TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

Wednesday,
August 25, 2010

Board Room
105 West 15th Street
Austin, Texas

COMMITTEE MEMBERS PRESENT:

VICTOR VANDERGRIFF, Chair
CHERYL JOHNSON
JOHNNY WALKER
CLIFF BUTLER
JIM CAMPBELL
ED SERNA
VICTOR RODRIGUEZ
LAURA RYAN

I N D E X

AGENDA ITEM		PAGE
1.	Call to order	03
2.	Briefings	--
A.	Administrative update	05
B.	TxDOT	--
C.	TxDMV	--
D.	My Plates	--
Executive Session		26
4.	Action Items	--
A.	LAR	--
B.	Speciality Plate Designs	--
5.	Consent Agenda	91
A.	Enforcement Agreed Orders 1-54	
B.	Enforcement Notice of Violation Citation Agreed Order 1-16	
C.	Enforcement Dismissal Orders 1-4	
D.	Settlement and Dismissal Orders 1-11	
E.	Franchise Case Dismissal Orders 1-7	
6.	Resolutions for Individual Consideration	91
A.	Adoption of rules under Title 43	
B.	Proposed rules under Title 43	
C.	Franchise Proposal for Decision	
D.	Warranty Performance Proposals for Decision 1-2	
E.	Enforcement Motions for Disposition Based on Default 1-11	
7.	Adjournment	--
Public comment		
Tom Gaylor		65

P R O C E E D I N G S

MR. VANDERGRIFF: The August 25, 2010 of the Board of the Texas Department of Motor Vehicles to order. I want to note for the record, that the public notice of this meeting, containing all items on the agenda was filed with the office of Secretary of State on August 16, 2010.

If you wish to address the Board, please complete a speaker's card at the registration table in the lobby. To comment on an agenda item, please complete a yellow card, and identify the agenda item. If it is not an agenda item, we will take your comments during the public comment portion of the meeting.

Before we begin today's meeting, please place all cellphones and other communication devices in silent mode. And now I would like to have a roll call, please, of the Board Members. Board Member Butler?

MR. BUTLER: Here.

MR. VANDERGRIFF: Board Member Campbell?

MR. CAMPBELL: Here.

MR. VANDERGRIFF: Vice-Chair Johnson?

MS. JOHNSON: Here.

MR. VANDERGRIFF: Board Member Rodriguez?

MR. RODRIGUEZ: Present.

MR. VANDERGRIFF: Board Member Ryan?

MS. RYAN: Here.

MR. VANDERGRIFF: Board Member Walker.

MR. WALKER: Present.

MR. VANDERGRIFF: And let the record reflect that I, Victor Vandergriff, Chair, am here as well. Board members Ramsey Gillman and Marvin Rush are absent today. I do want to note that joining us for the first time, Laura Ryan.

She comes to us from Gulf States Financial Services, and is representing the manufacturer/distributor interests before this Board. It has been my pleasure and privilege to have worked with her in other capacities, for many years, and have found her to be intelligent, articulate, very engaged and interested in helping whatever business she is working with move forward.

So I look forward to that continued service here with all of us with the Department of Motor Vehicles. So welcome. Glad to have you here.

MS. RYAN: Thank you.

MR. VANDERGRIFF: We would now like to move into the public comment portion. I did get a number of cards here. But every card that we have is identified for a particular topic. But I did want to ask if there is anyone in the audience who just wishes to speak on an item that is not on our agenda?

(No response.)

MR. VANDERGRIFF: All right. And with none, I will move directly into the administrative updates. Let me note for the record that we are going to have a September Board meeting in two weeks.

And it seemed like a very opportune time for us, going into -- almost finishing up our first year and going into our second. And heading into our first legislative session as an independent agency. For us to have a strategic planning session as a Board, in lieu of a regularly scheduled Board meeting, it certainly will be noticed publicly.

And the public, all of you obviously are welcome to attend that meeting. But we do intend to take up a number of topics. In the potential topics for discussion, we will talk about those at the appropriate time here in the meeting, when I have finished my little soliloquy.

Is you will note them on our agenda. The potential topics for us to discuss. I think it is very important for this agency at this point in time to mull over the direction that it has been, and the direction that it needs to go. And I want to kind of to highlight at least some of my thoughts for this Board, I want to give you a synopsis if you will, of a speech that I gave

at the recreational vehicles convention.

Myself and our Executive Director Ed Serna and Carol Kent attended that. And I made a few comments that I think are appropriate. And to make sure this Board is aware of. But also, it sort of frames where I hope we will go with our discussion at this particular planning session. There was, I went back a little bit.

On the last legislative session, there were a couple of battles as an advocate for the creation of the Department of Motor Vehicles that I lost, in winning the war. One of those battles was, believe it or not, I had advocated that we have a non-aligned Board with very strong advisory committees to help with the day-to-day, since that a Board would not know the details of our business.

That went down to spectacular defeat, because all of the industries represented out there in the audience fought very hard to have an aligned Board. And I noted for the audience that I spoke, that that was a good thing. That I had been wrong in that. And particularly democracy in this Board, and the way we work forward, it is sometimes not real pretty.

And we are -- as a new Board, very interested and engaged. But having the expertise of all of these individuals that I serve with, I think has been a benefit

to this agency. It is very hard for anything to get past this Board. Because someone knows something.

I will never forget the look on now departed Director of VTR, Rebecca Davio's eyes, which only us Board members could see, when Board Member Walker started talking about the axle links in great detail. That doesn't normally happen, if you do not have a Board that is aligned, engaged and understands the business. Having said that, there are a few things that we need to do, at least in my humble opinion.

The first is, and I have noted this. And I mean this with no disrespect intended to TxDOT, our friends, our partner is so much of what we do. But we must at the earliest expedited date possible divorce ourselves, separate ourselves if you will. Organizationally, structurally, financially, culturally, any way you want to look at it from that agency. That we must be known and seen as a standalone agency.

And all impediments in that regard, be they facilities, computers, support, that has to change. We have to work very hard for that. So that we create an identity for the Department of Motor Vehicles. I also noted that in my own personal feelings, that we needed, in addition to establishing a separate funding for us, we are certainly going through the LAR process.

But I believe we need to adopt as much as possible in a state agency a private sector mentality. Because we are dealing with predominantly retail businesses. We don't have to do that business, but we have to understand that business very effectively. And I think there are ways to do that, particularly with the funding.

One of the things that I think we should look at very hard is a self-directed semi-independent approach. There are agencies in this country that do that on a broader scale than Texas certainly does at this point in time.

But if we are in control of our economic destiny, then we can certainly more appropriately act in support of the industries that we serve. I also noted that in my opinion we need to be an economic development agency versus a pure regulatory agency.

We have a huge regulatory function. I by no means do not want to diminish that. In fact, I want to strengthen it. On a personal note. But the day we lose sight of the fact that we are out to not coddle, but support, promote the industries in which we oversee is the day that we lose some of that capability to help the State maximize its revenue by maximizing the business effectiveness and revenue of the industries we support.

So with that in mind, I felt it was very appropriate that our Board take up some of the things that we have discussed but not solidified. Obviously the vision, mission values of the Department as well as looking at our agency goals, and performance objectives. Establishing, I want to have a clear understanding of what self-directed semi-independent is, and this Board's overall viewpoint on that. Benchmarking of performance. These are just some things that we need to do.

But in addition to that, we are a very strong Board. And we need to also clearly establish our operating policies and procedures and very clearly understand our policy role versus the day-to-day role that is performed under the Executive Director. And to very clearly delineate those.

And then furthermore, we cover one other -- the other two areas that I said I lost the battle. I was not a real fan of this Board handling contested cases. We do handle those.

And I think that as a result to maximize our effectiveness on those, we need to have very clear Board policy and procedures so that we can move through those cases in an expedited manner, that the people before us and the companies before us certainly deserve.

The last thing I said at that meeting, when I

mentioned about the administrative cases, is that that was a battle that I had lost, not thinking this Board could really function well as a judicial body. I think we can with the proper guidance.

And I think that this Board comes to very good decisions. We are not always pretty in doing that. But we come to good decisions. But I do believe that that role is a unique one that we have.

And if we are not -- if we at this point, I would not give up that role until we clearly establish where we are as an economic development agency. Because giving up that role, we might then lose that effectiveness in overseeing the regulatory part of the business that we currently serve. So that is a broad overview.

I will certainly open this up to discussion, if any of the Board members have any. I will tell you that the goal that I have with Ed is that by the end of next week, we will provide you with some synopsis of what we will be discussing, so that we have some talking points, if you will to move our meeting along in September.

And then I also want to note, going through the things that I have mentioned to you here, the October Board meeting, we will have a pre-Board workshop on legislative session and issues coming up. I think by that time, we will have certainly a pretty good understanding

of what we will be facing out there, as well as some of the needs and concerns that this agency has.

And then legislative committee hearings, there is a round of hearings coming up in September. I have been asked to testify at House Transportation, which comes up on September 2.

I do want to note if -- I think he introduced himself to everyone here. He has since left the room. But we were graced a few moments ago with the Chairman of the House Transportation -- Joe Pickett from El Paso. He came into the room, just to introduce himself to our Board members.

People do pay attention to this agency. And they are interested in where we go and want to be helpful to guests there.

And then last but not least is really, in terms of general information updates, none other than the fact that we continue to be active in seeking out to the industries that we regulate and oversee. So with that, I will open it up, if anybody has any questions on anything I have said, or any direction to offer.

(No response.)

MR. VANDERGRIFF: All right.

MR. BUTLER: Was Elm Street -- sorry, Chairman. Was that September 8 or September 9?

MR. VANDERGRIFF: September, I am positive of at least the 9th. Is Thursday the 9th?

MR. BUTLER: Yes. Thursday.

MR. VANDERGRIFF: Our regularly scheduled meeting? And we will begin that at ten o'clock to allow you to travel in during the day. And now I can rest my voice and turn it over to Mr. Serna.

MR. SERNA: Good morning, Mr. Chairman, Board members. Just a quick update on some of the things that have been going on. Of course, in your Board book, the usual financial summary that Linda provides.

I would also like to note that although I don't have any specifics yet, Ms. Johnson and I yesterday conducted second round interviews for Vehicle Titles and Registration Division Director. I completed interviews for the Enforcement Division Director, Consumer Relations Division Director and Motor Vehicle Division Director.

And should have those announcements later this week. And I will certainly send an update to the Board on those selections, as well as the Vehicle Titles and Registration.

Concerning the Motor Carrier Division Director position, we will be working, I will be working with Mr. Walker. We will be restructuring that in an effort to get additional applicants that have got more practical

experience in the Motor Carrier industry. So that will be the next priority, is to try to get that Director position hired.

I would also like to note that Dawn has gone to the interview process, and we have selected a candidate for human resources manager. Once we get that finalized, I will include that in the message that I send out later this week for that individual. I am excited about getting that individual on board from two perspectives.

First of all, that individual will be responsible for then hiring the rest of our HR. And that will be one less thing that we will be turning to TxDOT for. They have been giving us good support, but we do need to -- I hear loud and clear from the Board members, we do need to stand on our own as an agency. So we will be able to do that.

And second, the individual that we are looking at has got a wealth of experience, and will be able to start examining our policies concerning human resources. And we will be working with the appropriate Board committee and the Board as we bring those policies, any that require any rule changes, we will bring those policies as we change them and approve them, back to the Board. So we are moving forward there.

Staff, just on a regular ongoing basis, we

continue to post and hire for our regular positions. We have recently had two. We had three regional managers retire. And collectively, we lost approximately 100 years of experience with the retirement of those three regional managers.

We were fortunate then, we were able to re-post and we rehired in at least two of the areas. And I think we have got a posting up. Or we will have a posting up for the third, which is in El Paso.

But the individuals that we are bringing on board kind of have the same positive customer service attitude that the retiring regional managers had. So we are moving forward in that area as well.

Let me ask you all, if you have any questions about the financial information, kind of skipping down. That is it for the human resources side of the update. If you have any information on the financial summary for fiscal year 2010 that Linda sent out. That has gone through July.

That report goes through July. We will be closing our books as an agency in August. So the September before, it will be a summary for the fiscal year. Turn to the second tab or the green tab.

MR. VANDERGRIFF: And when we are in this building again, I have promised Linda we are going to have

a table with a chair next time.

MS. FLORES: For those of us who are wearing heels. And the month of July expenditures really don't veer off where we have been following them the last couple of months.

I don't expect any major spikes for the month of August. So you know, right now, I am looking at spending approximately $102 million through the end of August.

MR. SERNA: And then, I don't know if you all have any questions on any of the financials. I will give you a couple of minutes to kind of read through that, and the other electronic material we sent out.

MR. CAMPBELL: Linda, just appreciate your -- I appreciate the breakdown of the other operating expenses. That does help us to identify specific issues and stuff. And I just want to comment on that. I appreciate it.

MS. FLORES: Yes, sir.

MR. SERNA: If there is nothing else on the financial, the last administrative updates that I have is Dawn worked real pretty hard to put together a floor plan that I have examined. And asked her to go back and look at making some changes to where we would move to -- no pun intended. We would move.

But we would work to physically realign staff

to match their organizational structure, with the least amount of disruption to our employees and to our operation. So we will be working on that. And hopefully get that done sometime next month.

And then we will plan our work with TxDOT, who is our facilities manager, plan our work with TxDOT to actually effect some of the changes. So we are working on that as well. And that Mr. Chairman, is all I have from my update.

MR. VANDERGRIFF: Okay. I know we did have committee meetings this last month. So I will ask Mr. Campbell if he has anything to add to the Board's benefit.

MR. CAMPBELL: Mr. Chairman, the only item -- we did review the budgetary numbers and the LAR. And the only item of action that we took was regarding the summary of exceptional items in the LAR. And I don't know, is it necessary for us to take action here?

MR. VANDERGRIFF: No. We do that in the LAR process. We will wait until that comes up.

MR. CAMPBELL: Okay. Thank you.

MR. VANDERGRIFF: All right. And Vice-Chair Johnson.

MS. JOHNSON: With regard to legislative and Public Affairs, we did have a legislative meeting yesterday. And we were receiving information from

stakeholders. We had a very good turnout.

I do believe there is some frustration. I think the people are ready for us to move forward, and let them know what direction the Board is going. And the Chair intends to identify to the Legislature as the agency.

We did discuss in that meeting that we would be having a meeting September 8. And I hope that we can get a quorum of Board members there, so that we can prepare a preliminary agenda to deliver to the Board for the October discussions and possibly September meeting.

With regard to Public Affairs, I did meet with the Texas Assessor-Collectors Association on Monday, and Mr. Serna the Executive Director was there as well. And I think that that was very positive meeting with those very important partners.

They expressed some concerns. I think we probably both took notes from some of their issues. And several of them, many of them did come to the legislative meeting yesterday. So they are watching closely. And pending their -- they are kind of holding their legislative agenda, because they want to meld it with ours. And that will be really wonderful to have partners.

And so we will get the word out to the legislative and Public Affairs committee with more details

on that meeting for September 8. Thank you.

MR. VANDERGRIFF: All right. And Mr. Walker, I don't believe you had a committee meeting this last month?

MR. WALKER: That is under report.

MR. VANDERGRIFF: Okay. With that, it is back to me for a couple of minutes and, Mr. Serna. I wanted to note for the Board, I think you are probably aware that there was a review done, a grant -- the grant board review is what it is referred to. TxDOT, a 600 plus page report that was completed, an exhaustive review of the agency.

And that in turn has been turned over, in effect, to a three person outside team, to very illustrious people who have worked on the state business, in and out of state government for decades, literally, led by Mr. Wolf. And they will then report to their Commission on the findings of that.

Well, it occurred to us that really, the Grant Thornton review was also reviewing us in large measure. Because the bulk of our -- we were part of TxDOT during part of that review. And certainly, we could benefit from it.

Julie Beisert who works for us as the Board has completed in a first draft form, condensing a 600 page report to about 35 pages of nice reading material for the Board members. And we should be able to get that out to

you in the next couple of days. Mr. Serna needs to take a look at that as well.

But I wanted to note that I think that is important for us to see what the outside review was of TxDOT, since that was a part of us. And that there are pieces of that that would apply to our agency. And I think this Board in advance of the planning meeting we have in September should duly note that.

And the next item that I had here for consideration and discussion is really, this might also be a very good time, while we are in our infancy stage for this authority to consider authorizing an organizational assessment of us. Not so much along the Grant Thornton lines, but really, about where we could be, and the direction that we could head. And how to scale to that direction.

For example, I did some research again. Ms. Beisert gave me this. That 41 of the 50 states in this country have drivers license and the functions we carry combined. I am not saying that should happen here, but if it does, how do we scale to do that? What would be the plan to do that, if we did?

Most of the agencies, the majority have oversized, overweight permits combined. They are not all in DMVs. There are some in Department of Transportation,

and there is some in a Department of Public Safety type agency.

So they are in various agencies. But there is definitely a trend that we could be moving towards a consolidation and scaling of all of those like functions that work together in the same agency.

How do we do that? So really, how do we. And then coming off of what I think will be out of September 9 is some key direction from this Board from a policy perspective, and how can we best see that the organization reacts to that?

And so perhaps a study and some outside help with that direction from us would be very appropriate. So with that, I would turn it over to Mr. Serna for any comments he might have on either one of the items I mentioned. And then to ask the Board members if they have any comments.

MR. SERNA: Just really quickly, the Chairman and I have discussed this, and I agree 100 percent that speaking to the second item that he referred to, now is probably a good time if we -- because we are still relatively holding as an organization. And especially after we have the September meeting, to have our own sort of organizational review conducted again, not as thorough, and not with the same intent as TxDOT's but rather, one

that will kind of help us fine tune perhaps the organization or the resources that we have, and how we have those resources applied.

So we will put the -- we will make that an emphasis. But just to kind of give the Board a heads up, we probably won't start taking action on it. Any action on it, until after our September meeting. We get a whole lot more feedback from the Board, concerning some of the topics that we will be discussing.

I really don't have anything on the Grant Thornton review, other than I did read Julie's report, her summary. She may be one of the few people that actually read all 600 plus pages in state government. Although I believe a lot of the people in TxDOT did that. But outside of TxDOT, she did a very thorough job. And we will get a copy of that to the Board members before the weeks is up.

One thing to note, just to kind of level set everybody, the divisions that are now the DMV divisions were specifically excluded from Grant Thornton actually interviewing them, or conducting any kind of a review, because of the pending transition. However, a lot of the broader issues that were brought up are significant, because they may be things that we want to take note of.

And as an organization, that we may want to

make sure that we don't sort of repeat any issue or problem. And kind of use it as a lesson learned for us, even though it was not specifically, it did not specifically include our divisions.

So that is the only thing I kind of wanted to add on that. And that is all I have on those.

MR. VANDERGRIFF: All right. That is great.

MR. RODRIGUEZ: Mr. Chairman.

MR. VANDERGRIFF: Sure, please.

MR. RODRIGUEZ: When you speak of the organizational assessment, is that the Board relationship with the agency, or are you talking about the agency proper?

MR. VANDERGRIFF: I think it potentially accommodates both. I think that it is -- to the extent that it is appropriate for an outside group to look at us, as to how we operate, then I think that would be helpful.

MR. RODRIGUEZ: Thank you.

MR. VANDERGRIFF: Any other questions?

(No response.)

MR. VANDERGRIFF: Okay. A couple of things more. But before we move into -- we have it listed as going into Executive Session. I do want to note, what I failed to mention is that we are trying, again, learning and moving forward, you will see in a couple of items

coming up that we have and particularly, most notably in the case that we have before us, the major cases that we have, that we are going to attempt to frame that discussion, if you will, to make it very clear what the issues are, and what the law is, that we as a Board can apply.

And to try to keep the discussion within those parameters. And I think that is appropriate. And certainly, I have asked Mr. Serna, and he has agreed that the staff can lead off a lot of the discussion of this, to again, frame the issues, and provide some consistency to it. That also applies to some of the programs that we will be discussing.

The Board has seen this, but I wanted to alert the public to this, that like, for example, as we move through the specialty plates, we are going to try to create a consistent framework to review those, and a checklist if you will of how the vendor for those has met those conditions. So that it moves through the process a little faster. And I think it will be clear to the Board as we go through that.

But we will have stops and starts for the first meeting or two that we do this. But I just wanted to alert that to the public, that we are attempting to do that. And I think we will do so successfully.

The last thing I want to bring up in my portion of this is, just actually a comment on the My Plates specialty marketing program, in that what our role is, and what that company is. And we will get into specifics of some of the plates here.

But as this agency is evolving and things are new, so is the My Plates program. They are ploughing new ground, just as we are ploughing new ground. And as I mentioned earlier, sometimes things aren't always pretty. Sometimes stuff happens, mistakes are made in translation and the like.

I know there has been some media interest in the My Plates program, particularly about questions or concerns of positions that they may have taken. But I want to state from my perspective, a couple of things. And it is yet, the Chairman's perspective.

The first is, that they are doing a service to this State. They are privatizing a function and aggressively marketing to not only get all sorts of license plate combinations and designs out there to the public for consideration, but to raise revenue that the State could certainly use.

And we don't know what the end of this tale will be. The life of this contract is five years. But I am very confident that they are going to do all they can

within the bounds of business sense, and legal rules to aggressively promote the program. And we can learn from that.

That type of public private partnership that we have here is the type of public private partnership that I think this agency can learn from, as I mentioned earlier, getting a more private sector approach to how we think and how we operate. So I applaud the efforts. Understand that there are issues or concerns as they start up.

But we are fully supportive. And I think I do speak for the Board in this next sentence, we are fully supportive and appreciative of the My Plates program, and what it can bring. And hopefully will bring to the State of Texas, and to its citizens.

So I want to make that very clear in open session here as well. That does not mean we will not take an aggressive oversight role. We will examine and look at every single plate.

We will just do so in an aggressive and expedited fashion for their benefit, for the citizens' benefit, and certainly for that of the State of Texas. So with that, I would like to note that unless there is any further comment that anybody would like to make?

(No response.)

MR. VANDERGRIFF: I would like to note that we

are now going to take a short break, like five minutes, and then go into closed session. It is now 10:40 a.m., approximately 10:40 a.m., August 25, 2010.

We will go into closed session at approximately 10:45 a.m. under the following sections of the Texas Government Code; Section 551.071, to obtain the advice of legal counsel regarding agenda items 4(A), 4(b), 5, 6, and bear with me one second. I should have noted that on my -- I believe 6 will cover it. Sorry. Seven, 8, 9. I am sorry. Five and 6 and that will cover it.

And to consult regarding pending or contemplated litigation or settlement offer, and then Section 551.074 to discuss personnel matters under agenda item 2. And for those in the audience, I anticipate an Executive Session for approximately 30 minutes.

And we will reconvene in open session after that. With that, we adjourn from the public meeting, and we are in Executive Session.

(Whereupon, the meeting was adjourned into Executive Session at 10:45 a.m.)

MR. VANDERGRIFF: August 25, 2010 and the Board of the Texas Department of Motor Vehicles is now in open session. We want to note that no action was taken in closed session.

We are now on number 4, and we are into action

items. And we are moving forward with the approval of the request to approve the Legislative Appropriation Request, 4(A).

MS. FLORES: For the record, my name is Linda Flores. I am the Chief Financial Officer for the Texas Department of Motor Vehicles. We are here today to request your approval of the 2012-2013 Legislative Appropriation Request for the agency.

Again as the Chairman mentioned earlier, this is another step in independence, I guess, for the new Department. It is a 20 page document, high level summary of the agency's request. It is approximately $156 million for each fiscal year for the next biennium.

We have incorporated nine exceptional item requests, which are identified on page 13. And they are established in priority order as I know them to be today, unless you all have other direction that you would like to provide.

The first priority item is the agency relocation at an approximate cost of $8.5 million, followed by seven cars, $168,000. Regional security, a total of $810,000. A telecommunications upgrade for the regions, $900,000. Office furnishings for the regions, $442,000.

A restoration of the recommended 10 percent

cuts to the ABTPA grants, $2.9 million. Data center services that I estimate at $9.8 million. The E-grants online system, this again is for the ABTPA program, $150,000.

And the last is a ProjectONE, which includes financials and human resources online for the new Department, $4.3 million. A total request of exceptional items, $28 million, primarily funded with Fund 6. A small portion, $3 million is funded with General Revenue, which again, go back to the ABTPA program.

Other items to note are the riders. We have seven riders. We are recommending to delete the following riders; Rider 5, the motor vehicle responsibility rider.

This is the Texas Sure program, which as we discussed before, the Department of Insurance is going to be requesting funding, direct funding for this program. The organ donor program, voluntary fee. And the others are just changing fiscal year notations within the rider.

We are also asking for a new rider. And that is to allow the agency to carry unspent dollars between fiscal years of the biennium. And with that, I will conclude, and take up any questions you may have.

MR. RODRIGUEZ: Is it complete, Linda, this one?

MS. FLORES: Yes, sir. It is.

MR. RODRIGUEZ: I move we approve it, Mr. Chairman.

MR. VANDERGRIFF: We have a motion for approval. Do I have a second?

MR. WALKER: I will second.

MR. VANDERGRIFF: Now we will open it up for Board discussion.

MR. CAMPBELL: Discussion. Mr. Chairman, there is a couple of areas, that need, I think, corrections. I think the org chart is one of them that we need to look at. Because in the -- in this presentation it is incorrect.

MS. FLORES: Based on the comments that we received during work session, we have gone back and updated the org chart to reflect the dashed lines between the General Counsel and the Board, as well as move the program coordinator directly to the Board.

MR. VANDERGRIFF: Vice-Chair Johnson.

MS. JOHNSON: There is still an error in this. It was my understanding that the government and I -- I can't read it. It is too small. Regulated industries was also supposed to be a dotted line. And I would support a motion that entertained that change.

MR. RODRIGUEZ: Mr. Chairman, I will modify so

that we get the right chart provided with this LAR request, as proposed today, provided all of the fixes in it are made, that it be approved.

MR. VANDERGRIFF: All right. We have had an agreement to modify based on the chart, with the change yet to be made to the chart. But Mr. Campbell, I think you said you had a couple of things?

MR. CAMPBELL: Well, and it was really in regard to organization chart. And the changes that were made, that was passed out, I think it was corrected.

But Vice-Chair is indicating that there is another one, that there is a direct dotted line to the Board from -- I am sorry. From the Board to the government regulated industries. And that is part of your motion.

MR. RODRIGUEZ: Whatever proposals you want to make. It is open. I move it on my part.

MR. CAMPBELL: Okay. And that is all.

MR. VANDERGRIFF: All right. So we do have a motion that has been amended, accepted to be amended by the author. Do we have any further discussion? Do you --

MR. BUTLER: No, I was just asking him if he had modified it.

MR. VANDERGRIFF: Okay. All right. Motion made and seconded. No further discussion?

(No response.)

MR. VANDERGRIFF: Now I would call for your vote for approval by raising your right hand.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: The motion carries unanimously. All right. Thank you, Linda.

MS. FLORES: Yes, sir.

MR. VANDERGRIFF: We will move on to agenda item 4.B. which is the approval of the specialty plates designs. Scott Renouard is here on that, I believe. Thank you, Scott.

I also do want to note that we did have a couple of people who registered to give public comment that actually registered under 2.D. which was just my briefing remarks. I think that they wanted to speak in his particular section on the design. So I will recognize you here, after Mr. Renouard's presentation.

