TEXAS DEPARTMENT OF MOTOR VEHICLES
BOARD MEETING

8:00 a.m.
Thursday,
January 5, 2017

Lone Star Room
Building 1
4000 Jackson Avenue
Austin, Texas

BOARD MEMBERS:
Raymond Palacios, Chair
Robert "Barney" Barnwell, III
Luanne Caraway
Brett Graham
Kate Hardy
Blake Ingram
Gary Painter
Guillermo "Memo" Treviño
Johnny Walker
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ON THE RECORD REPORTING
(512) 450-0342
MVD Docket No. 15-0015.LIC; SOAH Docket No. 608-15-4315.LIC Cecil Atkission Orange, LLC, d/b/a Cecil Atkission Chrysler Jeep Dodge, Complainant v. FCA US, LLC, Respondent

RULES - ADOPTIONS

9. Title 43, Texas Administrative Code, Chapter 215, Motor Vehicle Distribution
   • Amendments and Repeals, Subchapters A-J (Proposal Published September 9, 2016 - 41 Tex. Reg. 7011)
   • New, §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt (Proposal Published September 9, 2016 - 41 Tex. Reg. 7011)


RULES - PROPOSALS

11. Title 43, Texas Administrative Code, Chapter 206, Management Amendments, §206.131
    • Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders Amendments, §§221.16; 221.53; and 221.73

12. Title 43, Texas Administrative Code, Chapter 218, Motor Carriers Amendments, §§218.13, 218.17, 218.56, 218.57, 218.65, and 218.73 Repeal, §218.74, Settlement Agreements; New §218.75, Cost of Preparing Agency Record

EXECUTIVE SESSION

13. The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551:
    • Section 551.071
    • Section 551.074
    • Section 551.076

ON THE RECORD REPORTING
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MR. PALACIOS: Good morning, everybody. My name is Raymond Palacios, and I'm pleased to open the Board meeting of the Texas Department of Motor Vehicles. It is exactly 8:00 a.m., and I'm now calling the board meeting for January 5, 2017 to order. I want to note for the record that public notice of this meeting, containing all items on the agenda, was filed with the Office of the Secretary of State on December 23, 2016.

Before we begin today's meeting, please place all cell phones and other communication devices in the silent mode, and please, as a courtesy to others, do not carry on side conversations or other activities in the meeting room.

If you wish to address the board or speak on an agenda item during today's meeting, please complete a speaker's sheet at the registration table. Please identify on the sheet the specific item you are interested in commenting on and indicate if you wish to appear before the board and present your comment or if you wish only to have your written comment read into the record. If your comment does not pertain to a specific agenda item, we will take your comment during the general public comment portion of the meeting.

With that, now I will move on and we will have
a roll call. Board Member Caraway?

MS. CARAWAY: Present.

MR. PALACIOS: Board Member Graham?

MR. GRAHAM: Present.

MR. PALACIOS: Board Member Hardy?

MS. HARDY: Present.

MR. PALACIOS: Board Member Ingram?

MR. INGRAM: Present.

MR. PALACIOS: Board Member Painter?

MR. PAINTER: Present.

MR. PALACIOS: Board Member Treviño?

MR. TREVIÑO: Here.

MR. PALACIOS: Board Member Walker?

MR. WALKER: Present.

MR. PALACIOS: And let the record reflect that I am Raymond Palacios, I am here too. We have quorum. Everyone is here with the exception of Board Member Barnwell.

So with that, I just want to move on. This is the first board meeting of 2017, so as such, I want to wish all of my fellow board members, all the DMV staff and everyone present all the best in 2017, great health, prosperity, and just wish you all a great 2017.

I also want to recognize one of our board members. As you all know, this board is just stacked with
aces, great people on this board who receive a plethora of awards, and the latest award was one that really I want to mention. It was given to Board Member Memo Treviño, and it is the JBS Leadership Award. It's in recognition for his outstanding leadership and service to his community. And I know this is just one of many awards, he's probably going to need to get a new trophy case, but let's just congratulate Mr. Treviño, and thank you so much for all that you do.

(Applause.)

MR. TREVIÑO: Thank you very much, Chairman Palacios.

