. In your board books you
17 will find a partially executed interagency agreement with
18 TxDOT. Since the time that the board books were produced,
19 the board materials were compiled, we now have a fully
20 executed contract. General Weber, TxDOT's executive
21 director, signed the document on September 3. There are
22 no content changes from what is in your meeting materials,
23 there's simply the addition of General Weber's signature.

24 Are there any questions on that item?

25 (No response.)

1 MS. BREWSTER: All right. And the final item
2 in my report is in regards to the agency's operational
3 plans. This item is to simply let you know that all
4 division directors have submitted their revised
5 operational plans. We are now combining those plans into
6 a single document and it will be posted to the internet.
7 I will also be sending a copy to all of the board members
8 this month for your reading pleasure.

9 And with that, that concludes the executive
10 director report.

11 MS. RYAN: We appreciate that. Thank you.

12 We'll move to item 4.B, legislative reports,
13 Jeremiah Kuntz.

14 MR. KUNTZ: Good morning. For the record,
15 Jeremiah Kuntz, director of Vehicle Titles and
16 Registration.

17 This morning I'll be giving you an update on
18 where we are with the 83rd Legislative Session
19 implementation. We are nearly complete with the bills
20 that we had to implement. There were 41 bills that have
21 been fully implemented to date. There are still eight
22 bills remaining, and I believe that what we'll do going
23 forward is just handle any issues that come up with those
24 on an individual basis because the things that are left to
25 implement on those either have a longer time frame for

1 implementation or are about to be complete.

2 We still have some small rule changes that
3 remain with House Bill 2741 which was our large omnibus
4 bill. We'll continue to work on those as we go forward.

5 Most of you are fully aware of House Bill 2305
6 and I'll give you an update on that there in just a second
7 as I go back.

8 House Bill 2202, which created the agency fund,
9 as well as the processing and handling fee, as well as the
10 deputy rules, I believe most of the board members are
11 fully aware of all the issues that still remain on that.
12 We'll be taking up the issue of deputy rules at this board
13 meeting, and then we will also be utilizing the working
14 group that was discussed earlier to talk about any other
15 operational issues that could come out of that bill.

16 House Bill 719 relating to golf carts on public
17 highways, we have some programming that still needs to be
18 done to fully implement that. We've completed all the
19 rulemaking that needed to occur on that, and at this point
20 it's just a matter of scheduling programming for the RTS
21 system to make sure that that is fully implemented, and
22 with all of the IT issues that we have going on, we'll
23 look to get that put in place as soon as possible.

24 We still have a couple of bills, SB 162 which
25 is occupational licensing for military spouses, we still

1 have a form that needs to be updated for that. House Bill
2 700 which is energy, water and management planning and
3 reporting, Administrative Services is currently working on
4 our requirements with that, and that required some
5 interagency work between I believe it was the Facilities
6 Commission that does the planning for that.

7 SB 1681 which is oversight and management of
8 contracts, we still need to do some board training to be
9 in full compliance with that, and we'll make sure that
10 general counsel's office is making you aware of when we
11 can get that training completed.

12 And then SB 1815 which is donations, organ
13 donors, that bill required that when we update our vehicle
14 registration notice that we include a line item for them
15 to be able to donate to the organ donor program. We have
16 not updated that renewal notice to date, but there is a
17 planned update in the works, and so once we do that then
18 that will be fully implemented as well.

19 Are there any questions on implementation of
20 those bills?

21 (No response.)

22 MR. KUNTZ: So House Bill 2305, we continue to
23 work with IT and the other state agencies to get the
24 implementation activities completed on that bill. We have
25 taken delivery of a lot of the marketing materials. We

1 actually shipped a good portion of those up to our Dallas
2 Regional Office so they could start packaging them for the
3 counties, the starter kits, as we refer to them, for the
4 counties that they'll receive when we're ready to release
5 those. Right now we are planning to release the website
6 associated with single sticker in October, mid October,
7 and once that is up and available, then we can distribute
8 the marketing materials which all reference the website.
9 We can't send those materials out until the website is
10 fully up and functional at this time.

11 We still have all the business requirements
12 have been developed for the RTS programming and
13 programming is underway currently in the IT shop. We're
14 still working on the IRP system to get the, I guess, bid
15 back from the vendor that manages the IRP system. And so
16 we continue to stay on schedule, it is a very tight
17 schedule that we continue to march towards, but we fully
18 anticipate that we'll make the March 1 deadline at this
19 time.

20 MR. RODRIGUEZ: Jeremiah, at the onset when we
21 talked about this legislation passing, one of the things
22 we asked you to look at was perhaps the design of the new
23 sticker and addressing concerns with the stickers, and I'm
24 just wondering what is that new sticker going to look
25 like.

1 MR. KUNTZ: So we went back and we've looked at
2 that, I've had the folks in Registration Services look at
3 that. There was not a need to redesign the sticker.
4 After we went through all the business requirements and
5 looking at it, there really wasn't a driving force that
6 would require us to go and change the design of that
7 sticker, and so it will remain as it currently is, it will
8 still be the registration sticker. The way that the law
9 is laid out, its registration based enforcement of
10 inspection, so the way that the law is laid out is you
11 check for inspection at the time of registration but it's
12 still a registration sticker, so it's really an
13 enforcement action that the counties will be taking at the
14 time of registration, and because of that, there wasn't a
15 need to redesign.

16 MR. RODRIGUEZ: So we'll be using the sticker
17 that we have today.

18 MR. KUNTZ: Yes, sir.

19 MR. RODRIGUEZ: Thank you.

20 MR. INGRAM: Jeremiah, on the advertising
21 campaign to push this out, I've seen all the print
22 materials, they look nice. Do we also have a TV component
23 or any type of mass media?

24 MR. KUNTZ: So I'd like to publicly thank
25 Taurie Randerman, who really worked very hard on getting

1 all those marketing materials put together with our
2 vendor. She put in a lot of hours to get that done and I
3 think did a great job with it.

4 MR. INGRAM: They look great.

5 MR. KUNTZ: We have radio, they've developed
6 radio spots. We also have an animated video for the
7 website, and also, that can be provided to the county tax
8 assessor-collector offices. If they have display screens
9 in their offices, they have the ability to run those.
10 We've done that with the NMVTIS, the title check campaign.

11 We do not have a television ad currently in the works.
12 It was just cost-prohibitive to go with television. We
13 figured that radio would get us a good penetration into
14 the market of drivers, especially during drive times.
15 That's really where we're looking to try and focus that
16 effort is to do sponsoring drive times and those kinds of
17 things and get our radio ad out.

18 We are currently looking at a contract to do
19 the radio buys. The actual radio spot has already been
20 developed, but we still have to do a contract to do the
21 actual buying of the radio time. And you will be seeing
22 that in very short order.

23 MR. INGRAM: Or hearing it.

24 MR. KUNTZ: Or hearing it.

25 Any other questions on single sticker?

1 (No response.)

2 MR. KUNTZ: If I can move on to the next agenda
3 item, preparation for the 84th Legislative Session. Each
4 division, we went through a new process this interim, we
5 created a form for all of the divisions to fill out if
6 they had ideas for operational efficiencies that they
7 would like the board to consider to take to the
8 legislature. Each division submitted its request of
9 legislative changes, they submitted supporting
10 documentation, potential changes to the law, why they
11 wanted those changes.

12 We've reviewed those with the executive
13 director's office, as well as general counsel's office,
14 and are continuing to refine those requests, trying to
15 hone in on the exact language that we'll be carrying
16 forward, as well as the justification for those. I
17 believe some of you we have tried to brief on some of
18 those recommendations, and we'll continue to brief the
19 board as we continue to flesh those out, and that occurred
20 last Friday with the Board Oversight Committee.

21 The Legislative Committee, I believe, is going
22 to meet next month and so we will have that list to
23 present to the Legislative Committee for its
24 consideration. We're going to continue to work with
25 stakeholder groups to bring them in so that they're aware

1 of the changes that we are pursuing through the board, and
2 make sure that we get their feedback and make sure there's
3 buy-in from them on all those changes. That's worked well
4 for us in the past and we'll continue to do that in the
5 future.

6 The board will make its final determination
7 about that at its November board meeting, so we should
8 have a final legislative recommendation package to you for
9 the November board meeting. And then pre-filing of
10 legislation for the 84th session begins on November 10 of
11 this year, and the actual session will begin January 13.
12 So it's right around the corner, we'll be working hard
13 between now and then to get ready.

14 MS. RYAN: And the Legislative Committee will
15 vet what the divisions have developed.

16 MR. KUNTZ: That's the plan. There are some
17 legislative interim committee hearings that continue to
18 take place. I actually was called as a resource witness
19 for the State Affairs Committee on September 4. They were
20 taking up the issue of a new type of ID card. I was
21 actually brought up to testify very briefly about how we
22 utilize identification. They asked a question about if
23 they created a new type of ID, if we would have to change
24 our policies and procedures as it relates to our
25 requirement for identification for titling. The answer to

1 that was no, as long as it's still a state-issued ID.
2 Just so you're aware that that discussion was going on.

3 There was also a select committee on
4 transportation funding for the House that happened on the
5 same day. We monitored that hearing. They did discuss
6 the Houston Regional Office move, and just that issue came
7 up with TxDOT was testifying, they had questions about it.

8 And Pickett also made a comment about our offering of the
9 standard presumptive value calculator on our website, he
10 made mention of that in that hearing that that was
11 something that was available to the public in case they
12 ever wanted to check and see what their sales tax would be
13 for their standard presumptive value.

14 On September 16 and 17 there are two Senate
15 committees. The first on the 16th is the Senate
16 Transportation Funding Select Committee. We'll be
17 monitoring that committee. And then also, September 17
18 the Senate Transportation Committee has asked us to come
19 back and give an update on the agency. We were just there
20 recently but we'll be going back to give them another
21 update on where we are with all of the implementation
22 activities that we have going on, as well projects that we
23 have underway.

24 MS. RYAN: Is there anything specific, or is it
25 just a general update?

1 MR. KUNTZ: It's a general overview.

2 And that concludes my presentation.

3 MS. RYAN: Thank you.

4 Any questions? No? All right. Thank you very
5 much.

6 We'll move to item 4.C, Internal Audit update,
7 Sandra Vice.

8 MS. VICE: Good morning. I'm Sandra Vice,
9 Internal Audit director. With me is Arby Gonzales, deputy
10 director. And I have three items for information only
11 today.

12 First, the Internal Audit Division has
13 completed the followup audit report on the implementation
14 of recommendations. This report you can find in your
15 board book starting on page 57. In this audit we followed
16 up first on the organizational assessment that was
17 conducted by the Azimuth Group in 2011 to assist the
18 agency in becoming more customer centric and efficient.
19 Of 24 recommendations, the agency has fully implemented 18
20 recommendations. In addition, management implemented an
21 alternative solution for two additional recommendations.
22 Of the 24 recommendations, there are four that are
23 partially implemented. Two of these have to do with
24 strategic planning and two have to do with professional
25 development.

1 We also followed up on four audits conducted by
2 the State Auditor's Office between 2009 and 2013 related:
3 first, to the Texas Share Program; second, to an audit to
4 transfer funds, employees and assets from TxDOT; three,
5 the procurement process; and four, compliance with the
6 Historically Underutilized Business and State Use
7 programs. All 34 recommendations that we followed up on
8 are fully implemented by the agency.

9 Are there any questions about the follow-up
10 audit?

11 (No response.)

12 MS. VICE: The second item is another audit
13 that the Internal Audit Division has completed, and this
14 is the audit of the Automobile Burglary and Theft
15 Prevention Authority, or ABTPA. You can find this report
16 beginning on page 85 of your board book.

17 We recommended to the ABTPA, for example, that
18 they develop a new process for awarding grants, and also
19 that they strengthen monitoring processes over its
20 grantees. The ABTPA Board and team are in the process of
21 redesigning the ABTPA program.

22 Are there any questions about the ABTPA audit?

23 MR. PALACIOS: Yes. Ms. Vice, I know the
24 previous grants were on hold pending the outcome of, I
25 guess, the new procedures. Do you know if they've moved

1 forward with the recommendation on the grants?

2 MS. VICE: The grants first came up at the
3 ABTPA June board meeting, and they were approved
4 subsequently at the July board meeting. So it has not
5 been held up for the redesign, it just provided the board
6 members additional time to consider more information.

7 MR. RODRIGUEZ: They're back on track.

8 MR. PALACIOS: They're on track. Right?

9 MS. VICE: Yes, they are.

10 Any other questions?

11 (No response.)

12 MS. VICE: Before I go on to the third item,
13 Mr. Gonzales and I just want to express our thanks to DMV
14 management and especially to the ABTPA Board and the team
15 for all their cooperation. It makes our job a lot easier
16 when we have such great cooperation, so thanks to all of
17 them.

18 The third and final item is an update on
19 staffing for the division. On August 25, 2014, one of our
20 senior auditors left our agency, and so we posted an
21 Auditor-4 position that closed this Tuesday, and we've
22 received 17 applicants, and we are currently scheduling
23 interviews. So I will let you know how that turns out.

24 And then finally, to assist Internal Audit with
25 staying on track with our very aggressive 2015 audit plan,

1 as we try and fill this vacancy, we are planning on hiring
2 a contract auditor temporarily, beginning in October.

3 And that concludes my reports to the board.
4 Are there any questions?

5 MR. RODRIGUEZ: The 2015 plan has been adopted
6 by us. Right?

7 MS. VICE: Yes, sir.

8 MR. RODRIGUEZ: Thank you.

9 MS. RYAN: Thank you very much.

10 MS. VICE: Thank you.

11 MS. RYAN: With that, we'll move to item 5, and
12 we will start with 5.A. The board will now consider the
13 PFD in the matter of World Nissan v. Nissan North America,
14 SOAH Docket No. 608-13-4915.

15 Staff will make a brief presentation on the PFD
16 and then each party will have ten minutes to present their
17 arguments. The complainant, World Car Nissan, will
18 present first, followed by the respondent, Nissan North
19 America.