That was Mr. -- I am not sure I pronounced it, Gaylor [phonetic], and Mr. E.C. Sherman. Are those two gentlemen here? Okay. Super. I will make sure to recognize you after the conclusion.

MR. RENOUARD: Good morning, Chairman Vandergriff and Board members. My name is Scott Renouard, and I am the interim Deputy Director of the Vehicle Titles and Registration Division.

The State specialty plate vendor is requesting approval of the specialty plate designs that are included in your briefing book. These plate designs have been published on the Department's website for public comment. These comments are also included in your book.

In addition, the plates have passed the legibility and reflectivity testing. The Board has the authority to approve or disapprove the specialty license plates in accordance with the Department rules as listed in your Board book. Thank you.

MR. VANDERGRIFF: Mr. Serna, I don't know if you want to make any comment?

MR. SERNA: We have attempted to provide the Board some material that is presented. We have attempted to provide the Board with one briefing that kind of outlines the parameters for Board review and approval.

I will point out that the Board has the ability to either individually or collectively approve or disapprove the plates. And I will be available to answer any questions that the Board members may have.

MR. VANDERGRIFF: I want to thank you, Mr. Serna, for providing this chart that clearly demonstrates the testing that has been done on each one of these plates. Do any Board members have any questions of Mr. Serna? Would the Board have any questions of Mr. Renouard

at this point?

MR. WALKER: I do. Mr. Renouard, Scott, I guess. I would like to know two things to start with. Number 1 is, how many of the plate proposed designs conflict potentially with plates that are in existence already in the repertoire of the Department of Motor Vehicles?

MR. RENOUARD: There is actually one, sir. If it is -- if you look in the board book, it is number 14, the Texas Trophy Hunters Association. That plate, we thought, was possibly in conflict with the Hunt Texas plate by the Texas Parks and Wildlife.

We did contact Texas Parks and Wildlife, and we have a letter, stating from Texas Parks and Wildlife, stating that they have no objections to this plate, and do not feel that it would conflict with the plate that they have, that the State issues at this time.

MR. WALKER: And there is no Baylor University plate in existence today?

MR. RENOUARD: No, sir. I don't believe so. I would have to check on that one.

MR. WALKER: Well, I read a comment back here from one of the people that called in and says, why are we changing the Baylor plate. We are happy with the one that we already have. What would that comment refer to?

MR. RENOUARD: I will have to take a look, sir. I can't answer you right off the bat. But I do not -- I don't believe they have. They have checked to see that it did not conflict. Because the state-issued plate requires the logo of the University. And I am not sure that is what they considered. But I will check on that for you.

MR. WALKER: And the commercial plates, i.e., Ford Motor, I-Energy. We are sure that there are agreements in place so that the State of Texas is not going to come back on some kind of copyright infringements there? We have agreements and letters of authorization from those people?

MR. RENOUARD: Yes, sir. We do.

MR. WALKER: Thank you.

MR. VANDERGRIFF: Yes, please.

MS. JOHNSON: Based on my review, these type plates have been tested for reflectability and contrast, I think is something. I was surprised to see there were no concerns over Plate 17, that is very -- the light blue with the white print. It seems like a very difficult thing to see.

And I would think particularly for law enforcement, which leads me to do -- are we specifically requesting DPS to review these so that we don't just read their comments. But we have agency approval of these

plates before they are being brought to the Board?

MR. RENOUARD: Not specifically. What we did, when this program began is, we met with DPS and engineers from TxDOT to establish an objective method of testing the contrast and readability. In concert with DPS, they developed the equations that they used to actually test the plate. And so we run each plate against that.

We used about 1,600 plates from other states that have colors on them. And we used those as our starting point to develop these criteria. We have -- we are starting to revisit that because a lot of the states, the plates that we used were not quite the same as what we are seeing here.

Now these passed the legibility standard as we have them now. We are reviewing those standards. Once we get them reviewed, we will go back to DPS and review them again, and see how we need to tweak them to ensure that they are, in fact, readable.

MS. JOHNSON: Thank you. And then also, the Cowboys license agreement. Could you address Plate 19, and 20. And any concerns staff may have regarding those plates?

MR. RENOUARD: The concern that we have there has to do with the agreement. All of the other agreements allow us to renew the plates. The particular brand of the

Dallas Cowboys does not allow us to renew the plates, under the option that, in fact, My Plates goes out of business.

In fact, the financial implication is the same for all of them. We don't have the ability to pay the particular royalties for anybody. But the question here was, the inability to renew the plates, which every other agreement had. But in terms of the money, it is going to be basically the same.

MS. JOHNSON: Thank you.

MR. RODRIGUEZ: Scott. May I, Mr. Chairman?

MR. VANDERGRIFF: Please, sir.

MR. RODRIGUEZ: If you don't, and if not, maybe our Counsel can say. What is our authority at this point in time, with regard to this request.

And what I am asking is sir, are we -- may we authorize this, or may we authorize this if A, B, and C exists, as far as there anything? What is the specific language in that regard?

MR. RENOUARD: I think I would have to defer to Counsel on that.

MR. RODRIGUEZ: Okay.

MR. BRAY: Brett Bray, General Counsel. But I am not clear on the question.

MR. RODRIGUEZ: I was wondering what is our

authority behind this request right here?

MR. BRAY: On the plates? Well, the part I didn't understand about your question was that sort of an A, B and C. Generally, your authority is --

MR. RODRIGUEZ: Well, I am wondering -- right. I am wondering what -- I am sorry. Go ahead.

MR. BRAY: I am sorry.

MR. RODRIGUEZ: No. I am just wondering what it is that we have the authority to do so. And in that circumstance, the authority would also imply what we don't have authority to do.

MR. BRAY: Your general authority is to approve or disapprove issuance of these plates. And you are constrained somewhat by a standard. And that is, if you are going to disapprove, you must not do so unreasonably.

MS. JOHNSON: Would you repeat that? I can't hear you.

MR. BRAY: If you are going to disapprove, you must not do so unreasonably.

MS. JOHNSON: Okay. Thank you. I appreciate that.

MR. RODRIGUEZ: Thank you.

MR. SERNA: Brett, let me ask something. That I think I heard, and Mr. Rodriguez is questioning. I am not trying to put words in a Board member's mouth. But do

they have the ability to, say, to either approve or disapprove.

Or do they have the ability on any particular plate to instruct staff to go back and do something in particular before they approve or disapprove. In other words, give us additional instruction on any one of these plates, or a set of the plates.

So it is not an approve or a disapprove. But it is a we need more X information before we can make this decision.

MR. BRAY: Yes.

MR. SERNA: Okay. So there is a --

MR. BRAY: And you can do that on a plate-by-plate basis. Yes.

MR. RODRIGUEZ: Chairman, are you ready for a motion?

MR. VANDERGRIFF: I will keep the discussion open for a little bit. A motion can come at any time, of course.

MR. CAMPBELL: I think it was, the question was brought up regarding the Cowboys. And if we don't have the authority to commit or to allow Texas Department of Motor Vehicles to pay royalties, and this thing goes bad, we can't make that commitment, can we?

MR. BRAY: No. I can elaborate for you a

little bit, if you would like.

MR. CAMPBELL: Sure.

MR. BRAY: As I understand the situation, that the Department of Motor Vehicles is in right now is, we can't pay royalties to anybody at all. If what we have acquired from all of the other plates, or their interest holders in the plates, is the ability to continue renewing those plates so the public can still have their plates, even though we cannot pay the royalties for now.

In the case of the Cowboys plates, they take back. They don't give us that option of renewing the plates, if the royalties are not paid. Here is your exposure.

My Plates, generally speaking, and I believe that there is a My Plates representative that can confirm or correct me on this. But generally speaking, My Plates pays all of its royalties at the end of the month, or kind of monthly. And so what they collect, between the time they paid their last set of royalties, and the time they paid their next set of royalties is that exposure window.

If they were to -- God forbid something were to happen to them, and they couldn't pay those royalties, then those people who have plates, Cowboy plates, between the time of last time of payment, royalty payment, and

this royalty payment really are in a sticky situation. Because we don't really have authority to issue the Cowboy trademark at that point. Fair enough?

MR. RODRIGUEZ: Mr. Chairman, can we go down the list --

MR. VANDERGRIFF: Do you want to take them up individually?

MR. RODRIGUEZ: Yes, sir. But I would like to first and foremost ask this question about each one of them. For example, Number 1. Is there an existing Baylor University license plate right now?

Number 1. Number 2, and do we know whether or not there are any fiscal implications to anyone or anybody if we authorize this?

MR. RENOUARD: We do not believe that there is any fiscal implications to anyone with the exception of the General Revenue fund. If you authorize this plate, then money will go to the General Revenue fund, that does not go from any of the state-issued plates.

MR. RODRIGUEZ: My question is, do we believe or do we not? That is my question. And the first part of the question is, Baylor University, is there an existing license plate? Apparently, there is. Right. I have seen it.

MR. RENOUARD: Yes. There is.

MR. RODRIGUEZ: Okay. Do we know whether or not we would fiscally have an impact on any one person or any organization by authorizing this today? And if we know it. If we don't know it, we don't know it. And that is good enough. I am just wondering.

MR. RENOUARD: And no, sir. We do not know.

MR. RODRIGUEZ: Okay. The same questions for Number 2, Ford Motor Company. Is there an existing license plate right now?

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 3 is Mighty Fine Burgers. Same question.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 4 is State of Texas Recycling STAR.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 5 is Our Energy, limited liability.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 6 is Ford Motor Company again.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 7 is Houston Dynamo.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 8 is Houston Texans.

MR. RENOUARD: Yes, sir.

MR. RODRIGUEZ: There is an existing license plate?

MR. RENOUARD: Yes, sir. There is.

MR. RODRIGUEZ: Longview ISD.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: NASCAR.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 11 is NASCAR again, Gordon.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 12 is NASCAR Hall of Fame.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 13 is Texas Tech.

MR. RENOUARD: And I believe we have one.

MR. RODRIGUEZ: There is an existing one. Number 14 is Texas Trophy Hunters Association.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 15 is University of Oklahoma.

MR. RENOUARD: No, sir.

MR. VANDERGRIFF: I thought on the Trophy Hunters you said something earlier about that.

MR. RODRIGUEZ: You said there was something

similar that may have --

MR. RENOUARD: I am sorry. There is no plate like that. There is a -- the Texas Parks and Wildlife promotes a Hunt Texas plate.

MR. RODRIGUEZ: Right.

MR. RENOUARD: They have provided their agreement that this will not impact their sales.

MR. RODRIGUEZ: I guess my question is, is there a license plate right now for Texas Trophy Hunters Association?

MR. RENOUARD: No, sir. This is the first one for them.

MR. RODRIGUEZ: Mr. Chairman, is that clear enough?

MR. VANDERGRIFF: Yes. Yes, sir.

MR. RODRIGUEZ: Number 15, you say the University of Oklahoma, not in existence at this point in time; Number 16, the University of Texas at San Antonio.

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: There is no license plate for UT San Antonio?

MR. RENOUARD: No, sir. There is now.

MR. RODRIGUEZ: All right. Number 17, Vestas?

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Number 18, University of

Tennessee, Knoxville?

MR. RENOUARD: Yes, sir. There is. The University of Tennessee. I have to make sure that it is Knoxville. There is a Tennessee Volunteers plate. I am not sure that that is Knoxville.

MR. RODRIGUEZ: Okay. The University of Tennessee?

MR. RENOUARD: I will have to check on that, to be absolutely positive.

MR. RODRIGUEZ: And number 19 and number 20, both Cowboys, I would suggest the answer is no, right now?

MR. RENOUARD: Yes, sir. We do have a plate.

MR. RODRIGUEZ: Oh, we do have a plate.

MR. RENOUARD: Yes, sir.

MR. RODRIGUEZ: But we have issues with regard to --

MR. RENOUARD: And those agreements did not have that issue because the money, there was no royalties paid to the Cowboys on a state-issued plate. All of that money goes to the entity that built the stadium.

MR. RODRIGUEZ: But doing this presents a problem in the way of the contract with My Plates is created with regard to --

MR. RENOUARD: It has -- as Mr. Bray explained, it has to do with our ability to pay royalties should My

Plates go out of business. It is that particular situation, is that particular problem.

MR. VANDERGRIFF: I do want to note that I believe that situation, by agreement with My Plates -- well first off -- had it not been for the failure of a lot of bills, including Vision 21's predecessor bill in the last session to pass, there would have been a provision in there that would have closed that loophole, I believe.

And certainly, the company is willing to be supportive of that loophole being closed in the next legislative session. So I would note that at least from the Chair's perspective, that I don't think that that royalty issue is a problem.

MR. RODRIGUEZ: Mr. Chairman, I move then that we approve the specialty plate designs requested herewith today, except for Number 1, Baylor University, Number 8, Houston Texans, Number 13, Texas Tech University, Number 15, is the University of Oklahoma. Did you say there was none?

MR. RENOUARD: No, sir.

MR. RODRIGUEZ: Lost my place. I'm sorry. Number 18 is the University of Tennessee. That is my motion, Mr. Chairman.

MR. VANDERGRIFF: Okay.

MR. RODRIGUEZ: I am sold with 19 and 20.

MR. VANDERGRIFF: I will certainly entertain the motion and a second. But I would ask -- I failed to note this earlier, he had not filled out a card, but I noticed that he has come forward.

Steve Farrar, who is the President of My Plates. Before I entertain a second on that motion, if Member Rodriguez would be amenable to this. Is there anything you would like to say at this point, on this particular point?

MR. FARRAR: Yes. If I could. For the record, Steve Farrar, President of My Plates. Thank you, Chief for those comments. And I appreciate any questions or concerns you may have. I am certainly here to answer those.

With regards to your questions about any plate that is in existence in the marketplace, all of the universities have been consulted with, filled out agreements with all of those universities. They are quite aware that they have got an existing plate in the market.

The fiscal impact of those plates, those plates do not go away. They are still in the market. People who have those plates currently in the market are still able to purchase, renew those plates for $30 a year. And that $22 out of that $30 continues to support scholarships.

In addition to having a new plate in the market, we are supporting marketing efforts with the university to support not only our plate, but certainly to raise awareness of their existing plate as well. A number of those universities are looking to cross over their existing plate into our program next year. They are very supportive of our program.

And certainly, they would be certainly wishing for those plates to be approved at the moment. Just to let you know, the University of Texas already has two plates in our program, with an existing plate in the State program that they are wishing to cross over into our program.

Next week, we also release a number of other Texas University plates that already have existing Texas plate in the State program. So this will be their second plate in the market, including Sam Houston University, SMU, as well as the University of Houston.

So there are a number of plates. They have already set a precedent to have plates in our program as well as having a plate in the State program.

And certainly, I would encourage you to withdraw that motion. And I would put forward, propose a motion to approve all plates.

MR. VANDERGRIFF: Is it safe to say they think

that they will make more money under your program, than under the current program?

MR. FARRAR: Well, the universities don't receive any money specifically through their programs at the moment. They do receive monies to scholarships. The money that they will raise for royalties that we are paying to those organizations is certainly either being funded into scholarships or other efforts the university has planned.

MR. VANDERGRIFF: But they think the financial impact will be greater for them?

MR. FARRAR: Oh, I think the fact that a good organization like My Plates are going to be contributing, as you said earlier, aggressive marketing tactics to support their plates in the market. They will actually generate a lot more revenue.

MR. RODRIGUEZ: That was my question.

MR. WALKER: I have a question.

MR. VANDERGRIFF: Yes. Mr. Walker.

MR. WALKER: How does the consumer know? Today, the Legislature that created the University plates was very specific that those plates and the funds that they create were to be used for scholarships at those universities. Every one of them. Is that not correct?

MR. FARRAR: For the existing state plates?

MR. WALKER: Yes.

MR. FARRAR: That is correct.

MR. WALKER: And going forward to an additional plate for the universities, that they are going to get out. That money will now not go to the scholarship fund. But that will go to where, in these particular universities? To their general fund?

MR. FARRAR: It is up to the discretion of the university.

MR. WALKER: The discretion of the university. So a consumer that is buying a license plate out there, will he know that his money is going toward scholarships, or toward general funding of the University? Is there a way to know that.

MR. FARRAR: Well, with regards to -- we have a line that talks about the proceeds that will benefit those organizations. We don't specifically state beyond that organization, where it goes.

Certainly in the state program at the moment, it is very clear for those existing plates that are still in the market today. There is a link from the My Plates site to those plates as well.

We are working with a number of the universities as well, to promote both of their plates.

That they will actually be driven a link from our site to the existing scholarship site, if they are looking for the scholarship plate.

One of those is Texas A&M. We are working very closely with them to make sure that we cover all three plates in our program, should -- because there is Texas A&M plates released next week in our program. There is two. And we work very closely with them to make sure that we will be promoting all three plates.

MR. WALKER: So My Plates is going to promote the State's plate also?

MR. FARRAR: With a number of those colleges who have indicated that they are moving into a crossover --

MR. WALKER: Are you going to promote the Texas A&M plate, the one that the State has?

MR. FARRAR: With Texas A&M? Yes, we will be.

MR. WALKER: And it is going to cost still the same $40 fee?

MR. FARRAR: That will still be $30.

MR. WALKER: $30. I am sorry.

MR. FARRAR: Yes.

MR. WALKER: And your plate, the other plates at those universities are going to be $55?

MR. FARRAR: $55 for one year, or less than $30

a year, when purchased over a ten year period.

MR. WALKER: Thank you.

MR. RODRIGUEZ: Just kind of building on that a little bit, your agreement would trump the existing requirement the universities have to fund scholarships with the current process of license plate sales?

MR. FARRAR: It doesn't trump. They still have their existing plate in the market. Anyone who purchases that plate, or continues to renew that plate --

MR. RODRIGUEZ: But any one plate we sell could, of those universities through your company, wouldn't necessarily be required to fund a scholarship program at that university?

MR. FARRAR: As I said, it is at the -- for the new plates that are in the My Plates program, it is at the discretion of the University.

MR. CHRISTIAN: So the answer is that is correct, right. They wouldn't be obliged to do so. It would be strictly up to the University for --

MR. FARRAR: It is up to the University, whether their funding goes towards the scholarships or not. But as I mentioned on a number of these universities whose role is a number of other universities that we haven't brought plates forward and submitted yet, are looking at crossing over into our program as of March next

year, as the planned date.

And those plates, when they move into our program as a crossover plate, they will continue to support scholarships. And we will be continuing to support those plates when they are in our program.

MR. RODRIGUEZ: You don't know what the impact of that is. And that is the reason for my motion.

MR. FARRAR: The impact for that, well if -- I will just give you an example. If an existing Texas A&M plate as it stands today, as the state plate crosses over into our program, they already have existing customers with their plate, who will continue to renew that plate and continue to receive that revenue.

Additional to that, for the new sales, they then get additional revenue through the increased sales of marketing awareness that we will generate. So it is actually quite a windfall for the universities.

MR. RODRIGUEZ: No, I understand that. Except for the fact that at the point in time that they start buying your license plates, then it is up to universities to cough up to scholarships whatever if anything at that point in time to a scholarship fund. Whereas right now, the UT Texas plate sold through the DMV, it doesn't leave that up to them.

MR. FARRAR: There is a UT plate at the DMV at

the moment, correct, that goes to scholarships. There is two UT plates in our program. I think we are close to about a 1,000 plates already sold in our program that deliver royalties to the University of Texas.

MR. VANDERGRIFF: So basically you are saying that this agency has previously approved plates like the Texas plates, and I think you mentioned a couple of others that are, in effect, in competition.

MR. FARRAR: The University of Texas, Texas A&M, and the University of Houston, Sam Houston, SMU --

MR. VANDERGRIFF: These are already approved. These are approved that you are --

MR. FARRAR: These are approved. And some of these get released next week.

MR. VANDERGRIFF: Well, there is only one A&M plate out there, right now, I think Steve.

MR. FARRAR: Next week, we release --

MR. VANDERGRIFF: Okay. But right now, there is only one plate.

MR. FARRAR: Currently, there is only one. But as of next week, there will be three.

MR. VANDERGRIFF: These are ones you have already got approval. You are not coming back to the Board --

MR. FARRAR: The Executive Director of the DMV

approved those in a previous submission.

MR. VANDERGRIFF: Right. That is -- I am just making sure I have that point down. Can I ask you another question, because it came up on the Cowboys. Do you have an agreement with the Houston Texans? I am assuming you do?

MR. FARRAR: Yes. We have an agreement with all of the organizations that are represented today.

MR. VANDERGRIFF: Yes. I just thought I would close that loophole.

MR. FARRAR: Yes. And I met with the Houston Texans on Friday of last week. And they are very excited about being a plate. And look forward to bringing to the market.

And when you spoke about legislation, the crossover legislation doesn't allow professional sports teams to cross over. At this current time, and certainly, there has been language that we would support the DMV to allow those organizations to have that same ability, some time next year as well.

MR. WALKER: So would it be fair to say that the University of Texas has two plates out there that has money going into their coffers to fund any projects or whatever they want at those universities with the money. And if Texas Tech and Baylor don't get that, then

potentially, the revenue they would lose from not having that plate means that Texas may be able to build a bigger football stadium than Baylor or Tech has?

MR. FARRAR: Well, I have got to say that University of Texas in the state program is the number two college plate, behind Texas A&M. In the My Plates program, University of Texas is by far the number one plate in college plate now program.

Certainly, we would look forward to having that same opportunity for other colleges within Texas to at least exceed, and receive those revenues as well. Absolutely.

MR. WALKER: That is why they have been winning so many football games. I have one more question for you, Steven.

It was brought up a while ago that the Dallas Cowboy plate that is in existence today has been used to fund the debt on the new stadium. And this is the first I knew about that. Can somebody address that to me?

MR. BRAY: Yes, sir. That is the law. Any of these professional team plates, that is what the money goes to. The law uses special language that talks about, it has to go to the entity that was responsible for building the facility that the team plays in.

MR. VANDERGRIFF: I understand you are now

talking about my home town. If so, it is getting serious, okay.

MR. FARRAR: And it is the home field as well. So it is Arlington.

MR. WALKER: So if we divert from the debt retirement obligation over here on these license plates, because now somebody buys this license plate instead of this, doesn't that have some dire consequences to the debt retirement? Or is that the same group of people?

MR. FARRAR: Mr. Walker, what I would suggest to you is that at the moment the current Dallas Cowboys plate within the state system is not being promoted. Now, the Dallas Cowboys plates, when they move into our program, as well as the opportunity to support existing and raise awareness of the Dallas Cowboys license plate to the market will generate an increase in sales both in our program, as well as the state program.

So with increased awareness and increased availability of those plates, and accessibility to purchase those plates, I think it is going to generate a greater return for the stadium coffers. As well as certainly, to support Dallas Cowboys, and allow fans to show their passion and pride 24/7 on their vehicles in Texas.

MR. WALKER: But the two entities, but the

partnership that created the stadium and the people who own the Cowboys are going to get the royalties are two different entities, or are they the same entity?

MR. FARRAR: Well, the Dallas Cowboys still have to sign over the rights for their logos to be used. There is a contract that the DMV and previously TxDOT --

MR. WALKER: The question is, the question is principals. Are the principals the same between the two?

MR. RENOUARD: I think I can answer that. The Dallas Cowboy money goes to the City of Arlington from the state plate.

MR. WALKER: So the state plate is going to the city's coffers to help repay that debt.

MR. FARRAR: Let's also understand that Jerry Jones, I believe, has money invested in the stadium. So he is certainly more than keen to see that stadium debt paid down as well.

MR. VANDERGRIFF: That legislation now goes to the city to pay the debt. At some point.

MS. RYAN: I have a question, if I may. Are you finished in that line, it changes --

MR. VANDERGRIFF: Yes.

MS. RYAN: With regard to the commercial plates, did you solicit those businesses? Did they solicit you? And what is the process with regard to kind

of open competition, so to speak?

MR. FARRAR: Yes. Certainly, open competition within Texas, it is there. With regards to the Ford Motor Company, that came through a contact that I knew, that we spoke to their licensing agent in New York. And then that went to the Ford Motor Company, who were very excited about the opportunity.

I have got to admit, they first of all, didn't want to do it in Texas, because they wanted to do it in Michigan first. And then they found out that they couldn't do it in Michigan. And we are more than happy to move forward and move through a licensing agreement with My Plates.

The other companies actually came to us. Some actually come to us from the DMV, because they contact the DMV first. And some contact us through the publicity that they see.

We did have the first corporate plate that was approved in Texas was the RE/MAX plate that launched November last year. And so that has been very successful for the RE/MAX agents and is well supported by their sales agents and team and company as well.

MS. RYAN: Is there a process that is well known, that if a company wants a commercial plate, they know how to --

MR. FARRAR: Well, they need to contact either ourselves or the DMV. There is a quite a process about bringing in, proposing a new plate in Texas. There are three ways. One is through the DMV. One is through legislation. One is through the My Plates program.

There is a detailed information brochure that the DMV has. As well as, we carry that same information. And then there is application forms, there is a design process before it even goes to the application process to the DMV. Anywhere from four to six months really, in the process to get it done. But it certainly is open.

RE/MAX is already in the market. We have had Keller Williams already approach us with Keller Williams Cares. They are a charity that they have as a branch of their organization. And so we are looking at submitting that organization in the coming weeks.

MR. VANDERGRIFF: I think Mr. Bray has stood and would like to make a comment. I do want to note also that Member Ryan has brought up a point. These are the business plates that really creates a policy decision, if you will, because that is a departure from what the agency has been approving.

And the Executive Director specifically did not approve those. He wasn't declining them. He just felt like that that was a policy question for this agency to

address. Mr. Bray.

MR. BRAY: Member Rodriguez, I would like to go back and speak to your motion for a moment, about the plates that you were excluding, involving the institutions of higher education. Given what Mr. Farrar has highlighted for us, that we already have, that the Department already has some plates that are both the old style, and the My Plates style, that are of higher institutions, education institutions, I have a concern about this inconsistency or contradiction, and whether or not we are going to fall within the reasonable standard.

If you don't let Texas Tech and Baylor and the University of Texas San Antonio have My Plates plates, but we are letting other universities have My Plates plates, and if you elect to go that route, I would ask that you consider possibly placing something on the record to articulate a little more of what our reasons for doing for, or rethinking it, giving this new information.

MR. RODRIGUEZ: All right. Let's go back to Baylor. You say you have some Baylor plates out there?

MR. RENOUARD: Yes, sir. The State does.

MR. FARRAR: The State does.

MR. RODRIGUEZ: No, I am not asking about the State. I am talking about My Plates.

MR. FARRAR: No. We have got the Baylor plate.

It hasn't been released. It is here for your approval today.

MR. RODRIGUEZ: Texas Tech, do you have some plates out there?

MR. FARRAR: No.

MR. RODRIGUEZ: You don't have some plates out there right now?

MR. FARRAR: All of these, Baylor, Texas Tech, and University of Texas San Antonio, I think are the three that you highlighted, UTSA, University of Texas San Antonio used to have a plate in the State program. They did not, I believe, sell enough plates to generate enough return to cover their plate implementation fee.

At one point, some years ago. And it was Sunsetted and taken off the market. UTSA, very committed and under their new branding, would like to bring a new plate back to the market for the My Plates program.

MR. WALKER: There is some contradiction out here right now. Because we have been told two different things. I just want to know the actual answer. You just got through saying there is not a Texas Tech license plate out --

MR. FARRAR: Not in our program.