MR. PALACIOS: All right. With that, let's move on, and I want to note we have quite a few items on our agenda today. We do have a contested case that is further down on the agenda, however, I know we have quite a few people here that are involved in that case and we're going to move that case up shortly after the executive director's report, we'll have a couple of reports after that, so we should be able to get to that before 8:30.

So with that, I will turn this over to our executive director, Ms. Whitney Brewster.

MS. BREWSTER: Thank you, Mr. Chairman. For the record, Whitney Brewster, executive director. Good morning, members of the board.
The information I am providing to the board this morning is for briefing purposes only; I will not request any action of you at this time.

The first item is in regards to the interagency agreement with the Texas Department of Transportation. At your November meeting, the board heard an update from our general counsel, David Duncan, regarding the status of TxDMV's interagency agreement with TxDOT for FY17. The interagency agreement lays out the roles and responsibilities of the agencies and the responsibilities of both organizations as we pursue continued separation.

Since the last time you met, TxDMV staff has met with TxDOT and finalized the remaining items in the agreement. I executed the contract several weeks ago and it was sent to TxDOT for final approval. Once I receive an executed copy back, I will be certain to send that to the board via email.

Mr. Chairman, if there aren't any questions, I can move on to the next item.

MR. PALACIOS: Are there any questions?

(No response.)

MR. PALACIOS: Please proceed.

MS. BREWSTER: Just a brief legislative update.

Again, at the November 3 board meeting, a set of legislative recommendations was adopted by the board.
Upon further review with members of the board and receiving additional feedback from stakeholders, a final group of recommendations was approved by Chairman Palacios and has been presented to the office of the governor, lieutenant governor and speaker. Additionally, I had the opportunity to meet with both house and Transportation Committee chairs and have provided that language to them and talked through the different items. They have received the draft language and they have sent that along to Legislative Council for consideration for filing.

You will find in your board books a summary of the adopted recommendations in the briefing materials starting on page 9. One change not included in the materials not presented at the November is a recommendation for TxDMV to assume this campus, Camp Hubbard, from TxDOT for headquarters staff. We have continued to work closely with TxDOT and the office of the governor on this effort and we have briefed legislative leadership on this concept as well, and so far it has been very well received.

In addition, we removed two items related to fees, fee redirects to the TxDMV Fund, one being salvage dealer licensing, as well as motor carrier credentialing services. Again, that was redirecting from general revenue to the TxDMV Fund. While the department continues
to provide these services, obviously at this time the TxDMV Fund is estimated to cover our needs for the next biennium so we are foregoing this at this time but it could potentially be considered for future recommendations.

And finally, the draft that the board approved was consolidated down to ten draft bills, and so we have those ten bills that we will be pursuing. We combined like items to have ten overall bills for consideration by the legislature this session.

The 85th Legislature begins next Tuesday, January 10, and this kicks off, obviously, the 140-day regular session. We anticipate preliminary committee hearings to start in early February with updates from agencies and then potentially bills to be heard later on that month. So Ms. Love, Caroline Love, our Government and Strategic Communications Division director, will provide a thorough briefing at the board's next meeting.

If there aren't any questions, I'm happy to move on to item 3.C.

MR. PALACIOS: Do we have any questions for Ms. Brewster?

(No response.)

MR. PALACIOS: Please move on.

MS. BREWSTER: Okay. This part of the agenda
is where we recognize our employees, and this is one of
the favorite parts of my job. We have several employees
who have reached a state service milestone and two
retirees that we want to recognize as well. I want to
welcome the family and friends of our celebrants who have
joined us here this morning, and we appreciate the support
you have provided over the years to allow your loved ones
to work for this agency and other state agencies.

With that, Chairman Palacios and board members,
if you would please join me at the front of the dais to
congratulate our recipients

MR. PALACIOS: Be happy to.

MS. BREWSTER: Martha Yancey, from the Human
Resources Division, will read the service announcements.

MS. YANCEY: Good morning. I'm Martha Yancey,
Human Resources Division.

State service award recipients, please join Ms.
Brewster and our board members as your name is called.