20 MR. DUNCAN: And if I may, board members and
21 parties, if everyone would please speak clearly and not
22 talk over one another. The court reporter is making a
23 record of all of this. And for the parties, there is a
24 timer up here that when you sit in your spot it will say
25 ten minutes at the beginning of your presentation, you get

1 a warning at two minutes and that clock will say stop at
2 ten.

3 MR. AVITIA: May I proceed?

4 MS. RYAN: You may. Thank you.

5 MR. AVITIA: Madam Chair, board members, good
6 morning. For the record, my name is Daniel Avitia. I am
7 the director of the Motor Vehicle Division. Alongside me
8 this morning is Mr. Ken Herring, staff attorney with the
9 Motor Vehicle Division as well.

10 Agenda item number 5.A presents the State
11 Office of Administrative Hearings resolution of a
12 franchise contested case. In the New World Car Nissan v.
13 Nissan North America case, the SOAH judge has issued a
14 proposal for decision and staff has drafted a board order
15 for your consideration in which the board fully adopts the
16 SOAH judge's proposal and recommendation, and as such,
17 that this case be dismissed.

18 The SOAH judge in this case determined that
19 there was no genuine dispute as to the essential facts,
20 and that as a matter of law, the complainant's case must
21 be dismissed. By law, the board can change findings,
22 conclusions or orders issued by a SOAH judge when change
23 is justified under Texas Government Code 2001.058(e).
24 Staff finds that the aforementioned Texas Government Code
25 justifications are not present in this case.

1 Number one, the SOAH judge did not fail to
2 properly apply or interpret applicable law, agency rules,
3 written policies or prior administrative decisions.
4 Number two, there is not a prior administrative decision
5 on which the SOAH judge relied that is incorrect or should
6 be changed. And third, there is not a technical error in
7 finding or fact that should be changed.

8 In this matter the parties jointly agreed to
9 have a dispute settled by an independent private
10 arbitrator instead of filing a contested case with the
11 agency. The independent private arbitrator issued a
12 decision in the respondent's favor and against the
13 complainant. The complainant attempted to appeal the
14 arbitrator's decision at SOAH. The SOAH judge ruled there
15 were no grounds for appeal and that the arbitrator's
16 decision should stand. Therefore, staff recommends that
17 the SOAH judge's conclusions be followed by the board and
18 that this case be dismissed.

19 At this time, Mr. Herring and I are happy to
20 address any questions the board may have about agenda item
21 number 5.A.

22 MR. SLOVACEK: So moved.

23 MS. RYAN: Any questions at this time?

24 MR. RODRIGUEZ: I'll second.

25 MS. RYAN: Okay.

1 MR. RODRIGUEZ: Are we going to hear testimony?

2 MS. RYAN: We have a motion and a second. We
3 have some comment cards so we'll hear those. Thank you.

4 We'll hear first, a comment card from Martin
5 Alaniz, representing World Car Nissan. If you'll give us
6 one minute, is the timer ready? It will give you, I
7 think, a one-minute warning. Is that correct? Two-minute
8 warning, and we'll ask that you try to keep within that
9 time frame so we can hold everyone to that and then ask
10 questions. It's all yours.

11 MR. ALANIZ: This is a straightforward and
12 important case of first impression in front of this
13 agency. Your decision today is going to govern the
14 interpretation and application of two statutory
15 provisions: first, the arbitration appeal provision under
16 .466(b), and second, to an extent, the incentive
17 chargeback provision under 2301.475.

18 My name is Martin Alaniz and I represent World
19 Car Nissan, and I'm here today to ask you to reverse and
20 remand the PFD by the SOAH ALJ for not properly applying
21 and interpreting applicable law under your authority in
22 APA 2001.058(e)(1).

23 Now, World Car appealed to the TxDMV a decision
24 by an arbitrator under 2301.466(b) on the ground that the
25 arbitrator failed to apply the code. World Car believes

1 the arbitrator did not apply the Texas Occupations Code in
2 the underlying dispute. There's really in this case no
3 dispute as to the facts, and the only question you have in
4 front of you is what failed to apply this chapter means,
5 and that's the important standard that needs to be
6 developed in this case.

7 Now let me tell you about the case. The
8 underlying case involved a dispute between World Car
9 Nissan and Nissan which both parties decided to go to
10 arbitration. Now, when you go to arbitration and you
11 agree to this, the way the code is set up, you don't agree
12 to waive your rights to the Texas Occupations Code. So
13 they went to arbitration, and one of the code sections at
14 issue was TOC Section 2301.475, the incentive chargeback
15 provision.

16 Now, essentially, the way the provision works
17 is at the point you're paid an incentive payment, the
18 distributor has one year to decide to charge you back. At
19 that point the one year expires, they can no longer charge
20 you back because that time has passed. And there are
21 exceptions for fraud and other issues, but that's also
22 very good for the dealers because then they know after a
23 year passes they don't have to worry about an audit coming
24 through and then being charged back for incentive monies.

25 So in our case it's the last day of the

1 incentive program and Nissan contacts my client and asks
2 them to purchase to the dealership eleven cars under this
3 program. They decide to do so. Then that date was March
4 31, 2011. So on April 4, 2011, this incentive payment of
5 approximately \$100,000 was paid to World Car Nissan. Now,
6 this is the important date. Now we have a date of when
7 the incentive payment was paid, April 4, 2011, so we know
8 now that a year from now, April 4, 2012, is the date by
9 which the chargeback must occur, or else you're barred by
10 475.

11 In the interim, Nissan decides that they didn't
12 meet the requirements of the incentive program and informs
13 our client that they are considering moving forward with
14 making a chargeback. So after they got through the
15 internal appeal process, on March 21, 2012 -- so prior to
16 April 4, 2012 -- on March 21 my client gets a letter from
17 Nissan telling them that their appeal has been denied and
18 that they are going to charge them back. But then on
19 April 12, 2012, that money is actually debited from the
20 account and taken away.

21 So the next question in front of you is:
22 What's the definition of a chargeback? Well, there's
23 nothing in the code that defines chargeback, so when you
24 look to Black's Law Dictionary, the issue looks at the key
25 banking definition to deduct, which makes sense because

1 you look at the credit you're actually paid, so the
2 chargeback happens when it's deducted. So the deduction
3 happened on April 12 which happened outside of the one-
4 year period, and therefore, they would be barred.

5 Now, when this issue came upon the arbitrator
6 and our client said, Look at this code section of the TOC,
7 I want you to apply this code section, I want you to give
8 us this money back under this code section, the arbitrator
9 decides, well, the letter you got in March 21, it happened
10 before April 1, and his exact words were: The actual
11 chargeback was complete when Nissan sent the March 21
12 letter.

13 So at that point, what do you do? He's
14 essentially saying I've now found the statute that you
15 want me to apply isn't applicable, I'm not going to apply
16 the statute because I believe it's not applicable because
17 of the way I decided to define the word chargeback. At
18 that point, because World Car wants to enforce its rights
19 under the TOC, we moved to appeal to the TxDMV this
20 decision by an arbitrator.

21 Now, your scope of appeal is very, very
22 limited. You have .466(b) which says you can only appeal
23 when they fail to apply the code. So the question is, and
24 this is the question in front of you and this is why this
25 case is important: Did the arbitrator fail to apply the

1 code, and especially apply the code as written, in this
2 sense. And don't forget, the board has exclusive
3 jurisdiction over this issue, and yes, there is a
4 favoritism towards the idea, the policy of arbitration,
5 you go to private arbitration, but you put the protection
6 in that if you go to arbitration you still get your
7 protections, and the check on that power is .466(b). So
8 then we have to figure out what the standard is for fail
9 to apply.

10 Now, in this case we feel by deciding that this
11 statute was applicable that at that point he failed to
12 apply the statute as written. Now, in a case where the
13 board would decide, you know what, no, he applied it
14 correctly, then at that point the appeal should be
15 dismissed. So there's really no issue about a floodgate
16 of litigation, of everyone going to arbitration and then
17 appealing and it coming back, because once a statute is
18 appealed, it's pretty clear but in this unique case, the
19 statute was found to be not applicable and thus not
20 applied.

21 So once you've answered the question of what a
22 chargeback means, and if the board believes the chargeback
23 actually occurred on the date of the debit, then I'm
24 asking you to reverse and remand the PFD to SOAH to apply
25 these facts, to say, look, it applied 475, the chargeback

1 occurred after April 4, therefore, the chargeback must be
2 reversed and my client must be reimbursed for the amount
3 of the incentive payments taken away.

4 So therefore, my client's main issue here was
5 just an issue of fairness and the issue of being able to
6 rely upon what Nissan told them in making these purchases,
7 and then the issue of once that time period expired, it's
8 April 5 now and the money is still in their account, they
9 don't believe the chargeback has occurred, and we must
10 define what chargeback means. Will we define chargeback
11 now with this new March 22 letter that says, hey, we deny
12 your appeal, therefore the chargeback is going to go
13 forward?

14 And now we're saying that definition plays a
15 big role in the statute and now we're saying that now any
16 letter, you can just send any letter telling anybody your
17 intent to charge back now becomes the definition of
18 chargeback, and that shouldn't be the way the code should
19 be applied and we shouldn't let the board just let outside
20 arbitrators make these decisions when they're choosing not
21 to apply the code.

22 Therefore, we ask you to reverse the PFD. It's
23 all set up in our exceptions with the findings of fact and
24 conclusions of law, so the work is very easy to do. Thank
25 you very much.

1 MS. RYAN: Thank you very much.

2 Any questions?

3 MR. RODRIGUEZ: Go ahead.

4 MR. PALACIOS: I have a few questions, Mr.
5 Alaniz. Are there any provisions within the agreement
6 between World Car and Nissan, in the event that they
7 receive an adverse notice as this chargeback, for
8 mediation within the two parties, or do they have to go to
9 third parties?

10 MR. ALANIZ: As far as them having to do to
11 arbitration, the arbitration decision would have been
12 mutual between both parties. They felt that would have
13 been a faster, more efficient way of dealing with the
14 issue at the time, but whether or not the underlying
15 program required a mediation or arbitration provision, I'm
16 not sure, but it wouldn't be enforceable, we believe,
17 under the code. But it was voluntary for them to go to
18 arbitration on this issue.

19 MR. PALACIOS: Normally there's a mediation
20 process before the arbitration. Did they exercise any
21 option to do mediation?

22 MR. ALANIZ: I can tell you that that answer
23 you can probably get better from Nissan's attorney than
24 World Car. We picked up after the arbitration, so right
25 now I'm not 100 percent positive. I do not know if a

1 mediation happened before the arbitration, but I believe
2 that was the first thing that occurred.

3 MR. HERRING: Board Member, I can tell you that
4 they went to an internal appeal. My name is Ken Herring,
5 staff attorney for the Motor Vehicle Division. I can tell
6 you that from the PFD it indicates that the dealer and the
7 manufacturer went through an internal appeals process
8 first. They were first denied through the internal
9 appeals process, then they went to the arbitrator.

10 MR. PALACIOS: Okay. And I'm just asking a
11 question, during that process was the issue more, I guess,
12 the issue of the chargeback itself?

13 MR. ALANIZ: The issue at that time was
14 actually whether or not these eleven vehicles that World
15 Car believes they purchased on March 31, 2011, the last
16 day of the program, whether or not they actually met the
17 requirements of the program when they were purchased on
18 that day, and Nissan came back and said no. It became an
19 argument of the definition of purchase and that happened
20 afterwards, that they weren't RDR'd until a different time
21 period, and that was one of the issues that went to the
22 arbitrator but because there's not a code provision that
23 governs that, that would have been an appealable issue to
24 the TxDMV even though our client believes the cars were
25 actually purchased on the 31st to meet the requirements of

1 the program.

2 That's what the issue was, and at that point
3 the internal audit decided that they did not meet the
4 requirements of the program, and therefore, their intent
5 to charge them back to go forward was justified. And even
6 if it was justified, you could give them that and say even
7 though it's appropriate justification, they still had to
8 do it before a year, and a year expired before they did
9 it, and at that point, the way the law is set up, they
10 can't make that chargeback.

11 MR. RODRIGUEZ: Let me ask, Mr. Duncan, at this
12 point in time in this process jurisdiction for us is
13 rather limited. Is it not?

14 MR. DUNCAN: It is.

15 MR. RODRIGUEZ: What areas are there?

16 MR. DUNCAN: The elements of your review of a
17 PFD are those that were specified by Mr. Herring in his
18 introductory presentation.

19 MR. RODRIGUEZ: And I believe I heard I heard
20 them from Mr. Avitia in the process.

21 MR. DUNCAN: I'm sorry. Mr. Avitia. My
22 apologies.

23 The 2001.058(e) factors are that the
24 administrative law judge did not properly or interpret
25 applicable law, agency rules, written policies provided

1 under Subsection (c) which is a state agency shall provide
2 the administrative law judge with a written statement of
3 applicable rules or policy.

4 MR. RODRIGUEZ: All right. Let me ask Mr.
5 Avitia and staff, on that point what is your conclusion?

6 MR. AVITIA: Daniel Avitia for the record
7 again. Staff's conclusion is that justifications are not
8 present in this case.

9 MR. RODRIGUEZ: Okay. The next item?

10 MR. DUNCAN: The next item is that a prior
11 administrative decision on which the administrative law
12 judge relied is incorrect or should be changed.

13 MR. RODRIGUEZ: And on that point, what's your
14 conclusion, staff?

15 MR. AVITIA: Our recommendation is that the
16 SOAH judge's conclusions be followed and that the board
17 dismiss this case.

18 MR. HERRING: Specifically, we found that there
19 was not a prior administrative decision which the judge
20 relied on that was incorrect or should be changed.

21 MR. RODRIGUEZ: Okay. I understand.

22 MR. DUNCAN: And then the last is that a
23 technical error in the finding of facts should be changed.

24 MR. RODRIGUEZ: So on that point, is there any
25 technical error or otherwise error?

1 MR. HERRING: There's not a technical error.

2 MR. RODRIGUEZ: Thank you.

3 MS. RYAN: Any other questions?

4 (No response.)