MR. VANDERGRIFF: No. The question to him was, he doesn't have this plate. The State does have a plate.

MR. WALKER: Okay. So the State does, but you don't, yet.

MR. VANDERGRIFF: Thank you.

MR. WALKER: Okay.

MR. VANDERGRIFF: The point he was making earlier is that the previous Executive Director has approved plates like Texas, for example, that, in effect, compete with the plate that the agency already has. So a precedent has been set that competing plates have been approved.

MR. WALKER: But those plates were not approved by this Board.

MR. VANDERGRIFF: That is correct.

MR. WALKER: They were approved by our prior predecessor.

MR. VANDERGRIFF: The Executive Director.

MR. SERNA: I approved those, prior to -- as you may recall, two session, two meetings ago, is when we had the rule that moved this from the staff to the Board, on recommendation of the staff, that way, there could be public hearings on all of these, in exactly this format. Versus the way the process worked before.

MR. VANDERGRIFF: And the Executive Director in his report to us did not indicate any issue or concerns

with the plates. He did note that he had not approved yet any commercial companies, like the Ford plate, for example, the Blue Oval plate or the Built Tough plate. That he had not approved anything like that. That was departure. That was new ground.

MR. RODRIGUEZ: And just to be clear, do you have any Baylor University plate. You have answered the question, you don't have a plate out there now. Do you have one approved, or coming out tomorrow?

MR. FARRAR: NO. We have a number of other Texas colleges that are coming out in the coming week. Baylor University, no. Texas Tech, no.

MR. RODRIGUEZ: University of Texas.

MR. FARRAR: University of Texas, we have two plates.

MR. RODRIGUEZ: In existence, right now?

MR. FARRAR: Correct.

MR. RODRIGUEZ: And just to be clear on this concern, if we don't approve Baylor, you are saying we may -- that may leave A&M with an edge, because they do have a license plate contract with My Plates.

MR. WALKER: Bigger football stadiums.

MR. RODRIGUEZ: Is that what you are saying?

MR. BRAY: That is what Mr. Farrar might say. He might question what the reasonableness is. He and his

contract party Baylor might question what the reasonableness is of not letting Baylor have a plate through My Plates while other universities --

MR. RODRIGUEZ: Well, all I am saying is, we don't know what impact fiscally this would have on, that we know of. We know of the scholarship program. And that is my concern. And that is what I am -- that is the basis of my motion.

MR. BRAY: And I think that articulates something. That is a reasonable articulation.

MR. VANDERGRIFF: Ms. Johnson.

MS. JOHNSON: I hate to jump in the fray here, but I have to ask. Member Walker specifically addressed diversion of scholarship funds. But I also heard that the Executive Director in the interest of time, I recall that meeting, that we gave him authority to approve other plates.

And there already are other universities that potentially could have a diversion of scholarship funds if they buy the My Plates instead of the state plates. I heard that correctly. Right.

So we would be giving an unfair -- we would not be consistent, is what I heard our General Counsel say, if we disapprove these, and allow therefore the diversion of scholarship funds for the other universities and don't

allow it here. Is essentially the issue.

MR. VANDERGRIFF: Yes, ma'am. There is an inconsistency.

MS. JOHNSON: There is an inconsistency. Okay.

MR. BRAY: That is my issue. If the Board at this point in time chooses to go the direction of requiring more of a financial analysis on all of these plates, that is a reasonable -- I wouldn't say, a change in policy.

But it is a slight change in course. But that was my concern, yes. Because some universities have both and we are saying some don't.

MS. JOHNSON: Thank you.

MR. VANDERGRIFF: If, before -- and again, I am begging the indulgence of Mr. Rodriguez on this. But before we get to that motion, if we have further questions on this point, that would be advisable.

But I would also think, because it might have some impact on the motion, that we do have a couple of people from the -- well, I am not sure. The Texas Police Association. So I shouldn't speculate as to what their viewpoint is.

For all I know, they are concerned about one of the university plates as well. I have no idea. But I think it might be appropriate to get that public comment.

Is that acceptable to you?

MR. RODRIGUEZ: Yes, sir. Absolutely.

MR. VANDERGRIFF: Okay. Thank you, Scott. We will probably call you back up. So don't go too far. Scott is retiring in a few days. I think he is thinking, one day. He is here for this hearing. What a way to go.

MR. RENOUARD: Yes, sir. Thank you.

MR. VANDERGRIFF: May I ask that Tom Gaylor.

MR. GAYLOR: Thank you, Chairman and Board Members. My name is Tom Gaylor. I am Department Executive Director with the Texas Municipal Police Officers Association.

And I don't have any concerns about the university plates. I don't hear mine mentioned, but that is all right. Maybe they will come up next time, when they get ready.

We have a concern about the legibility standard. When the Department issued plates recently with the -- I guess, the space header and the skyline bottom, with the blue on the white on the blue, my membership erupted. Because they had a significant trouble reading the contrast between the black letters and the blue top and the blue bottom.

And we saw many examples that were tested through the legibility standard, but they didn't actually

look the same as the plates look. The dimensions were different. The tested plate was wider than the plate that actually produced.

And so we have great concerns when we start talking about speciality plates and people being able to put hamburgers or whatever they want on these plates. That the legibility is a significant issue for us. We are probably the second largest user of license plates in the State of Texas, the first being the person who has got them on their car to register them.

The second being us, trying to figure who has got that car registered to them. And we need to do it in a split second. We have split seconds to make the determination of where that plate came from, and hopefully, identify the lettering on that plate.

I am not suggesting that the legibility standard is not sufficient. I don't know. I think one of the problems is, that lots of folks turn to DPS as kind of the State law enforcement agency. DPS may have different ideas about what they believe legibility standards are to what the municipal officers or the county officers.

I represent 17,000 Texas peace officers from all types of agencies. And yes, we are consistently resistant to change. I understand that. But in this case, we are not trying to stop this ball from rolling.

What we are trying to do is, is there some way that we can get involved more in the legibility standard, or the legibility testing, even if it is to disseminate the information in advance of a release, so that the officers can be aware that these plates might be coming. So the first day they see a pink license plate on the streets, they don't think it is some kind of forgery or a false plate. We are just asking to be involved.

It is obvious that the state has decided that this is the direction they want to go, to allow the drivers of vehicles to show their support using license plates instead of bumper stickers. Just a very expensive bumper sticker. We just want to be a part of the process, in the way that we think will -- we want to ensure officer safety too, and not diminish our ability to investigate crime.

So oftentimes, we rely on partial plates from witnesses that see some car speeding off. And you know, we have to -- we struggle through that now, as it is. Because different states have different numbers of characters, and different characters in the right directions. And but we can work with it.

We just need to be, I guess, we would like to be more involved in the issue of legibility and testing. I would be willing to answer any questions you might have.

MR. VANDERGRIFF: Does anybody have any questions?

MS. JOHNSON: Is there a particular plate in this issue that the Texas Municipal Police Association was concerned about, with regard to legibility?

MR. GAYLOR: You know, I am sorry. I didn't get to see the plates that are on --

MS. JOHNSON: Would you like to look at them?

MR. GAYLOR: I would love to. Yes. If that is all right.

MS. JOHNSON: Please.

MR. GAYLOR: Thank you. Just from my, I mean, looking at it, like a cop would, I would be concerned about number 5 and number 6. Number 9, just depending on how that produces. I don't imagine we would see a whole bunch of those. I am not sure that is going to be a prolific plate across the state.

And again, it is that quick transition for the eye. There are plates that have black on white, or white on black. Those are easy for us to pick up. We can quickly identify those. But when you have to transition from logo to banding to characters, or if in fact, in the future, we have something that is a picture that is laminated across the back.

One of them that is on the website currently is

a beautiful landscape with the bluebonnets, Texas bluebonnets. It is going to be very hard for us to pick up transition or contrast between the letters and that picture. I love the picture. It is a great picture. And it reflects Texas.

But again, we are talking about quick recognition and being able to identify where the plate came from. Obviously, with that picture, you can tell where the plate came from. We are the only ones with the bluebonnets, right.

MR. BUTLER: How about number 17?

MR. GAYLOR: Definitely, 17. I am sorry. I didn't turn the page over. And even the Cowboys star is going to be complicated, just because of the number, as it goes into that -- fades into that blue of the star. It is going to be lost. Especially at night.

You know, it is a lot easier for us to look at them in the daylight. When you are at night, and you are trying to pick up a plate from 50 feet, it is a little bit more difficult.

MS. JOHNSON: So the vanity of the consumer is less significant, in the opinion of law enforcement than the safety for our officers, as well as the public, in identifying these plates, in the event of a crime?

MR. GAYLOR: Yes, ma'am.

MS. JOHNSON: Okay. Thank you.

MR. GAYLOR: Absolutely.

MR. VANDERGRIFF: Any further questions?

MS. RYAN: A quick one. A request was made to be included in the legibility and testing. What does that look -- sound similar to what you have done, measures of testing reports. In your mind, what works?

MR. GAYLOR: You know, I would like to have an officer stand 50 feet away from a plate at night and see if he can read it. Or maybe a group of officers that could do it. I mean, I understand formulas and reflectivity. That is all fantastic.

But let's test it on the road. Or at least at the distances at night. And see if they can read it. Maybe not somebody as old as me, with eyesight that is fading. But let's get some of these young bucks that have sharp eagle eyes and see if they can pick it up.

So yes, I think we can get lost in science of reflectivity. But when you get out on the street, and it is what it is, if we can't read it -- we were even concerned when we had gone from the raised lettering to the flat lettering. Because the raised actually provided us some depth, and we could pick it up.

Hey, I understand times change. But we just would like to see if perhaps we could be involved in an

actual test. And then we can message that. And we already have the opportunity to talk to you guys about it.

We have with the blue top plate, the most recent release. And we have had discussions that they are lightning in the background, so that the black, the lettering is more of a contrast. It is working.

It is working with the state agencies a lot slower than the cops in the field would like it to be. But that is just the way it is. We just want to be participating in advance.

So that if we can maybe mitigate some of these legibility issues, then we won't have to deal with them after they have already run 100,000 plates, or however many, a million plates. Or how many they have got sitting in the warehouse somewhere.

MR. VANDERGRIFF: Yes, sir. Do you have a follow up?

MS. RYAN: No. I was just -- thank you.

MR. VANDERGRIFF: Okay. Tim.

MR. CAMPBELL: On the OU plate, it is on the second page. Any chance that the police officer can't in trying to pick one of those out, in saying oh, it was an Oklahoma plate and not a Texas plate?

MR. GAYLOR: I think you have a significant opportunity for college profiling with this plate. It

might be dangerous for the OU --

(Simultaneous discussion.)

MR. CAMPBELL: I do think that whenever you see the O, you are going to consider it, you may consider it an Oklahoma plate.

MR. GAYLOR: Any type of transition is going to be troublesome for the officer. The one concern that I have when you have letters in front of the numerals of the plate is, does the officer include those in the search. So would that plate, for example, would it be OU BB, 01 BB or is it just BB 01 BB.

And so the same situation exists with the Texas T plate. You know, do you include the T in your search or not. And you know, that is things that we are going to have to address from a policy and procedure standpoint, I guess. Since the decisions have kind of already moved forward with this plate, these plates.

And of course, we only college profile outside states. Not Texas Tech or Baylor or anybody like that.

MR. VANDERGRIFF: Spoken like a true Texas officer.

MR. GAYLOR: Yes, sir. Born and bred.

MR. VANDERGRIFF: Thank you very much. Any further questions?

(No response.)

MR. VANDERGRIFF: Okay. We also have E.C. Sherman registered, who wished to speak. I don't believe Mr. Sherman is in the audience. At least, he doesn't recognize it. Okay.

With that, I would move it back to Chief Rodriguez and his motion is before the floor. If we have any further presentation or discussion before acting on that motion.

MR. WALKER: Mr. Chairman, the officer brought up a point that I would like to ask a question to, if I could, referencing the Dallas Cowboy plates, that I need to go back to -- I guess, Mr. Renouard, with the Department. Because I am looking at the Dallas Cowboy plate.

And the Dallas Cowboy plate that he says is hard to read has got the star. And it has six characters. And what do we do when we go to a seven character -- how do we get that on to there, without diminishing the size of the letters which makes it, I guess harder for the law enforcement.

Or is it -- I notice that some of these plates have seven characters and some have six. The Dallas Cowboy plate obviously has six, because the star is bigger and it kind of squishes that into that.

MR. RENOUARD: The font is slightly smaller.

And that is the same font that is on the general issue plate, which is also a seven character plate.

MR. CAMPBELL: So the font will be smaller.

MR. RENOUARD: Slightly. But the font is already that size.

MR. CAMPBELL: Okay. On the seven character.

MR. RENOUARD: On the seven character, it will be the same size as is on the general issue plate. It will not be smaller.

MR. CAMPBELL: And I have one other question that I would like to ask of you. I always say that, and end up with two. But the -- when the Dallas Cowboy plate was created to help retire the debt for Dallas, for the Arlington, the City of Arlington, whoever got that plate approved, there was a fiscal note on that legislation, would there not have been?

MR. RENOUARD: Yes, sir.

MR. CAMPBELL: Because I think all riders have to have a fiscal note.

MR. RENOUARD: Yes, sir. There would have been.

MR. CAMPBELL: So what is the fiscal note revenue that was supposed to be generated to go toward the retirement of the stadium?

MR. RENOUARD: I can go back and --

MR. CAMPBELL: On the license plate sales.

MR. RENOUARD: I can go back in our files and find that for you. I don't have that information with me.

MR. SERNA: The fiscal note, and I don't have the details of the fiscal note. But generally, the fiscal note would have addressed the cost versus revenue to the state, not the impact to the City of Arlington or to the --

MR. CAMPBELL: Just the total overall fiscal --

MR. SERNA: It is to implement this bill, will it cost the State money, be neutral, or save or bring money into the State, the state meaning the State of Texas coffers, not the city or something like that. So we will look for --

MR. RENOUARD: Yes, sir. What it will tell you is how many plates we estimated would be sold.

MR. SERNA: Right.

MR. RENOUARD: Which would give you that particular --

(Simultaneous discussion.)

MR. WALKER: And we have some actual history of actual sales, do we not?

MR. RENOUARD: Yes, sir.

MR. WALKER: Maybe we could -- I would like to see that history, if we could. Do we have it here today?

MR. RENOUARD: I can get it for you. I do have it. But I do not have it with me today.

MR. VANDERGRIFF: I do want to note that you could just -- I am not pretending to be an expert on stadium financing. But when those bills were passed, our bills were passed to allow for the City at a certain size and location to use that kind of financing.

They correlated that, or connected the various funding mechanisms that were possible. I am not sure they articulated how much money any of those funding mechanisms would bring in. But this isn't the only thing.

License plates is not the only thing that is connected to the stadium. It is a minor part of it.

MR. RENOUARD: Oh, no sir. In fact, in most cases, these plates were well after the stadiums were actually built.

MR. VANDERGRIFF: Yes. They were just tying everything into it.

MR. RENOUARD: It was what the Legislature wanted the money to go to.

MS. JOHNSON: First, I want to congratulate you on your retirement, okay. That needs to be said. And then also, it was mentioned by Mr. Gaylor that, or Officer Gaylor that the tested plates were wider.

Can you address that for us? Because it sounds

like what was tested is different from what we are going to see in these plates. And I think that would be a concern.

MR. RENOUARD: Yes. It should not have been different. And I actually have with me, if you would like to look at it, I actually have a sample plate that was made for all of the plates that are here, because that is what we used in the testing. So I do have an actual plate for all of the ones that are up for review right now.

MS. JOHNSON: Then perhaps the visibility standard from the back of the room might be proper at this point in time. Thank you very much.

MR. SERNA: Ms. Johnson, just real quick to your point, I think the issue that was raised by the person providing testimony was that on the -- what is currently the standard issue plate, or was the standard issue plate, that there was a size difference there.

I am uncertain that Scott or I -- I know that I don't know whether there was, in fact, a size difference or not. I do know that since -- well, since the DMV started, we actually produce and test an actual plate, you know. One that would be put on a car. So we don't test something that is an odder size just to test the material.

MR. RENOUARD: All of our plates are to AMBA standards.

MS. JOHNSON: Thank you.

MR. FARRAR: Can I also just make one mention. Certainly with regards to the real plates. They are, certainly, different when you do see the real plate, versus a color jpg image when it has been reduced on a piece of paper from a different computer printing forms. It is vastly different.

MS. JOHNSON: Thank you.

MR. VANDERGRIFF: Any further questions of Mr. Renouard, or Mr. Farrar?

(No response.)

MR. VANDERGRIFF: All right. So we -- thank you, Scott. You can sit for a moment. For the moment. We do have a motion on the floor. It has not been seconded yet. That motion -- I would ask Chief Rodriguez if there is anything he wants to differently on that motion, or leave it as presented.

MR. RODRIGUEZ: I will leave my motion as presented.

MR. VANDERGRIFF: Okay. And that was a motion to approve all of the plates except numbers 1, 8, 13, and 18. If I have those numbers correctly.

MR. RODRIGUEZ: That is correct.

MR. VANDERGRIFF: Okay.

MR. RODRIGUEZ: I am sorry. Number 16.

MR. VANDERGRIFF: One, 8, 13, 16 and 18. So there is five of them. Okay. Everybody understands that motion. Do we have a second for the motion?

(No response.)

MR. VANDERGRIFF: All right. So that motion, it looks like it will fail for lack of a second. I will open the floor up. Do we have a new motion?

MS. RYAN: I have a question. Can we, and I don't know if we can, based on testimony, on there being concerns regarding safety issues on some of the designs, can those designs approval be delayed to possibly tweak the designs before approval is made that would satisfy --

MR. VANDERGRIFF: Or to review them, just to --

MS. RYAN: Prior to, to see if they can be --

MR. VANDERGRIFF: You certainly can make that motion.

MS. RYAN: Okay.

MR. FARRAR: Could I also just address -- one, they certainly have been tested for legibility through the Department's approved process at the moment. My Plates certainly, as I mentioned to Mr. Bower [phonetic] just a moment ago, we are certainly more than happy to commit to working with the DPS and make sure that any of those plates on the list today certainly pass and satisfy his concerns, before they are released to the market.

And I am more than happy to make that commitment in a public forum today. And so I would certainly urge, encourage you all to make a motion to pass all the plates as they are presented today. And you have My Plates commitment and certainly the DMV will support that, to make sure they meet the required legibility requirements.

MS. RYAN: And if that input required a change in design that would be completed prior to production?

MR. FARRAR: We would hold those back from release prior to DPS being satisfied with them.

MS. RYAN: Okay. Thank you. And one last clarification. You had mentioned earlier, with regard to the commercial plates, and you said we would be changing policy.

MR. VANDERGRIFF: Not changing, just adopting a policy.

MS. RYAN: Setting, adopting, with regard to commercial plates. This would be the first approval of commercial plates.

MR. VANDERGRIFF: Yes.

MS. RYAN: Okay. Thank you.

MR. VANDERGRIFF: So that breaks new ground of unknown magnitude.

MS. JOHNSON: Mr. Chairman, I would like to

make a motion that the Board approve the plates with the exception of 5, 6, 9 and 17 and that those designs be reviewed for legibility in consult with law enforcement and that they then be brought back, and that process be expedited.

MR. WALKER: Which ones? Would you repeat again?

MS. JOHNSON: Five, 6, 9, and 17. Oh and 19 I believe was another. I apologize. On the motion, that with the exception of 5, 6, 9, 17 and 19.

MR. VANDERGRIFF: All right. We have a motion that the designs be approved except for 5, 6, 9, 17 and 19, in order to allow for I guess, greater review by law enforcement of legibility. Who are you expecting to review these?

That will be under the discussion part. I apologize. We have a motion. Do we have a second for that motion?

MR. BUTLER: I'll second it.

MR. VANDERGRIFF: We have a motion and a second by Member Butler. I then ask for any discussion. And I guess I will lead that off, by asking, who is going to review it?

MS. JOHNSON: Well, according to what I have been reading under law or rule. And I apologize. But I

can't specify which. DPS is supposed to be involved in approving or not approving these.

And I believe I also heard today that if they have the opportunity to go online and comment, that I am going to request later, that we actually adopt a rule requiring specific approval by law enforcement, being DPS, since that is the state agency that would be a companion partner agency. And I am not trying to slow the process.

And Mr. Farrar, I appreciate your comments. But I am not really comfortable making a motion subject to a bunch of promises that I need -- I have a responsibility to the citizens of Texas and those law enforcement officers to ensure that that process absolutely happens before we make a commitment.

MR. SERNA: Mr. Chairman, is there a specific time frame in which this should happen, before we take our direction.

MR. VANDERGRIFF: That was going to be my next question. So you asked it.

MS. JOHNSON: I would say if that info could be received, if law enforcement is concerned, I would think that this could move forward quickly, so by the October Board meeting, we would be through on these plates, and we would have all of the testing and the final

recommendations. And also hear from DPS of their concerns, if they have any.

MR. RODRIGUEZ: Mr. Chairman, a couple of points. One is, there is nothing we can do that will make those require another agency. We can't order another agency.

MS. JOHNSON: We can request them.

MR. RODRIGUEZ: Number one. Number two, I think we are already applying a legibility and reflectivity specification standard. And we are saying, to these plates we are going to apply a different one. So what is it.

MS. JOHNSON: My question would be visibility. It appears, and I will research my paperwork here in a moment. But whether it was rule, or whether it was law, and I would imagine that it would be rule, that we had -- that DPS, and it might be law. That the DPS, that law enforcement do be involved.

And it doesn't specify that they have to be, that they would approve these. That is part of this. And I can probably find it right in this paperwork here. I don't think -- I agree with you, that we don't have the authority to require them.

But if that was legislative, then although it might not be a specific mandate, that is something that

perhaps needs clarification. But I would feel a lot more comfortable, especially just based on the public comment that we have received, and then the input we received today, both what was on the internet as well as what we received today, that one more testing, and even Mr. Farrar was saying that they were okay with testing, or to having another legibility review done.

And 30 days should be plenty of time. I think that we don't have anybody from DPS here who could address that. But if DPS has no concern, I would think that Mr. Gaylor would contact DPS. And if they have no concern, then correspondence indicating such would definitely be appropriate.

MR. RODRIGUEZ: I am sorry. That is not the motion in front of us. But nonetheless, what I am saying is, whether it is these plates, and others that are already in service, there is a concern, has been a concern. We have raised those concerns in these meetings.

Thus far, we have accepted the standards for them. And we have settled questions on existing license plates based on the fact that they have passed those standards. Those standards are being applied here.

So I am just wondering about getting into trouble in saying, for these guys, we want different standards. And if so, what are they? That is all I am

asking.

MR. VANDERGRIFF: It is a similar argument on a different part of the topic. The majority of the Board, seemingly, by taking no action was talking with respect to the college plates. And the fact that we have approved plates with this college plates before, and now we would not be, under the same criteria.

From my personal perspective, perhaps rather than delay these plates with this, it might be best to ask the staff to come back with a thorough understanding for this Board of the legibility and reflectivity tests. And that those have been vetted through the law enforcement community. And that would be a separate motion, apart from the approval, just the approval of these plates.

MR. SERNA: Mr. Chairman, if I might to address some of what I am very clearly hearing. If the Board would indulge, separate from -- I guess I can't make a motion right now.

Except from any motion to approve plates, allow me to commit to the Board that the staff will review the current process that we use. And we will propose enhancements to that existing process for all future plates, whether it is a standard issue, a specialty, or something else that comes from the Legislature. Whatever it is.

And we will come back to the Board in the October meeting with, one, a review and summary and briefing to the Board on the process we go through now. And then second, recommendations to improve that process, to engage law enforcement or other organizations. And in as objective a manner as possible, and the reason I say in an objective manner as possible is, because to text a set of plates with a particular set of officers, looking at them.

And the next time we test a set of plates, and it is a different set of officers, or it is a cloudy day, or a sunny day. So we will come back to the Board in October with one, a summary of what we are doing now, a briefing and summary of what we are doing now. And the basis and science behind it.

And then two, recommendations for broadening the review. And if the Board would consider that separate from the approval of this particular set of plates. This offer of mine. Not offer, but commitment, rather to the board.

MR. VANDERGRIFF: I would like to add that to be specific, in addition to DPS, like the Texas Police Association or any other major organization that is out there --

MR. SERNA: Yes, sir. That is exactly what I

was thinking. More than just DPS.

MR. VANDERGRIFF: Okay. And that I would also make sure, just for clarity's sake, that My Plates would be engaged and involved in this process too. That it would not be just the Department working this through without their active involvement and participation.

MR. SERNA: Yes, sir. No, as a matter of fact, I will invite My Plates to join in the presentation, the staff presentation at the October meeting, on the results of our efforts.

MR. VANDERGRIFF: Okay.

MR. CAMPBELL: And are you suggesting that we table this until then, or are you saying, pass it. Your recommendation is pass this, and then review from there.

MR. SERNA: Yes, sir. My recommendation is that you would take action on these plates. And I am going to stay neutral. But you would take action on these plates. Because we have already taken action on plates in the past, using the current reflectivity models, et cetera.

And Brett had pointed out the discussion about, to Mr. Rodriguez' point earlier, about the particular university plates. We have other university plates that we have approved or not approved.

There are other plates that have been approved,

including the standard issue plate that is currently used by the State that has gone through the current reflectivity tests. So if we can finish out the cycle with these plates.

And then for any future plates that we move forward with, we will present a new methodology for reviewing, evaluating and including law enforcement. Of course, My Plates and any other organization. So I guess in plain English -- I am sorry. Sir, go ahead.

MR. VANDERGRIFF: If a new methodology is necessary.

MR. SERNA: Right. Yes, sir.

MR. CAMPBELL: So your suggestion is to approve all 20 of these proposed --

MR. VANDERGRIFF: He didn't say that. He said take action on them.

MR. CAMPBELL: Okay.

MR. VANDERGRIFF: But I would say that that would be my suggestion.

MR. WALKER: We have a motion and a second right now. We need to vote on that.

MR. VANDERGRIFF: That is correct. We are in discussion mode here. If you are calling for the question on your motion.

MR. BUTLER: You may want to.

MS. JOHNSON: I'll call for the question.

MR. VANDERGRIFF: All right. Well, we have a motion and a second to -- I wrote down that we would approve the plates except numbers 5, 6, 9, 17 and 20.

MS. JOHNSON: Nineteen.

MR. VANDERGRIFF: Seventeen, 19 and 20. Okay. I apologize. Motion and second, approving all plates except numbers 5, 6, 9, 17 and 19. All those voting in favor of the motion, please raise your right hand.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: All those opposed?

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: Okay. The motion fails. Now I would look for a new motion.

MR. CAMPBELL: Mr. Chairman, I would make a motion that we approve all of the plates as presented, with the suggestion of the Executive Director for future plates, in looking at their safety a little further.

MR. VANDERGRIFF: Do we have a second?

MS. RYAN: Second.

MR. VANDERGRIFF: We have a motion and a second. Any discussion?

(No response.)

MR. VANDERGRIFF: All right. I would call for your vote. Right hand signifies approval.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: All those opposed?

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: That motion carries five to two. Okay. I think that all of the parties, our agency and My Plates can certainly note that we want a little more discussion on this. All right.

We now move to the consent agenda portion of our agenda. Why don't we -- I have had a question to me about breaking for lunch. And we can do that here quickly.