This morning we have one employee being
recognized for 20 years of state service, our general
counsel, David Duncan.

(Applause.)

MS. YANCEY: David began his legal career at
the Texas Air Control Board and worked at the Texas
Natural Resource Conservation Commission, supporting the
state's air quality regulatory efforts. Prior to joining our agency, David served as deputy general counsel at the Texas Comptroller of Public Accounts. We are fortunate to have David lead our legal team. He greets his work with energy and enthusiasm, and every now and then adds just the right amount of comic relief.

Congratulations, David.

(Applause.)

MS. YANCEY: Now employees reaching a state service milestone of 25 years are Brad Beaty.

(Applause.)

MS. YANCEY: Brad works in the Finance and Administrative Services Division. He has a very unique job where he works with inmates at the Texas Department of Criminal Justice in Huntsville. He manages the production of millions of license plates, forms and placards that are shipped to the agency and county tax offices. He ensures these orders are filled and shipped within 24 hours of receipt, ultimately benefitting our customers across the state. Through his dedication and consistent efforts, Brad has built excellent customer service relationships and people know they can count on him.

Congratulations to Brad for his 25 years of state service.

(Applause.)
MS. YANCEY: And next Monica Hernandez.

(Applause.)

MS. YANCEY: Monica works in the Finance and Administrative Services Division as well. She has a very friendly personality and greets everyone with a smile. She provides quality customer service no matter how big or small the request. She brings a sense of humor to her job, as reflected in her clever lost and found emails. Monica has worked in several areas of the agency and has mastered many skills along the way. She is known as an employee who consistent goes the extra mile in whatever she does. She is always willing to take on a new challenge, such as participating in continuous improvement and change management projects. You know Monica as the friendly smile that greets the board members, visitors and staff before each meeting, and today as the friendly smile we are recognizing for her 25 years of state service.

Congratulations.

(Applause.)

MR. PALACIOS: The following employees also reached a state service milestone but were unable to join us this morning. Twenty years: Maria Dassing, Consumer Relations Division; Michelle Lingo, Motor Vehicle Division; Tommy Rodriguez, Enforcement Division. For 30 years: Charles Bennett, Enforcement Division. And
finally, employees who retired from the agency recently are Nancy Naysmith and Esther Costa.

Thank you.

(Applause.)

MR. PALACIOS: Okay. Let's move forward. We have one individual who has registered to speak. I'd like to call Mr. Hickman.

MR. DUNCAN: Ladies and gentlemen of the board, if I may, just a couple of brief announcements. When we take general public comment under the Open Meetings Act, the board can't comment on or deliberate on any public comment that doesn't relate to a specific item on the agenda. That's because the public wouldn't have notice that that would be discussed. If the board desires, we can schedule some aspect of the commented's remarks for a future agenda, with the approval of the chairman.

Under Board Rule 34 TAC 206.22, public comment is limited to three minutes per presenter. We have a timer which will give a yellow light when there's one minute remaining and a red light when their time is up.

MR. HICKMAN: For the record, my name is Howard Anthony Hickman. I'm a retired enforcement attorney for this agency.

As I listened to the executive director at the last board meeting state, "Overall, you will see an
improvement in the key performance indicators over this
time last year," I thought of the all West Texas axiom
about someone pissing on your boots and telling you it's
raining. You might ask why that axiom came to mind.
Simply put, I know that during the third quarter of 2015,
agency performance dropped 15 percent, so an improvement
over last year's third quarter is not a proper subject for
bragging.

The real question is has agency performance
reached the level of the second quarter of 2015. The
definitive answer is no, so the issue is how much has it
improved. To answer that question, I started looked at
the quarterly numbers from past board meetings and noticed
something rather strange. The numbers for the 2015 second
and third quarters in the November 2016 board packet are
different from the February 2016 board packet. The
numbers for the 2015 third quarter contained in the
November 2015 board packet is different from both the
November 2016 and February 2016 board packets. The 2015
second quarter numbers in the November 2015 board packet
is different from the 2015 second quarter numbers in the
August 2015 board packet.