5 MS. RYAN: Okay. Thank you very much.

6 MR. RODRIGUEZ: Thank you, Mr. Alaniz.

7 MS. RYAN: We'll hear now from the complainant,
8 Billy Donley, representing the complainant, Nissan North
9 America.

10 MR. DONLEY: Good morning, members of the
11 board. May I proceed?

12 MS. RYAN: Is the timer set? You may proceed.

13 MR. DONLEY: My name is Billy Donley. I'm an
14 attorney with the law firm of Baker & Hostetler, and I
15 represented Nissan in the World Car matter throughout the
16 entire course of it.

17 Let me first answer one question that's already
18 been raised: Was this matter mediated? Indeed it was,
19 voluntarily by the parties. We mediated in San Antonio
20 and it simply didn't settle. After that, World Car
21 decided it would demand arbitration and Nissan didn't mind
22 if we mediated. We went to Tennessee, we mediated the
23 case and we got an arbitrator's decision.

24 The question then becomes under 2301.466
25 whether or not the arbitrator applied the code. The

1 administrative law judge, after receiving briefing from
2 both parties, decided indeed the arbitrator did apply the
3 code. 2301.466(b) says that an arbitrator shall apply
4 this chapter in resolving a controversy and that either
5 party may appeal to the board a decision of an arbitrator
6 on the grounds that the arbitrator failed to apply this
7 chapter.

8 Well, on page 9, for instance, for the PFD, the
9 ALJ finds expressly that the arbitrator indeed did apply
10 2301.475 of the code and found that Nissan did act
11 properly in performing the chargeback. The only issue
12 here today is not the chargeback issue itself, but whether
13 or not an appeal of that decision belongs before the
14 board. As the administrative law judge and the Motor
15 Vehicle Division staff has stated this morning, there is
16 no appeal of this, this case was over before it began.
17 The arbitrator did apply the code, the administrative law
18 judge found the code was applied, and that's the beginning
19 and the end of the case.

20 All World Car is trying to do is to get yet one
21 more bite at the apple because they don't like the result.

22 The arbitrator indeed found that World Car did not follow
23 Nissan's incentive program, and as a result, Nissan was
24 allowed to do the chargeback. World Car does not like
25 that result so they're coming before this agency hoping to

1 get one more bite at the apple. They're not entitled to
2 another bite at the apple. The administrative law judge
3 got it right in the proposal for decision, and Nissan
4 would ask that the board enter a final order adopting that
5 proposal for decision.

6 MS. RYAN: Thank you.

7 MR. DONLEY: Thank you very much. Any
8 questions?

9 MS. RYAN: Any questions?

10 MR. INGRAM: I have a question for perhaps
11 David. The definition of chargeback, I've heard several
12 times that there is no definition for chargeback currently
13 in that code.

14 MR. DUNCAN: Not that would discreetly speak to
15 the issue between the parties as they've laid it out.
16 Does that answer your question?

17 MR. INGRAM: Well, it does and it doesn't. I
18 mean, it does in the fact that there's nothing specific,
19 but I mean in terms of does it just fall back on what a
20 prudent person would believe?

21 MR. RODRIGUEZ: And I understand the question,
22 and depending on where you're at on this, that question
23 probably could have been answered. I'm just going down a
24 path I don't want to go down here, but the process of the
25 payback decision was started, appealed and decided way

1 before the actual deduct happened, so I'd argue the
2 decision was made a long time ago. Whether the actual
3 physical transaction of the money, that's a whole
4 different other game. But nonetheless, the point I want
5 to make here is the only points of concern for us -- the
6 only points we can rely upon to make a decision on are on
7 the jurisdictional points we discussed earlier. Right?

8 MR. DUNCAN: And what is clearly before the
9 board is a SOAH judge's review of an arbitral decision the
10 arbitrator decided. The question before the SOAH judge
11 was did the arbitrator properly apply the law, and the
12 SOAH judge said yes. So when we're talking to did the
13 SOAH judge do their job, was this decision rightly
14 rendered by the SOAH judge, we say yes, and there's a lot
15 of case law discussion, there's a lot of policy discussion
16 about the legislature's and the courts' longstanding
17 policy of favoring supportive arbitral decisions unless
18 something was done horribly wrong.

19 And that's sort of a generalization, but that's
20 a longstanding legal principle, and something that there
21 are statutory and legislative directives that arbitral
22 decisions are favored to be supported unless they were
23 clearly done incorrectly. So we believe the SOAH judge
24 correctly looked t that policy angle and the legal
25 constraints of their decision and rendered the right

1 outcome.

2 MR. PALACIOS: Mr. Duncan, I just want, I
3 guess, your opinion. It seems to me this issue centers
4 more around the timing, getting back to the chargeback,
5 the March 21 date of notice from Nissan to World Motors
6 and the debit occurring after which, according to Mr.
7 Alaniz, was roughly eight days after the one-year
8 anniversary of when the incentive was paid. What's
9 staff's interpretation of that rule regarding the one-year
10 chargeback?

11 MR. DUNCAN: I don't know that we've had an
12 opportunity to squarely be presented with that as a staff.
13 Again, this was not presented to us, they mediated part
14 of it and then they arbitrated that particular point. We
15 didn't participate in that, there would have been no
16 reason for us to participate in that, it's a financial
17 dispute between a franchise dealer and a manufacturer.
18 And so as a staff we've not stated a position on when the
19 chargeback must occur, what the definition of that term
20 is.

21 MR. PALACIOS: But is that not an issue for
22 you?

23 MR. DUNCAN: Not in this PFD. Again, we
24 hesitate to go back and revisit the arbitrator's
25 application of that term. And what the arbitrator was

1 doing during arbitration is that once the arbitrator
2 renders a decision, the SOAH judge is limiting their
3 review to that arbitrator's decision and whether they
4 properly applied the law, and we believe that the SOAH
5 judge was correct in not going backwards, running the tape
6 back and let's revisit that application of the law. Did
7 the arbitrator give an appropriate explanation and
8 appropriately apply the law, and we believe the SOAH judge
9 correctly ruled that the arbitrator's decision should be
10 given deference on that question.

11 MS. RYAN: And Raymond, it mentioned, as I read
12 it, in the PFD that the arbitrator looked at that statute
13 which had the time and place -- I don't have any of the
14 information it -- but the point in question was did they
15 use that statute, did they apply it, and at least from hat
16 SOAH presented, it was, which is why they made their
17 decision. So the timing, we don't have that information
18 because it wasn't the question that SOAH was asked.

19 MR. PALACIOS: And I guess that's my point.
20 I'm assuming the arbitrator and SOAH were arguing the
21 merits of the chargeback itself but not necessarily this
22 timing issue. I guess there are two separate issues.
23 Again, I'm not here to talk about the decision the
24 arbitrator made regarding the actual merits of the
25 chargeback, but more so getting back to this timing issue.

1 Setting precedent going forward, what is the rule?
2 Getting back to Mr. Alaniz's question, at what point does
3 the chargeback occur? Does it occur when a dealer is
4 given notice or when the money is physically taken out of
5 his account?

6 MR. RODRIGUEZ: Let me ask this question. I
7 know you want to try to answer it, it seems to me you're
8 having difficulty answering it, but is that a question for
9 us right now?

10 MR. DUNCAN: That's what I was going to get at
11 is we would -- I'll answer it in sort of two phases. With
12 regards to this case, we believe that the SOAH judge
13 reviewed the arbitral decision and said that the
14 arbitrator properly applied the law to the facts. And the
15 second phase of it is, that one actually has two parts as
16 well, the ultimate question how the board would like to
17 see this interpreted in the future if the board, through
18 its recommendations or another party or organization were
19 to seek legislative clarification of that, would be
20 applied in every case the facts and the law.

21 So they looked at what happened in this case:
22 there was a letter sent, and then there was an actual
23 banking event that occurred. Those facts and this law, do
24 I say that sets precedent for all time? Not necessarily
25 because you need to know the facts of any individual case.

1 That's why I'm struggling so much to answer this
2 question. I have to answer it in the context of this case
3 where I go back to we looked at the SOAH judge's decision
4 and what the SOAH judge's parameters for that decision
5 were and we say it was done correctly.

6 If you say does this create precedent across
7 the board, I say no, just because every case is fact-
8 specific. I need to know what they did, what letters they
9 sent out when, when the chargeback occurred, and not only
10 do we not need to get into that in this case, we believe
11 that because of the 2001.058(e) factors, we really can't.

12 We don't think that the judge incorrectly applied the
13 law.

14 MR. RODRIGUEZ: David, I think we're off on the
15 wrong grounds here on that point, but nonetheless, if
16 you've got ten days to assess a fine on me or whatever it
17 might be, and on the ninth day you come and tell me I'm
18 assessing this fine. I say, well, okay, I'm going to
19 appeal that action. And by the time the appeal process
20 gets done, now we're 20 days later and the decision is
21 finalized, okay, I can have my money. So does that mean
22 that I didn't take the action within ten days? That's the
23 kind of stuff you're getting into here, and that's exactly
24 what I think you're saying, the judge followed the law to
25 your best estimation and that's your recommendation.

1 MS. RYAN: So I'm going to ask two questions.
2 Raymond, did you get the information you needed?

3 MR. PALACIOS: Yes.

4 MS. RYAN: Okay. And then I'm going to ask
5 that we try to keep it within the scope of what we've been
6 asked to make a decision on, if that's okay, as long as,
7 Raymond, you got what you needed information-wise.

8 MR. PALACIOS: I'm fine.

9 MS. RYAN: Okay. Any other questions?

10 MR. SLOVACEK: A procedural question, Mr.
11 Duncan. I made a motion, Chief seconded the motion, we've
12 heard argument of counsel, we've heard board deliberation,
13 and the vote would be to either affirm what the staff
14 recommends or to vote that down, following which another
15 motion would be made. Correct?

16 MR. DUNCAN: Correct.

17 MR. RODRIGUEZ: Call the vote, Madam Chair.

18 MS. RYAN: Okay. I have a motion by Member
19 Slovacek, I have a second by Member Rodriguez. The motion
20 is to accept staff's recommendation to adopt the ALJ's PFD
21 to dismiss. All in favor raise your right hand.

22 (A show of hands.)

23 MS. RYAN: I think we had a unanimous vote.
24 All opposed?

25 (No response.)

1 MS. RYAN: None. Okay, move forward. It's
2 been adopted. Thank you.

3 The board will now consider the contested
4 matter of Budget Leasing, Inc. d/b/a Audi North Austin and
5 Audi South Austin, Ricardo Weitz, Hi Tech Imports North,
6 LLC, Hi Tech Imports South, LLC, Hi Tech Imports, LLC v.
7 Volkswagen Group of America, Inc. and Porsche Cars North
8 America, SOAH Docket No. 608-13-4599.

9 Members, we will start by considering only the
10 staff's position that the matter should be dismissed.
11 Staff will make a brief presentation on their position and
12 each party will have ten minutes to present their argument
13 on that one issue. The protestant, Budget Leasing, will
14 go first, followed by the interveners, Ricardo Weitz and
15 Hi Tech Imports, with the respondent, Volkswagen Group,
16 last. I understand that Porsche Cars has stated in a
17 filing that they will not be appearing today.

18 After the board has had an opportunity to ask
19 any questions and deliberate, I will ask if there is a
20 motion on that one issue, and if so, we will vote on that
21 particular motion. If not, we'll cross that bridge when
22 we get there.

23 MR. DUNCAN: And if I may, Madam Vice Chair,
24 for the members benefit, we are handing out some copies of
25 the statutes, and that would be Occupations Code 2301.359

1 and .360, and also a copy of 2001.058. If any members of
2 the parties would like to see copies of those, we would be
3 glad to provide them, we've made some extras.

4 MS. RYAN: Okay. Thank you.

5 MR. DUNCAN: And apologies. Obviously there's
6 a number of people, we've set up a second line of chairs.

7 As you guys are asking questions, people may have to jump
8 in and out.

9 MS. RYAN: Okay. Thank you.

10 Ready? Okay. We'll have staff's position at
11 this time. Thank you.

12 MR. AVITIA: Thank you. For the record, my
13 name is Daniel Avitia. I am the director of the Motor
14 Vehicle Division.

15 Agenda item 5.B is the Budget Leasing v. Audi
16 franchise contested case. This matter is presented for
17 board consideration following a hearing conducted by the
18 judges with the State Office of Administrative Hearings,
19 or SOAH. The SOAH judges issued a proposal for decision,
20 or PFD, on July 16 of this year. Staff recommends the
21 board reject the SOAH PFD and dismiss this case for lack
22 of jurisdiction.

23 The board can reject findings, conclusions or
24 orders issued by a SOAH judge when the action is justified
25 under Texas Government Code 2001.058(e). Staff finds that

1 the aforementioned code justifications for rejection of
2 the SOAH PFD are present in this case because the SOAH
3 judges failed to properly interpret the law as it applies
4 to jurisdiction.

5 The underlying case was brought under Texas
6 Occupations Code 2301.359 and 2301.360. These sections
7 provide protections to licensed franchise dealers who wish
8 to sell their dealerships. To use these protections, a
9 selling dealer must strictly follow specific notice
10 requirements outlined in 2301.359. The record shows that
11 Budget Leasing did not follow these requirements. Budget
12 Leasing did not submit the application to Audi via
13 certified mail. In considering this deficiency on the
14 part of the applicant, staff notes that Audi did not
15 submit its response via certified mail, as is also
16 required. Most importantly, the PFD rejects that Budget
17 Leasing did not provide Audi with the prospective
18 transferee's written agreement to comply with the Audi
19 franchise.

20 In the finding of fact, the SOAH judge states
21 that the transferee is absolutely willing to sign a dealer
22 agreement. The fact that the transferee is willing to
23 sign an agreement does not satisfy the 2301.359 mandate
24 that submission of the prospective transferee's written
25 agreement is required to create a complete application.