But I think we might be able to knock out about three-quarters of it at least page-wise, our agenda, if you were so inclined for the Directors to make a motion for approval of the consent agenda. Or first, I should ask if anyone has a particular item they would like to pull out for individual consideration?

(No response.)

MR. VANDERGRIFF: Seeing no indication, the same -- would like a -- please entertain a motion for approval of the consent agenda which consists of 5(A), Items 1 through, adding them all up, 54. And Mr. Bray, would you like us to have a separate motion on 5(B)? C and B.

MR. BRAY: No, actually, if it is your

pleasure, you can do the whole thing altogether.

MR. VANDERGRIFF: Okay.

MR. RODRIGUEZ: Okay. So moved, Mr. Chairman.

MR. VANDERGRIFF: All right. We have a motion and a second for approval of the consent agenda. All those in favor, please raise your right hand.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: The motion carries unanimously. The consent agenda is approved. And we now move, before we move, we will break for lunch here quickly. But I will tell you we are now at Item 6, or will be after our break.

It is approximately 1:00. And we are going to break from the meeting. And we will not be in Executive Session. But we will break for approximately 30 minutes for lunch. We will be back at 1:30.

(Whereupon, a short recess was taken.)

MR. VANDERGRIFF: It is approximately 1:35 p.m. on August 25, 2010. And the Board of the Texas Department of Motor Vehicles is now in open session.

The next item on our agenda is Item Number 6. I apologize for not having that open and handy very quickly. It is the adoption of rules under Title 43 of the Texas Administrative Code, in the Vehicle Titles and Registration. Scott Renouard, regarding specialty license

plate.

MR. RENOUARD: Good afternoon, Chairman Vandergriff, Board Members. My name is Scott Renouard, and I am the interim Deputy Director of the Vehicle Titles and Registration Division. The Texas Department of Motor Vehicles proposes the adoption of an amendment, Section 217.18 concerning specialty license plates, symbols, tabs and other devices.

The amendment adds the ability of the Department to use the character of a heart in conjunction with a license plate number. Adding this symbol will give the public another symbol option to place on a plate. There were no public comments to the amendment. I recommend the amendment for adoption.

MR. RODRIGUEZ: Chairman, so moved.

MR. VANDERGRIFF: We have a motion and a second. Do we have any discussion. We don't have a second, excuse me. Do I have a second.

MR. CAMPBELL: Second.

MR. VANDERGRIFF: Second from Director Campbell. We have a motion and a second. Do we have any discussion?

MR. RODRIGUEZ: I think this is a carryover. We have already had this.

MR. VANDERGRIFF: Yes. So I will call for your

vote. Right hand signifying approval.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: The motion passes unanimously. Thank you, Scott. We now have up before us Brett Bray with -- excuse me, again Scott with traditional motor Vehicle Titles and Registration questions.

MR. RENOUARD: These are proposed rules. And again, Good morning. My name is Scott Renouard. And I am the interim Director of Vehicle Titles and Registration Division. The Texas Department of Motor Vehicles proposes amendments to Chapter 217 concerning motor vehicle registration.

The amendments to 217.22 create permanent trailer plates, which allow a trailer to retain the same plate for seven years without being issued a windshield sticker. The registration receipt retained in sight or on the vehicle will provide evidence of registration.

Other amendments allow the Department to send renewal notices by electronic mail if the customer chooses that option. Amendments to 217.40 delay the increase of fees for one year T plates and generic plates. Generic plates are the whites plates with the small Texas book emblem on the top of the plate.

The increase in fees was approved by the Texas Motor Vehicles Board on July 10, 2010. But it is being

delayed due to the computer implementation time tables. The amendment also grandfathers existing specialty license plate fees for the non-profit organizational plates, including personalization.

As long as an existing customer timely renews, the price of the plate will not be increased to the new vendor pricing schedule. The amendments also clarify that the transfer of patterns that have been purchased at auction may be by gift, inheritance or sale.

Such a transfer does not need to be through another auction. I recommend the proposed amendments for approval.

MR. VANDERGRIFF: Do we have a motion?

MR. WALKER: I move to accept the motion.

MR. VANDERGRIFF: Do I have a second.

MS. JOHNSON: I second.

MR. VANDERGRIFF: Motion and second by Directors Walker and Campbell. Excuse me, Walker and Johnson. Any discussion? I would ask you to raise your right hand in approval of the motion.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: The motion carries unanimously. Thank you again, Scott. And the last item on the proposed rules is on motor vehicle distribution advertising and auctions. Brett Bray.

MR. BRAY: Actually, Mr. Chairman, Members. Brett Bray, General Counsel. And actually, I am going to have to ask if we can revisit 6A. In 6A, it has been published in accordance with the Texas Register rules and all.

But recently, one of your own, Member Walker, made some slight amendments. And what you just adopted, when you adopted 6A did not include that. And so I think the way to approach this is, is to back out of what you just did in 6A, and allow -- I suppose Mr. Walker can move to undo what he just did, and then do what he wants to do. Which is adopt it with his pretty small amendments.

MR. RODRIGUEZ: Mr. Chairman, I revise my motion again, if appropriate. Or do you want me to just undo it, and then do it over again. Whichever way. I just want to know what the amendment is.

MR. WALKER: Let me make the amendment.

MR. VANDERGRIFF: And I think the cleanest way is if he will move to undo it, and then articulate his changes, modifications.

MR. WALKER: I would move that we undo what we just did. Because there has been some modifications --

MR. VANDERGRIFF: About 6A.

MR. WALKER: About 6A. And I would like to restate the proposal, or the adoption. However I word

that right.

MR. VANDERGRIFF: You basically want to move adoption of the rule with your changes. I apologize. Aren't those changes in our book?

MR. BRAY: Yes, sir.

MR. CAMPBELL: But they weren't published for 30 days.

MR. VANDERGRIFF: Oh, because I was --

(Simultaneous discussion.)

MR. CAMPBELL: You have them, the public does not.

MR. VANDERGRIFF: Yes. I understand. So a motion to rescind the previous motion that approved the rules that we need now to modify. Do we have a second.

MR. RODRIGUEZ: I second.

MR. VANDERGRIFF: We have a motion and a second. All of those in favor, please raise your right hand signifying approval.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: Scott had absolutely no idea that they last thing he passed was this, the agency was reversed.

MR. BRAY: Actually, he was instrumental in helping get the changes made.

MR. VANDERGRIFF: Okay. So you decided to pass

it and then reverse it immediately. All right. Mr. Walker, would you like to explain?

MR. WALKER: Yes. I move to approve the adoption of the amendment to Section 217.2A with the addition of a cross reference to a portion of motor vehicles. This cross reference clarifies that portion motor vehicle need only to display one license plate in accordance with existing Section 217.44.

MR. RODRIGUEZ: And that what is already here.

MR. VANDERGRIFF: It is in the book. It is what is already in there. That is what you read. But all of us thought it was the motion. But it wasn't public.

MR. WALKER: It was a correction.

MR. VANDERGRIFF: It was a correction due to just a typo where they had put in that two plates were needed. And you only need one on a portion truck.

The good news is, everybody read that. So we have a second from Member Rodriguez. A motion and a second. All of those in favor, please raise your right hand in support.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: The motion carries unanimously. Thank you, Mr. Bray.

MR. BRAY: Thank you. Mr. Chairman, Members.

This next item which is C, concerns Chapter 215. It relates to an advertising rule proposal. When the Division's advertising rules were reenacted under the Department of Motor Vehicles last year, this rule was inadvertently dropped.

We are asking permission to begin the process for reenacting this rule. It has taken this long just to get it before you for the first time. By publishing it in the Texas Register for public comment. The language in the proposed rule has not been changed.

Let me say it again. It has not been changed from its previous version. The rule states that the use of auction, auction special or similar wording may only be used in advertising in connection with a vehicle that is offered or sold at a bona fide auction. We ask your approval to publish the proposal for public comment. And if you have any comments, I will try to answer them.

MR. RODRIGUEZ: So moved, Mr. Chairman.

MR. VANDERGRIFF: Motion, Rodriguez. Do I have a second?

MS. JOHNSON: I will second.

MR. VANDERGRIFF: Second from Vice-Chair Johnson. No indication on any discussion?

MR. CAMPBELL: Well, discussion. This is, so we think it is going to go through a sale, it has got to

be displayed as an auction, like any kind type of marketing or advertising, anything that does it.

So if a new car dealership has a -- all of a sudden, they do a big sale, and I think somebody explained it. But it sounds like all of the marketing, if you advertise anything, you have got to have a license to do an actual auction basically. And to do a license, you have got to be approved and the location?

MR. BRAY: Generally speaking. There are ways to do -- you can hold an auction without being an auction. You can be a dealer and that could be your sales model.

And you are getting almost past my level of ability to converse with you on this, at this point. All I am trying to do is to get it published, so we can discuss it.

MR. CAMPBELL: Okay. But he knew his. As you are getting it published. I am just trying to question this at this time, to clarify this. Dealers have had auctions at their locations.

MR. BRAY: And that is legal.

MR. CAMPBELL: And that is legal. But based on what you are saying here, it sounds like it wouldn't be.

MR. BRAY: No. That is not what I am saying here. The rule never said that. What the rule says is, if you are going to say you are holding an auction, you

have to actually hold an auction. It has to be a bona fide auction. That is all the rule really is talking about.

MR. CAMPBELL: Okay. Thank you.

MR. VANDERGRIFF: Any further questions?

(No response.)

MR. VANDERGRIFF: I ask you to raise your right hand in support of the motion.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: The motion carries unanimously. Mr. Bray. We now move on to Item 6.C. on the agenda, which is consideration of the franchise proposal for decision.

MR. BRAY: I am going to remain to help you introduce Ms. Cost, who -- I am still the interim Division Director for MVD. But I wanted to make sure everybody understood the reason Ms. Cost ought to introduce this, as she provided your Executive Summary. And she is a very bright lawyer.

And probably, the most familiar with this case, and franchise law of all of us. So that is why she should be presenting it to you.

MR. VANDERGRIFF: Thank you. Good afternoon, Ms. Cost.

MS. COST: Good afternoon. I hope I can live

up to those words. For the record, my name is Molly Cost. And I am the Director of the Licensing Section in the Motor Vehicle Division.

In the case you have before you today, Protestants are four recreational vehicle dealers that carry several lines of towable recreational vehicles, also known as travel trailers. And they are manufactured by Keystone RV Company.

Keystone is a manufacturer of many lines of travel trailers, including the four at issue in this proceeding, and that I will say ad nauseam for the next few minutes, Challenger Everest Alpine and Avalanche. It is common in the RV industry for products to be refreshed and updated on a regular basis.

Protestants contend that their Challenger Everest franchises were improperly terminated when Keystone simply performed the normal annual refreshing of the Challenger and Everest products, but then changed their name to Alpine and Avalanche. Designating them as new lines, and forming a new dealer network for the products.

Keystone argues that the Alpine and Avalanche are not refreshed Challenger and Everest, but new products, designed and engineered from the ground up with new and revolutionary features, and different marketing

and price points. Therefore, Keystone contends it was able to establish a new dealer group to carry the new RVs without affecting existing Challenger and Everest franchises.

Two main issues are presented for the Board's consideration. One, are Alpine and Avalanche new lines, or just rebadged Challenger and Everest products, for which Protestants have the right to be franchised.

Two, absent a proper notice of termination by a manufacturer, does a request for repurchase of inventory by a dealer amount to voluntary termination of those lines? The sole proposal for decision states that while they shared some of the same characteristics, Alpine and Avalanche are not relabeled Challenger and Everest products, and that Protestants failed to show that Keystone's goal through the introduction of the Alpine and Avalanche was to thin the dealer group.

In this regard, the ALJ recommends that Keystone be ordered to provide all Texas Challenger and Everest dealers with a copy of the Board's final decision in this case, a copy of the franchise application for Alpine and Avalanche, and a list of objective standards by which Keystone will evaluate those applications. In finding that Keystone improperly terminated Protestants Hoover's Challenger and Everest franchise, the POD states

that the Board is not required to follow a prior agency decision, known as Buddy Gregg Motor Homes versus Liberty Coach, and therefore, Keystone should not have considered Hoover's request for inventory purchase as a voluntary termination.

For this violation, the ALJ recommends that Keystone pay a civil penalty of $10,000, be reprimanded, and be required to reinstate Hoover's Challenger and Everest franchise. And the franchises of any other Texas Challenger and Everest dealers Keystone terminated for requesting inventory repurchase.

Staff is concerned that the ALJ's rulings on the first issue are conflicting. The ALJ finds that Keystone did not relabel the Challenger and Everest, but then recommends that Keystone be ordered to allow each of the Challenger and Everest dealers to apply for Alpine and Avalanche.

Yet if Alpine and Avalanche are not rebadged Challenger and Everest but truly new lines, then the Challenger and Everest dealers have no right under Texas law to be offered the Alpine and Avalanche franchises the ALJ has recommended. Only if Alpine and Avalanche are the same as Challenger and Everest, with new lipstick, as argued by the Protestants should Keystone be required to allow all Challenger and Everest dealers to apply for

Alpine and Avalanche.

With regard to the second issue, the Buddy Gregg case basically states that a termination has to occur before a manufacturer is required to repurchase qualifying inventory. And that absent a proper termination by the manufacturer, a dealer's request for repurchase is considered a voluntary termination.

In this case, the ALJ makes a distinction between Hoover's acceptance of repurchase on the Challenger and Everest inventory, because changes to the product were on the horizon and the repurchase request by Buddy Gregg after an ongoing dispute with the manufacturer. The staff is concerned that the ALJ's recommendation creates an uncertainty that the Buddy Gregg case resolved, namely, what effect does a dealer's request for repurchase have on a valid franchise.

Under state law, the Board may only change a finding of fact or conclusion of law for one of three reasons; misapplication or misinterpretation of applicable law, agency rules or prior agency decisions. Reliance on a prior agency decision that is incorrect or should be changed. Or a technical error.

In reaching the decision, the Board can rely only on the evidence that was submitted during the hearing, and the sections of the law specified in the

protest. Staff has recommended that several findings and conclusions be changed to correct technical errors and misapplications of law, but do not alter the outcome of the case. And has presented the Board with an explanation of those changes in your Executive Summary. Along with proposed orders for the Board's consideration.

And I think they are all under Tab 6C in your notebooks, the second light blue tab. That concludes my prepared remarks, but I am available for any questions.

MR. VANDERGRIFF: Does anyone have any questions for Ms. Cost?

MR. RODRIGUEZ: Ms. Cost, just to be clear, you have proposed orders, is that final order 1 and final order 2?

MS. COST: Yes.

MR. RODRIGUEZ: Okay. And the effect of those would be correcting some issues, but not necessarily affecting the outcome?

MS. COST: In both final orders, the proposed final order 1 and final order 2, there are some common recommendations, that would correct technical errors or misapplications that don't affect the outcome in the case.

MR. RODRIGUEZ: Like number 40 and number 29, and so on.

MS. COST: Actually, findings of fact number 6,

findings of fact number 15. Finding 45, and then conclusions of law 2, 7 and bullet point 7 in conclusion of law number 28.

MR. RODRIGUEZ: And if we adopt these proposals, again, the net effect of that to the two parties is none. Right?

MS. COST: If you adopt the ones I just delineated, I think the only net effect would be to change the conclusion of law 28 bullet point 7. That bullet point orders that the Protestants' filing fee, the $200 filing fee reimbursed. And there is no authority for that, currently in the statute.

MR. RODRIGUEZ: I read that. Okay. Thank you.

MR. VANDERGRIFF: Any further questions?

(No response.)

MR. VANDERGRIFF: All right. We do have the parties who are wishing time before us. They are allowed. We have with us Ron Hoover and Chris Jones, representing themselves, I believe. And then Chris Pearson on behalf of Keystone.

The parties do have 15 minutes each, per side. So and with that, I would call Mr. Hoover to make your presentation.

MR. HOOVER: Victor, if you don't mind, I think it would make more sense if Cliff went first.

MR. VANDERGRIFF: That is fine.

MR. HOOVER: His is a different approach than mine.

MR. VANDERGRIFF: Sure.

MR. JONES: Mr. Chairman, Board Members, thank you for the opportunity to be here today. I will turn my watch on. I understand we have 15 minutes. I should be able to do it in that time. My name is Cliff Jones. I am a RV dealer, with stores in Katy and in Sealy. And have been a long time Keystone dealer.

And just by way of background, Keystone is a division of Thor Industries, which is the largest RV manufacturer in the United States. It is a publicly traded, owned Airstream and a bunch of other things. And Keystone is one of their large divisions.

And out of the Keystone product, I represented one section, which consisted of separate franchises for Everest and Challenger in Laredo. I am still a Laredo dealer. Keystone made the decision to change the name of Challenger and Everest for two reasons that we were told.

One, when they report sales, the sales statistics are reported by franchise. So Challenger and Everest were two separate line items. And so they were further down. If you combine the two, they were number

five in Texas.

And Keystone wanted to issue just one franchise for bragging rights and for sales purposes, so it would gain higher. So when they changed the name to Alpine and Avalanche, it is only one franchise. It is Alpine. And Avalanche is a sub factor of the one franchise.

So when, before the change, in our division there were three separate franchises. Challenger and Everest and Laredo. Now after the name change in that division, it is Alpine and Laredo, with Avalanche being a subgroup. But the thing I wanted to point out, and that we testified to, it is the same management.

They are saying that Alpine and Avalanche are different. It is not different. The changes that were made to that product are the same changes that were made to other Keystone products line Montanas, exactly. All of the changes that were made in an attempt to be more competitive with Hartman which is another big RV manufacturer. And so all of the floor plans, all of the features, the same as Hartman.

When they came out with the Alpine name, they took the same sales brochure, and they changed the name, changed the picture, and all of the bullet points, 92 percent of them are exactly the same. The same features, the same concepts. The same management, the same sales

people. The same manufacturing facility. The same production workers. It is the same.

You call Keystone's customer service, like you are a customer, and say what happened to Everest? They would say, oh, we just changed the name. It is now Alpine. The employees at Keystone readily acknowledge that this was done, the changes were done so that they could report sales under one franchise and to realign the dealers.

Of all of the dealers in Texas that were Challenger and Everest dealers, and there were some dealers that only had Challenger and some only had Everest and some had both. I had both. All of the dealers in Texas were given the Alpine-Avalanche franchise except for dealers that were in the market area of Holiday World and Camper World. Two large RV group chains.

Camping World is nationwide large. They are, by far and away, Keystone's largest customers. Keystone or Thor has either loaned or invested over $30 million in that company in the last twelve months.

Holiday World is another big -- I think they have three stores in Texas. So they both wanted the Alpine Avalanche franchise. And, in fact, when the name was changed, Keystone had submitted an application for license to the State of Texas.

The only dealers that were not continued and offered the franchise were dealers like myself and Mr. Hoover that were either in Holiday World's trade area. My store is 700 yards from Holiday World. So and Mr. Hoover is in the same situation. Holiday World is right down the street from him.

So everywhere where Camping World had a trade area, or Holiday World had a trade area, they terminated those dealers by not giving them the new franchise. That was the only reason.

I mean, I have been a good dealer. I do good service work. I have -- I still do -- of course, I still have Laredo. I do all of the area customer heat when they have problems with warranty claims, they send them to us to fix them.

So you know, we have been a good dealer over the years, but we are not huge like Holiday World. And for whatever reason, they haven't wanted to invest $30 million in my store, although I will certainly allow them to.

One of the things on the findings of fact that is wrong, and we can get it cleared up here today is during the time of the shock of getting terminated, by saying we are going to kill Challenger and Everest, and we are not going to give you the new product, we were

negotiating whether or not we wanted to even continue to try to sell the existing inventory.

It was a big issue. And at one point, I wrote a buyback letter on Everest only. I had two franchises in Sealy. And two separate franchises in Katy. It is different. You have to have different licenses for different occasions.

So I wrote a buyback letter for the Everest product in Sealy only. And a few days later, rescinded it. Keystone, through their attorneys and their executives argued at the hearing, if you look at findings of fact 11, they said on November 3, 2009, Keystone rejected Mr. Jones' attempted rescission because the Everest units had been sold to other dealers, and informed Mr. Jones that Keystone considered blah blah everything terminated.

And then once again in another spot, he says, it was too late for me to rescind, because Keystone acted to my detriment. They set out there, throughout that hearing saying we bought those units back and we sold them to other dealers. And unfortunately, the ALJ believed them and not me.

But I am telling you for a fact, they did not buy those units back. They did not buy them back. They said, since you are going to stay a dealer, we will offer

you a rebate to help you sell them, which the rebate turned out to be thousands of dollars less than they were giving other dealers. But that is a matter for another day.

But I think we should get it cleared up today, that this finding of fact was wrong. And it is important. Only to the extent that if we -- if the Board finds that it is a new -- that it is just a name change, then we are entitled to that franchise. And in order to be entitled to it, we need to be franchised at the time.

My argument would be even if they said I didn't have Everest any more, I still have Challenger. So if you have either one, you are entitled to the new one, which would be Alpine. As I said, they are the same units.

The only changes they made were the same changes they made to Montana and Fusion and Cougar, some of their other lines, where they changed the rail and changed a few other things. But basically, these are recreational vehicles, fifth wheels that tow in the bed of a truck.

And they are large, expensive units, at a very high price point. So this new Alpine, in addition to sharing the same management and the same production facility, it is in the same price point. Costs exactly the same amount of money. It was introduced when they

killed Challenger and Everest within a month, a very short period of time. And it is the same.

If you look at the web page, it is the same format, the same -- they give you the demographics, the size, the weight, the floor plan. They are all the same. It is just a name change.

It was done in order to -- so they could get Holiday World and Camping World some dealerships without compensating us for terminating us. And so they could climb in the sales stats by reporting everything under one sale. And so I thought that we made that very clear.

And you know, under this proposed finding or ruling, they found that Keystone didn't do anything wrong. That they didn't have an obligation. There wasn't a line making. It wasn't a transfer. So what I am saying is, that stands. Keystone is going to be able to take our dealerships.

I bought my dealership at the request, or my franchise at the request of Keystone. I was a good Laredo dealer. They were having problems in Houston with Everest dealer who was struggling financially, and was not doing a good job, and had a lot of customer complaints.

And Don Clark, the general manager of Keystone says, Cliff, Everest would be a great thing to combine with Laredo. Why don't you go over there and buy these

guys out. And I did.

So I went over there, at their request. Paid a lot of money to buy that franchise. And have operated it successfully since. The only reason they are taking it away from us, from me, is to be able to give it to Holiday World. And that is just -- it is not right. And I think that it is -- it should be clear.

And in fairness to the ALJ, he didn't know anything about the RV or the automobile industry. He knew nothing. And he didn't know anything about how the motor vehicle commission rules were set up. I mean, what it takes to even kill a franchise.

Because always before, we have been allowed to rescind, to buy back later, if it was done before, with a normal two weeks it took to process. But he didn't have any of those rules. And he didn't know any of that stuff. So my rescission was accepted by Keystone. They never tendered payment.

They never called my floor plan source, to see how much I owed on them. They never said, we are here -- here is a check. We want the units. They didn't do that. They did not have those units sold. They made no effort to buy them back.

They said, when they called me and said all right. Well, if you are going to stay a dealer, we will

help you sell them. And we will give you some rebate money. So I think that the proper finding is that it was just a name change.

And what they did with the other dealers, there was no application process. The other existing dealers that had it, they just gave them a license amendment to file with the State of Texas. There was no inquiry as to who you are or what you did. It was just the same thing that you do when an automobile line comes out with a new model. You are just giving a license amendment.

So I think that is what -- I even get finished early. I think that is what the Board should find, is that Keystone was wrong. That we should be given the franchises. Thank you.

MR. VANDERGRIFF: Do any of the Board members have any questions?

MR. CAMPBELL: How long have you been a member or a dealer for Keystone?

MR. JONES: For, with Laredo, I think -- gosh, I am not sure. I think at least ten years.

MR. CAMPBELL: And you indicated that they have bought back before your -- in the past, they have bought back inventory?

MR. JONES: Not from me. No. They bought back, I think in the case of Mr. Hoover, he was unhappy

because when they killed these products, I mean, they killed them. They pulled them off of the web page even.

So people were trying to research them and we would say oh, this is made by Keystone. And they would say funny, they don't have Everest or Challenger. And we would say, well, call customer service. And that is when they were being told they were just name changes.

But they took them off the web page, which is an important source for us to get leads to sell. Because customers will click, fill out an inquiry form. And then they forward the contact information to us. And we get a lot of sales off of the Keystone web page.

But when they took it down, I mean, if it was just going to be discontinued, like Pontiac, say. You can still get on GM's web page and see Pontiac. It is going to be there, as long as there is inventory out there to sell. But Keystone took it down completely, and removed all traces of it.

MR. CAMPBELL: Well, I guess I was asking, in prior years, have you had them -- have they bought back inventory or given you some sort of --

MR. JONES: For me, no. Never.

MR. VANDERGRIFF: Any further questions? Mr. Walker.

MS. RYAN: I have a question.

MR. WALKER: Go ahead and let Laura go first.

MS. RYAN: If I may, when you made the initial request to buy back, was it just the sales inventory? It did not affect -- there was no request for parts inventory or service warranty?

So you had planned, just the new car inventory to go? But your intentions were to retain parts and service operations?

MR. JONES: Correct. Yes. Because out of that division, since I would still be a Laredo dealer, I would still be able to do, as I understood it, would still be able to do the Everest and Challenger.

And plus, I still would have the Everest franchise in Katy, at my other location. So -- and we have some combined service. And at the time, I didn't even send the letter to the State.

At the time, that was part of the negotiation process that -- it wasn't like they told me it was going to be. So when I realized it wasn't going to be like they said it was going to be over the phone, then I wrote the rescission. And that was just a few days later.

Now, they are arguing that I wrote the letter for Challenger and Everest. But I mean, the letter is the letter. It is in evidence. And it says Everest. And it lists them. There is three, I think only three of them.

And it lists them.

So you know, for them to argue that it covered everything, and that they actually bought them and sent them out of state or wherever they were going to send them to another dealer. It is just not true.

They testified that over and over. And this poor Judge, I mean, he is sitting there saying, well these are high powered lawyers. And here is this little old non-lawyer from Sealy. So he went with them.

But the fact of the matter is, I had them. And I sold them. I sold the last Everest last week, in fact.

MR. VANDERGRIFF: A couple of quick questions for you.

MR. JONES: Okay. Sure.

MR. VANDERGRIFF: You mentioned -- I caught this earlier. You retained the Everest franchise in Katy. So why did you retain it one place, and not here? Or what was the --

MR. JONES: Exactly. I can tell you exactly what my strategy was. I wanted, seeing that the winds of war were coming, I wanted to be able to say, if we are entitled to be franchised because of this franchise that we are entitled to get the Alpine, then I want it.

And if I have Everest in one of my locations, I

am going to get it. And that is exactly why I didn't write the buyback letter on Challenger in Sealy. Because I said, well, if it is two franchises, and it is going to one, and if I had either one, I am still entitled to the new one.

Like one of the Protestants in this case, only had Everest and one of the others only had Challenger. So that was why I was -- and like I say, it was -- the guy that I was dealing with was telling me a bunch of things. And I don't know that he was being insincere.

But he either didn't have the authority to do, or couldn't get it done. And I just thought it sounded. So I wrote the letter. Sort of as a negotiating thing.

MR. VANDERGRIFF: That is what I want to understand too. Part of the negotiating process? I am just trying to understand what you meant by that. You said that earlier, too.