I'm sure the executive director will probably
have an answer for these discrepancies, probably involving
more fuzzy math and the universal time conscience or
perhaps some new computer program that will somehow cure
the problem as it has the agency's performance measures.
Whatever the explanation, there are only two things of
which I'm certain: agency performance is still down
significantly from the second quarter of 2015, and my
boots are getting wetter and it still ain't raining.

A year and a half of deception and failure is
enough. New management is needed. We'll talk again at
the next board meeting.

And I have a minute. Thank you all.

MR. PALACIOS: We are going to move up now, as
I mentioned earlier, on the agenda item. We will go
straight to a case that we have. Daniel Avitia and
Michelle Lingo will now address agenda item 8 which is a
contested case, and also, we have attorneys for each party
that, by agreement, each will have 20 minutes to present
their arguments.

Mr. Avitia and Ms. Lingo.

MR. AVITIA: Chairman, board members, Ms.
Brewster, good morning. For the record, my name is Daniel
Avitia, and I have the pleasure of serving as the director
of the Motor Vehicle Division.

Alongside me this morning is Ms. Michelle
Lingo. She is a staff attorney with the Motor Vehicle
Division. She's also the legal subject matter expert
assigned to review this contested case this morning.

Agenda item, which can be found on page 209 of your board books, is a contested case regarding the franchise dealer, Cecil Atkission Chrysler Jeep Dodge and the manufacturer, FCA US, or Chrysler. This matter is being presented for the board's consideration to adopt a final order.

In this case, Atkission protested FCA's proposed termination of the franchise for the Chrysler Jeep Dodge dealership located in Orange, Texas. The issue presented in this case is whether FCA established that there is good cause for termination of its franchise with Atkission.

This particular case had a five-day hearing conducted by two ALJs at the State Office of Administrative Hearings. The ALJs considered the evidence and legal arguments presented during the hearing on the merits. The ALJs also considered Atkission's exceptions to the PFD, the Texas Automobile Dealer Association's amicus brief, and FCA's replies to Atkission's exceptions to the PFD.

After the five-day hearing, the ALJs found that FCA met its burden of proof by a preponderance of the evidence to show that good cause exists for the termination of its franchise with Atkission. The ALJs
recommended the board deny Atkission's protest and allow
FCA to terminate the franchise.

The board may change findings of fact or
conclusions of law made by the SOAH ALJs when change is
is to say that change can be made if: (1) the judges did
not properly apply or interpret applicable law, agency
rules or prior agency decisions; (2) the judge's relied on
a prior administrative decision that is incorrect or
should be changed; or (3) the judges made a technical
error in a finding of fact that should be changed.

In determining whether FCA demonstrated good
cause for the termination, the statute requires the board
to consider all existing circumstances, including specific
statutory factors. At this time I'd like to ask Ms. Lingo
to speak about the statutory factors the board is required
to consider on this matter.

Ms. Lingo.

MS. LINGO: Good morning. Michelle Lingo.

I'm going to briefly go over the statutory
factors that you're required by law to consider in this
matter, and of course, please feel free to stop me if you
have any questions on any of them.

The statutory factors require that you consider
all existing circumstances including dealer's sales in
relation to the sales in the market, dealer's investment
and obligations, injury or benefit to the public. Factorour is the adequacy of the dealer's service facilities,
equipment, parts and personnel in relation to those of
other dealers of new motor vehicles of the same line make,
whether warranties are being honored by the dealer.

Factor six is actually broken down into nine
sub-parts. Those sub-parts are Atkission's sales
performance obligation, whether there was performance on
warranty obligations, management obligations, personnel
obligations, facility, business, advertising and signage
obligations, and working capital and net worth
obligations, all under the franchise agreement.

Factor seven is the enforceability of the
franchise from a public policy standpoint, including
issues of reasonableness, of the franchise terms,
oppression, adhesion and the parties' relative bargaining
power.

And finally, an element is whether the desire
for market penetration is the sole basis for the
termination.

This concludes my portion. Of course, I'm here
to answer any questions you may have, and I believe Daniel
has a few closing comments before we go to oral arguments.