1 The statutorily required written agreement was simply not
2 provided in this case. Therefore, Budget Leasing never
3 submitted a complete application under 2301.359.

4 Budget Leasing lacks standing to bring this
5 action under 2301.360. Without a statutorily complete
6 application, Budget Leasing can't argue that Audi
7 improperly denied their application. Because Budget
8 Leasing lacks standing, it is staff's position that this
9 agency does not have jurisdiction to consider the merits
10 of this case.

11 At the time the parties submitted a protest to
12 this agency, only a prima facie examination of the case
13 was made before the matter was referred to SOAH. Proper
14 evaluation of jurisdictional standing in this case could
15 only be made after the SOAH judges issued their factual
16 determinations. Jurisdictions can be raised at any time
17 and cannot be waived. Many times jurisdictional problems
18 are not discovered until a case is being argued on appeal.

19 In this case, Budget Leasing v. Audi, the SOAH
20 PFD revealed that: number one, the Budget Leasing
21 application was incomplete, and number two, that Budget
22 Leasing lacked standing. Staff recommend that the board
23 reject the PFD in its entirety and issue an order for
24 dismissal for want of jurisdiction. Staff has prepared a
25 draft order for your consideration.

1 Let me close by saying that staff understands
2 the frustration the parties must feel if the board concurs
3 and the outcome today is dismissal for lack of
4 jurisdiction. Staff would certainly like to extend the
5 offer of DMV mediation services to both parties in the
6 hopes of working toward an agreed resolution of the issues
7 at hand. That being said, Mr. Herring and I are happy to
8 address any questions the board may have about agenda item
9 5.B.

10 MR. SLOVACEK: I've got a question. Read that
11 last statement back about working things out. What's that
12 about?

13 MR. AVITIA: That is the offer to extend
14 mediation services, as the new mediation program began
15 January of this year, to both parties.

16 MR. SLOVACEK: Why wouldn't you do the
17 mediation before you bring it to the board?

18 MS. RYAN: I don't think the agency has
19 jurisdiction to do that at this point. David, you can
20 answer that.

21 MR. SLOVACEK: Well, why would you offer
22 mediation if you don't have jurisdiction to offer
23 mediation?

24 MS. RYAN: Once it's dismissed, if their
25 recommendation is accepted and it would be dismissed. Is

1 that correct, David?

2 MR. SLOVACEK: Actually, I'm asking him the
3 question. Why would your staff offer mediation if it's
4 not available?

5 MR. DUNCAN: It's definitely available, it's
6 just not required. If the same matter were to be filed
7 today, the statute changed in the last session, it would
8 go to mandatory mediation.

9 MR. SLOVACEK: I understand. So why wouldn't
10 you mediate before you ask this board to make a decision?

11 MR. DUNCAN: Because we can't make them.

12 MR. SLOVACEK: Pardon me?

13 MR. DUNCAN: We can't require it. This
14 application has been pending for some time.

15 MR. SLOVACEK: Procedurally, if we don't have
16 jurisdiction, how can we make a decision? Subject matter
17 jurisdiction?

18 MR. DUNCAN: No, no. It's not subject matter
19 jurisdiction. The board has the jurisdiction to decide
20 this matter. What we're saying is that SOAH should not
21 have taken jurisdiction and rendered a decision on the
22 merits.

23 MR. SLOVACEK: It's a legal decision.

24 MR. DUNCAN: Yes.

25 MR. RODRIGUEZ: But even after this decision

1 here, if they go on into district court or otherwise,
2 mediation could occur at that point.

3 MR. DUNCAN: At any point, yes.

4 MR. RODRIGUEZ: And it could be ordered at some
5 point.

6 MR. DUNCAN: I would not say ordered, even by
7 the board, because, again, it's a statutory change.

8 MR. RODRIGUEZ: It may have settled but a judge
9 could say you guys have got to go to mediation.

10 MR. DUNCAN: Judges have very broad powers too.

11 MR. RODRIGUEZ: Absolutely.

12 MR. SLOVACEK: It's really a case of dotting
13 i's and crossing t's, it sounds like, on a paper
14 application and a process, and you don't think the i's
15 were dotted and the t's were crossed and this case
16 shouldn't move forward.

17 MR. AVITIA: That is correct, sir.

18 MR. PALACIOS: I have a question, Mr. Avitia,
19 as a followup on Board Member Slovacek's question. So the
20 basis of, I guess, your argument that we don't have
21 jurisdiction is because of a procedural matter, what
22 wasn't followed. You've got six points here regarding
23 notice, one of which is the notice must be sent by
24 certified mail, return receipt requested. I want to ask
25 you what is your understanding of why that is a

1 requirement.

2 MR. AVITIA: Daniel Avitia for the record
3 again. It is required by Section 2301.359, notice under
4 subsection states that it must be in writing. It really
5 just outlines -- and I really don't want to read all of
6 these to you -- it outlines the requirement.

7 MR. PALACIOS: I understand, but I want to talk
8 specifically about the certified mail requirement. Why do
9 you think that's a requirement?

10 MR. HERRING: May I address your question?

11 MR. PALACIOS: Yes.

12 MR. HERRING: Ken Herring, staff attorney.
13 This statute is set up to enable a selling dealer to put a
14 manufacturer or distributor on notice that I am going to
15 go under the code in the sale of my dealership. The
16 concept being that manufacturers and dealers should be
17 able to have a friendly relationship and discuss things,
18 and perhaps if a dealer wanted to sell to someone that the
19 manufacturer disliked, the dealer will just accept that.
20 But the code says I'm telling you now by doing it in this
21 format that that's not the situation. I want to sell to
22 this particular entity and you're on notice that if you
23 don't respond, I've laid out everything, if you don't
24 respond to me properly, I'm going under the code.

25 MR. PALACIOS: So I agree with you. I guess,

1 again, we're getting really detailed here regarding this
2 one point here, and I guess what I'm asking was there
3 substantive compliance here with the notice. I mean, I
4 understand maybe it wasn't sent certified mail, but was
5 Audi notified? And it's a rhetorical question because
6 obviously they were. So I guess my question is what is
7 the consternation here, what is the issue if the
8 manufacturer was given notice, they acknowledge they were
9 given notice. Why is it staff's concern now that the fact
10 that it wasn't sent certified now we have to throw
11 everything out? I'm kind of puzzled by this.

12 MR. HERRING: That's one of two elements of the
13 reasons why we believe that it needs to be thrown out.
14 But again, the concept of the notice is twofold. It's not
15 just the notice that the dealer wants to transfer their
16 dealership, it's also notice that I'm availing myself of
17 the protections of the code, and that certified mail
18 letter is one of the first things to let you know that
19 this is not them just talking to me and we're having a
20 friendly conversation, they're putting me on notice that
21 if I don't respond in the right way, they are going for it
22 with the code.

23 And the code also goes further to say that if a
24 dealer follows their part of it and presents their
25 complete application for a transfer and the manufacturer

1 does not respond in the right way, that application is
2 deemed approved, and it's not even deemed approved, it is
3 approved, and we would be automatically, essentially as
4 the licensing side of it, granting that new transferee a
5 license above the objection of a dealer if that's where
6 the case led to.

7 MR. PALACIOS: Another question. Why weren't
8 these issues raised back in January or I guess February.
9 It seems to me that would have been the time to raise this
10 issue about a certified letter, and instead, we let both
11 parties go before the SOAH judge, the ALJ, spent nine days
12 and then we raised the issue. Why didn't we do this
13 before?

14 MR. HERRING: The facts of whether or not there
15 was a complete application had to be determined
16 essentially by the ALJ during the fact-finding of the
17 hearing. When a pleading or a complaint comes to our
18 office, we're only in a position to be able to do a prima
19 facie examination of it because they tell us: I have been
20 wronged and I think I can prove that person wrong and I
21 want to go to court. So what we do is determine: Well,
22 yes, you have a license, yes, they have a license and you
23 have availed yourself of a statute that seems to apply to
24 you. It would be actually inappropriate for us to do more
25 of an examination without any evidence given under oath

1 and say you're going to lose or we're not going to let you
2 get your due process of going to court.

3 MR. PALACIOS: Well, it seems to me you did.
4 You let them go through this whole process and then
5 afterwards said, Oh, by the way, we're not going
6 acknowledge this because you don't have jurisdiction. It
7 makes no sense to me.

8 MR. HERRING: The SOAH judge gave us the
9 findings now that let us know that they do not have
10 jurisdiction. In the course of a person submitting an
11 application, we don't have findings of fact, we don't have
12 people testifying under oath, we can't say whether or not
13 he application was complete at that point. When you
14 submit your case, you make the allegation that I can prove
15 my case, and we allow you to essentially go to court or go
16 to SOAH giving you the full opportunity to do so. And
17 then the SOAH judge, it's their duty to go through the
18 facts and see if you meet. And then once they've given us
19 facts, then we now have the fact that the application was
20 not sent certified mail, we now have the fact that the
21 transferee never signed.

22 MR. PALACIOS: I understand. It just seems
23 like a complete waste of time. Shouldn't we be doing
24 these things before?

25 MS. RYAN: Well, Raymond, I think -- because I

1 had the same questions -- I think the thought process was
2 we wouldn't have known those things. All we have when we
3 get the PFD is to use the ALJ's -- because we don't have
4 any of the evidence, we don't sit through the trials, we
5 the staff, or we the board. All we can do is read the
6 finding of fact and the conclusion of law and then applied
7 that to the statute document, and you've kind of got those
8 things and what our jurisdiction is, and you add that
9 fourth one. Because I had the same question, why, and
10 then I walked through that process in my own head, I
11 guess.

12 So I think what I'm hearing is that it wasn't
13 known until the PFD came back with the ALJ's summary, so
14 we didn't know what the ALJ was going to come back with
15 until it comes back.

16 MR. SLOVACEK: What staff has suggested is that
17 there's a solution through a mediation process. If it's
18 jurisdictional, you can't fix it.

19 MR. HERRING: No.

20 MR. SLOVACEK: So why would you suggest
21 mediation if it can't be fixed?

22 MR. HERRING: Because we respect the fact that
23 they have gone through this process and it has taken this
24 time, instead of them starting from scratch, we are
25 offering the service of mediation in the hopes they do not

1 have to retry the whole case again and maybe we can help
2 them come to a conclusion without expending those
3 resources a second time. That's why the offer is being
4 made.

5 MR. SLOVACEK: And my point earlier, instead of
6 this procedural trap that somebody fell into, why wouldn't
7 you pursue mediation and then come back to the board? Why
8 wouldn't you just try to do that? And by the way,
9 procedural mediation and traps to me are the law, I
10 understand the law, but if you guys were going to suggest
11 that mediation is a possibility, why wouldn't you try
12 mediation before we have to make a decision?

13 MR. HERRING: Unfortunately, when this case was
14 filed the mediation was not in place. The program is in
15 place now. If this same case was filed today, these are
16 the thoughts.

17 MR. RODRIGUEZ: Are the parties willing to go
18 to mediation?

19 MR. DUNCAN: That's what I was going to speak
20 to, Mr. Rodriguez and Mr. Slovacek.

21 MR. SLOVACEK: Can we just put it off till
22 November?

23 MR. DUNCAN: The parties strongly requested
24 that this item be scheduled today for the board's
25 consideration. And as they will tell you -- I'm not going

1 to speak for them -- they strongly believe that this board
2 has the authority and should decide this matter today in
3 the fashion that they're suggesting.

4 MR. SLOVACEK: Are the parties here today?

5 MR. DUNCAN: They are.

6 MR. RODRIGUEZ: Are they willing to go to
7 mediation, yes or no, all the parties?

8 MS. RYAN: I don't think we've asked. I don't
9 believe that the agency was in a position or had the
10 authority to offer or ask mediation prior to it coming
11 before the board. They were following the procedures that
12 they are required to follow, and mediation is not there.

13 MR. SLOVACEK: That's not what staff said,
14 though, Laura. He said mediation was available. That's
15 the reason I asked the first question.

16 MS. RYAN: Let me finish. They offered. I
17 think what they were trying to do, what I heard, is that
18 staff offered is that if the board should accept their
19 recommendation and dismiss this, then that would leave the
20 parties a couple of options: appeal, it would leave them
21 to start over, they could resubmit, should then everything
22 be followed, it come back to the board, then mediation
23 would be required. I think what he's offering is if we
24 accept that they'd offer it to try to speed things up as a
25 courtesy to the stakeholders.

1 MR. SLOVACEK: It sounds like we're offering to
2 put a noose around their neck, and once the noose is
3 around their neck, we'll mediate.

4 MS. RYAN: Well, how about let me ask this.

5 MR. SLOVACEK: I'm missing something here.

6 MS. RYAN: David, if we take a five-minute
7 break, would you please speak with the parties and ask
8 them if they would like to take the agency upon a
9 mediation offer or if they would like to proceed. I think
10 this decision should come from them.

11 MR. DUNCAN: I'd be glad to do that.

12 MS. RYAN: So if everybody is amenable to that.

13 MR. SLOVACEK: Well, can I ask another
14 procedural question? Is that even necessary that we take
15 a break? Do we need to make a decision today?

16 MS. RYAN: We can't require them to go to
17 mediation.

18 MR. SLOVACEK: No, I understand that.

19 MS. RYAN: So I'd like them to discuss it and
20 have an opportunity to discuss it while they make that
21 decision. I think it's a pretty important decision.

22 MR. SLOVACEK: Right. Again, point of
23 procedure, if there's no motion, there's not been a motion
24 to accept the staff's recommendation.

25 MR. DUNCAN: If the parties agree to go to

1 mediation, you can pass this item on to a future board
2 agenda with an eye towards if the mediation is
3 unsuccessful, they could then get their consideration at a
4 future board meeting.

5 MS. RYAN: David, if I recess and you come back
6 and tell me the parties would like to mediate, then we can
7 make a motion to do that. Correct?