MR. JONES: Okay. Well, he said, what he told me, he said, well here is what we will do for you. Under no obligation, we will buy your inventory back. Because we realize that it has been discontinued. And it is going to be harder to sell. No obligation.

And so I said, I will still have the right to get the Alpine. And he said, yes. And so then he came with a letter that was not that at all. It was, I am

terminated. I have got no legal rights under the State of Texas. Can never bring a complaint.

And I said, well, I am not going to sign this. And he said well -- anyway. It was poorly thought out on my part to write the letter. But I did not send it to the State. And I rescinded it before they took any action.

And historically, it has been my experience that if you write a buyback letter, you have the right within a short period of time, prior to their cancelling your franchise to rescind it. And I might add, the State never rescinded my license. So far as I know, I am still a franchise dealer for Everest.

They never -- Keystone never pursued it. Never wrote a letter to the State. Never said, this guy is terminated. So as far as I know, I am still a dealer. Like I said, I have been selling the product all along. I sold the last one, last week. And I still have a few Challengers left.

MR. VANDERGRIFF: Do your customers have a right of rescission? Can they -- if they a couple of days later wanted to back out of an RV sale?

MR. JONES: Oh, they do it all the time. With an RV sale, you ought to do spot delivery. So it takes, usually, because they are handmade, and there is a lot of defects. And so we make them ready at the time of the

sale.

It takes, we normally get three to seven days to make it ready. And when they have buyer's remorse, change their mind, lose their job, we sell to a lot of old people. You know, and we have had it all from heart attacks to slip and fall to broken hips.

I just say look, you know what. You don't want it. Here is your money back. So yes, we do allow rescission. It is a little bit different than the car business, when you are spot delivering. Yes, sir.

MR. VANDERGRIFF: Questions? Yes. Mr. Walker.

MR. WALKER: What -- you had about 15 units on hand when this happened?

MR. JONES: Yes, sir. I think that is about correct.

MR. WALKER: And what was the wholesale value of those units at that time?

MR. JONES: Rough, 4- to $500,000. I think on the average, that I wrote the letter on, it was $108,000.

MR. WALKER: Yet, it says here that you cashed a check from them for $539,000.

MR. JONES: No, I think that was Mr. Hoover.

MR. WALKER: Oh, a different one. It is different. Okay. I am sorry.

MR. JONES: Thought I was having a heart attack. My phone started vibrating.

MS. RYAN: So, just so I can be clear, you are still servicing -- you still, in your opinion have a franchise?

MR. JONES: I do.

MS. RYAN: You are still servicing. And you just sold the last one.

MR. JONES: I just sold the last Everest. And I still have some Challengers left.

MS. RYAN: You still have parts, inventory, and run an active service department.

MR. JONES: Oh, yes. I run active service.

MS. RYAN: For both Challenger and Everest.

MR. JONES: Absolutely.

MS. RYAN: And Laredo?

MR. JONES: Absolutely. I have got plenty of Laredos. I have got them on sale.

MS. RYAN: I am not looking for an RV. But thanks. Thank you.

MR. VANDERGRIFF: Any further questions?

(No response.)

MR. VANDERGRIFF: Okay. Thank you very much. All right. Mr. Hoover.

MR. HOOVER: The franchise laws in Texas

basically give us the rights to these franchises and we put a lot --

MR. VANDERGRIFF: If you would identify yourself for the record.

MR. HOOVER: I am sorry. I am Ron Hoover. I own Ron Hoover RV and Marine. I am President of the corporation. Let me give you a little quick history on my history in the RV business.

I started in 1986. I have been in business continuously since 1986. I have five dealerships in Texas, in four different cities. One of the largest dealers in the state. At one time, I was one of the largest motor home dealers in the state.

And we over the years, moved out of the motor home business. Moved into the towable business. Keystone was definitely the number one player in the towable business. So my sons and I went to Keystone. Sat down with Keystone. Said, we want to realign ourselves in the State of Texas as a major towable dealer.

And we sat down with our management people. And we went over every store that we have in the State, and every product that they had. And at that time, we had eleven other brands from other manufacturers.

And in our negotiation to become, basically, an exclusive Keystone dealer, they asked us if we would be

willing to give up those eleven other franchises, which we agreed to do. And then we sat down at each store, and went over which ones of the Keystone products we would be selling at those stores.

At that time, they asked us if we would take Challenger and Everest at all of our stores, across the state. And at that time, they said, this product is not doing very well. And we know that. But we are working on it. And by next year, we will have the changes made, to make this a successful product.

And I said, I trust that you will. Not a problem. You know, put Challenger and Everest in the mix. We gave up the eleven other competitive products from other companies, and went exclusively Keystone at all five stores. Okay.

Approximately nine months after this decision was made, all of a sudden, I hear rumors in the RV world that Challenger and Everest was being cancelled. It is not going to get rebuilt. It is going to get cancelled, and a new product is coming out called Alpine and Avalanche.

So I called the rep us and say, why am I hearing this in the streets, and not hearing this from you? What is happening with Challenger and Everest? What is going on here?

He says, don't worry about it. We are making all of these changes. Everything will be good. You are going to love the new product. And time kept going on and on.

I heard other dealers were already getting prices. They are already getting information. So I called again, and said, where is my information for this product?

That is when I started smelling a rat. I started understanding that maybe they weren't going to give this to us. At that point, before this happened, Camping World in Houston, because Thor Industries had loaned them a ton of money, they made them give up all of their non-Thor products.

And Heartland, which is probably the second largest, and working towards being first manufacturer in the industry calls me up and says, Ron, will you take on all of the Heartland product? And I said, well, I would love to. It is a great product. But I can't. I have already married Keystone.

And you know, I just can't do this. Now I find out three months later that Keystone is not returning that same favor to me. I called the rep at Keystone, told them that I could not afford to lose this product. That I had spent a ton of money getting this product set up in the

stores.

I explained Texas law to him, Texas franchising law. I took the Occupations Code. I highlighted every part in it that said, that you can't take this line away. You can't terminate me without proper information, et cetera. And send that to him. I called his boss. I called the President of Thor.

I called everybody in the company down the line, all the way up the ladder. And every single one of them said, well, it is whatever Ryan Juday who is the manager of that product, it is his decision. Nobody would take responsibility for their employees' decision.

The reason Keystone is here today is because of their rep. Not because of their upper management, but their upper management is responsible for what their people do. Okay.

Somewhere in all of that information it says that I sent a repurchase in. That is far from the truth. I never sent a repurchase in. I literally almost got on my hands and knees and begged them, not to cause me this grief of having to go find new product, and having to start all over with another product.

Let me also back up and say, in Houston, where this big problem developed, my new store was in La Marque, Texas. Which is a few feet away from Galveston. Before

this Challenger and Everest inventory showed up, we had a hurricane.

And that hurricane destroyed the area. They called me, and said, we have 30 plus units ready to ship to you. What do you want us to do? I said, well, I guess, ship them. Because I don't cancel orders. If I give you my word, my word is good.

We had to go down and get the Department of Transportation, DPS to move the barricades that were on I-45 South so that these 30 units could be brought into a dealership that was destroyed, had no electricity, and didn't have electricity for six months after those units were delivered. But they cancelled me because I didn't sell enough after the hurricane hit to meet their goals.

Now let me back up a minute and tell you also, that all of the crew that handled Challenger and Everest and everybody got hired away from a competitor. And all of these new people were put into this position.

So these new people were sitting there saying, well, what can I do to pad my pocket the quickest? Well, I will go down to this other established dealer, and give them the line.

And Texas law, there is not anything that they cared about. To this day, I don't think they realize what Texas law is. On August 4, I flew up there and sat down

with them.

After this was all over with, and spent 2 2 hours with the President of Thor and the President of Keystone. And spent 2 2 hours trying to explain everything they did wrong, and everything that happened.

And told them that I thought they should have been there to hear the testimony, instead of just listening to what their rep was telling them. To listen to what their dealers were also expressing. And they never showed up.

Again, they didn't show up here today. They just sent lawyers. Okay. I have not heard from them since that August 4 meeting. And they promised me that they would relook at this, and get back with me. And see if we could come to some resolution.

Again, there is no resolution. They expect us to hire high powered lawyers, and spend hundreds of thousands of dollars fighting this, instead of doing what the right thing is. They were given the laws. They were given the whole deal.

And it just didn't seem to make any difference. And I still don't think it does. I now have four other stores in the State of Texas that are exclusively Keystone dealers. That I am having to deal with Keystone on all of these other products.

And I have a great relationship with Keystone. Don't misunderstand me. I only have a bad relationship with the man who is in charge of Challenger and Everest, which is now Alpine and Avalanche. And I cannot do business with this man here. We can't even talk on the phone anymore.

Even after the Judge issued the previous order, the order that was set out, and said that you did Hoover wrong. You need to do the right thing. He still calls me up and says, we will give it to you in Corpus Christi, but we are not going to do anything in Houston.

So I guess until somebody does something really serious to them, they are just not going to pay any attention. You are fining them $10,000. That is like fining me a penny. Okay.

If every time I went down the highway and got a speeding ticket, it cost me a penny, do you think I would ever slow down? I would just put a jar of pennies in the console of the car. Okay.

The fines and the reprimand that is being done is not going to stop this kind of treatment of dealers. And the reason we have laws in Texas, and the reason that legislator approved these laws is to protect dealers, and to protect their investments, okay.

MR. VANDERGRIFF: Can I ask a question?

MR. HOOVER: Certainly.

MR. VANDERGRIFF: You were repaid, it is like, the record shows about $530,000. Something like that.

MR. HOOVER: What happened there, when I was on the phone with the President of Thor Industries, and explained this whole thing to him, he said, let me look into this, and I will get back with you. He called me up three or four days later, and said, Ron our policy is that we let the department manager, in other words, Ryan Juday, who is in charge of Challenger and Everest, now Alpine, now the new brand name, we let them make all of those decisions.

We don't override their decisions. And that is just the way we have already done it. And I need to stick to that policy. He said, I will buy your product back.

And I said, if you want to buy it back, you are welcome to. But I am not relinquishing my franchise. And I am not giving up any rights I have to this new product.

I am going to prosecute you. And he said, I understand. That is your right. Your privilege. I still will buy it back. Okay.

They sent me a letter about two weeks later, again, Ryan Juday sent me a letter, saying you hereby terminate your franchise. I called them up and said, I didn't terminate anything. You just don't get it. I am

not terminating anything.

If you want to buy it back, buy it back. But I am not terminating franchises. I am not giving up any rights. And that is what they said they didn't want to do.

MR. VANDERGRIFF: Knowing that you then would have no inventory, why would you take the check?

MR. HOOVER: Why would I take the check?

MR. VANDERGRIFF: Yes. Knowing that you -- that would put you technically, from a sales perspective, out of business.

MR. HOOVER: Well, it didn't put me out of business totally. Only at one store. Only at my La Marque store, was the only store that only had those three products that that one manager had. All of my other stores had -- right now, I have twelve other Keystone products at every other store.

I virtually sell everything Keystone makes, except this one product. I don't know what they call, the left side of the product. They basically have their company divided into two halves.

One dealer kind of sells one half. The other dealer sells the other half. Kind of like General Motors would lump GM and GMAC trucks and Pontiac and Oldsmobile at one store, and maybe another store have three other

products.

So I was a little more fortunate than some of the other three. There were four dealers that they did this to. One of them has already gone out of business. Okay. So I guess it will be determined in the future, whether this put him out of business or not.

Cliff doesn't have any product to replace this with. I am a big enough hitter that people came to me. Other manufacturers came running. I can't believe they did it, but we are glad they did. And I was able to replace that product with other brands.

Because physically Heartland, which was the product that they -- remember, I told you that Heartland had come to me before. And I told them I couldn't do it. But fortunately, in the six months that followed that, Heartland brought out enough new product, that I was able to pick up to make up for that.

But something has got to be done in the State of Texas. We have these laws to protect the franchises of the dealer here, and the business people in Texas. And every dealer in Texas cannot afford to go out and hire lawyers to come fight, to enforce these laws.

That is why I am glad to see a Board now, so this Board hopefully can enforce the laws of Texas and make them understand that they do need to follow the laws.

Any other questions?

MS. RYAN: I have a question. I think it was probably similar. So the letter that they sent, that you refused, in terminating your franchise, was it the one location? You said you have eleven other -- do you have independent franchise agreements, dealer agreements for each location?

MR. HOOVER: I believe I told them that if they were going to buy back one of them, you know, this was an offer. I didn't ask them to. I was begging them not to terminate the franchise.

MS. RYAN: So the inventory that you requested that they offered to take back was just at the La Marque location?

MR. HOOVER: No. They took it all.

MS. RYAN: They took all?

MR. HOOVER: That was for all of it.

MS. RYAN: And how many locations did you have that inventory at?

MR. HOOVER: Four or five. I don't remember exactly. I think five, but maybe four.

MS. RYAN: Was each individual location under a separate dealer agreement?

MR. HOOVER: Yes, ma'am.

MS. RYAN: So you had four or five individual

dealer agreements?

MR. HOOVER: Yes.

MS. RYAN: And the termination letter that they sent included all four or five of those dealer agreements?

MR. HOOVER: Yes. When I had the conversation with Ron Fidick [phonetic] , who at the time, was President. When I had the conversation with him, I explained to him clearly, that there was no termination. I am here fighting for my rights.

I wasn't terminating my franchise. That would be silly. That is like telling your wife you want to keep her, but you have filed divorce papers on her. I mean, that is not what happened.

Okay. In fact, in the hearing, they produced that letter. And I clearly asked him, has that letter been signed? No. Did I refuse to sign it? Yes. So why are you saying that I terminated my franchise? I did not terminate my franchise. They simply offered to buy back the stale inventory.

MS. RYAN: One last question. And for clarification. In those four or five locations, you said that you have other Keystone products. Are they under different dealer agreements in those same locations?

MR. HOOVER: Yes, ma'am. Yes.

MS. RYAN: So those four or five locations have

all eleven Keystone products?

MR. HOOVER: Yes.

MS. RYAN: And they were just terminating, in your statement, Challenger and Avalanche.

MR. HOOVER: This all boiled down to one little group. To put it in a car series, okay, if I carried every General Motors product at all of my stores, we are only dealing with Pontiac. Okay. And the guy who was running Pontiac was the one that decided that he didn't want me or Cliff or Camper Clinic or First RV to be a dealer.

It is just greed. He was looking at his wallet, going, it didn't matter what happened to the dealers. It didn't matter how much money it cost us.

I bought a $4 million RV park in La Marque, Texas, converted it into an RV park, and I named the streets in the RV park, Challenger Lane, Everest Drive. They were all named after Keystone products, so when you pulled in there, and saw this big long row of these products, you know, it was cute, with the names on them.

And it didn't matter how much I had spent. It didn't matter that I got slammed by a hurricane. None of that mattered to this salesman, this Ryan Juday. All he cared about was, how can I pad my wallet.

It didn't matter what it cost any of those four

dealers. One of them is now out of business. Because he probably was not able to find new product.

MR. CAMPBELL: Mr. Hoover, if I could? Your dealer agreement, is there a specific requirement on sales? Do you have to meet a certain threshold?

MR. HOOVER: No, sir.

MR. CAMPBELL: In your dealer agreements?

MR. HOOVER: No.

MR. CAMPBELL: You do not. On the -- were the other dealers, you are saying that -- you said they specifically targeted you all. Are there other Keystone dealers that still, that went from the old inventory to the new inventory, are they still in business?

MR. HOOVER: Yes. Most of the -- about half the dealers were automatically just told they are going to get the product. And at one time, I was told I was going to get the product. It just never happened.

MR. CAMPBELL: Okay.

MR. HOOVER: When I started hearing other dealers were getting the product, and I hadn't even been contacted, I contacted them and said what is the deal? Why am I not hearing from you? And at first, they said, well, gee, I don't know. No one has told us to call you yet.

You know, and they kept passing the buck. And

that is when I started climbing the ladder, saying somebody up there knows what is going on. And I deserve an answer. And I want it now.

MR. CAMPBELL: Thank you.

MR. VANDERGRIFF: Any further questions? Mr. Walker.

MR. WALKER: I haven't asked any, have I?

MR. VANDERGRIFF: No. But that is why I am looking at you.

MR. WALKER: You all asked all of the good questions. I don't really have one.

MR. VANDERGRIFF: All right. Okay. Thank you, Mr. Hoover. Appreciate it. We appreciate it.

MR. HOOVER: You bet. Thank you for your help.

MR. VANDERGRIFF: Mr. Pearson.

MR. BRAY: For the audience and members of the Board, you will just have to move to the side, because there is a screen that he is going to make a presentation on.

MR. POWELL: I have paper copies if you would rather stay where you are, you can read that.

MR. BRAY: Well, that would be the pleasure of the Board.

(Simultaneous discussion.)

MR. VANDERGRIFF: It is your right, if you

would like to have the PowerPoint.

MR. PEARSON: No. I would rather use the PowerPoint from my standpoint.

MR. VANDERGRIFF: Okay.

MR. PEARSON: Well, you know, that is okay. That is okay. I can work from paper. Mr. Chairman, Board, thank you for allowing us to come speak today, and present some of these issues to you, and clear some things up. For the record, my name is Chris Pearson. I am with Clark Thomas and Winters law firm here in Austin.

Dave Thomas who is the General Counsel from Keystone came here from Indiana today. And as was noted, Mr. Parkhurst and Mr. Juday, the sales individuals referred to were both at the hearing that was conducted.

And we had a full day hearing on this matter. Generally, I think it went from 9:00 in the morning, to maybe 6:00 or 7:00 at night. Lots of evidence presented.

Keystone does know what Texas law is. It followed it to the T in this case. And the net effect of that has been, it has been reprimanded. It has been sanctioned and fined. And it has been told that it did something wrong by following Texas law. And I will explain that to you. I will try to keep myself on time here.

MR. VANDERGRIFF: I will tell you. I am watching it for you.

MR. PEARSON: Okay. I bet you will do that.

MR. VANDERGRIFF: We all will.

MR. PEARSON: Let me give you some background facts, because I think they are really important to understand what happened here. Mr. Jones, some of these have been covered, but let me hit them real quick. Because a franchise dealer sold Challenger and Everest, and other Keystone products.

As he noted, he still has some of the Challenger and Everest products, and selling them. He is a franchise dealer.

Let me explain what happened, because he kept saying, we never came and picked the units back up. There was literally three days from the time he filed -- he sent his terminate -- his rescission of his termination letter three days from that point, until he filed the protest. We actually had gotten the guy to come down. He was on his way.

We had made arrangements to come down, to take and inspect the units, take possession of them. But then when he filed the protest, it came with an automatic stay. And so we couldn't do anything, under the automatic stay. We are prohibited from doing anything. So that is why

nothing progressed from that point forward.

Mr. Hoover was a franchised dealer, as he noted, with Challenger, Everest and numerous other products. He is currently, as he noted, selling the other Keystone products, but not Challenger and Everest, because we bought them all back from him.

It is not like telling your wife you love her, and filing for divorce. It is like telling your wife you love her, filing for divorce and going and getting a divorce decree entered. Because we sent him a check and he cashed it. He didn't send it back, and say, oh no. There is a terrible mistake here. I didn't want you to repurchase my units. He cashed the check for $530,000 something.

The other dealers that were mentioned, First RV, they sold Everest and other Keystone products in Buda. They don't have any products anymore. They are the dealership that was noted, that has since gone out of business.

Before they went out of business, they sent us a letter, that I just have. And I will put it in the record. After the fact, I guess. But we received a letter from Mr. Ward, saying please come buy back my Keystone units. I am no longer going to be in business.

We bought them all back. Came and picked them

up. Sent him a check. That all happened after the hearing, by the way.

Camper Clinic is franchised to sell Challenger and other Keystone products in New Braunfels. They still have the products. They are still selling them. We didn't terminate them. They still have the products, still selling them.

I am not going to dwell a lot on First RV and Camper Clinic. Essentially because the Judge didn't provide them with any relief. And they didn't file any exceptions. So I won't deal with them too much.

One thing I do want to mention is, that the only exceptions filed here were filed by Mr. Jones. And they really pertain only to issues with regard to him. And I think under 2301.709, the Board can really only consider things that are timely submitted. If there are not exceptions filed to these findings, in my book, they stand as they are.

I think generally, the administrative law judge got most of the issues right. And I will just try to focus on the few of the issues that I think he got wrong.

As mentioned here, Keystone is a large manufacturer of RVs, towable RVs. Never been in front of this Board. Never been sanctioned. Never been

reprimanded, anything like that. They have been in business about eight or nine years, I believe.

Keystone did not and has not terminated a single Challenger and Everest dealer in Texas. I want to say that again. We have not terminated any Challenger or Everest dealer in Texas. We want our dealers to sell the product.

And even in those instances where we discontinue a product, obviously, we want them to continue to sell them. We don't want to have to buy them back. And so when we discontinue a product, our preference is to allow them to continue to sell the product.

They are franchise dealers. And we deal with them as if they are franchise dealers. But if a dealer requests a buyback, we will and frankly, we are obligated under Texas law to buy them back. It is no ifs, ands, or buts.

If somebody says, we want you to buy back our units, we are obligated under Texas law to do that. And if we don't do it, Ms. Cost and Mr. Bray will send us a letter real quickly saying, you are violating Texas law.

In the present case, as I said, the proposal for decision suggests that we should be punished for doing exactly that. We complied with Texas law. And I don't really -- I will admit to you, I don't understand how the

administrative law judge got there.

But somehow, his finding is that by buying back Mr. Hoover's products, and by not offering him a different product that was not a continuation of the previous product, that he had asked us to buy back, we somehow violated Texas law. I don't understand it. I wish I could explain it to you.

Keystone made the Challenger and the Everest vehicles. They decided to terminate the Challenger and Everest vehicles. They went and, from ground up, came up and made the Alpine and Avalanche vehicles. Yes. Does the fifth wheel look like the next fifth wheel? Yes. We admit that.

But there are unique features, between the Alpine and Avalanche and the Challenger and Everest. And, in fact, that is what the administrative law judge found.

We have gone through most of this. In October of 2009, Mr. Hoover requested in writing a buyback, that writing is Exhibit 2, I believe, to the hearing. And it is a fact sheet.

And it basically gives us the entire listing of their stock that they have of Challenger and Everest. We tallied it up, sent them a check for it. They cashed the check.

We followed up with a letter, saying this was a termination by you, and Mr. Hoover has already covered all of that. But I will explain the significance of the buyback in just a minute, with regard to Texas law.

The buyback was completed before Hoover even filed the protest. In my way of thinking, and I think in the law's way of thinking, he wasn't even a Challenger and Everest dealer when he filed the protest.

With regard to Mr. Jones, Mr. Jones sent a letter requesting repurchase. And there are some conflicts in it. But I will read to you very quickly the statement. And this is in Exhibit 3, in the trial.

To Mr. Juday. Per my conversation with Scott Parkhurst, I wish for Keystone to repurchase my Everest and Challenger inventory, due to the fact that Keystone has informed me that I will not be franchised for the Alpine and Avalanche product. Mr. Parkhurst said he would forward a letter of voluntary termination which is agreeable.

That is Mr. Jones' letter. He testified in trial that he typed it. He testified that that is his signature on the bottom of the page. As I said, Keystone was prepared to go pick the units up, inspect them, buy them back.

He sent his rescission letter on November 3.

And I will read that for you. Because I think that is significant to that process. He says, based on my conversations -- sorry. Wrong letter.

This is formal notification that I hereby rescind my termination and buyback letters. He called it termination and buyback letter. November 3, 2009, he sends that rescission letter.

And then three days later, November 6 is when the protest is filed. We are barred from doing anything. We can't do anything. And it would be a violation of the stay for us to go do anything.

It has already been hit on, and I think it is important to focus on this. If you look at the protest letter, the issue presented, the issue presented is very simple.

It is we, Mr. Hoover and Mr. Jones think that Alpine and Avalanche are a continuation, as they put it, it is like lipstick on a pig. It is a continuation. It is not a new product. That was what they raised the issue about.

And they said, because we were Challenger and Everest dealers, we are entitled to the continuation or the slightly altered product. And so that issue is that simple. If indeed, Alpine and Avalanche are continuations, they are absolutely entitled to the

franchise. No question about it.

If they are different products, which is what the administrative law judge found, then they are not entitled to it. There is no continuation of a new product. There is only continuation of a modified product, or something of that nature.

What the administrative law judge found, I have cited those out for you. He said, the Challenger and Everest line, they were a complete redesign to Alpine and Avalanche. Keystone decided to start with a clean slate, rather than a simple upgrade. They were a series of major and minor improvements.

Keystone did not quote, relabel, which was their term, the Challenger and Everest line makes. And more important, on page 24, Protestants did not show the Keystone design, produced, marketed the Alpine and Avalanche lines solely as a means of eliminating the percentage of the former dealer group.

There was no showing that Keystone's goal was to thin the dealer group. That is after a day of hearing, and testimony from these two individuals. And the two sales people, that is what the administrative law judge found. So that is what the administrative law judge determines.

I won't go through the notice of protest. Let

me give you a little background though, because it is relevant to what happened between the notice of the protest, and the hearing.

Mr. Jones and Hoover told the administrative law judge, we would like to notify all of the other Challenger and Everest dealers in the state that we have this protest going. And if they want to join it, we would like to invite them. We said fine. We gave them a list of all of the Challenger and Everest dealers.

Mr. Jones attempted to contact them. Two of them, First RV and Camper Clinic decided to join in. All of the rest of them, obviously didn't. Because they never became parties to this process.

As I said, there was a full day hearing. Camper Clinic was there. First RV, Mr. Jones, Mr. Hoover. We had a lengthy decision.

Quickly, I will touch on the decision. Did Keystone violate the Code by terminating or refusing to continue to franchise the Protestants without good cause? Keystone did not violate the Code by stopping production of Challenger and Everest. Did not violate the Code by terminating or refusing to continue the franchises by other direct action.

So then we shift over. Okay. Is there some violation by indirect action. Because that is what the

Code says. You can violate by direct or indirect.

As to Jones, basically, what the administrative law judge says was, he read the letter. Mr. Jones terminated. So there is really no issue with regard to him. We couldn't terminate him, because in essence, he terminated us. We didn't buy the units back again, because the protest got filed.

As to Hoover, and this is where I wish I could explain it to you. But he says, although Mr. Hoover's willingness to sell his inventory may have reflected his lack of interest in maintaining a Challenger or an Everest franchise, Hoover took no action that would have authorized Keystone to terminate his dealership.

We didn't have to take any action. He asked us to buy them back. And we bought them back, and sent him a check for them. And then he finds that we violated the termination provisions of the Code with regard to Hoover, without good cause.

Again, we didn't terminate him. He terminated us. And that is the only violation, the only violation Keystone is charged with here, is refusing to continue Hoover's franchise without good cause.

I hope you see the inconsistency. I do there. Because the facts are, that Hoover wanted us to repurchase. He accepted the check. We sent him the

check.

He didn't have any Challenger or Everest products which he filed the protest. As to Hoover, Keystone did nothing more than comply with what he asked us to do. And we complied with the Code provisions in the repurchase.

The other document that you have in front of you is a really significant document. And I have highlighted certain sections of it. And some of those, I have set out in this document, in the PowerPoint.