MR. AVITIA: Ms. Lingo, thank you.
Staff's review of the ALJ's proposal for decision under Texas Government Code 2001.058(e) revealed no findings of fact or conclusions of law requiring change. Staff provided a draft order for the board's consideration. The draft order is consistent with the ALJs' findings of fact, conclusions of law and the ALJs' recommendation to the board which is to deny Atkission's protest and allow FCA to terminate the franchise.

The board's three options in this contested case are as follows: (1) the board may adopt the ALJs' findings of fact and conclusions of law, as provided in the PFD; (2) the board may amend the PFD by changing the ALJs' findings of fact or conclusions of law which require the board to state specific reason and a legal basis for each change; and (3) the board may remand the PFD back to SOAH with specific direction on further consideration of facts or legal concepts, again, as directed by the board.

Members, this concludes our remarks. Ms. Lingo and I are certainly happy to answer any questions you may have. At this time, I'd also like to let the board know that the parties are here and would also like to make oral arguments to the board.

MR. PALACIOS: Are there any questions for Mr. Avitia or Ms. Lingo?

(No response.)
MR. PALACIOS: Thank you very much.

MR. DUNCAN: Just a brief note, members. David Duncan, general counsel again.

The parties, by agreement, set the time for oral argument for each party at 20 minutes. The party with the burden of proof in this case is the manufacturer so they will go first. They can reserve time for rebuttal. The dealer will then go, and if any time is reserved, the manufacturer will use the remainder of their 20 minutes.

MR. PALACIOS: Okay. Thank you.

MR. WALKER: Mr. Chairman, I have a question.

MR. PALACIOS: Yes.

MR. WALKER: Can we know who's present for both parties right now. So is Mr. Atkission represented here today?

MR. DUNCAN: We could ask the attorneys for the parties to announce their group and we won't use their time for that. How about that?

MR. PALACIOS: Did you want to know before?

MR. WALKER: I'd like to know who all is here for both sides.

MR. DUNCAN: Would it be acceptable to have the attorneys do that?

MR. WALKER: That's fine.
MR. DUNCAN: Thank you, Member Walker.

MR. PALACIOS: Thank you.

We will then begin with the attorney that will be speaking on behalf of FCA. I believe that's Mr. Mark Clouarte.

MR. CLOUARTE: Mr. Chairman, may I proceed?

MR. PALACIOS: Yes, please proceed.

MR. CLOUARTE: Good morning. My name is Mark Clouarte and I'm here on behalf of FCA US, LLC, which I'll call FCA or Chrysler. Along with me today from Chrysler is Katherine Trust, who is in-house counsel from Detroit.

Also, we have Todd Tunic who is a network development manager from Chrysler Southwest Business Center in Dallas.

We appreciate the opportunity to present to the board today.

In short, this is a case about decisions by both parties. On the one hand, you have the very difficult decision made by Chrysler in December of 2014 to terminate the dealer agreements of Protestant Cecil Atkission Chrysler Jeep Dodge, which I will refer to as the dealership or Atkission. This decision was not taken lightly. It came after years of counseling of Atkission by Chrysler in person, in writing and electronically in an effort to help the dealership improve its operations to better assist Orange consumers, and it came after giving
Atkission a contractual right to cure which Chrysler even let go for an additional six months, for a total of one year, when Atkission's performance actually declined during the cure period. This gave Chrysler little choice but to terminate Atkission's dealer agreements.

This case is also about decisions made by the dealership which were largely to ignore the suggestions and offered assistance by Chrysler over a number of years, to ignore its obligations under the dealer agreements, and to ignore, most importantly, the consumers in the Orange area. As the facts show, Atkission's decisions led it to becoming one of the worst performing dealers in Texas, to the detriment of Orange consumers, to itself and to Chrysler.

I wanted to start out by discussing the standard of review, if you will, that you all are charged with, but counsel did an apt job of that, as well as a discussion of the good cause factors. One thing I did want to point out about the good cause factors, under applicable case law, Chrysler need not prevail on each of the seven good cause factors to meet its burden. Now, the dealership will try and argue that this case is solely about improving market penetration. If that was the case, we wouldn't be here. This case is about much more than that. It's about a dealer's many failings under the sales
and service agreement, it's failure to serve Orange consumers, and its unwillingness to improve, which the ALJs found tipped five of the seven factors in favor of good cause of termination.