8 MR. DUNCAN: yes.

9 MS. RYAN: So I'd like to take a five-minute
10 recess. The meeting is adjourned, we'll reconvene in five
11 minutes, please. Thank you.

12 (Whereupon, at 10:14 a.m., a brief recess was
13 taken.)

14 MS. RYAN: I'm going to bring us back from
15 recess. I'll note that we recessed at 10:14 and that we
16 are back from recess at approximately 10:29. Thank you,
17 everybody, for your patience.

18 With that, David, I'd like to ask how we're
19 moving forward.

20 MR. DUNCAN: The parties have each considered
21 their positions separately and would like to announce
22 their position on your request.

23 MS. RYAN: Well, I guess what I'd like to know
24 is if mediation is an option, then we're going to need a
25 motion and it changes the direction. If we'd like to

1 proceed with comment and move through the course that was
2 on the agenda, then I need to know that too.

3 MR. DUNCAN: I think that they're announcements
4 will drive your decision on that, and as far as the
5 motion, were they amenable to mediation, could be to
6 postpone consideration. It could be something as simple
7 as that, but it may require more, depending on their
8 positions.

9 MS. RYAN: So based on what I hear, the parties
10 are asking that we proceed as scheduled from the agenda,
11 and we would now go into public comment from the parties,
12 or comment from the parties.

13 MR. DUNCAN: It's a little more nuanced than
14 that.

15 MS. RYAN: Well, then we're going to continue.
16 Yes?

17 MR. BENNETT: Well, I would like to state our
18 position, ours being the protestant and interveners.

19 As you said, Commissioner, we don't want to go
20 to mediation with a noose around our neck on this
21 jurisdictional issue. We want to go forward on the
22 jurisdictional issue. If you reject the staff's
23 recommendation and find that you do have jurisdiction, we
24 are willing to go to mediation at that point. So if we go
25 forward and you find there's jurisdiction, at that point

1 you can recess this matter, we are willing to go to
2 mediation.

3 MR. SLOVACEK: Who do you represent?

4 MR. BENNETT: I represent the intervenors, but
5 I'm authorized to speak for the protestants on this
6 position.

7 MS. RYAN: Would you state your name for the
8 record, please?

9 MR. BENNETT: Yes. I'm sorry. It's Bruce
10 Bennett.

11 MS. RYAN: Thank you.

12 MR. SLOVACEK: What firm are you with?

13 MR. BENNETT: Cardwell, Hart & Bennett, here in
14 Austin.

15 MR. SLOVACEK: Thank you.

16 MS. RYAN: Okay. Thank you very much. And I
17 guess we'll hear from the other party on their position.

18 MR. DONLEY: Billy Donley, again, Baker &
19 Hostetler, on behalf of Volkswagen and its division Audi.

20 Frankly, what I just heard from Mr. Bennett
21 threw me just a little bit of a curve ball. It's not
22 something I've discussed with my client yet. Can I get
23 five more minutes of indulgence from the board to discuss
24 that? Because what he's saying is go forward with the
25 hearing today, get your decision, and then mediate, and my

1 understanding was the question was would we be willing to
2 mediate before the board reaches a ruling.

3 MS. RYAN: Correct.

4 MR. BENNETT: That was not it, Billy.

5 MR. DONLEY: Okay. I misunderstood.

6 MR. BENNETT: What we're saying is we want a
7 ruling on the jurisdictional issue. If we get a ruling
8 that the board has jurisdiction, at that point we are
9 willing to go mediate before we reach the merits. So we
10 would not go forward with the merits today.

11 MR. DONLEY: Just on the jurisdiction.

12 MR. BENNETT: Just on the jurisdiction. We
13 want that decided because, like you said, we don't want
14 that hanging over us.

15 MR. SLOVACEK: You know, what makes me
16 uncomfortable about this whole process is I'm the only
17 attorney on this board and when you talk about
18 jurisdiction, you know you can't waive subject matter
19 jurisdiction, and we've had that conversation, and I
20 suggested that the mediation would be appropriate without
21 the noose and without the threat if that's possible. If
22 it's not possible, then you're right, the board can make a
23 decision and somebody can then do whatever your rights are
24 to do after that. I was, frankly, just looking for you
25 guys to get us out of the fire and put this thing off

1 until November and give you a couple of months to figure
2 it out. That's not possible?

3 MR. BENNETT: We feel strongly you do have
4 jurisdiction, and there really is no question in our minds
5 that jurisdiction exists here.

6 MR. SLOVACEK: And if we ultimately make a
7 decision, there is an appellate remedy after this board
8 acts. Correct? Like a lawsuit gets filed.

9 MR. BENNETT: That's right. It would be a suit
10 for judicial review.

11 MR. DONLEY: And we feel just as strongly that
12 this board does not have jurisdiction.

13 MS. RYAN: What I would suggest is that the
14 agency at this time remove the offer of mediation. It was
15 a courtesy. I think let's move forward. It doesn't sound
16 like it's something we'll get to. I think that the offer
17 is certainly not something that's being removed
18 permanently, but for now, let's move forward to make the
19 decision that we came to make today, and I think as a
20 courtesy as an agency to stakeholders, we'd always be
21 willing to try to assist any we could in finding an
22 amicable resolution. Is that an acceptable direction?

23 MR. SLOVACEK: Well, actually, counsel --

24 MS. RYAN: David, does that work for you?

25 MR. SLOVACEK: Counsel, why can't we just order

1 them to mediation like any other body?

2 MS. RYAN: We don't have that authority.

3 MR. SLOVACEK: Really. Counsel, what if we
4 ordered you to mediation, would you go to mediation and
5 bring this back in November?

6 MR. BENNETT: If you order us to mediate?

7 MR. SLOVACEK: Right.

8 MS. RYAN: David, do we have authority to order
9 mediation?

10 MR. DUNCAN: I do not believe we do.

11 MS. RYAN: Okay.

12 MR. SLOVACEK: Well, by the time they appeal
13 that, would you do that.

14 (General laughter.)

15 MR. BENNETT: Well, I learned a long time ago
16 not to disobey an order of a court or an agency.

17 MR. SLOVACEK: Would you guys mediate this and
18 bring it back in November? That's my question.

19 MS. RYAN: I think we asked that.

20 MR. SLOVACEK: I'm asking again.

21 MS. RYAN: But I'm trying to keep this moving
22 forward, and so I really would like to keep this on track,
23 and I'd like to, if we're not going to move forward and we
24 don't have that ability, if our general counsel tells us
25 that we don't have the authority to order it, I don't have

1 a motion to order it, then I would like to move forward
2 and hear from the parties of both sides before we make any
3 additional decisions or have any additional discussion.

4 So with that, David, is there anything else
5 procedurally that I need to be aware of?

6 MR. DUNCAN: No, ma'am.

7 MS. RYAN: Okay. Then with that --

8 MR. DONLEY: May I be excused.

9 MS. RYAN: You may. Thank you.

10 So are you okay with us moving forward?

11 MR. RODRIGUEZ: So originally we were going to
12 give them ten minutes, Madam Chair. Should we now dock
13 them five minutes? They've each used five minutes
14 already.

15 MS. RYAN: I'm trying hard to let them keep
16 their time.

17 MR. RODRIGUEZ: No. I'm serious about the
18 question. I'm not kidding, I'm serious.

19 MS. RYAN: I would like to, out of courtesy and
20 respect, give them their full ten minutes. I would ask
21 that you keep to the ten minutes and not go over, please,
22 and then that will give us the opportunity to ask the
23 questions.

24 I will, I guess, remind the board, Mr. Avitia,
25 can I get just a very quick, very quick review the staff's

1 recommendation that the board is being asked to consider
2 right now, and that is the only question right now that
3 we're asking for comment on from both sides. So if I can
4 get a real quick review of the staff's recommendation.

5 MR. AVITIA: Yes, certainly. For the record,
6 Daniel Avitia, director of the Motor Vehicle Division.

7 MS. RYAN: We understand the whys. If you can
8 just summarize the recommendation, and again, that way the
9 parties can speak directly to that one question as we
10 started with.

11 MR. AVITIA: Sorry. Shuffling paperwork
12 around.

13 MS. RYAN: That's okay.

14 MR. AVITIA: The staff is recommending that the
15 board reject the PFD in its entirety and issue an order of
16 dismissal for want of jurisdiction. We have found that
17 the Budget Leasing application was incomplete and that
18 Budget Leasing lacks standing. Those are the two
19 findings.

20 MS. RYAN: Okay. Thank you.

21 So if the parties would have a ten-minute
22 response to that, that's the decision the board will need
23 to make at this time. If it needs to be expanded, we'll
24 do that after this particular decision.

25 So with that, we'll start with the protestant

1 will go first, I think as we stated, and representing
2 Budget Leasing, I believe, is Bill Crocker. Is that
3 correct?

4 MR. CROCKER: That is correct.

5 MR. DUNCAN: And members, before we start the
6 clock on them, if I may. A document was provided by Mr.
7 Morton and I believe you all have a copy of that.

8 MS. RYAN: It's my understanding that that's
9 only --

10 MR. DUNCAN: Informational.

11 MS. RYAN: And Mr. Crocker, is that part of
12 your presentation?

13 MR. CROCKER: No, that is not.

14 MR. BENNETT: Part of mine.

15 MS. RYAN: And you all are keeping together ten
16 minutes?

17 MR. CROCKER: We have three separate parties.

18 MR. SLOVACEK: Would you identify yourself,
19 what firm you're with, and who you represent?

20 MR. CROCKER: Absolutely.

21 MS. RYAN: Go ahead.

22 MR. CROCKER: Thank you. Madam Chairman,
23 members of the board, and Director Brewster. My name is
24 Bill Crocker. I'm with the firm of me, and that's all.

25 I prepared a two-minute presentation to you, I

1 will stay with that, but I do want to insert one
2 additional thought.

3 MR. SLOVACEK: Who do you represent?

4 MR. CROCKER: I represent Budget Leasing, the
5 seller in this transaction.

6 Just one little aside, I noted with a great
7 deal of interest your budget of 298 million plus dollars
8 for the coming -- is that biennium or year?

9 MS. RYAN: Biennium.

10 MR. CROCKER: Biennium. Most of you know, some
11 of you may not know that I was the first executive
12 director of the Texas Motor Vehicle Commission back in
13 1971 when the agency was formed, and it has now morphed
14 into a division of this agency that Mr. Avitia -- thank
15 you. Very seldom do I need something that elevates
16 anything. This is really nice. Thank you.

17 (General laughter.)

18 MR. CROCKER: Mr. Avitia now heads that
19 division. I want you to know that back in the day our
20 budget per year was \$110,000 for the entire agency. It's
21 amazing to see where we've come from there.

22 At any rate, I want to offer you three
23 thoughts. Number one, the procedure that has been
24 recommended to you and which you are apparently following
25 is, I would submit to you, extremely bad policy.

1 Number two, the decision regarding jurisdiction
2 in this case which has been recommended to you is a
3 terribly erroneous application of the law. The law was
4 and is today that substantial compliance, not strict
5 compliance, is all that's necessary. That was articulated
6 by the Third Court of Appeals several years ago, and that
7 is the applicable law at this point in time. The parties
8 followed that and that's why the issue wasn't even raised
9 before SOAH.

10 So that being the case, item three, I would
11 urge you to reject both recommendations that have been
12 given to you, go back to the customary procedure for
13 hearing cases, and when you hear this case properly, do
14 not rule that you have no jurisdiction on it.

15 And I'll be happy to respond to any questions
16 you may have. Thank you very much.

17 MS. RYAN: Thank you. No questions?

18 MR. SLOVACEK: You believe we have
19 jurisdiction?

20 MR. CROCKER: I do believe you have
21 jurisdiction. Yes, sir, absolutely.

22 MS. RYAN: Okay. Mr. Bennett, is that correct?

23 MR. BENNETT: Yes, ma'am.

24 MS. RYAN: You are representing?

25 MR. BENNETT: The interveners.

1 MR. SLOVACEK: Which are?

2 MR. BENNETT: My name is Bruce Bennett. I'm
3 with Cardwell, Hart & Bennett here in Austin, and I
4 represent the interveners, Ricardo Weitz and his group.
5 Thank you for the opportunity to speak at the meeting
6 today.

7 We realize that most of the time your staff
8 gives you sound and reliable advice. Following in this
9 case, though, it would be wrong, they're giving you
10 erroneous advice. It will lead to a catastrophic legal
11 error and cause a massive waste of time, resources, and
12 money, not only ours but this agency's money. You should
13 reject this recommendation for the following reasons.

14 As Mr. Crocker said, the Third Court of
15 Appeals, the court of appeals to which appeals from this
16 agency can go directly, has ruled in a case to which this
17 board was a party that the notice requirements of Section
18 .359 are not jurisdictional. Your review process of
19 jurisdiction and the review process is invoked by a
20 protest filed by a dealer who has been rejected, the
21 proposed sale has been rejected by the manufacturer. It's
22 the protest of the rejection that invokes your
23 jurisdiction. Jurisdiction is not shown by compliance
24 with Section .359's notice requirements, and there's a
25 good reason for that, and this is why the court ruled this

1 way.

2 If you look at .359, it talks about providing
3 the manufacturer with a copy of pertinent agreements,
4 plural. Well, what are those? People can disagree about
5 what's pertinent or not. It talks about applications,
6 forms and related information generally used. That's a
7 pretty general term. You can't have strict compliance
8 with terms like that in the statute because it becomes a
9 minefield and a trap for the dealer who is trying to sell
10 his dealership.

11 Now, the staff is telling you just the
12 opposite, it's a strict compliance standard, and it's not.

13 The court said: Inadequacies in notice do not deprive
14 you of the power to consider the protest. Your order is
15 not void for want of jurisdiction based on notice
16 deficiencies.