Buddy Gregg isn't just an advisory thing, something that should be followed. Buddy Gregg is a case very much like this one. And it involved a dispute between the dealer and a manufacturer. And they got crosswise with each other.

And from there, it went to the Board. Well, there was an ALJ hearing. There was a proposal for decision. It came before this Board in its former state. The Board decided that sending -- that requesting repurchase was equivalent to termination by the dealer.

That was affirmed by the Third Court of Appeals here in Austin. And they said, a manufacturer can be compelled to repurchase inventory only after a franchise has been terminated. In other words, a mandatory repurchase cannot occur without a termination.

If you are asked to repurchase, and you repurchase, that is a termination. The request is a termination. But for darn sure, getting them back and paying for them is a termination.

Accordingly, it was the dealer's demand that the manufacturer repurchase his inventory, that for purposes of the Code effectively terminated the franchise. In other words, the dealer in this case, not the manufacturer terminated the franchise.

There is really a two track system under the Code. If you think you have been done wrong by a manufacturer. If you are a dealer, and you think you have been done wrong, you have two choices. You can go file a protest.

Or you can say, I am washing my hands from you, with regard to this line make, or totally, if you want. I am washing my hands. I want you to come buy my units back.

If Mr. Hoover and Mr. Jones were not happy with the thought that they were not going to get the Alpine and Avalanche franchise, they could and should have sent us, filed a protest, and then this would have been before the Court, before these repurchases occurred. But instead what happened, they forewent that process and they said no. We just want you to come buy our stuff back.

They terminated us. We didn't terminate them. If we terminate them, there are many steps that we have to go through. We have to send a letter of termination. There is so much time. They have time to file a protest. None of that was done here, because when they come to us, and say, come get our units, that is termination from them, not us.

Keystone did not and has not terminated a dealer, a Challenger and Everest dealer here in Texas. Mr. Jones has already said, he is still selling Challenger and Everest product. He can't lawfully do that if he is not a dealer. Camper Clinic is still selling Challenger and Everest.

Hoover and First RV requested repurchases. They requested buybacks. We complied with the Code, and we did exactly what they asked us to do.

The administrative law judge found that Alpine and Avalanche are not a continuation of Challenger and Everest. If they are not a continuation, then the fact that you are a Challenger and Everest dealer does not entitle you to the Alpine and Avalanche product.

Obviously, having said that, there is really no basis for sanctions against Keystone. The suggestion is a $10,000 sanction, which is the maximum, I would add. And it really doesn't explain why we are being sanctioned.

In fact, the administrative law judge goes to a great extent to explain that, previously, when the agency was involved, they would explain their basis for sanctions. They would give long explanations, and set out why people were being sanctioned. He says he hasn't done any of that here.

He hasn't gotten the help from the Board in doing that. But then he just says, you are going to be fined $10,000. But really doesn't tell us why. And as I have said, the best I can see, is we are being fined $10,000 because we did what we were asked to do, and what we were obligated to do under the Code.

Last, with regard to the issue of notifying the other dealers of the outcome of this, and sending this applications, they were, or are dealers. They know that we are selling Alpine and Avalanche.

They have been notified already by Mr. Jones, advising them that this action is ongoing. None of them chose to become involved, except for the two that chose to become involved. So the thought that they need to be told that this action is ongoing, or what the outcome of it is, frankly, doesn't make much sense.

And then last, I think there is a requirement in there, that essentially says something to the effect of, when we send that application to them, we need to

explain to them what our basis is for making decisions about who is our dealer or not. No basis in the Code for that.

No explanation for why he believes we should do that. And I just don't think -- I frankly don't think he or the Board has any authority to require that from one of the companies. If that issue comes up, obviously, in a protest hearing, as it did here, we provide explanations to the administrative law judge or to the Board as to why we made the particular decision at issue.

But the thought that we should be obligated to provide that information to these dealers ahead of time has no support in the Code. I would be happy to answer any questions, if anybody has any.

MR. VANDERGRIFF: Anyone have any questions?

MR. WALKER: I do.

MR. VANDERGRIFF: You need to turn on your mike.

MR. WALKER: There is too many buttons to push. Mr. Pearson, can you tell me what has changed in the units between the -- whatever that other one was, now to the Avalanche and the --

MR. PEARSON: I don't have them memorized. I know there was lots of testimony on that at the hearing. It had to do with floor plans and caps and frames. I

mean, it was -- it was, what the Judge found, was that it was a ground up change in design.

MR. WALKER: Are those units made in the same factory as the other units were made in?

MR. PEARSON: They are made in the same factory. Yes.

MR. WALKER: By the same people?

MR. PEARSON: By many of the same people.

MR. WALKER: All of the same people that made the ones that used to be made.

MR. PEARSON: And some of the management is the same. Some of it is not. Some of it has been shifted around to other lines.

MR. WALKER: And can I ask you why if you cancelled their franchises, why you wouldn't -- I am sorry. If you discontinued a line, and you were going to start a new line. And you had already a franchise dealer in place, why would you have not have offered Mr. Hoover or Bray -- over here, an opportunity to sell your new line?

MR. PEARSON: That was covered in the hearing. And I think there was some shift in the -- what I call the market segment. This was a slightly different -- it was being marketed to a slightly different group. A different clientele.

I expect some of it has to do, as a practical matter with changes in population. New dealerships coming in that weren't there before. Any number of things of that nature. Again, there was testimony at the hearing about that with regard to why those decisions were made.

MR. WALKER: You know, sometimes I tell war stories. Mr. Vandergriff tells history stories a lot. I have four boys. And you have probably got some kids of your own.

MR. PEARSON: I do.

MR. WALKER: I am sure they have gotten mad at you before. And they say, when they get mad, they come in and they say. I hate you, Dad. Have you ever had your kids say that?

MR. PEARSON: I couldn't count.

MR. WALKER: But they come back and say I love you three days later.

MR. PEARSON: Yes.

MR. WALKER: So it appears almost like you know, you cancelled these men's franchises. And they are angry. I can understand me being angry if somebody did that to me.

And then you go back and you sit down and you think about it. And you think, well, I did the wrong thing maybe. So you have to discount some of what they

did. Because what you did to them.

MR. PEARSON: I understand your point. But the situation is, as I have said, they cancelled us. They came to us and said, we want you to buy these units back.

MR. WALKER: And that is your main argument, though? Is that right?

MR. PEARSON: I mean, that is the law under Buddy Gregg. And I think it is a law under the Code. I mean, and the Third Court of Appeals obviously tells it that way. And then the administrative law judge in Buddy Gregg did, and this Board did, at that time, 2005.

MR. VANDERGRIFF: If there is further questions, it would be great. I do want to note that I have just been informed that one of our Board members, Mr. Butler, is going to have to leave here pretty quickly. And so I certainly want the benefit of his counsel in this case.

But I just want to note that. But it doesn't preclude anybody from asking questions. But we may lose a member of our Board.

MR. RODRIGUEZ: I will leave about 4:00 as well.

MR. VANDERGRIFF: Okay.

MS. RYAN: I have one quick question. Was

notification sent to the dealers of the strategy change with regard to Everest and Challenger and Alpine, that one product line was going to be discontinued, and another was going -- was that strategy shared either in writing or a meeting?

MR. PEARSON: I am not aware, at least in the early stages of what I would call a formal letter that goes out. The way that happens is, pretty much as Mr. Jones or Mr. Hoover explained.

I mean, it is passed from sales representative to the individuals at the dealership, before. And obviously at some point, there is an official launch. Let me explain that a little bit. Because there was actually somewhat of a gap.

The Challenger and Everest products quit coming off the line, I think fall, late fall, October sometime of 2009. And the Alpine and Avalanche started getting made very much later in that year, maybe even like the first week of the year. And they actually still ramping up on that product.

Which goes to explain somewhat the whole concept of -- if we really, all we did was change a few things to go from Challenger and Everest to Alpine and Avalanche, we are pretty bad business people, because we spent a lot of money to do it. Put in a new management

team. Put in new equipment and all of that.

We shut down our line for the better part of two or three months, and weren't making any product. But to answer your question, I can't point you to a formal document until late in the game. It is really more of a process of word of mouth.

MS. RYAN: A major production and pipeline inventory, volumes were shifting for your dealers across the country. Correct. And there was no communication, regarding that strategy?

MR. PEARSON: No. What I am saying is, there was some communication. But I think it occurs person to person, as opposed to there being you know, a formal documentation.

I think Mr. Hoover is the one that said, he was in communication with people about what was going on in regard to the new line. He heard it from someone else, as opposed to getting it himself.

MS. RYAN: And that is consistent with all of Keystone's lines? That communication strategy?

MR. PEARSON: I can't -- I don't know that I can answer that.

MS. RYAN: I am just trying to understand the system.

MR. PEARSON: But I know from my experience

with the industry, that is pretty common.

MS. RYAN: The RV industry?

MR. PEARSON: Communications between -- from my representation of them, that most communications go from sales person to people at the dealership.

MS. RYAN: And one last question, how long were Challenger and Everest in production, roughly? Those lines?

MR. PEARSON: I am sorry. I don't have a better answer. But I know it was five or six years. And maybe upwards of ten. Because there were numerous refreshing.

There were numerous times where they had taken that product, and said, we want to make it a little better. Just upgrade it a little bit. And the decision was made, and this came out in the hearing, the decision was made, we have done that before, and that hasn't really jumped sales. So we are just going to start from the ground up with a new product.

MS. RYAN: So were they the initial product, since Keystone opened in Texas in '01? So in Texas it was '01, but nationwide, it was before that?

MR. VANDERGRIFF: We have got the General Counsel for Keystone who is stepping up. He might want to answer these questions.

MR. THOMAS: I think I should answer some of these questions. If that is okay with Mr. Butler.

MR. BUTLER: Fine. Go ahead. I am just going to read.

MR. VANDERGRIFF: All right.

MR. THOMAS: For the record, my name is David Thomas. I am a Vice President and General Counsel of Keystone.

To answer your first question, Ms. Ryan, to answer your first question, we contacted every single dealer personally to tell them about the situation with Challenger and Everest. What was the next question?

MR. CAMPBELL: Well, hey, let me follow up.

MS. RYAN: Yes. No, go ahead.

MR. CAMPBELL: In saying that, you say you contacted each dealership individually?

MR. THOMAS: That is correct.

MR. CAMPBELL: And you did this in writing?

MR. THOMAS: We called them. Each one of our sales reps contacted them, independently.

MR. CAMPBELL: You mean, if you are discontinuing a franchise, or you are discontinuing a model or something, and you are ramping up for another one, you wouldn't do that in writing?

MR. THOMAS: Well, you know, that is a great

question. And in this case, I guess we did not do that. This case, we thought it was better to have a personal contact with them, that to just send them a cold email or a letter.

MS. RYAN: Was that documented somehow in a communication report, or some sort of field report, back into the regional office?

MR. THOMAS: In what way?

MS. RYAN: Communication reports. The field staff is required to say he spoke with the dealer on this date, that said --

MR. THOMAS: I don't know if we have any formal records of whether they --

MS. RYAN: Yes. Okay. Just curious.

MR. THOMAS: You know, they wrote down, I spoke with Mr. Hoover or Mr. Jones on such-and-such a date. Because I believe there was more than just one phone call.

MS. RYAN: I understand. Thank you.

MR. THOMAS: What was your second question? You did ask another one.

MS. RYAN: How long were Challenger and Everest in production?

MR. THOMAS: Initially, Keystone started in 1996. It was bought by Thor in 2001. Challenger and Everest would have been part of those product offerings in

that time period. But it wasn't an initial product offering.

I believe it was purchased from another RV company, the rights to those products. Somewhere in that time zone. I wasn't with the company at the time. I have been with the company since 2005. And Challenger and Everest have been with the company as long as I have been there.

MS. RYAN: Thank you.

MR. WALKER: And where you all located?

MR. THOMAS: We are in Goshen, Indiana. We have a number of manufacturing facilities in Goshen, as well as Pendleton, Oregon.

And the current number of production facilities escapes me right now. But is going to be over 15 or so, for different product lines. As Mr. Hoover said, he represents a number of our product lines.

MR. WALKER: When you took away their franchisees, I guess, Mr. Hoover, how big was your franchised area? You said Houston. And Mr. Jones, you said you were outside in Fort Bend County, I guess?

MR. JONES: The way they might have said it, Mr. Hoover had like from downtown out, and I had the western part. There is actually, another dealer up in Cleburne, which is the far north.

But the territory that I had kind of branched out. You have bigger territories in the RV business, than you do with cars.

MR. VANDERGRIFF: Mr. Bray.

MR. JONES: But I had the territory that was to the west.

MR. VANDERGRIFF: I apologize for interrupting. Mr. Bray.

MR. BRAY: We may not be getting an accurate record, or a good record --

MR. THOMAS: They may want to come up. You had the Katy location and the Sealy location.

MR. JONES: Right.

MR. THOMAS: Just outside, just west of Houston.

MR. VANDERGRIFF: Mr. Jones, I would request that you come to the microphone if you want to talk, just so that we can get an accurate record.

MR. JONES: Do you want me to answer it to the mike?

MR. WALKER: Well, my question was, is that we are all -- we are franchised. Where did your franchise go? I assume that both of you all are the only two in the Houston area. Is that pretty much -- except for somebody now on the North Side?

MR. JONES: That is correct.

MR. WALKER: And so you had kind of the West Side of Houston, and Mr. Hoover had the East Side of Houston?

MR. JONES: That is correct.

MR. WALKER: And the new franchisee is right next door to your dealership?

MR. JONES: Correct. And just down the road from his. They have two locations. Holiday World has two locations.

MR. WALKER: So they just kind of moved from their parking lot, and said, we are going to give it to the guy next door?

MR. JONES: Exactly.

MR. RODRIGUEZ: I have a question, Mr. Chairman. I think a couple of times, I heard Mr. Walker say, when we terminated -- or that is, when Keystone terminated. I don't think that is clear yet. I don't think that is --

MR. THOMAS: Yes. We have never terminated any Challenger and Everest dealers. And you have said that on a number of occasions.

MR. WALKER: I am sorry. When their franchise expired? Is that a better word to say?

MR. THOMAS: When we discontinued manufacturing

the product line, we couldn't really send them any more product after that date. The products just naturally discontinued over time.

MR. VANDERGRIFF: Mr. Rodriguez.

MR. RODRIGUEZ: No, I am just -- if we are done with him, I would like to get Ms. Cost back.

MR. VANDERGRIFF: Any more questions? Yes, sir. I will go ahead and finish questions. Go ahead.

MS. JOHNSON: Mr. Thomas, my question is, is I heard the other gentleman say that Mr. Jones and Mr. Hoover were not given an opportunity to sell the new product, because of a market shift.

But I am hearing that that shift occurred yards away from their dealerships. Can you please explain that? I have done market staying and demographic work and I just don't understand.

MR. THOMAS: Yes. I heard Mr. Pearson talking about it. It is hard for him to explain, because we are trying to recall exactly what the testimony was from the hearing.

MS. JOHNSON: Well, I would think, coming here, you would have had got your hands on what the testimony was, sir.

MR. THOMAS: We had Scott Parkhurst, who is a product manager for Alpine, and Ryan Juday, who is the

general manager for Alpine and Avalanche. They testified that there were a number of changes to the product. And that is what the ALJ found.

Some of those changes include items like the frame. The exterior profile of the trailer. The front cap. The graphics. If you lined up all of these trailers, I think at one point, there was testimony, could you tell the difference?

Well, there has got to be some difference. And if I lined up all cars, and saw four wheels and four doors, there is going to be some difference. Otherwise the consumer would not -- I mean, you just go up and say give me that one.

MS. JOHNSON: That is not answering my question, sir.

MR. THOMAS: Okay. But that was the --

MS. JOHNSON: Was there indeed a study conducted --

MR. THOMAS: No.

MS. JOHNSON: So you identified that there was a market shift, but there wasn't a market shift? I am a little confused. And then, does anybody here have photographs of any of these four products?

MR. VANDERGRIFF: Can I ask a question? And I believe I am correct in doing this. Is that we are -- and

I don't mean to cause any offense to any of the Board members. But we are asking fact questions here.

And I don't believe that is within our purview to ask those questions. I mean, if we want to, from an informational basis. But that is -- the ALJ made findings there.

MR. THOMAS: That is why I was trying to refer back to what occurred at the ALJ's findings.

MR. VANDERGRIFF: I understand

MR. THOMAS: I understand, you know. It is a good question.

MR. VANDERGRIFF: Mr. Bray, did he answer it how you would have answered it?

MR. BRAY: Essentially. All I can suggest is that we stick to the record. There probably are photographs in the record. Typically, we used to have the record here.

MR. VANDERGRIFF: We are not trying this matter anew. We are merely going on the record, that we are presented.

MR. BRAY: You are limited by the record that has been made at the hearing.

MR. VANDERGRIFF: Right. And Mr. Hoover, I will acknowledge you in a bit.

MR. WALKER: Mr. Bray, is there a definition or

a defined boundary that says, this is a new product, versus this is a revised product?

MR. BRAY: No.

MR. WALKER: I mean, if we change the color of motor homes from red this year to green, and we change the name from a Challenger to an Avalanche, did we change lines? I mean, is there a definite, or is it a personal interpretation?

MR. BRAY: It is a fact question, case by case.

MR. WALKER: So --

MR. VANDERGRIFF: But that is for the ALJ to have made that decision.

MR. BRAY: Yes, sir. It is. And in this case, the ALJ made a finding of fact that it was not that kind of change just described by Mr. Walker. But then, made other findings and conclusions that they were terminated, which kind of indicates maybe it was the same line. How do you --

MR. WALKER: And that is what my point is. If you read the hearing stuff, you will see that the ALJ made a determination that there really wasn't a product change. Is that not correct? When I read some of the facts. But now we go back and we are going to a different area?

MR. BRAY: Well, he expressly says that the Alpine and Avalanche are different products. Ms. Cost

probably needs to be here helping me answer these. But then he -- some of the other findings and conclusions within the same document kind of contradict that.

MR. RODRIGUEZ: And that is what is in front of us right now.

MR. BRAY: Yes, sir.

MR. RODRIGUEZ: There is some contradictions. I mean, we either agree with that, or we don't. If we say it is not a new product, then you know, that could be order number one.

That is what I want to ask Ms. Cost. Is a rebadge an improper termination? In other words, we are going to say, we don't agree with the Judge and it was, or we agree with them, and it was --

MR. VANDERGRIFF: Maybe we --

MR. BRAY: One point of franchise law you might want to keep in mind is, if someone like Chevrolet stops making Chevrolets, but there are still Chevrolets out there being sold, effectively, if you don't get to sell Chevrolets any more, you may not get a formal letter saying you are terminated. But if you don't have new Chevrolets or whatever, you are terminated, ultimately.

MR. WALKER: Could I ask you another question, and hopefully, this is related.

MR. VANDERGRIFF: Are we seeking questions to

Mr. Thomas at this point in time?

MR. WALKER: Sure, this one is.

MR. VANDERGRIFF: Because I know Mr. Hoover and Ms. Cost need to be brought back up.

MR. WALKER: Sure. Mr. Thomas, the question was raised, you know, there was a statement made from you, through your counsel that this product, you are going for a new share, market share, another area. Although there is two new franchise dealers, that came close, evidently close to them. Do they carry similar products?

Like, if I am a franchise dealer, and you run out of my product, and I can't sell it anymore. But I sell parts and things that are related. I have a franchise dealership. I have a contract with you. Is it normal to put another one close to me?

I mean, isn't there some restrictions there? I mean, that is why you get a contract for boundaries and restrictions. Right?

MR. THOMAS: Correct.

MR. WALKER: Is that normal, to do it way to your dealers?

MR. THOMAS: To put -- do you mean the proximity question of how close you locate one to another?

MR. WALKER: Right.

MR. THOMAS: First of all, there would be

statutory restrictions. I don't know the exact requirements.

MR. RODRIGUEZ: I am just wondering, Mr. Chairman. Is this an area of question that is, one, relative to what we have to decide today, or --

MR. VANDERGRIFF: No.

MR. RODRIGUEZ: Thank you.

MR. THOMAS: Thank you.

MR. VANDERGRIFF: Okay. I believe Mr. Hoover, you had something you would like to say.

MR. HOOVER: Yes. I would like to take a couple of minutes and rebut some statements that were made about my case, that are right here in this piece of paper. All you have got to do is read the paper. Okay.

MR. VANDERGRIFF: You do have that right. Go ahead. But we will have to limit that to five minutes.

MR. HOOVER: Start with page 1. You all have the same page I do. Right. Okay. Down at the bottom, it says, currently selling other Keystone products, but not Challenger and Everest as Keystone in 2009 repurchased Hoover's Challenger and Everest products at his request. Remember those words. At his request. Okay. There was no mandatory request.

Okay. Go over to page 4. In the present case, proposal for decision suggests that Keystone should be

punished for complying with the dealer, Hoover's requested buyback. I never requested a buyback. Again, requested no buyback. Okay. Go to page 5.

MR. VANDERGRIFF: But you cashed your check. They send you a check.

MR. HOOVER: That doesn't mean that -- I didn't request a buyback. They offered one. And I made sure that it did not include a cancellation of anything.

MR. VANDERGRIFF: But you accepted their offer to buy back your inventory?

MR. HOOVER: Sure.

MR. VANDERGRIFF: Okay. Go to page 5. It says that October 2009, Protestant Hoover requested in writing that Keystone repurchase his inventory of Challenger and Everest. Remember, requested in writing. Show it to me. Let me see it. Where is it?

Where is this request in writing? Okay? That is not true. Keystone sent a letter to the effect that their buyback terminated the Keystone relationship as to Challenger and Everest. I refused to sign it. They can't produce a signed letter.

They sent me one, but I called them up and said, this is not what we talked, what we agreed to. It was not signed. The buyback was completed before Hoover filed the present protest. There was no buyback. Not a

mandatory buyback that effectively cancelled the contract. Okay.

Go to page 6. In their own paperwork right here, they have got copies of Cliff's letter. Correct? Protest letter number 1, protest letter number 2. Those are both from Cliff Jones.

There is no copy of any letter from Ron Hoover, because there isn't one. That is why there is no copy of it here. There never was a letter. When they voluntarily agreed to buy my product back, and I said, you can buy it back. But this is not terminating any franchises, and not releasing you from any liability for Alpine and Avalanche, they said, send me a copy of your inventory.

All they have, this letter that they are saying was my request for repurchase is simply a list of the inventory I have, which they asked me to provide to them. It is not a letter from me, asking for a termination. I am going as fast as I can folks. I know everybody is tired. Okay.

Number 14, page 14, how could Keystone be found guilty of a code violation for terminating or refusing to continue the Hoover Challenger and Everest franchise when in October Hoover requested in writing -- Hoover requested in writing. Their whole case that they are bringing up, as Mr. Walker pointed out, was that I requested a

termination. And I did not.

Requested in writing that Keystone repurchase his inventory of Challenger and Everest. That did not happen. Yes, I cashed the check. But that was their voluntary deal.

That was not me requesting a termination. Hoover had no Challenger and Everest product at the time. Okay. Let me see if there is anything more here, then go back. One last summation.

MR. RODRIGUEZ: Mr. Hoover, may I ask, did you at one time send them any paperwork saying, this is my inventory? This is what it costs?

MR. HOOVER: Yes. They asked me to. So I sent that to them.

MR. RODRIGUEZ: Thank you.

MR. HOOVER: The President of Thor said that he would buy the product back. I said, I don't care if you do that, but understand this is not a termination. I am begging for my rights.

MR. RODRIGUEZ: I understand that.

MR. HOOVER: I am not asking for a termination.

MR. RODRIGUEZ: What was the intent of sending a listing of your inventory?

MR. HOOVER: Because he offered to buy it back. It was going to become stale inventory, because they had

discontinued it. They were taking it off the website. And other dealers were telling people that that product was no longer being built, and devaluing the property.

MR. VANDERGRIFF: You are an experienced operator. And you know there are other dealers out there. Were they buying back other dealers' inventory?

MR. HOOVER: Yes.

MR. VANDERGRIFF: They were buying back other dealers?

MR. HOOVER: Yes.

MR. VANDERGRIFF: Without considering it a termination of the franchise?

MR. HOOVER: Yes, sir. Okay, go to page 16, which is the last page. It says the ALJ found that Alpine and Avalanche line makes were not a continuation of the Challenger and Everest line makes. This is their statement.

I say that he did determine that it was the same product. We all agreed that if you put all of this product, took all of the stripes and names off of them, nobody could tell one from the other. So they fundamentally was no different.

Now go to the front, let me go to the front of the page. They keep bringing up Challenger and Everest. This case is not about Challenger and Everest. This case

is about Alpine and Avalanche. We don't care if they cancel Challenger and Everest. If they choose to discontinue it, that is their right.

Our complaint is that Alpine and Avalanche was not given to us in its place. That was the complaint. That is what we are here about. So saying that we -- they never terminated Challenger and Everest makes no difference to us. That has no bearing.

The fact was, Alpine and Avalanche was never given to us. But it was to other dealers. So it is not about those. The changes that were made to Alpine and Avalanche, what Cliff was trying to explain to you before, they have probably 14 or 15 other lines.

Many of the changes that were done to the Alpine and Avalanche were also done across the board in all of their products. But they didn't change the name of those.

They only changed the name of this one line, so they could realign the dealerships. They could pick and choose new people. And that was all because the new guy in charge had personal motivation for going to other dealers, whether it be friends of his, whether it be padding his pocket. We don't know.

He would never answer that question in the courtroom, when we asked him why did you not offer us this

other product? They would never give us an answer.

To this day, nobody would give us an answer. In my meeting on the 4th of August in Indiana, I said, why was I not given this product? He says, we really don't know.

MR. VANDERGRIFF: Any further?

MR. HOOVER: No, sir.

MR. VANDERGRIFF: Thank you.

MR. CAMPBELL: Mr. Chairman. Let me just ask you, maybe. If -- I mean, this was brought up by their attorneys, that they give an answer. And their answer was, that they were going for a different market.

So I mean, it was given. At least, to us. They were going for a different market. And that is why I couldn't understand a moment ago --

MR. HOOVER: Well, their salesman, evidently, I can only assume, since he would not answer the question when he was asked this was, that he felt that this new dealer would sell more product, and he would make more commissions. Okay.

The Occupations Code says that you can't change franchises because of an anticipated or expected market share. The Occupations Code clearly states that cannot be a reason for changing or cancelling a franchise, to give it to somebody else.

It has to be based on the fact that you are insolvent. You have a multitude of complaints. You have broken federal law, or have a felony. There is nothing in the Occupations Code that says I have to sell however many you want me to sell to be your golden boy. It is just not in the Occupations Code.

In fact, it says that you can't do that. Probably with five stores, I have as many as 16 lines per store. That is sixteen times five. Which somebody do the math for me. That is what, 50, 50 franchise agreements?

MR. VANDERGRIFF: We appreciate it, Mr. Hoover. Any further questions?

(No response.)

MR. VANDERGRIFF: Okay. With that, I don't know --

MR. RODRIGUEZ: I would like to ask a question of Ms. Cost.

MR. VANDERGRIFF: That is what I thought. That is what I was going to say. I don't know if there is any further questions of the parties. But now Ms. Cost needs to come back up.

MR. RODRIGUEZ: Ms. Cost.

MS. COST: Yes, sir.

MR. RODRIGUEZ: Just so that I grasp this as succinctly as possible, we are charged with either

agreeing that this is a new line, or it is not. And if it is a new line, if it is not a new line, then the appropriateness of the terminations?