So let's look at those factors. The first one that Ms. Lingo mentioned was the dealer's sales in relation to the sales in the market. Now, as I will discuss in a moment under another prong, Atkission contractually agreed to meet what is called minimum sales responsibility, or MSR, abbreviated. MSR is the number of new vehicle a dealer must sell to equal the state market share in its local market -- here, the Orange market, it's called the Orange sales locality. Since it became a dealer, Atkission met its MSR for one month; never again did it meet its MSR. The dealers surrounding Atkission did or came very close to meeting their objective. Also, in relation to the sales in its market, the evidence shows that Atkission didn't sell to many customers at all in the Orange area. Instead, the sales made to Orange consumers were made by or pumped in by surrounding dealers outside the Orange market.

If you would -- I placed on your desks a packet of admitted exhibits -- if you would flip to the tab that says 57(l). It's a chart that has an orange column down it. This is called a pump-in report and it was an
admitted exhibit. And if you'll see on the first line, it

talks about the pump-ins into the Orange sales locality or
the Orange market. The blue line there, the top line,
reflects what the dealership sold. It sold 45 units
through July 2014 which was practically the end of the
first six months cure period. It sold 45 units, or 13.6
percent of the sales in the Orange market. You'll see
dealers outside the market sold the remaining nearly 86
percent, and you'll see a dealership in Port Arthur sold
107 units, doubling that of the Atkission dealership.

Now, you may wonder, well, what does that mean,
so what. That means that 87 percent of consumers who live
in Orange are driving 20 to 40 miles away from Orange,
each way, to purchase a vehicle.

Now, at the time of the notice of termination
at the end of 2014, Atkission was selling only 12.8
percent of the vehicles in the Orange market, so in that
next six months of the additional cure period it actually
went down. In other words, Atkission wasn't taking care
of its market or its consumers in that market.

Now, during the hearing the dealership argued
many defenses and excuses about why it wasn't able to
perform, talked about a 2008 hurricane, its location and
industry recession, highway construction, but admissions
by Mr. Atkission, which are cited to in the PFD, belie
these points. Also, uncontradicted data belied those points. For example, with regard to the construction, the dealership's performance was deficient before, during and after the construction. The dealership never asked for any type of relief, whether Chrysler on its MSR figures or TxDOT to assist it with, for example, directional signage during construction. Because the sales in relation to the market were dismal, the ALJs appropriately found this factor tipped in favor of termination.

Let's go to number two, the dealership's investments and obligations. The record evidence indicated that the investments in the dealership were minimal. Chrysler CPA expert opined that the dealership's financial statements showed long-term assets, which were accumulated over an eight-year period, of less than 100,000, many of which could be recouped at the time of termination.

Now, you'll likely hear much of what's called Cecil money, cash deposited into the dealership accounts by Mr. Atkission. These funds were a form a cash management account, or essentially a guaranteed savings account for Mr. Atkission with a guaranteed 4 percent rate of return. Mr. Atkission was paid interest on those funds whether the dealership made money, which it didn't, or whether it lost money.
But under this prong the investment to be considered is that of the dealer, and dealer is defined as who holds the distinguishing number issued by the board. Here the dealership holds that distinguishing number, not Mr. Atkission. As the ALJs correctly found, Cecil monies do not bear on this prong.

Let's talk about the obligations. The dealership was a month-to-month tenancy, and let's get back to the Cecil monies, if the dealership claims they were obligations, they weren't treated as such. They were called subordinated notes on the financial statements. There was no paperwork to indicate there was ever any indication or intent for it to be considered a loan. In fact, Mr. Atkission testified that there was no indication that he ever intended to be repaid. And even the CFO of the dealership testified that the monies were debt or obligations of the dealership. The testimony and record evidence on this good cause factor were clear and the ALJs found that the evidence tipped in favor of termination.