17 Audi never raised any notice deficiency in its
18 rejection letter. Crucial fact: no noticed deficiency,
19 no lack of certified mail, no lack of a written agreement
20 to abide by the franchise, never raise. In processing the
21 protest, your staff made under your own rule, 215.306,
22 made a determination that a hearing was appropriate and
23 they referred it to SOAH for a hearing on the merits. That
24 was the reference made in this case. It was processed in
25 compliance with the Ford Metro case, since Audi had never

1 raised a notice requirement at all or notice deficiency,
2 and was sent to SOAH for a hearing on the merits. And
3 your agency paid for that hearing.

4 Now, the ALJs considered one alleged noticed
5 deficiency that Audi raised after the rejection and
6 shortly before we went to hearing on the merits at SOAH,
7 and that was this written agreement to comply. And the
8 agency heard that and they held that Mr. Weitz had
9 substantially complied with that requirement and that your
10 agency had jurisdiction over this matter. And we set out
11 on the handout for you, on pages 4 and 5, the findings
12 that the ALJs made, the findings and conclusions, that
13 substantial compliance with notice was done, that Mr.
14 Weitz had satisfied the notice requirements of .359.

15 Now, it's become obvious this week that the
16 staff has a new strict compliance policy that violates the
17 Ford Motor holding, it violates the APA, it violates your
18 own statute, it violates your rules and it violates due
19 process. The statute's new strict compliance policy makes
20 jurisdictional what the Third Court expressly ruled is not
21 jurisdictional. The new policy cannot be applied to this
22 protest because, number one, retroactive application of it
23 violates basic due process guarantees. The Third Court
24 has held that. You processed it under substantial
25 compliance, not under this new strict compliance policy.

1 And here, probably most egregious, is this
2 policy is an unwritten rule of this agency. If I went to
3 your rules, I would not find this policy anywhere. If I
4 went on your website, I would not find any such policy,
5 it's not there. It's only the staff knows about it.

6 And you have a rulemaking process, as you're
7 well aware. You're getting ready to consider adoption of
8 new rules to Chapter 215, which is where the rule that
9 referred us to SOAH is in. On a going forward basis, if
10 staff wants to have a strict compliance policy and they
11 think it's legal -- which I don't, but even if they do --
12 you should amend your rules. And you amend your rules
13 through a public hearing and a public process where
14 dealers, manufacturers and the interested public can
15 participate so everybody knows about it. And when a rule
16 is adopted it's put in the *Texas Register* and it's online
17 and it's made available to the public so everybody knows
18 about it.

19 You don't have a new policy that is
20 retroactively applied that is unwritten and it's being
21 unfairly applied at the eleventh hour. This is not even
22 changing the rules in the middle of the game, there's 30
23 seconds left in the game, and now we get told there's a
24 strict compliance policy with .359.

25 Staff did not apply this policy when they

1 processed this protest under your rule when they
2 determined if it's appropriate to send it to SOAH. It was
3 never given to SOAH. You understand that the APA mandates
4 that your policies have to be given to SOAH and SOAH's own
5 rules says you have to give us your policies. This policy
6 was never given to SOAH. They're trying to blame SOAH a
7 little bit, I think, today. SOAH didn't know about this.

8 Audi had never raised a noticed deficiency. It's not
9 SOAH's fault. If there was such a policy, it should have
10 been in writing and it should have been provided to us and
11 to SOAH.

12 The APA prevents you from rejecting the ALJ's
13 compliance and jurisdictional conclusions and findings
14 because, number one, SOAH did correctly interpret the law.

15 The law is as stated by Ford Motor Company. And number
16 two, Audi filed no exceptions. That is a critical thing.

17 Audi has not even filed exceptions to the PFD excepting
18 to the findings that we substantially complied with the
19 notice requirements or even excepting that you have
20 jurisdiction. Those are not even excepted to.

21 So the staff, who is not a party to this
22 case -- it says it right here in the referral, MVD is not
23 a party -- they are trying to raise non-jurisdictional
24 notice things that Audi never raised. This statute is for
25 the benefit -- Mr. Herring is right, it's for the benefit

1 of the manufacturer. The manufacturer can waive that, the
2 manufacturer can say I've got everything I need, and
3 that's exactly what they did in this case. They said, We
4 have all the documentation we need to evaluate your
5 transfer proposal, we are rejecting it, and they don't
6 mention one thing about a lack of notice, any problem with
7 the notice, any problem with agreements.

8 So we've got a case here where we did comply
9 with the notice requirements, standing does exist,
10 everything was done to Audi's satisfaction as far as
11 notice, they didn't complain, only when we got right in
12 front of the SOAH hearing did they bring up this written
13 agreement deal. They lost on that. They didn't even file
14 an exception, they're not even complaining to you about
15 that finding that there was substantial compliance.

16 The staff in its recommendation says: Well,
17 basically, no harm, no foul, this will leave everybody in
18 the position they would be in if the PFD was adopted.
19 That's simply not true. Dismissal would be unjust, it's
20 nonsensical, it's catastrophic to Budget and Weitz, it's a
21 colossal waste of money and time and resources. This is
22 the very thing the Supreme Court says when you're
23 construing a statute you don't do, you don't come up with
24 an unjust, nonsensical, wasteful interpretation.

25 Dismissal will mean that the parties and SOAH

1 have wasted thousands of hours and literally millions of
2 dollars for nothing. The PFD would be a nullity and have
3 no effect. Dismissal means that we have to start either
4 completely over and go through it all again, or we have to
5 go pursue an appeal, and that's going to be more cost and
6 further delay. The wheels of justice grind slowly over in
7 Travis County in the Third Court.

8 But if you approve the PFD, you do take
9 jurisdiction, as you should -- you've already taken
10 jurisdiction, you took jurisdiction back in May 2013 when
11 our protest was filed -- but if you approve the PFD, the
12 existing buy-sell will be approved with conditions, and as
13 you will hear when we get to the merits, we can meet those
14 conditions. If you approve, you will retain jurisdiction
15 until the conditions are met, the process won't start
16 over.

17 So finally, after two years and an expenditure
18 of millions of dollars, we're ready to close this \$67
19 million transaction, but here at the last minute we're
20 being told by staff that it was all a waste of time and
21 money, ours, Audi's, yours, the taxpayers', and we're
22 being told this because a letter was sent by Federal
23 Express instead of certified mail. And we're being told
24 this by a man who is buying two Audi franchises and files
25 an application saying I want to be a dealer because maybe

1 he didn't say the right thing about I'll agree to the
2 franchise. It was implicit, it was clear he was agreeing
3 with the franchise. It was in the testimony during the
4 evaluation period he told them I will comply with you 100
5 percent.

6 And so you should reject the staff's
7 recommendation. You do have jurisdiction, you took
8 jurisdiction, and we should go to the merits and let us
9 get this thing done.

10 I'll be happy to answer any questions you have.

11 MS. RYAN: Thank you.

12 Questions?

13 MR. SLOVACEK: You're asking that we approve
14 the PFD of July 16? Is that what you're asking?

15 MR. BENNETT: Yes, we'll be asking that you --
16 well, we're getting into the merits now, but our point
17 is --

18 MR. SLOVACEK: What did you say? You want us
19 to approve what?

20 MR. BENNETT: We want you to approve without
21 conditions, but if you approve with conditions, the
22 conditions recommended, we can meet those. We've provided
23 your staff with the information that we can satisfy those
24 conditions.

25 MR. SLOVACEK: Did you understand my question?

1 You said PFD.

2 MS. RYAN: The proposal for decision from the
3 ALJ.

4 MR. BENNETT: Right now we're just talking
5 about jurisdiction.

6 MR. SLOVACEK: I understand that, but what you
7 said is you wanted us to approve --

8 MR. BENNETT: No. I said if you approve --
9 maybe I left out the if in my presentation, and I'm
10 sorry -- if you approve with the conditions, we can meet
11 them. We have already got everything ready to show you we
12 can meet them.

13 MS. RYAN: But to the point that's on the table
14 right now, you -- which I clearly heard -- believe we have
15 jurisdiction.

16 MR. BENNETT: Yes. You took jurisdiction in
17 May 2013 and you've never lost it.

18 MS. RYAN: But the point that is on the table
19 right now, that's the direction, the position for this
20 point you'd like us to consider.

21 MR. BENNETT: I want this recommendation by the
22 staff rejected. They're trying to apply retroactively a
23 policy of strict compliance that was not in effect and
24 wasn't applicable to our case.

25 MS. RYAN: I understand. Thank you.

1 MR. SLOVACEK: Thank you.

2 MS. RYAN: David, quick question, and Ken,
3 either one. The comment or position that this is a new
4 compliance policy, what is staff's comment or feedback on
5 that?

6 MR. HERRING: Ken Herring, staff attorney. It
7 is not a new policy. The statute says these are must
8 features. There has been cases subsequent to the Court of
9 Appeals, or at least one case subsequent to the Court of
10 Appeals case where the agency found that, again, an
11 application was incomplete. The Court of Appeals case,
12 and the Metro Ford case that it is based on, basically
13 says in that case the ALJ was satisfied that all elements
14 were met.

15 I can give you a brief amount of details about
16 that case. The situation in that case was, again, we have
17 the five things, the five pieces that need to be submitted
18 for an application, and that was going on in the Metro
19 Ford case. Only one of them was sent certified mail, and
20 so the argument became, well, we think every single piece
21 needed to be sent certified mail. That ALJ found that I
22 can point to every piece of paper that needs to be here,
23 it's here, some of them were not sent certified mail and
24 we think that's okay. And that was the position of the
25 agency and the Appeals Court agreed with that.

1 Subsequent to that this agency dealt with a
2 case where somebody else submitted an application that a
3 piece was missing. It also wasn't sent certified mail,
4 but the focus of the decision in that case was, again, a
5 piece was missing, it's an incomplete application, and we
6 dismissed based on the fact that application was
7 incomplete.

8 We go to this case here and we have the same
9 situation. You can distinguish the facts in this case
10 from the facts in the Metro case and the case on appeal
11 because, again, number one, all pieces were supplied, one
12 piece was sent certified, the question was whether the
13 rest were. In this case the PFD says that nothing was
14 sent certified and that a piece was missing. The notice
15 was provided by email is what the PFD said.

16 MS. RYAN: Outside of the certified, from a new
17 strict compliance policy with regard to a complete
18 application, is there a new strict compliance policy with
19 regard to a complete application or the written agreement
20 to comply. Is this a new strict compliance policy?

21 MR. HERRING: Absolutely there's not a new
22 strict compliance policy. Again, the case that was said,
23 I believe it was in 2010, the case, the Roundtree case,
24 was based on the idea that an application was incomplete
25 and one of the pieces missing in that application was also

1 the transferee's agreement to follow the manufacturer's
2 franchise agreement. I can explain why that is such an
3 important piece, if you would like.

4 MS. RYAN: I'm looking to have whether this is
5 a new policy from staff or not.

6 MR. HERRING: Yes, ma'am. Thank you.

7 MS. RYAN: Any other questions?

8 (Mr. Bennett and Ms. Ryan spoke at the same
9 time; could not clearly hear what Mr. Bennett said.)

10 MS. RYAN: I would appreciate not. I just
11 needed to know from staff's perspective whether something
12 was new.

13 MR. BENNETT: It's not even close.

14 MS. RYAN: I appreciate that. Thank you very
15 much.

16 Next we're going to respondents which I believe
17 is Mr. Donley. Is that correct? If you'll state your
18 name for the record, and we'll start the clock when you're
19 ready.

20 MR. DONLEY: I'm ready. My name is Billy
21 Donley. I'm with the law firm of Baker & Hostetler, and
22 as I stated earlier, I represent Volkswagen and its
23 division Audi in this case.

24 The board does not have jurisdiction. Let me
25 start with the last question that was asked about whether

1 or not this is a new strict compliance policy. It is not.
2 The Roundtree decision was issued by the agency in May of
3 2010. In the May of 2010 decision, the agency there said
4 that these requirements in .359 are jurisdictional and
5 they are to be followed. If they're not to be followed,
6 then how can parties ever know, and in particular, a
7 manufacturer know whether or not .359 is actually
8 implemented. In other words, in looking at the
9 requirements of .359, if you just go to substantial
10 compliance, or as the PFD actually says, there was a
11 signal given to Audi that there was compliance that the
12 transferees would follow Audi's dealer agreement. Is a
13 signal enough to cover all of these requirements?

14 And let me go a step further because this is
15 something you did not hear from the other two lawyers that
16 have spoken this morning. The code also requires, .359
17 also requires a manufacturer to respond within 60 days, so
18 if they get all the things required under .359, then the
19 manufacturer has to respond in 60 days. It has to be in
20 writing, it has to be sent by certified mail. I wonder if
21 the two lawyers that spoke earlier this morning would
22 agree that it's enough that a manufacturer substantially
23 comply with that or that a manufacturer simply send a
24 signal that they're going to turn something down within 60
25 days, or maybe it's enough that the manufacturer actually

1 instead of doing it in 60 days does it in 80 days, maybe
2 that's substantial compliance.

3 The point is this is your statute. I think the
4 board has to draw a very bright line here. We have to
5 have rules that we live by and parties have to reach them
6 and have to follow them, and if you don't and if you start
7 letting that slip, if you start finding that substantial
8 compliance is enough, well, then we've hit a slippery
9 slope, haven't we? The next time there will be another
10 party in front of you and they'll cite this case and
11 they'll say: Well, you found substantial compliance in
12 that Budget case, and so now I've substantially complied a
13 little different, I didn't really send them the pertinent
14 agreements, I just sent them an email saying I'm thinking
15 about selling, and I argue that's substantial compliance.

16 I don't think that's where we ought to be left
17 as parties, as dealers, as manufacturers, or as this
18 agency and the board. Instead, your staff has gotten it
19 right. These statutes are important.

20 And the other thing I want to say is when you
21 get into this idea, this notion of strict compliance, it's
22 a statute. We've all read this statute. It's been in
23 place for years and years and years. In fact, you'll
24 remember Mr. Crocker started his discussion with you this
25 morning that he has been involved with this agency since

1 the beginning. He's well aware of the requirements of
2 this code, he's well aware of what's required in .359, and
3 he was involved with his client, Budget, from the very
4 beginning of this process. He well knew that there had to
5 be a written statement, and it's not oral, by the way, and
6 it can't be done in any other way. He knew that the code
7 required under .359(c)(3) that the prospective transferees
8 had to provide a written agreement to comply with the
9 franchise to the extent that the franchise is not in
10 conflict with this chapter. That was not done.