MS. COST: Correct. I actually think those two issues are separate. Because the way -- what the ALJ did with the termination issue was not say, that because these aren't new lines, it was an improper termination.

What the ALJ seemed to do is say, because Keystone treated the repurchase, either request or acceptance, whichever way you want to go as a voluntary termination, they shouldn't have done that. And that was a violation of the Code.

MR. RODRIGUEZ: Okay. And we have a point of difference about that. Right?

MS. COST: Yes.

MR. RODRIGUEZ: We have a suggested set of orders. One or 2 or both?

MS. COST: Actually, there are two separate orders. And just to make matters even more complicated, they could be mixed and matched. I just put them -- I had to put something down on paper.

MR. RODRIGUEZ: But one is not necessarily attached to number 2, is what I am asking.

MS. COST: That is correct.

MR. VANDERGRIFF: In looking over whether the

Alpine and Avalanche lines are considered rebadged, Challenger and Everest or not, are we to consider the facts anew? Are we not to go on what the SOAH --

MS. COST: You are constrained to the record. You are constrained to the findings that the SOAH ALJ has made. I will say in that particular instance though, there are some conflicts, as I think Mr. Bray was saying.

There are some findings that seem to indicate that it is a new product. But then there is a recommendation that can only be there if it is not a new product. So there is some conflict.

The findings seem to point toward it being a new product. Specifically a finding that says, these are not relabeled Challenger and Everest.

MR. VANDERGRIFF: That is certainly on pages 23 and 24. What they say.

MS. COST: Yes.

MR. VANDERGRIFF: Okay.

MR. RODRIGUEZ: Mr. Chairman, do you need a motion?

MR. VANDERGRIFF: Yes. Let me ask a question of Molly.

MS. COST: Yes.

MR. VANDERGRIFF: So are we kind of directed

to -- can we send this back to an ALJ for a new hearing? Is that one option we have? Or do we have to make a determination here that says, we can overrule it or accept? I mean, do we have three options? What are our options here?

MS. COST: I mean, I think technically, the Board would have the option to, on a majority vote, remand the case for further evidence. We have had that happen in the past, very --

MR. VANDERGRIFF: Remand it. Send it back.

MS. COST: Send it back to have a new hearing.

MR. HOOVER: Can I make a statement on that?

MR. VANDERGRIFF: Go ahead. Just a second, Mr. Hoover.

MS. COST: It has been a rare instance, but we have had it.

MR. VANDERGRIFF: So we have two options then. One is to accept the SOAH's ruling. Or to remand it and send it back?

MS. COST: No. You actually have an option to re -- under some limited parameters, you have the ability to change some findings and some conclusions. There is those three things that you have to find.

It is either misapplication, technical error, or a prior agency decision that needs to be changed was

relied on. Under those parameters, you can change some findings and conclusions. And I have presented orders that do that. That I believe will meet that test.

MR. VANDERGRIFF: Do we have a copy of that here?

MS. COST: Yes, you do.

MR. VANDERGRIFF: I guess if it was an agency decision that was wrong, that would be the Buddy Gregg decision. If you were trying to -- a Court of Appeals or the prior Board. Not to discount the Board, but a Board that served in this capacity.

MS. COST: I actually don't think that particular prong is applicable in this case. Because the ALJ did not rely on the Buddy Gregg decision.

MR. VANDERGRIFF: Yes. That was going to be my next point. So we really -- our prong is narrowed to perhaps two.

MS. COST: Right. Misapplication or misinterpretation of prior agency decision law or statute, or a technical error.

MR. VANDERGRIFF: And just for clarification, can you explain to the Board, how with both of those -- because they don't specifically talk about facts. So how we use the facts as presented in the record, that we have, in determining -- or how can we?

MS. COST: Well, again, I think it is -- if you are looking at the issue with regard to is this a new line or not? The ALJ's findings and the conclusions seem to be in controversy.

MR. VANDERGRIFF: Is it the way they wrote it, certain parts. So we are still taking their record and finding that.

MS. COST: Correct.

MR. VANDERGRIFF: We are not constructing any other ideas.

MS. COST: You are not reweighing the evidence. You are not reweighing credibility determinations that the ALJ made with regard to the witnesses that testified. You are simply taking the findings and conclusions that are in this proposal for decision, and based on two of the prongs, making changes to come up with an order that we believe is legally supportable on appeal.

MR. RODRIGUEZ: And again, just for my clarity, the conflict points in the ALJ's order is that this is a new line. That conflicts when he also rules that the termination was involuntary.

MS. COST: No. This is a new line. But Keystone has to give -- has to allow all of the Challenger and Everest dealers to apply for it.

MR. RODRIGUEZ: Right. Okay.

MS. COST: And then the second one is, the finding of violation of the Keystone violated the termination provision by repurchasing product seems to be in conflict with the Buddy Gregg case.

MR. WALKER: Which would throw out the $10,000 fine. Is that not correct?

MS. COST: Right.

MR. VANDERGRIFF: And basically, the three prongs, the technical error problem is covered by your final point, which is the common changes?

MS. COST: The common changes have some misapplications and some technical errors. I think mostly technical errors, though.

MR. VANDERGRIFF: Okay.

MS. COST: There were some findings made that I could not find any evidence in the record. I listened to the entire eight hours of hearing tape and looked through all of the exhibits that were presented. And I could not find. And I believe Keystone brought that up in their exceptions.

MR. VANDERGRIFF: So essentially boiling down to misapplication of the law is what we are really looking at here.

MS. COST: Correct.

MR. VANDERGRIFF: Okay. Thank you.

MR. RODRIGUEZ: Mr. Chairman.

MR. VANDERGRIFF: Yes.

MR. RODRIGUEZ: I move that we adopt the proposed order as listed here. It doesn't necessarily have to be order number 2. But it is which one is proposal number 2, which is a finding by us that this was a new line, and the termination was voluntary.

MR. WALKER: I am sorry. I think the proposal is, was a new line, and the termination voluntary?

MR. RODRIGUEZ: Proposed order 2.

(Simultaneous discussion.)

MS. RYAN: On page 5 of the summary.

MR. VANDERGRIFF: Yes. If you go down the summary, the final order, it reflects that Alpine and Avalanche are new lines and not rebadged Challenger and Everest.

And 2, Hoover voluntarily terminated his Challenger and Everest franchises by requesting and accepting inventory repurchase. That is on order 2.

MR. RODRIGUEZ: And that order as proposed has various rejections of findings of fact that would support the order as laid out. In other words, what I am proposing is, that the order be adopted as submitted here, with in our packet. It has all of the rejections of findings of fact, and substitutions for conclusions as

well, as proposed.

MR. VANDERGRIFF: Do we have a second for that motion?

MR. CAMPBELL: I am not sure I totally understand. Would you restate that?

MR. RODRIGUEZ: In order for us to do something somewhat different from what the ALJ did, we need to find, we need to have a basis for one of those three points right there. Proposed order 2 is what I am proposing we adopt.

And that is that we agree that this is a new line. And that termination was voluntary. And the draft of the order that has been proposed, it also outlines the basis for one of these three prongs that we address, that we are basing this decision on.

That is different from the AL Judge's decision. And it is a final order, that she has drafted. It is in your packet.

MR. VANDERGRIFF: What that has the effect of doing is as I read it, I understand it has the effect of affirming and agreeing with the SOAH's decision with respect to Alpine and Avalanche not being relabeled products. But --

MR. RODRIGUEZ: Disagreeing on the termination.

MR. VANDERGRIFF: Yes. Right.

MR. RODRIGUEZ: It says, we disagree on the termination on the basis for -- that is outlined in the order.

MR. CAMPBELL: So you are saying Hoover, instead of voluntary, we really believe it was involuntary?

MR. RODRIGUEZ: No. Voluntary.

MR. CAMPBELL: You are saying that Hoover voluntarily terminated their agreement.

MR. RODRIGUEZ: Yes.

MR. VANDERGRIFF: By sending in the inventory list and accepting the money. That is, I think that is the intent of the motion. Do we have a second of the motion?

MS. JOHNSON: I second the motion.

MR. VANDERGRIFF: Okay. We have a motion and a second. Is there any discussion on it?

(No response.)

MR. VANDERGRIFF: Okay. Well, I would then call for your vote, a motion to approve with -- raise your right hand is support of the motion to approve final order 2.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: And as I feared, this motion will be deadlocked. Those opposed, please raise your

right hand.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: So the motion deadlocks, three all. Which means the motion fails. I am happy to accept an alternative motion. That which I can fairly much get the outcome of that motion.

But for the purposes of the record, I will go ahead and try. Would someone like to make a motion?

MS. JOHNSON: I would. I would like to move that final order number 1 be adopted, to reflect the determination by the Board that Alpine and Avalanche are rebadged Challenger and Everest and Keystone improperly terminated Hoover's Challenger and Everest franchise.

MR. CAMPBELL: Second.

MR. VANDERGRIFF: We have a motion and a second. Any discussion?

(No response.)

MR. VANDERGRIFF: Okay. I would call on final order 1, approval of that language. Please raise your right hand in support of that motion.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: And all of those opposed? Please raise your right hand. So this motion also fails deadlock. Two things I would like to know. Counsel, where do we go next?

And second, I want to apologize profusely to the parties. I did not know that we would lose a Board Member. Which obviously, that vote has become critical. I [inaudible] the moment that he informed me of that 30 minutes ago. So after we have been an hour into this.

MR. BRAY: And where you go next is, exactly where you alluded. I guess it will just have to be delayed for another Board meeting.

MR. VANDERGRIFF: So we will continue it to the October Board meeting?

MR. BRAY: Yes, sir. That is my recommendation.

MR. VANDERGRIFF: Okay. All right. And the parties will have a chance to represent the whole case again?

MR. BRAY: That is the Chair's discretion.

MR. VANDERGRIFF: Well, under the circumstances, we of course had one Board Member who heard most of it, but two who were not present for any of it. So I would anticipate that we have to in fairness, allow the parties to represent. It will be your option as well. But I think that would be appropriate. The parties options, I mean.

MR. BRAY: By then, I don't know if this is helpful or not. And I can feel daggers. But by then, it

would help if any Board Member, including the ones not here, I could provide the transcript of what happened today.

MR. VANDERGRIFF: That would be an excellent idea. It will be available for review. So that would be an excellent idea.

MR. WALKER: Chairman Vandergriff?

MR. VANDERGRIFF: Yes, sir.

MR. WALKER: Do we -- I serve on several other boards. And lots of times I get proxies. Is that appropriate on --

MR. VANDERGRIFF: I would go to Counsel here. But I would venture that that would not be appropriate in this case.

MR. BRAY: My Director is shaking his head, no. But as a legal matter, I am not sure. I think that you actually can. I don't think it is --

MR. WALKER: Just asking. I know that on some other boards, we pass proxies.

MR. BRAY: Honestly, I guess I had better just beg off.

MR. VANDERGRIFF: As the executor [phonetic] point, you have to have an agreement for somebody to give you their proxy.

MR. WALKER: Sure. I am not asking for it

right now.

(Simultaneous discussion.)

MR. VANDERGRIFF: I mean, I just want to know, if this happens again, like if Cliff would have left here, and whispered into my ear, and says hey, I am leaving, but I give my proxy to Johnny. Could that have been done or not?

MR. BRAY: Well, sir. We would want more than a whisper. I actually think it can. I would have to research a little bit. Obviously, it can in some instances.

I am not sure about a state agency board. I will find out. But in the meantime, but I am positive of one thing. A whisper isn't going to do it for us.

MR. VANDERGRIFF: Well, I know one thing for sure. In our next Board meeting, we will discuss some of those rules, please remember to remind me that if you start the case with us, you stay with the case until it is over. So that we don't lose a member.

MR. BRAY: Which would obviate the need to talk about proxies.

MR. VANDERGRIFF: Very true. Because we don't have an even number.

MR. RODRIGUEZ: I am leaving now for two reasons.

MR. VANDERGRIFF: I understand. That means you are going.

MR. RODRIGUEZ: Now to start a case, and that way there is also a way to bring a vote.

MR. WALKER: And I am going with you. So when we leave, you may get a new motion.

MR. VANDERGRIFF: Again, to the parties, I sincerely apologize for the inconvenience of your time and effort and cost. You deserved an answer, one way or another.

But we certainly will endeavor to have the full Board here, in our October meeting. And we will get with you on the dates and times of all of that.

MR. HOOVER: Are you saying that all of the Board members will have a copy of the transcript of that deal? Because they really need that.

MR. CAMPBELL: Of this deal.

MR. HOOVER: Yes.

MR. VANDERGRIFF: Yes.

MR. HOOVER: This one or the other one.

MR. CAMPBELL: This one.

MR. HOOVER: Not the hearing, though.

MR. VANDERGRIFF: No. Go ahead. We could. We could get that.

MR. HOOVER: Because I think the thing that is

frustrating to all parties, Keystone and us and everybody is, when you read through the report, one page says one thing and then two pages over, it contradicts that 100 percent 180 degrees what it said two pages before.

And I think it is that simply a case of he doesn't understand the law. He doesn't understand the business or the industry that we are in. And none of us could figure that out.

I think that if the Board members would -- I know that is a lot of work to listen to eight hours of tape. But that is the only way you are going to get the true story.

MR. BRAY: The record is available to any Board member that chooses it. I might suggest to you that that is one of the reasons why parties have the ability to file exceptions and other types of briefs, is to point out to you what they have gleaned out of the record.

You are not required to listen to the eight hours of tape, or to read the record if you don't choose to. And yes, I was referring to today's transcript. But it is available. All of that, the entire record is available for any Board member.

MR. VANDERGRIFF: Anyone who wishes to have it, I will certainly ask the Board members that. They will get a copy of it. All right. We are now moving to the

next item on our agenda.

I do want the record to reflect that at approximately 3:05 this afternoon, I failed to note this earlier, Board Member Cliff Butler left the room, and did not participate in the final part of the decision that we just had. And then at approximately 3:38 in the afternoon, Board Member Victor Rodriguez left the room.

So we now are down to five. And we barely have a quorum. Yes. Go ahead. I am sorry.

MR. BRAY: Mr. Chairman, are you calling Item 6D?

MR. VANDERGRIFF: I am.

MR. BRAY: This item involves two contested cases, involving one repair matter. Excuse me. They were heard before the State Office of Administrative Hearings. And the proposal for decision are now before you to issue a final order.

The parties, I was told were here. Have been here most of the day. And are here to present oral argument. And we have recommended to the Chairman that they be allowed ten minutes each to present their case.

If you disagree with the SOAH ALJ's proposal for decision, you should remember as Ms. Cost pointed out earlier, under the law you can only change the proposals findings and conclusions for the specific reasons of not

following the -- ALJ did not properly apply or interpret applicable law or the rules or written policies. That a prior administrative decision that was relied upon should not be, or should be changed. Or that a technical error occurred.

And my recommendation is that, as I remember this, both of the SOAH proposals for decision, it was to order repair of the vehicle. Which would indicate that the manufacturer would be the disadvantaged party and be the party opening and closing. That is just a recommendation. And it is at your pleasure, sir.

MR. VANDERGRIFF: Okay. We will proceed that way. With that, the first one we have is obviously Shawna Wood and Mark Acerlante [phonetic].

MS. WOOD: Hello. State my name?

MR. VANDERGRIFF: Would you state your name for the record?

MS. WOOD: Shawna Wood.

MR. VANDERGRIFF: Okay. Go ahead.

MS. WOOD: Well, I basically had my vehicle in serviced for water leaks six times. None of these attempts have fixed my repairs. And I have actually called and spoke with multiple service departments, including the one that has been servicing my vehicle at Greg Aegir Classic Auto in Texarkana, Texas. And they

told me they have done everything they can do to correct the problem, including any protocols or any bulletins or updates on new repairs that they can do to it, to correct it. And they told me there was nothing else they can do themselves even. I have even -- they have even flown in field service engineers to try to correct the problem as well. That have more expertise and more experience with the problem. And that still hasn't corrected the problem. And I feel like we are kind of out of options with these repairs. It continues to leak every time I get it back. So I just need some other option. Because this isn't -- just keep getting it repaired. And it is just not getting -- it is a failure. It keeps being a failure.

MR. VANDERGRIFF: So you are looking for a buyback of the deal.

MS. WOOD: I would like that, yes. Because I --

MR. VANDERGRIFF: And you are aware that the administrative law judge found that you were outside of the parameters of the law with respect to the requirement to purchase the vehicle. And therefore, they still wanted to help. And they have tried to repair it. But you are aware of that.

MS. WOOD: Yes.

MR. VANDERGRIFF: Okay. Do you have any facts

or circumstances to offer that somehow would make that guideline?

MS. WOOD: I am not real sure. Just on the reading that I have done, I don't know what a sufficient number of attempts to repair a vehicle is, as far as what it was under the law here. It doesn't specify what that is.

But I read that if they are not able to conform the vehicle by the warranty, that and if it creates a safety hazard or impairs use of the vehicle, or the market value, as far as if I want to trade it in or get a new vehicle, it just says a reasonable number of attempts. And if that is not met, it says, that the manufacturer can accept the return of the vehicle from the owner, and refund the owner the full purchase price of the vehicle.

But I am not sure I understand what a reasonable number of attempts is. So if you guys would have a decision to override the repair order, and say hey. You guys need to -- we need to look at different options here.

MR. VANDERGRIFF: What the administrative law judge found was that by the time you had made application for a lemon law repurchase, you were already outside the time limit. According to the law that they had to consider it. So it is like before you even made your

first claim, you were outside that boundary.

MS. WOOD: Well, that is the thing that I don't understand, either. Because my problems started in July of '08. It didn't reoccur until goodness, probably almost a year later. And then it was just repeated.

Which was due to the weather. Because I can't control what the weather does. So I didn't know I had a water leak issue. But from then on, I had it in there. Back to back, to try to get it repaired.

MR. VANDERGRIFF: I do understand the record indicates that obviously you had come in before the date. But the record says to the fact that you filed the request on November 2, 2009. But by law, the complaint had to be filed no later than August 28, 2009. So by the time you filed the complaint, you were past the deadline.

MS. JOHNSON: If I may ask you a question. You had -- the car had been repaired in 2008. And in 2009, you experienced the problem again. Do you remember what month that you first started, and during what months then -- you said you made six attempts all together, to get the car repaired. So did those attempts fall -- when did they start? And if you can tell us the months, if you can recall, that you had them in. Because I am trying to determine whether you fell outside of that time period

because you were still in the process of trying to attempt the repair.

MS. WOOD: Well, as far as my service tickets, that is what I have been going off of. Because my first one, I did do in July of '08. And they also told me that there was an actual recall on it. But after that, and I can't tell you if we didn't have a bad rain. Because that is usually when it leaks, whenever it is a real heavy rain. They performed the power washing test at the service place. And it doesn't leak for them. But when I get back, and it rains, it leaks. But anyway, after July of '08, I believe it started again in August of '09 maybe. I had it on my computer, but my computer went dead because we have been here all day. But from August '09 all the way until November of '09, I had it in, like, I think five times within that time period. And it was out of service a total of probably I believe between 30 and 45 days. I can't remember the exact days on it. And it has also caused other problems in my vehicle, which I am not even sure if those are going to be covered, now that I am out of warranty. I mean, I started back at 10,000 whenever I started this issue. But now I have got like electrical problems with my navigational system. Just the power locks and windows. Just things electrical things in the vehicle now. And I am worried about also what they

are going to cover. I know the Judge ordered that they will cover repairs under the water leak. They will take care of that, since it was before my warranty ran out. But I am concerned with the other issues as well. That the water leaks are causing that all. Not to mention, every time it rains, the carpets, I mean, they fill with water, standing water literally in them. So they have to replace the carpet every time. And the headliner, the headliners get stained. I mean, it is depreciating my vehicle at the same time. Do you know what I am saying? So like, if I have it later, after I do save and get it paid off, if I just have to keep getting it repaired, I am not going to have any value in it. So I wonder what I am going to be -- how I am going to be compensated, even if I do have to keep this vehicle, and keep getting it repaired.

MS. JOHNSON: Do you have any education from any other service companies, that the electrical issues that you are having now as a result of the water? Do you have anything that validates that?

MS. WOOD: That is stated in my service tickets as well.

MS. JOHNSON: Okay.

MR. VANDERGRIFF: Any other questions?

MR. WALKER: If I say that it is a headliner,

do you have a sunroof in the car?

MS. WOOD: [inaudible].

MR. WALKER: And every time they determine that the water leaks at the sunroof.

MS. WOOD: That is not real clear.

MR. WALKER: It is not clear to you?

MS. WOOD: To them. A lot of the times it is -- they say it is because of the tubing. The tubing is not leaking, or draining correctly.

MR. WALKER: Well, I am just trying to figure out how water gets from the sunroof to the DVD.

MS. WOOD: Well, the DVD player is up between the two sunroofs.

MR. WALKER: Oh.

MS. WOOD: And it has actually leaked out of the DVD player as well. I have had leaks out of all of the vents, air vents and the headliner. I have had leaks drain down into my passenger side floor. My carpets have molded. I have two small children. I don't like that.

MR. WALKER: Have you taken it to multiple dealerships, it looks like?

MS. WOOD: Yes. I have taken it to two.

MR. WALKER: Oklahoma and in Texarkana.

MS. WOOD: Yes. Because I live in Atoka, Oklahoma. So I have a Buick shop right down the road. So

I decided to do that. For convenience, instead of driving a total of 300 something miles there and back to Texarkana. But after I started with them again I continued to take it there, so that they could keep trying to correct the problem themselves.

MR. WALKER: Well, we appreciate you buying a car in Texas.

MS. WOOD: I like my car. But it is defective. It is non-fixable. And I just don't know what else to do. And that is all I keep hearing is, repair it, repair it.

MR. CAMPBELL: Have you done anything since the ruling from SOAH? Have you taken it back in?

MS. WOOD: Yes. I took it back in. And they flew field service engineers in to do it.

MS. JOHNSON: And they did what? I am sorry.

MS. WOOD: Field service engineers, they called them. So I guess --

MR. CAMPBELL: And this was done when?

MS. WOOD: That was done in October or November of '09. October to November actually. I had it in there for a total of about a month.

MR. CAMPBELL: I am sorry. The hearing was on March 10, or 29, 2010. Since that time, you got the ruling for them to fix it. Has anything been done since

that time?

MS. WOOD: Yes. It was put in service again after that. I believe that is whenever the service engineers were called in.

MR. CAMPBELL: And about when was that?

MS. WOOD: I can't -- I don't know for sure without my -- my computer went dead. I had all of my dates.

MR. CAMPBELL: Well, approximately. Like if the ruling was -- you know, you met on March of 2010. It closed May of 2010. Sometime after that, you had it worked on. And you are saying they still haven't corrected the problem.

MS. WOOD: Right. It is still not corrected. Yes. And it had to be within a couple of months from then, because I know, after she ruled it, she said we have 30 days to appeal, I believe. And I got it in. And I got it back. And it was still leaking. So I was right at the deadline, whenever I called back in, or wrote a letter in, saying that hey, it is still not repaired.

MR. WALKER: The deadline for the warranty, not for the --

MS. WOOD: No, for the hearing. For the appeal for the hearing. Yes.

MR. VANDERGRIFF: Any further questions? Go

ahead.

MR. CAMPBELL: But if they have -- if the ruling was to fix it. And she took it to get it fixed, and they haven't fixed it. They haven't --

MR. VANDERGRIFF: My suspicion would be, and the lawyers can correct it. Is that, because it is under appeal. I mean,, basically coming to us. Go ahead. Mr. Bray.

MR. BRAY: It is a little bit of both. There is no formal order yet, making General Motors fix it. That is your job. But typically, I think, as you are gathering, typically, once a manufacturer sees something like a proposal like this come out, they will start fixing it.

That is why -- that is what probably it got another service after June 23. Which I believe is the date the SOAH ALJ issued this PFD. Sometime in the last two months is probably when that occurred.

MR. VANDERGRIFF: No. That is not my point. Since there is no order. Some other questions?

MR. WALKER: Yes. Mr. Bray, I am a little bit confused. Because we have determined that she doesn't apply to the Lemon Law, because the period of time is way beyond what was reasonable on that.

And she is here today. We don't know of any

facts that have been restated that were not in the line of the law, so to speak. So she does have a warranty problem. Can we as a Board direct General Motors to fix the problem that has been persistent since day one of her purchase of the vehicle.

MR. BRAY: That is the recommendation before you. And yes, you have that authority.

MR. WALKER: Thank you. So if nothing further, I would like to make a motion.

MR. VANDERGRIFF: Well, no we have a representative from General Motors here, that we need to allow opportunity. Any further questions?

MS. WOOD: Will I be able to speak after they do, as far as they talk about warranty?

MR. VANDERGRIFF: You do have a chance to rebut. Yes, you do. All right. Kevin Phillips.

MR. PHILLIPS: Thank you, Board and Chairman. My name is Kevin Phillips for the record. I am with General Motors. I am the business resource manager. I am not retiring tomorrow. I have been with GM 26 years, though, as a mechanical engineer.

And I think added to the proposal for decision for being out by 24,000, not filing within six months of 24,000 miles, is that this vehicle was also purchased used. And that was omitted from the proposal for

decision.

And the purchase contract indicates used. And I don't know if that should be submitted or not, but it shows it is used on her purchase agreement.

MR. VANDERGRIFF: I would appreciate it if you would make sure that our counsel has that record.

MR. PHILLIPS: This is part of the hearing. I think yes, it was presented. Yes. It just was omitted from the proposal for decision. Let me explain something about sunroofs. They all leak.

If you look real close, by design, there is forward rain tubes in each corner. And it is to redirect that leakage through the pillars to the outside of the vehicle. Because over time --

MR. VANDERGRIFF: Excuse me one second. I just want to note that Ms. Kent is leaving the room. And she told me there would be days like this. So I apologize. She didn't hear me.

MR. CAMPBELL: Would you restate that? Would you restate your statement?

MR. PHILLIPS: All sunroofs leak. And by design, there is four drain tubes, kind of like a gutter system. So it doesn't come into the passenger compartment.

If you ever get a chance, open up your sunroof.

And you look in the corners, there is a little hole. That hole leads to a rubber tube. And it goes down the A pillars. And it goes down the B pillars, or D pillars, C pillars. So that is to redirect the water from the passenger compartment.

What happens is, sometimes in the manufacturing process, there might be a little kink in the hose. So from a manufacturing a product defect level, there is a potential that one of them gets kinked. But then you have three others.

Sometimes, the way customers park. If they park on an incline, and there is too much water, there is too much water for the two drain tubes to work. Other cases are environmental conditions. Leaves, tree sap can clog those lines.

And with this vehicle, there has really been no loss of use. There is probably about 60,000 miles on this vehicle, at about 60 miles a day, looking at the warranty claims. We had a field service engineer go out. These are people that have all of the GM training on body structures, electronics, and they are dispatched to the dealer.

That is our manufacturing representative, to go evaluate the vehicle. And I will just read back, April 28. This was shortly after the hearing. Field service

engineer on site, with field service engineer Randy Mason to inspect the vehicle. Field service engineer requested dealer have headliner lowered for inspection of water management system.

Dealer, field service engineer completed extensive water tests, for fixed removable roof glass area. Field service engineer observed normal water management performance for the duration of the test, 20 minutes of heavy water flow to exterior of vehicle.