Let's go to number three, injury or benefit to the public. The termination of the dealership's dealer agreements would positively, not negatively, impact the public. As I mentioned before, Atkission was selling a small portion of the consumer market vehicles, so nearly 88 percent of the vehicles were driving 30 to 40 miles...
past the dealership each way. In addition, the dealership ranked 88 out of 90 in terms of sales advocacy, and 85th out of 90 in service advocacy. Neither of these points are good nor convenient for Orange consumers.

Chrysler intends to replace this dealership with a dealer who aggressively promotes and sells the product to Orange consumers. Additionally, increased sales will mean more jobs for Orange employees and more tax benefits. This prong, the ALJs found heavily favored termination.

Let's talk about the adequacy of the dealer's service facilities. Perhaps the best way to sum this up is testimony from Mr. Atkission himself who said, "It's not conducive to a successful business." And he and the general manager agreed it's not comparable to surrounding dealership facilities. The ALJs found here this factor weighs in favor of termination slightly as well.

Let's go to the next point, the party's compliance with the franchise. Perhaps this was the greatest area of testimony during the hearing. The dealership entered into what's called a sales and service agreement, or SSA, with old Chrysler in 2008. The agreed to certain obligations regarding management. For example -- and this is reflected in your binder of materials at R-27, and actually, why don't we flip there
for a minute, it's R-27(b). On that first page of this exhibit under paragraph 2, Mr. Atkission agreed to be substantially involved in the management of the dealership, and going on to the second page, he agreed to be physically present during most of the dealership's operating hours.

And as we go through here, if were to spend time, you would find obligations regarding sales, for example, to meet its MSR. Under facilities, the dealership agreed to maintain its facilities in a manner equal in attractiveness and appearance to its competitors, and agreed to conduct operations solely at that approved location. With regard to finances, the dealership agreed to meet a certain working capital figure and also maintain adequate net worth, and also submit financial reports in a complete and accurate manner. With regard to personnel, it agreed to maintain and retain personnel sufficient to carry out its obligations. With regard to signage, it agreed to display appropriate signage that was updated with current programming. And with regard to advertising, the dealership agreed to promote products aggressively and sufficiently.

Now, the ALJs on pages 37 to 63 of the PFD -- you'll see the bulk of the PFD was related to this prong -- they found that the dealership had committed
breaches of at least eight portions of the sales and
service agreement which, interesting, they said each of
those eight were sufficient grounds to tip this factor in
favor of good cause to terminate.

In terms of management, Mr. Atkission admitted
that he only spent 15 to 20 percent of his time at the
dealership, despite contractually committing to be there a
majority of the time. In terms of sales, the testimony
and evidence revealed that Atkission was not an
occasionally poor performer, it was the bottom performer
in the State of Texas.

If you flip to Exhibit 151 and on the bottom
right-hand corner of this page I'd like you to go to page
140, and there's a yellow highlighted row there, and for
years 2012 to August 2015, it showed that the dealership
as the bottom ranked performer. In 2013 it was 155th out
of 156 dealers. Again, that's on page 140 of Exhibit 151.
Now, the dealership may argue no harm, no foul on its poor
performance because other dealers were satisfying Orange
consumers, but that misses the point of customer
inconvenience.

Now, it may also argue that is location was the
cause of its poor performance, but in the materials at R-
3, when he signed up to become a dealer, Mr. Atkission
agreed to consider a different location and also make
upgrades to its facilities. It didn't make one of the
bulleted renovations that it agreed to do way back in
2008. It might argue, again, that construction prevented
it performing and after construction the sight lines were
altered by vehicles driving by. There was disputed
testimony on that, and additionally, there was a billboard
immediately across the highway that could have been
rented. That's at Exhibit 160 in the packet, and right
across the highway from the dealership and it says
Advertise Here and has a phone number.

The dealership could have asked for adjustments
to MSR from the manufacturer. It never did. It could
have made operational or advertising changes. It never
did. In terms of facilities, there's no doubt that the
evidence showed that the dealership failed to adhere to
the agreements it made. The dealership employees, the
principal, the CFO, the office manager, the general
manager all testified about the poor condition of the
facility and its incomparable condition to other
dealerships. Photos of the facility are reflected at
Exhibit 150 and it shows the noncompliant nature of the
facility, as well as the signage.