11 Let me be clear on one thing, though, all the
12 discussion in the PFD is generally about Mr. Weitz, all
13 the discussion this morning before you was all about Mr.
14 Weitz. There are more prospective transferees in this
15 case than just Mr. Weitz. There's no finding on behalf of
16 any of these other prospective transferees that they
17 complied, substantially complied or even signaled
18 compliance with .359(c)(3).

19 Let me give you who those prospective
20 transferees are: Hi Tech Motorcars, LLC; Hi Tech
21 Partners, LLC; Headwater HiTech Partners, LLC; LKCM
22 Headwater Investments I, LP; LKCM Headwater Investments
23 GP, LP; Charles Ross Bartley; Equity Trust Company FBO
24 Charles Ross Bartley IRA; Turner Family Partnership; and
25 K. Rick Turner Revocable Trust.

1 Those also were prospective transferees in this
2 case and they didn't signal, they didn't suggest, they
3 didn't substantially comply with .359(c)(3). The fact of
4 the matter is that even if they had substantially
5 complied, it's not enough.

6 Let me talk a little bit about what is the
7 timing on complying with .359. What the administrative
8 law judges found was that compliance at some point in time
9 is enough for .359. That's not true. At the time the
10 protest is filed, and certainly by no later than the time
11 the protest is filed -- and I'd argue it's actually at the
12 time of the turndown -- the prospective transferees and
13 the selling dealer had to have complied with the code,
14 because how can we know otherwise how this statute
15 actually works or what we have to do as manufacturers or
16 as the agencies. Here that did not occur. The
17 substantial compliance, even for Mr. Weitz, ignoring all
18 these other prospective transferees for a moment, didn't
19 happen until some moment much later.

20 But specifically, I just want to be clear on
21 this substantial compliance, anyway, because it's a point
22 that bothers me every time I hear, because actually what
23 the ALJs ultimately said was that the prospective
24 transferee signaled, simply signaled that they would
25 follow 2301.359. It's not enough that they signaled and

1 it would never be enough for a manufacturer to signal
2 compliance with .359.

3 This is not a new rule that the board would be
4 imposing on the parties, it's not strict compliance that
5 we haven't seen before. Instead, all this board is being
6 asked to do is to tell the parties you've got to comply
7 with the statute. It's been in place for a long time.
8 Why shouldn't the parties have to comply with the statute?

9 I can certainly tell you if the shoe was on the other
10 foot, the other side would be up here arguing Audi had to
11 strictly comply with the statute and they didn't, and so
12 now Audi has problems. Well, certainly it works the other
13 way too, that the selling dealer has to strictly comply
14 with .359, the statute is crystal clear.

15 There is no unwritten rules with regard to
16 this. We're not talking about a rule here. You heard Mr.
17 Bennett talk about, well, this is an unwritten rule, I
18 don't find it anywhere in 215 and he held up a piece of
19 paper. This isn't a rule, this is actually a statute.
20 The state legislature saw fit to pass this statute and
21 impose it upon the parties in the situation that we have
22 here. So this is not a rule, it's certainly not an
23 unwritten rule, instead, it's a statute and it must be
24 followed.

25 The staff didn't get it wrong, they didn't get

1 it wrong here at all. When this case was originally
2 filed, so the protest comes in, it comes in to the Motor
3 Vehicle Division. All the staff has at that moment in
4 time is the protest. If the protest says the world is a
5 certain way, that's the only thing that staff knows, so
6 the staff can't be faulted for not knowing whether or not
7 jurisdiction existed at that time. The protest goes
8 forward, replies are filed, discovery is had, and then
9 it's discovered that the other side had not complied with
10 2301.359.

11 You heard kind of a muddled presentation on
12 whether or not anyone ever raised the issue before today.

13 Audi did indeed raise the issue that there had not been
14 compliance with .359 before the administrative law judges.

15 We did that in January during the summary judgment
16 portion of the case. The administrative law judges at
17 that time disagreed with our position. It's unfortunate.

18 I think we were right at the time and we're right here
19 today: there was no jurisdiction. But the administrative
20 law judges disagreed with us. The issue is now here
21 before this board.

22 Just to be clear, there was nothing that the
23 staff could do at the Motor Vehicle Division during the
24 course of the protest either. They're not involved in the
25 proceeding at that time. They don't know what discovery

1 states; they have not; they have not participated in the
2 depositions; they do not get a chance to review and get
3 involved in all the briefing that might be filed with the
4 administrative law judges. So it's not a problem with the
5 staff here at the Motor Vehicle Division.

6 Where does the problem lie? We've got parties
7 on the other side and two lawyers who got up here this
8 morning to suggest it's someone else's problem that they
9 failed to comply with .359. How can that possibly be?
10 That statute was written so that Budget Leasing had to
11 comply with those portions of the statute that are now at
12 issue in front of you. It wasn't MVD staff's problem, it
13 wasn't Audi's problem, it wasn't anyone else's problem.
14 They simply failed to comply with the statute.

15 Now, the other thing you've heard in terms of
16 timing was, well, Audi didn't say anything in the turndown
17 letter about them failing to comply and provide that
18 statement as to whether or not they would follow the
19 dealer agreement. It is up to the selling dealer to get
20 that information to the manufacturer, not vice versa. As
21 far as Audi knew, these parties were not trying to proceed
22 under 2301.359, they certainly weren't following the
23 statute. So it wasn't Audi's obligation to ask: Are you
24 following the statute, and if so, are you aware that
25 you've missed several things that you need to provide?

1 Instead, these parties proceeded as they
2 wished. Audi got the information that was provided and
3 responded. So it's not Audi's fault either and there was
4 nothing Audi should have done more than it did in a letter
5 sent stating that it would not accept this particular
6 transaction.

7 The other thing that was stated this morning by
8 Mr. Bennett is that the board has failed to provide its
9 policy on this to the State Office of Administrative
10 Hearings. Again, I'm puzzled as to what policy. There is
11 no policy. We're talking about 2301.359, and that's what
12 has to be followed here. It's not a policy, members of
13 the board, it's actually construction of a statute. These
14 parties have to follow that statute just like the
15 manufacturer would.

16 As a result, Volkswagen and its division Audi
17 would request that this board find that it has no
18 jurisdiction, adopt the recommendation of the staff, and
19 to dismiss this matter for want of jurisdiction.

20 I'll go one step further, even if the board
21 decided it had jurisdiction -- which I don't think you
22 should -- even if you did -- may I go just 30 seconds
23 longer, I'm out of time -- even if the board would decide
24 it has jurisdiction, these parties still didn't follow the
25 statute. The statute is still mandatory, and if they

1 failed to follow it, they still don't have a claim, and
2 you still end up at the same spot at some point in time
3 where this matter is going to be dismissed. And so at the
4 end of the day, the board hear today should find no
5 jurisdiction and simply dismiss this protest.

6 MS. RYAN: Thank you.

7 Any questions?

8 MR. PALACIOS: Yes. I have one question for
9 Mr. Donley. You stated that Audi knew prior to the
10 hearing that there was a violation of .359. Knowing that,
11 why did Audi proceed with the hearing, knowing that, I
12 guess, there was a violation of statute?

13 MR. DONLEY: I did not say that. If I did, I
14 misspoke.

15 MR. PALACIOS: Well, I heard you say that there
16 was an issue raised regarding the violation of .359.

17 MR. DONLEY: That was after the protest was
18 filed. After the protest was filed, we filed papers with
19 the administrative law judges raising that issue. Because
20 until these parties filed their protest, we don't know if
21 they're proceeding under 2301.359 or not because, frankly,
22 buying and selling of dealerships can happen outside the
23 code. Had they presented a buyer to Audi that Audi liked,
24 the code didn't have to be followed and we could have
25 simply gotten the transaction done. And so as a result of

1 that, I should say, manufacturers don't know whether or
2 not -- when information comes through on a buy-sell,
3 whether or not it's intended to fall under the code or
4 not.

5 And here they simply failed to follow the code,
6 so it wasn't Audi's obligation to say are you aware you
7 didn't follow certain requirements under the code. That's
8 up to the selling dealer to make that decision when they
9 submit the information to the manufacturer, and that can't
10 be visited on the manufacturer. That belongs to the
11 selling dealer to do it properly.

12 MS. RYAN: Any other questions?

13 MR. RODRIGUEZ: I've got a question for staff,
14 Madam Chair.

15 MS. RYAN: Okay. Thank you.

16 MR. RODRIGUEZ: Mr. Avitia, would you again
17 repeat your recommendation for us?

18 MR. AVITIA: Member Rodriguez, for the record,
19 Daniel Avitia, director of the Motor Vehicle Division.

20 Staff recommends that the board reject the PFD
21 in its entirety and issue an order of dismissal for want
22 of jurisdiction, based on the fact that Budget Leasing's
23 application was incomplete and that Budget Leasing lacks
24 standing.

25 MR. RODRIGUEZ: Two questions. One is do you

1 know the effective date of those rules that impose these
2 requirements? You may not know it, but was it like 2010
3 or 2011 or yesterday?

4 MR. HERRING: Again, there are no rules. This
5 is the statute and the statute has been in place --

6 MR. RODRIGUEZ: I'm talking about the statute.

7 MR. RODRIGUEZ: -- the statute has been in
8 place for more than 20 years.

9 MR. RODRIGUEZ: So my point is it's not
10 something that sprung up yesterday.

11 MR. HERRING: No, absolutely not.

12 MR. RODRIGUEZ: Is there anything, Mr. Avitia
13 or Mr. Herring, is there anything you heard today that
14 dissuades your recommendation in any shape or form?

15 MR. HERRING: No, sir.

16 MR. RODRIGUEZ: Madam Chair, I make a motion
17 that we follow the staff's recommendation on this matter.

18 MS. RYAN: I have a motion. Do I have a
19 second?

20 (No response.)

21 MS. RYAN: I'll second it. So a motion and a
22 second, motion made by Member Rodriguez, second made by
23 myself, Member Ryan. All in favor raise your right hand.

24 (A show of hands: Ingram, Rodriguez and Ryan.)

25 MS. RYAN: That would be Member Rodriguez, Mr.

1 Ingram, and Ryan.

2 All opposed?

3 (A show of hands: Palacios and Slovacek.)

4 MS. RYAN: Member Slovacek and Member Palacios.

5 The motion will pass three to two. Thank you.

6 Quickly, before the parties leave, I will put
7 back on the table the offer of the agency, should it be
8 wanted, for mediation if the assistance is desired, and I
9 would ask that you get with Mr. Duncan. Thank you.

10 We will pick up with item 6.A. Mr. Avitia,
11 you're back up.

12 MR. AVITIA: Thank you, Madam Chair. For the
13 record, my name is Daniel Avitia. I'm the director of the
14 Motor Vehicle Division. Alongside me now is Michelle
15 Lingo, staff attorney with the Motor Vehicle Division.

16 Agenda item 6.A.1 is presented for the board's
17 adoption of new rule Sections 215.88 and 215.89,
18 respectively called Criminal Offense and Fitness. On May
19 9 of this year, the board approved publication in the
20 *Texas Register* proposed new rules sections which provide
21 for denial of an application or for the suspension or
22 revocation of a license due to criminal conviction or a
23 determination of unfitness. The proposed new rules
24 sections implement Occupations Code Chapters 53 and 2301
25 and apply to applications evaluated and licenses issued

1 under Transportation Code Chapter 503 and under
2 Occupations Code Chapter 2301.

3 Please keep in mind the new sections do not
4 modify a person's opportunity to ask for a hearing
5 regarding an action on the application or the license. In
6 accordance with statutory requirements, the rules require
7 consideration of mitigating factors when evaluating a
8 criminal conviction to determine a person's fitness.

9 Before publication in the *Texas Register*, the
10 new sections were discussed at three meetings of the Motor
11 Vehicle License Advisory Committee which was chaired by
12 Board Members Ingram and Palacios. The department
13 received no comments on the proposed new rule sections
14 during publication in the *Texas Register*.

15 If the board approves the proposal package
16 today, staff anticipates publication in the *Texas Register*
17 on October 3, an effective date of October 12 of this
18 year, and implementation by the Texas Department of Motor
19 Vehicles thereafter.

20 Staff recommends that the board adopt the rules
21 as proposed. Ms. Lingo and I are certainly happy to
22 answer any questions the board may have regarding agenda
23 item 6.A.1.

24 MR. INGRAM: If there's no comments, I'd like
25 to move that we adopt Sections 215.88 and 215.89.

1 MR. RODRIGUEZ: Second.

2 MS. RYAN: We have a motion and a second. Any
3 discussion?

4 MR. INGRAM: I'd like to just say also, to
5 thank Ms. Lingo for such dedicated work to this project.
6 It was a long one. We spent quite a lot of time on this.

7 And also to my fellow board members, Member Palacios and
8 Member Ryan, for their commitment to it. So thank you so
9 much.

10 MS. RYAN: Thanks for leading it.

11 All in favor raise your right hand.

12 (A show of hands.)

13 MS. RYAN: The motion carries unanimously.

14 All opposed?

15 (No response.)

16 MS. RYAN: The motion carries.

17 We'll move to 6.A.2, Jeremiah Kuntz.

18 MR. KUNTZ: Good morning, members. Jeremiah
19 Kuntz, director of Vehicle Titles and Registration.

20 Members, before you today are the rules
21 amending Chapter 217 of the State Administrative Code for
22 final adoption titled Deputies. The proposed rules were
23 published in the *Texas Register* on May 23, 2014. The
24 comment period closed on June 23, 2014. The department
25 received 160 comments from groups, businesses and citizens

1 with various comments.