Field service engineer to observe water drain tube. Driver's side had an elevated section midway to the rear vehicle exit. This elevation of drain tube had the potential to cause insufficient drain action of trough. Drain tube was repositioned to allow free flow of water from management area to rear exit.

So what he observed is, just this tube went up, and created a blockage system. So he corrected that. And on that last visit, from our position, is that the vehicle was repaired. Now depending on how she parks, or if she parks outside, on a prior field service engineer visit, this was back in February 23, the correction was clean sunroof drains of debris from parking under trees.

So there must have been some type of debris in that trough system. So I don't know where she parks. However, in our new vehicle limited warranty, we kind of

talk to that condition of we are responsible for any manufacturing or product defect. But we are not responsible for damage or corrosion due to environment damage caused by airborne fallout, tree sap is not covered.

So we are not -- there might be a condition that she has environmentally that is causing some of this perpetual problem that she is having. At this point, we will honor the power train warranty that is on this vehicle. And if she wants to bring it in, we will evaluate the system again.

But we do request to adopt the ALJ's position of repairing the vehicle, but not to repurchase, because she did file outside of the six months of filing within 24,000 miles. And probably more importantly, that the vehicle was purchased used.

MR. VANDERGRIFF: Okay. So you are accepting the ALJ's decision?

MR. PHILLIPS: As it is.

MR. VANDERGRIFF: I mean, all things considered.

MR. PHILLIPS: GM doesn't win at these hearings. We like to try to resolve these issues. But if she still has a problem with her vehicle, we will go ahead and evaluate the vehicle.

MR. VANDERGRIFF: Mr. Campbell.

MR. CAMPBELL: And you are saying you will go ahead and fix the problem. Does that include the items that it caused other problems?

MR. PHILLIPS: Yes. Any kind of collateral damage. I mean, if we find that it is a manufacturing or product defect, we will go ahead. And if it damaged the DVD player or anything else -- we have replaced the headliner on this vehicle already.

MR. VANDERGRIFF: Mr. Walker.

MR. WALKER: I have one question for you. Because I mean, I know that she bought the car used. It says so in the hearing findings. What does that have to do with the warranty? Does that void your warranty to buy a car used?

MR. PHILLIPS: No. In fact -- it is the Occupational Code, on whether it is eligible for repurchase or replacement.

MR. WALKER: Just for the Lemon Law purposes.

MR. PHILLIPS: Correct.

MR. WALKER: But not for the warranty?

MR. PHILLIPS: Correct. Yes. There could be three or four owners of the vehicle. Yes.

MS. JOHNSON: I don't know if you can answer this or not. But this says that they purchased and took

delivery of the Buick Enclave from a Buick, from Gregg Orr Classic Buick. So she bought it from a dealer with 2,859 miles on it. So is that actually used?

MR. PHILLIPS: Well, the way the law is written is, on title transfer.

MS. JOHNSON: So the title had transferred previously?

MR. PHILLIPS: Yes.

MS. JOHNSON: She is saying no.

MS. WOOD: I was preferred on that. There is actually a person at the dealership --

MR. VANDERGRIFF: So you bought a demonstrator?

MS. WOOD: That is what I was told. I didn't see that in my paperwork of course, whenever I was buying the vehicle. I didn't fine point it. But I was told that someone's wife at the dealership was driving the vehicle. The title was in nobody's name.

I was, my grandpa. I am here representing him. It is in his name, but I am the driver, and I paid for the vehicle. And I was told that it was a demo vehicle. That is what I was told. It wasn't marked on my sales slip. But that is what I was told.

MR. VANDERGRIFF: Okay. I understand. Mr. Goldfield [phonetic] are you still up with us? Okay.

MR. CAMPBELL: Mr. Chairman, I would like to

make a motion, when you're ready.

MR. VANDERGRIFF: Yes. Except I think that Mr. Phillips wants to hand something out. And I think that Ms. Wood requested to get an opportunity to make a final comment.

MR. PHILLIPS: This is the Texas Lemon Law handbook. And on page 2, the law does not cover used motor vehicles, including program vehicles, repossessed vehicles.

MR. VANDERGRIFF: It still has a problem with the time limits. I think it probably might qualify as a new vehicle.

MR. PHILLIPS: Yes. Right.

MR. VANDERGRIFF: But it would still have a time limit problem.

MR. PHILLIPS: Correct. Yes.

MR. VANDERGRIFF: So --

MR. PHILLIPS: And it wasn't marginal. It was almost ten months afterwards.

MR. VANDERGRIFF: Yes. Ms. Wood, would you like to say anything in conclusion?

MS. WOOD: As far as the time line, I was kind of confused on that as well. Because I was trying to read up on that. And it says that a proceeding under this subchapter must be commenced not later than six months

after the earliest of one of two things. One, expiration date of the express warranty. I was within my warranty. And then two, it says, the dates on which 24 months or 24,000 miles have passed, since the original delivery. So do we get an option with the 24 months and 24,000 miles?

MR. VANDERGRIFF: As the record reflected, by the time you made the second -- I have got to go back to it here. But by the time you made the second trip into the dealership, you had 41,000 miles on it, on the vehicle at that point in time. In August of '09. The administrative law judge did try to give the benefit of the doubt based on your mileage, thinking that it being most generous you would have based on the way you were driving, you would have reached the 24,000 mile mark in February 28 of 2009. You would have had to file the complaint by August 28 of 2009. That complaint was not filed until November 2. And by November 2, you were up over 44,000 miles.

MS. WOOD: Okay. So it is not either 24 months or 24,000 miles? It is just --

MR. VANDERGRIFF: Generally what comes first. You were at the 24,000 miles. You had passed that.

MS. WOOD: Okay. I just wanted to make sure on that.

MR. VANDERGRIFF: Yes.

MS. WOOD: And as far as all of the service that has been performed with the kinks in the tubing and parking under trees, there is no trees. There no trees at my work. There is no trees at my house.

The kinks in the tubing. They have replaced every tubing, all four of them. Four of them, right? All four of them, however many there is up there. They said they have replaced the whole system. They told me that they cannot do anything else to this vehicle. Just for the record. Thank you.

MR. VANDERGRIFF: Okay. Thank you, Mr. Phillips. I will submit this matter to the Board.

MR. CAMPBELL: Mr. Chairman, I would like to make a motion to accept the ruling of the SOAH, and accept that ruling.

MR. VANDERGRIFF: All right. Do we have a second?

MS. JOHNSON: I will second that.

MR. VANDERGRIFF: We have a motion and a second. I see no indication of any discussion. I will call for your vote.

MR. WALKER: I have one question.

MR. VANDERGRIFF: Mr. Walker, you can't -- at this point, I guess anything is possible in this meeting. But we are supposed to be discussing, not asking more

questions.

MR. WALKER: Well, okay. Then how do I amend the motion?

MR. VANDERGRIFF: Well, you can ask the parties who made the motion if they would consider your amendment. Or you can propose a substitute motion.

MR. WALKER: If she takes the car in one time, and they say, we fixed the car. And it rains next week, and it leaks again. How do we address -- how does she get addressed to the hey, it really didn't fix it. But they said yes, we did. That is my question.

MR. BRAY: In these repair order cases, the only leverage left, the only outcome left is, in the event that a lasting repair is not made, the consumer can complain to the enforcement division. And that, General Motors has not complied with the Board's order. And it will go through an investigation. It is kind of like a second try at it.

MR. WALKER: So she does have an alternative to -- because it is not going to rain for months maybe again. And so if they say they fixed it, but it doesn't rain again, we don't know if it is fixed. Or she doesn't know. And it occurs three months from now. She is entitled to get it fixed again, I guess. Right?

MR. BRAY: As long as the warranty is in

effect, she is entitled to have it fixed. And under -- if you were to adopt the --

MR. WALKER: But she is fixing to go out of her warranty, is she not?

MR. BRAY: Yes. But actually Board orders extend past warranty periods.

MR. WALKER: That would be my question. How far does it take that?

MR. BRAY: Reasonable. There is no real answer to that. They need to fix it. And it needs to be a lasting repair.

MR. WALKER: Okay. Then that answers my question.

MR. BRAY: And, in fact, if it would give you any level of comfort, that is the one thing you might could do would be to add the word" lasting" to the order, if you just really --

MR. WALKER: And that is what I was going to change. Is that they fix the car and not just go take it in one time. Permanently fix it.

MR. CAMPBELL: Well, I can amend the motion to say that, and also to include -- I would amend the motion to include your statement, but also anything that was damaged because of it. CD, or whatever, or DVD.

MS. JOHNSON: And I would second that motion.

I made the second to this motion particularly because the Judge ruled that the Respondent is liable for making any repairs necessary to conform the vehicle to the basic manufacturer's warranty. And so that is why I seconded this motion. This needs to be fixed.

MR. VANDERGRIFF: Okay. I would make sure that you state your motion before I make any comment. Your restated motion. You are approving the administrative law judge's order, subject to the following changes.

MR. CAMPBELL: The following changes are, to make sure that it is fixed, lasting fixes. I guess the right terminology. And also that any other items that were damaged because of this would also be repaired.

MR. BRAY: Would the language -- excuse me. Is it all right if I --

MR. VANDERGRIFF: Please.

MR. BRAY: The language within the proposed order that says, including damage resulting from the leaks, suffice?

MR. CAMPBELL: Yes, sir.

MR. BRAY: So all we really need to do is to add the word lasting in the appropriate place.

MR. CAMPBELL: Perfect.

MR. VANDERGRIFF: Mr. Bray, before we have it -- we have a motion and a second. And I assume that

you seconded this motion?

MS. JOHNSON: Yes, I did.

MR. VANDERGRIFF: The concern I would have is the slippery slope of expanding it to damage resulting. How -- because we have not seen this car. We did not hear the factual record that came before the administrative law judge. I am just concerned about the slippery slope of us stepping into too much of a fact finder here.

MR. BRAY: Well, I believe that is -- bear with me one moment.

MS. RYAN: Can it be with anything listed that was already addressed in the repair orders, that was already entered in SOAH, those items.

MR. VANDERGRIFF: All right. That language covers any warranty covered problems related to water leaking into the vehicle?

MR. BRAY: Yes, sir.

MR. VANDERGRIFF: I understood this -- is that the motion that we are making, is conforming with the ALJ's recommendation with that. Or are we making a broader motion, which I was afraid we were.

MR. BRAY: No.

MR. VANDERGRIFF: Okay. All right.

MR. BRAY: The only thing I am suggesting is the adjective lasting.

MR. VANDERGRIFF: Lasting. Right. Okay. All right. Then we have a motion and a second. Any further discussion?

(No response.)

MR. VANDERGRIFF: Call for your vote. Right hand raised for approval.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: The motion carries unanimously. I wish you success this time.

MR. WALKER: Don't buy sunroofs. It sounds like they all leak.

MR. VANDERGRIFF: Our next case is the Elmer Lizama versus the General Motors Company.

MS. LIZAMA: Do you press this button to turn this on. Because I noticed it is not on. I don't know if you can hear me.

MR. VANDERGRIFF: I am not sure where the button gets pressed. It's on.

MS. LIZAMA: Okay. Great. Mr. Chairman, Board members, thank you for hearing my case. I am here as a representative on behalf of my husband who, on our anniversary purchased this gift for me. I am sorry.

MR. VANDERGRIFF: Take whatever time you need.

MS. LIZAMA: Thank you. He purchased the vehicle in April '08, brand new off the showroom floor,

ten miles on it. And we have had nothing but problems. I apologize.

This is really hard for me. I even had to quit driving the vehicle because it is very emotional for me to get in it. And I had to drive it here today.

They have dropped the engine twice because of major leaks in the engine. They have dropped the transmission twice because of major transmission issues. These are not small mechanical issues. They are major in this vehicle.

I know that I was past the statute of limitations for the Lemon Law. I realize that. I also read, after he bought me this anniversary gift, was diagnosed with breast cancer and had to deal with that. I couldn't deal with the car right then.

I wasn't driving it a whole lot, except back and forth to Dallas from Waco for appointments that I had to go to, so I had a tremendous amount of miles on this vehicle. Couldn't get it in for service, because that wasn't my priority right then.

When I filed this complaint, it was because they had continually tried to fix this vehicle. The manager at Richard Carr Motors, where we live in Waco, we bought it at Tranum in Temple. The manager there, on a couple of occasions tried to make the statement to me,

that they did not, in fact, have to drop the engine.

They just had to open the lid, the hood, and actually get to the components inside the hood. That in fact was not the truth. My service advisor, Steve Thompson, on a regular basis, I would go in, take my keys, set up my appointment, would joke and say, well, we need to just get you a time card, because you are here all of the time.

They wouldn't offer a vehicle unless they were keeping the vehicle overnight. I consistently had to find transportation when I took the vehicle in, if they had to just assess what was wrong with it, and then order the parts.

Once the parts came in, when they had the vehicle for a long period of time, up to a week to ten days at some points, they did put me in a vehicle. Which causes problems when I had to take two teenage daughters here and there, and to doctor's appointments, as you can imagine. These problems are still reoccurring.

We went to the ALJ. We went to the hearing. My husband was present. I was present. The ALJ did issue a repair order. They also, she also at that time told Ms. Williams who is a representative from GM to contact me, so that we can make arrangements to get my vehicle in, and get it repaired once again.

At that time, I did not hear a word from Ms. Williams. Did not hear from Richard Carr. Well, last Wednesday, we received a fax on my fax machine of this hearing. At that point, my phone didn't stop ringing.

Ms. Williams consistently -- I had seven voice mails from Ms. Williams. Not to mention the three times that I talked to her. Wanting to get my vehicle in, before this hearing today, so that we could get my service resolved.

Again, I am battling another issue, I found out yesterday. And this is not my priority. They don't care. GM does not care that this vehicle is defective. It has some serious mechanical difficulties.

Twelve times, I took this vehicle in for the same revolving door problems. And only until they got their letter of this hearing, or notice of this hearing, did anybody call to try to help me resolve it.

I contacted Mike Lee when I had not heard from anybody. I took my vehicle down there, and spoke to him face to face. And I said, Mike, when can we get the vehicle in to get the repairs that the ALJ ordered GM to repair? He said ma'am, I can't talk to you. GM has told me I have to keep my hands off of your case. And I cannot touch your vehicle. Quote, unquote.

I left in tears. What do you do? Who do you

call? What, I mean. I am not eligible for a buyback. I am not eligible for the Lemon Law. I realize that. I understand that. And that was not any fault of GM. Not any fault of the dealership.

And really not any fault of mine. Unfortunately, circumstances had it, that I wasn't able to get it in. I get that.

But the ALJ ordered that my vehicle be repaired. And then for the dealership to blatantly and rudely dismiss me, and say, GM has told me not to touch your vehicle again. Can they do that? Really?

And then Mr. Lee called me yesterday or the day before yesterday. I don't recall exactly what day. Days are running together. And basically did not apologize for being rude to me. Actually stated to me that I must have mispercieved what he was saying. But GM did in fact tell him not to fix my vehicle. And not to touch it under any kind of warranty or anything.

So I guess I am coming to you guys and asking for help. I know that I am not eligible for this. But if the dealership is not going to deal with it. If you guys order them to repair it, and then I get the same treatment again, I can't deal with this. I just really can't.

And this vehicle is very scary to drive. The transmission, it still clangs when you're in reverse. You

still have issues in the brake, when you hear the squeaking. It is tremendous. It vibrates like crazy. I tried to see if it was an alignment issue, or balancing on the tires, and it is none of the above. I don't know.

It was a brand new vehicle. It was a gift. I love my vehicle. But I don't like that it came with all of these issues. So I am begging to please help me with this, because I don't know what else to do or where else to go. And I appreciate your time.

MR. VANDERGRIFF: Thank you. Does anybody have any questions?

(No response.)

MR. VANDERGRIFF: All right. We do have Carmelita McKinnis-Williams here for General Motors.

MS. MCKINNIS-WILLIAMS: Kevin and I will go together, if it is okay. Thank you.

MR. VANDERGRIFF: Would you identify yourself for the record.

MR. PHILLIPS: Kevin Phillips, business resource manager with General Motors.

MR. VANDERGRIFF: Carmelita, you should as well, identify yourself for the record.

MS. MCKINNIS-WILLIAMS: Sure. Thank you, Mr. Chairman. Carmelita McKinnis-Williams, General Motors, fixed operations manager.

MR. PHILLIPS: The last warranty service date we have for this vehicle is back in January 22 of 2010. We have no other records for a warranty claim on this vehicle.

The second event that occurred was the hearing on May 7. And then a proposal for decision came out, rather quickly. Two weeks later, May 21. And I think probably the big part of this is the communication.

We never received that proposal for decision. We went back and asked our call center, which is right here in Austin, did you receive the proposal for decision? We didn't receive it. That is -- when we get a proposal for decision, that is usually our trigger to engage with the customer and follow the proposal for decision.

So we really didn't get a notification until just six days ago, about this Board meeting. And that letter was written August 19. And at that time, that is when we received the proposal for decision. So that explains all these calls and activity recently, knowing that we had a hearing today, when we were only told six days ago, four business days.

And that is when Carmelita called several times, including the Complainant's husband. And at the time, he said there was nothing wrong with the vehicle.

There has really been no loss of use on this

vehicle. The average use on this vehicle is about 80 miles a day. That is well above the average use for a normal vehicle of 12,000 miles a year.

We are requesting that -- we will go ahead and we will comply with the ALJ's request for these four repairs. But we just need to have the vehicle made available to us, to make those repairs. So we are requesting a motion to adopt the ALJ's proposal for decision. At this point, I would hand it over to Carmelita.

MS. MCKINNIS-WILLIAMS: Thank you. The only thing I have to add is that at the hearing, the Judge, she advised Ms. Lizama that, you know, the vehicle was ineligible for repurchase. Because that is what the customer initially was pursuing is a repurchase.

I knew that she was not happy with that decision. And in the interest of customer satisfaction, and we are trying to keep all of our customers at General Motors. That is my job. I offered the customer a $2,500 trade assistance to get her into another vehicle, because I knew she was trying to get out of the vehicle.

I had become aware that the dealership had attempted to trade the customer out of the vehicle. And so I offered funds to help with that particular transition. I told the customer at the hearing that offer

was good for seven days. That they would follow up with the dealership to make that happen. The customer didn't follow up with the dealership.

And then of course, as Kevin and as the customer said, the customer said, Ms. Lizama said she didn't receive a fax until last week. So the customer, the dealer, nor General Motors knew that we had a repair decision.

So the dealer was correct in that, when she called, inquiring about the decision, we did say we had not received any information from TxDOT. That we can't do anything until we get that decision. So that is accurate.

I did try to contact her. I spoke with Ms. Lizama on Friday. Because when my dealer contacted her husband, her husband said nothing was wrong with the vehicle. He didn't really see any reason for us to come to the hearing. But his wife was out of town. And she is the one who initiated the case. And that he didn't want to make a decision until she returned.

So late Friday on the 20th, I kept trying to call her. I conferenced in the dealer, service manager, Mike Lee, myself, and Ms. Lizama. And I said, we were trying to get your vehicle into the dealership. Can you take it to the dealership Monday morning for repairs.

She said, she might. She might not. She has

to talk to her husband. She says she doesn't even drive the vehicle. And that her husband drives the vehicle. She doesn't even drive the vehicle. So on Monday morning, she didn't turn the vehicle into the dealership for inspection.

I tried calling her Monday, several times, as she stated. I have been trying to reach her to get the vehicle in. So that she could present the vehicle for inspection and repairs for the items that were on the complaint form. And to no avail.

And so that is why we are here. And as Kevin stated, we are willing to stand behind the recommendation for the repairs. But the customer has to present the vehicle. Give us that opportunity.

MR. VANDERGRIFF: Okay.

MS. MCKINNIS-WILLIAMS: Thank you.

MR. VANDERGRIFF: Thank you very much. Anyone have any questions?

MS. RYAN: Are you willing to provide her a rental car?

MS. MCKINNIS-WILLIAMS: It is not part of the warranty, but yes. We will.

MS. RYAN: Okay. That makes it easier in the end.

MS. MCKINNIS-WILLIAMS: Yes. We will.

MR. VANDERGRIFF: I just want to make sure if anyone else has any further questions.

MS. JOHNSON: I have a question. I have a question for Mr. Bray. Generally speaking, and I know that you can't speak to every order. But is it generally not standard operating procedure for the administrative law judge orders to be sent certified mail?

MR. BRAY: I think so. It was easier to answer that question when the Lemon Law program was administered by the agency. Because I know we sent them not only certified mail, we faxed them to the factories and to the consumers.

But it is out of our control at this time. The State Office of Administrative Hearings issues these proposal for decision. And they send them when they send them, to whom they send them.

MS. JOHNSON: Okay. And then let me clarify again. As you said in the last case, if this complaintant, if this vehicle cannot be repaired according to -- if the ALJ's order to repair the vehicle, if the vehicle is not repaired, they have the right to file a complaint with the Enforcement Division at the Texas Department of Motor Vehicles, in order for you all to intervene in this matter at that point?

MR. BRAY: That is right. The theory would be

that they did not comply with your order to repair.

MS. JOHNSON: Okay. So ongoing repairs then would be addressed through Enforcement?

MR. BRAY: No, ma'am. It is simply an enforcement action, because they didn't comply with your order. I can't really say ongoing repairs. They either repair it, or they don't.

MS. JOHNSON: Right. But if the car goes in for repair, let's say tomorrow. And next week, that car is still not repaired.

MR. BRAY: Then it is not really repaired.

MS. JOHNSON: But it has not been repaired. And in a roundabout way, trying to make sure that this Complaintant understands that there is additional recourse.

MR. BRAY: Both Ms. Lizama and Ms. Woods have consumer advisors at our agency.

MS. JOHNSON: Okay. Very good.

MR. BRAY: And if they are not clear now, they will be clear as soon as your order is filed.

MS. JOHNSON: Thank you.

MR. BRAY: But yes, they would definitely have that opportunity to complain, if the repair is not lasting.

MR. CAMPBELL: Mr. Chairman, it indicates there

is four problems. And she mentioned transmission. But on the sheet, it only indicates sporadically what the keyless remote and trunk release, steering and brake pedal noises, the engine revving and a faulty AC cover.

MR. BRAY: I noticed that too.

MR. CAMPBELL: So I don't know, when you are -- and this is from -- you know, so are we adding things to the list. I am not sure where we are going there.

MR. BRAY: No, sir. The order doesn't add anything. That was her commentary. But it does not add it to the order.

MS. JOHNSON: But it is listed. Her complaint items are listed in the discussion.

MR. BRAY: But the ALJ found what he found, and recommended. And we are constrained by that. So since the ALJ didn't speak to transmissions, we can't really do anything about the transmission. However, I do believe that the manufacturer in this case is getting a pretty clear signal to do what they can to make lasting repairs.

MS. JOHNSON: Mr. Chairman.

MR. VANDERGRIFF: Any further questions of either Mr. Bray or General Motors at this point?

(No response.)

MR. VANDERGRIFF: Okay.

MS. LIZAMA: May I?

MR. VANDERGRIFF: Yes. You have a chance to make a final closing comment.

MS. LIZAMA: When I specified on my complaint form, when the vehicle is in reverse it primes in drive, it idles in red sight. I didn't put claims in there. Which was the transmission claim.

This is all one motion together, which they found when they had to deal with the transmission twice, that that was the problem with the transmission. Does that make sense? But I didn't specify transmission because I am not a mechanic.

I don't know these things. I don't know. But that is what it was doing. It idles high, it revs. And it grinds when you put it in reverse. And it is all due to the transmission. I apologize for not writing that on there. But that is what all of those components are from.

And the other things is that my husband said he did not -- and of course, I was not privy to this conversation. But I can only speak for what he said. He said that he did not tell them that there was nothing wrong with the car.

And no, I don't drive it any longer. But he says these things still maintain having issues in the vehicle. But it is just emotional for me to get in it. I just -- it is very hard to do that.

MR. VANDERGRIFF: Thank you. Any further questions from the Board? All right.

MR. WALKER: I'd like to make a motion that we accept the SOAH's ruling on this.

MS. JOHNSON: I second that.

MR. VANDERGRIFF: Okay. A motion to accept the SOAH ALJ ruling. And a second from Ms. Johnson. Any further discussion?

(No response.)

MR. VANDERGRIFF: Please raise your right hand in support of the motion.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: The motion carries unanimously.

MS. LIZAMA: So the dealership is not going to turn me away again, and say no, they can't take care of my car.

MR. VANDERGRIFF: No. They will work to fix your car.

MS. LIZAMA: Thank you.

MR. VANDERGRIFF: The next item on the agenda is consideration of enforcement motions for disposition, based on default. Mr. Bray, I am not sure who is presenting those, if anyone. No presenting.

MR. BRAY: Well, I thought Mr. Harbeson was.

These are cases where the dealer didn't --

(Simultaneous discussion.)

MR. VANDERGRIFF: He is taking care of Lemon Law issues or non-Lemon Law issues. Excuse me.

MR. BRAY: I think you may be right. Which is good. These are cases where the dealer didn't appear at the hearing. And under your rules, if a dealer doesn't appear at the hearing, the allegations in the petition are considered admitted. And on behalf of the Enforcement section, we asked the SOAH ALJ to dismiss the case from its docket, and now ask you to adopt the proposed default orders.

MR. VANDERGRIFF: Any questions of Mr. Bray.

MR. CAMPBELL: In your notification, since we are in charge of this one, they did have notification in writing, where they signed for it?

MR. BRAY: That is right.

MR. CAMPBELL: Okay.

MR. BRAY: I won't promise you that there is never a glitch. And the reason I can say that, because as you know, Transportation Code 503 cases come to me. And I have had a case on occasion where something wasn't just right.

But that is the beauty of having a motion for rehearing. If this didn't work out right, then if there

is some mistake here -- and you know, with defaults, there is that possibility. That they will say, I never got notice. And if that is the case, they have the opportunity for a motion for rehearing. And you will get another chance to take a bite at the apple.

MR. WALKER: I make a motion that we accept the default recommendations.

MR. VANDERGRIFF: We have a motion from Mr. Walker. Do we have a second.

MS. RYAN: Second.

MR. VANDERGRIFF: Second from Ms. Ryan. Seeing no discussion, we will call for your vote, by raising your right hand in support of the motion.

(Whereupon, a show of hands was given.)

MR. VANDERGRIFF: The motion carries unanimously. Do any of the Board members have any other business that we need to attend to?

MR. CAMPBELL: Since you put this other lady on the Board, our meetings are lasting a lot longer. I don't know.

MS. RYAN: I didn't have anything to do with the book.

MR. VANDERGRIFF: Well, I will tell you what, if I have anything else, I will make sure that I have some sort of subpoena powers to get all of the Board members

here.

MR. WALKER: Would you accept a motion to adjourn?

MR. VANDERGRIFF: I would, sir. Thank you very much.

I have a motion and a second. All of those in support, please raise your right hand.

(A show of hands.)

MR. VANDERGRIFF: We are adjourned.

(Whereupon, at 4:36 p.m., the meeting was concluded.)

C E R T I F I C A T E

MEETING OF: Texas Department of Motor Vehicles Board

LOCATION: Austin, Texas

DATE: August 25, 2010

I do hereby certify that the foregoing pages, numbers 1 through 238, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Leslie Berridge, before the Texas Department of Transportation.

9/03/10
(Transcriber) (Date)

On the Record Reporting, Inc.
3307 Northland, Suite 315
Austin, Texas 78731