2 I'll go through those very quickly: 85
3 requesting titling companies be allowed to remain in
4 business; there were 17 that stated fees are reasonable
5 and they should be allowed to continue to do business;
6 nine that customers should have the right to choose where
7 they do their transactions; six that the current fees were
8 reasonable and that reasonable fees should be allowed;
9 there were also six in support of titling service
10 companies.

11 We also received comments from the Texas
12 Independent Auto Dealers Association, the Texas Auto
13 Dealers Association and various county tax assessor-
14 collectors with specific recommendations to the rule.

15 As staff has laid out in the board packet, we
16 are recommending that the board withdraw the proposed new
17 Sections 217.112, 217.113, 217.114, 217.115, and 217.116,
18 and adopt the amended 217.111, Deputies, as they have been
19 proposed in your packet.

20 MR. INGRAM: I so move, Madam Chair.

21 MR. RODRIGUEZ: We're proposing posting at this
22 point. Right?

23 MR. INGRAM: This is adoption.

24 MR. RODRIGUEZ: Oh, this is the adoption?

25 MS. RYAN: This would be adoption.

1 MR. RODRIGUEZ: For the deputies.

2 MR. DUNCAN: We amended the rule based on
3 comment.

4 MR. RODRIGUEZ: Got it. Second.

5 MS. RYAN: I have a motion and a second.

6 MR. DUNCAN: Before you vote, I do believe we
7 have a speaker.

8 MS. RYAN: Before we vote and before
9 discussion, we do have a card, Kevin McCary. Is that
10 correct?

11 MR. McCARY: Good morning. Yes, that is
12 correct. Kevin McCary, assistant county attorney, El Paso
13 County, Texas.

14 We understand the proposed rule as amended to
15 preserve the status quo, pending further study by the
16 Texas Transportation Institute, therefore, we will hold
17 off on further comment until another day. Thank you.

18 MS. RYAN: Thank you very much.

19 MR. RODRIGUEZ: Are you going back to El Paso
20 today?

21 MR. McCARY: Yes.

22 MR. RODRIGUEZ: Have a good trip. Thanks a
23 lot.

24 MS. RYAN: We have a motion and a second. Any
25 discussion?

1 (No response.)

2 MS. RYAN: All in favor raise your right hand.

3 (A show of hands.)

4 MS. RYAN: All opposed?

5 (No response.)

6 MS. RYAN: The motion carries. Thank you.

7 With that, we will move to item 6.B, David
8 Duncan.

9 MR. DUNCAN: Members, as you'll see I'm being
10 joined by Aline Aucoin, who is one of my assistant general
11 counsels, and Mr. Jimmy Archer.

12 This rule review is of the Motor Carrier Rules
13 in Chapter 218. This is consistent with the rule review
14 schedule that we discussed with you several meetings ago
15 where we said we were going to go through all of our rules
16 and review for consistency, clarity, and clean up any
17 issues that we find.

18 On this particular rule review we did work
19 closely with the TXTA, the Texas Trucking Association. We
20 shared with them an initial outline of what we were
21 proposing. They reviewed that and had some comments. We
22 addressed their comments, and sent them a revised version
23 with markups, and have not heard back from them, so our
24 assumption is they're okay. And this is just a proposal,
25 they'll certainly have the opportunity if they find

1 something later to address it with us.

2 And we're available for any questions if you
3 have any.

4 MR. RODRIGUEZ: So moved, Madam Chair.

5 MR. INGRAM: Second.

6 MS. RYAN: Motion and second. Any discussion?

7 (No response.)

8 MS. RYAN: All in favor raise your right hand.

9 (A show of hands.)

10 MS. RYAN: All opposed?

11 (No response.)

12 MS. RYAN: The motion carries unanimously.

13 Thank you very much.

14 We are now on item 6.B.2, Jimmy Archer.

15 MR. ARCHER: Good morning, Madam Chair, members
16 of the board. For the record, my name is Jimmy Archer.
17 I'm director of the Motor Carrier Division.

18 For the board's consideration, this is a
19 proposal for amendment to 43 Texas Administrative Code,
20 Section 217.44, Registration Reciprocity Agreements. This
21 amendment was originally brought to you in the May board
22 meeting. After receiving comments from the Texas Trucking
23 Association, the department decided to withdraw the
24 submission and submit an amended version of Section 217.44
25 to the board.

1 The proposed amendments add language to clarify
2 that the department will issue one license plate for
3 tractors, truck-tractors, trailers and semi-trailers.
4 These are vehicles typically used in conjunction with one
5 another. The rule will amend power unit language to
6 specify the plate issued to a tractor or truck-tractor is
7 to be placed on the front of the vehicle. The one plate
8 issued to trailers and semi-trailers will be placed on the
9 rear of the vehicle.

10 Currently, when the department issues one plate
11 for a power unit under the International Registration
12 Plan, we tell the applicant to attach the plate to the
13 front of the vehicle. Further, peace officers are
14 accustomed to seeing a license plate on the rear of a
15 power unit that is not designed and used primarily for
16 drawing or towing another vehicle. The department decided
17 to issue two license plates to these vehicles to display a
18 license plate on the front and rear of the vehicle.

19 The rule also adds language about the
20 department issuing two license plates to all other
21 apportioned vehicles, which includes buses used to
22 transport charter parties and trucks that are registered
23 under the International Registration Plan.

24 The proposed rule also corrects statutory
25 references, rule references and references to language in

1 the International Registration Plan, adds a definition of
2 the department's Regional Service Centers, and makes other
3 amendments to the rule as consistent with other Texas
4 Department of Motor Vehicle rules and terminology.

5 There is no significant fiscal impact related
6 to these proposed amendments. If the proposed amendments
7 are approved by the board, staff anticipates the
8 publication in the *Texas Register* on or about October 3,
9 with comments to be received by 5:00 p.m. on November 3,
10 2014.

11 I respectfully ask the board to approve this
12 rule for publication in the *Register*, and I'll be happy to
13 answer any questions.

14 MS. RYAN: So you're requesting just to
15 publish.

16 MR. INGRAM: So moved, Madam Chair.

17 MS. RYAN: Do I have a second?

18 MR. RODRIGUEZ: I'm going to let somebody else
19 make it.

20 MS. RYAN: Somebody?

21 MR. SLOVACEK: Second.

22 MS. RYAN: A motion and a second. All in favor
23 raise your right hand.

24 (A show of hands.)

25 MS. RYAN: All opposed?

1 (No response.)

2 MS. RYAN: The motion carries unanimously.

3 Thank you very much.

4 With that, we will move on to item 7.A,
5 specialty plate design. Making your debut, Mr. Kuntz.

6 MR. KUNTZ: For the record, Jeremiah Kuntz,
7 director of Vehicle Titles and Registration.

8 Before you today is the new specialty license
9 plate design for the Daughters of the American Revolution.

10 This plate is a non-vendor specialty license plate. It
11 is sponsored by the General Land Office, so it is not a My
12 Plates plate. It has been reviewed by staff, it does meet
13 reflectivity and legibility standards, and we would move
14 adoption.

15 MR. RODRIGUEZ: Question, Jeremiah.

16 MR. KUNTZ: Yes, sir.

17 MR. RODRIGUEZ: I think we worked really hard
18 with My Plates to try to standardize the specialty plate,
19 and I thought that the left quarter, third, two inches,
20 whatever that size of the license plate, was the standard
21 that we would be following, and I just see this one as
22 exceeding that particular left side of the license plate.
23 My question is why are we not adhering to the standards,
24 number one. Number two, you know that by putting God
25 here -- we may already have it -- we're inviting a lawsuit

1 or we're inviting a challenge to the next one that comes
2 here and wants to put something else completely contrary
3 on the license plate. So I'm just wondering if any
4 thought went into that. But my first concern is the
5 standards piece.

6 MR. INGRAM: If I could just tag on to that
7 comment, if you don't mind. I thought that there was
8 always a star in them.

9 MR. RODRIGUEZ: A silhouette is required, the
10 silhouette of the State of Texas.

11 MR. KUNTZ: The standard for the left region,
12 there is a standard for that. It dictates how many
13 alphanumeric characters are allowed to be on a plate. So
14 in order to increase the legibility of the image that is
15 on the left-hand side, that is at its maximum that it can
16 have as that width for that region of interest.

17 MR. RODRIGUEZ: We went through all this with
18 the last license plate that Johnny couldn't read.
19 Remember that?

20 MR. KUNTZ: And when you get to that maximum
21 width --

22 MR. RODRIGUEZ: Can't read. I'm sorry.

23 MS. RYAN: You do notice it's closer this time.
24 (General laughter.)

25 MR. KUNTZ: You get to a five character

1 maximum for the alphanumeric pattern, so it limits the
2 personalization that can be done on the license plate
3 because you're now limited to five characters, but it
4 allows for that image to be a larger font size. So it
5 does meet our standards. A lot of the plates limit that
6 size that's on the left so what you see is a lot of them
7 choose to use a narrower image there to give them more
8 alphanumeric character opportunities for personalization.

9 MS. BREWSTER: Madam Chair, if I might. So the
10 standards contemplate both a five character and a six
11 character plate, and based on the choice of the number of
12 characters dictates the size allowed for the graphic.

13 Is that correct?

14 MR. KUNTZ: Correct.

15 MR. RODRIGUEZ: So you're saying there are two
16 standards.

17 MR. KUNTZ: Well, the standard has a maximum
18 width that that left region can be, and you can shrink
19 that width and pick up an additional alphanumeric
20 character, but there is a maximum width and this plate
21 does meet that maximum width.

22 MR. RODRIGUEZ: We've done it with the last
23 license plate that we had here in question.

24 MR. KUNTZ: We did.

25 MR. RODRIGUEZ: And it didn't go as wide as

1 this one is.

2 MR. KUNTZ: If I'm remembering correctly, we're
3 referring to the TCEQ plate, and I believe that we did
4 maximize that left side of the license plate and it was
5 down to a limit of five characters for that plate as well.

6 MR. RODRIGUEZ: So are you telling us today
7 that the TCEQ plate was equal in width on the left side of
8 it for the graphic piece of it as this one is?

9 MR. KUNTZ: That is my understanding, yes.

10 MR. RODRIGUEZ: So you don't know.

11 MR. KUNTZ: That is my understanding. I can go
12 back and verify that definitely, but that is my
13 understanding.

14 MR. RODRIGUEZ: My point is the standards
15 piece, Jeremiah, it's far wider than anything I've seen on
16 the left side of the license plate, and then the second
17 point is the verbiage at the bottom. I mean, we're
18 inviting a lawsuit, basically, if we don't already have
19 it.

20 MR. KUNTZ: We do have an In God We Trust
21 license plate.

22 MR. RODRIGUEZ: Yes. That's why I thought we
23 might have something out there.

24 MR. SLOVACEK: I move we approve it.

25 MS. RYAN: Motion. Do we have a second?

1 MR. INGRAM: I'll second.

2 MS. RYAN: We have a motion and a second. Any
3 further discussion?

4 (No response.)

5 MS. RYAN: All in favor raise your right hand.

6 (A show of hands: Ingram and Slovacek.)

7 MS. RYAN: All opposed?

8 (A show of hands: Palacios, Rodriguez and
9 Ryan.)

10 MS. RYAN: All in favor was two, Member
11 Slovacek and Member Ingram; opposed, Member Rodriguez,
12 Member Palacios and Member Ryan.

13 What did I do? I'm sorry.

14 MR. DUNCAN: They voted for and the three of
15 you voted against.

16 MS. RYAN: Let me repeat that. For was Member
17 Slovacek and Member Ingram, opposed was Member Rodriguez
18 Member Palacios and Member Ryan. Sorry about that. Thank
19 you.

20 With that, I'll move to item 7.B, key
21 performance indicator measures update.

22 MS. BREWSTER: Thank you, Madam Chair. For the
23 record, Whitney Brewster, executive director.

24 Today I'm asking for the board's approval of
25 the proposed key performance indicators in your board

1 materials. These performance indicators have been
2 modified and extensively reviewed by executive management
3 and with further input from the Projects and Operations
4 Committee. The reason for this effort to modify the
5 TxDMV's performance measures is because the executive team
6 believes that our measures should be clear, comprehensive
7 and meaningful, and we believe that some of our
8 performance measures have become outdated and we were
9 hitting them at 100 percent consistently. They also left
10 out some key areas within the agency, such as the Office
11 of Administrative Hearings and the Auto Burglary and Theft
12 Prevention Authority, among others.

13 So we are asking that the board approve the
14 performance measures as proposed in your board books.

15 MR. PALACIOS: I move to accept the performance
16 measures as presented.

17 MR. RODRIGUEZ: Second.

18 MS. RYAN: Motion and a second. Any
19 discussion?

20 (No response.)

21 MS. RYAN: All in favor raise your right hand.

22 (A show of hands.)

23 MS. RYAN: The motion carries unanimously.

24 Thank you.

25 MR. RODRIGUEZ: Move we adjourn.

1 MS. RYAN: Unless there's further business,
2 I'll take a motion to adjourn. I think we had one
3 unspoken. Oh, he said it? I have a motion. Do I have a
4 second?

5 MR. INGRAM: Second.

6 MS. RYAN: All in favor raise your right hand.

7 (A show of hands.)

8 MS. RYAN: The meeting is adjourned. Thank you
9 very much.

10 (Whereupon, at 11:29 a.m., the meeting was
11 concluded.)

C E R T I F I C A T E

1
2
3 MEETING OF: TxDMV Board
4 LOCATION: Austin, Texas
5 DATE: September 12, 2014

6 I do hereby certify that the foregoing pages,
7 numbers 1 through 118, inclusive, are the true, accurate,
8 and complete transcript prepared from the verbal recording
9 made by electronic recording by Nancy H. King before the
10 Texas Department of Motor Vehicles.
11
12
13
14
15

16 /s/ Nancy H. King 09/21/2014
17 (Transcriber) (Date)
18

19 On the Record Reporting
20 3636 Executive Ctr Dr., G-22
21 Austin, Texas 78731
22
23