Ms. Lingo also mentioned the place of business
requirement. In the dealer agreement the dealership
agreed to conduct dealership operations form that location
only. Testimony was that the dealership would bring a
customer in, then would ship it to the Toyota facility to
do the paperwork and the finance, and then ship it back to
the Chrysler dealership for final delivery, all in
violation of the dealer agreement and also to the
detriment of the convenience of the consumer.

In terms of finances, the evidence showed that
at no point ever did the dealership have sufficient
working capital or meet the guide figure for every year.
It also had negative net worth. Now, knowing that they
were deficient in net worth and working capital, about
nine months after their protest was filed, they hired a
CPA expert witness who concocted a scheme to retool the
working capital and retool the net worth through sleight
of hand, and despite the fact that they had reported the
working cap and the net worth completely different for
eight years prior to that time. The ALJs rejected that
last-minute maneuver, and rightly so. They found that
maneuver, I think they called it unreasonable.

In terms of personnel, the evidence showed the
dealership experienced high turnover. Mr. Atkission
testified, "If I was looking for a job, it's probably not
one of the spots that I would want to work at." From 2012
alone, the dealership had five different general managers,
and with each new general manager came a whole new round
of employees and disruptions to operations. Additionally, the general manager was shared with the Toyota dealership and the management issue was compounded by the fact that the dealer principal wasn't at the dealership 75 to 80 percent of the time, using his own testimony.

In terms of signage, the signage was damaged in 2008. A bag was placed over the sign. Even though he agreed to adopt some 2010 signage by signing an agreement in 2013, the dealership still hasn't installed that 2010 signage at the dealership. In terms of advertising, the dealership spent much less than comparable group dealers, those dealers that were selling into the Orange market.

Now, this dealership and its poor performance persisted despite years of efforts to assist the dealership. The Chrysler area sales manager, who called on the dealership for a number of years, testified that he couldn't get the dealership to make changes at all. The record was replete with documents showing the counseling and rejection. For example, Chrysler offered supplemental allocation to the dealership over a six-month period. The dealership decided to order a few more cars on one occasion during those six months.

And as I mentioned earlier, this wasn't a surprise to the dealership. They'd been counseled for a number of years, they were given an additional six months
on top of the six months to cure from the SSA, and their performance actually declined in terms of sales, in terms of working cap, in terms of net worth.

Now, the last prong that Ms. Lingo talked about was enforceability of the franchise from a public policy standpoint. Perhaps the evidence can be best summed up by referring to the dealership's own admissions. Exhibit 129 is the dealership's discovery responses, and at page 31 of those responses, in response to a question about if it contended the dealer agreement was in violation of the public policy: "Atkission is not contending its sales and service agreements with FCA are unenforceable from a public policy standpoint." This prong, like the others, weighs in favor of termination.

In total, the evidence showed and the ALJs found eight independent breaches of the SSA and it found that five of the seven good cause factors were fulfilled in favor of termination. All of the evidence in sum pointed in one direction: that Atkission made certain decisions that caused its operational deficiencies and that caused its noncompliance with SSA provisions. It's extremely poor performance and its disinterest in doing anything about it left Chrysler with little choice but to make the difficult decision to terminate Atkission.

Now the decision is in the board's hands, and
that decision is whether it will permit a nonperforming dealership in nearly every conceivable area to continue to operate to the detriment of itself, to Orange consumers, and to Chrysler.

Thank you very much.

MR. PALACIOS: Thank you Mr. Clouarte.

I'll leave that to the board, we can ask questions now or afterwards. You'd rather ask now? Okay.

Go ahead.

MR. GRAHAM: I've got a few I just need to get clarification on. So you showed us the slide on dealer performance and dealer sales in the marketplace. How many other dealers are actually in that what you call the Orange County market?

MR. CLOUARTE: They are the only one.

MR. GRAHAM: So they're the only dealer.

MR. CLOUARTE: Right. Which typically gives a geographic advantage. If you're the only shop in town, that will give you a geographic advantage to those consumers closest to you.

MR. GRAHAM: You spoke to their performance in regards to dealers in their -- how do you classify them? You listed about 90 dealers within that.

MR. CLOUARTE: I think there was two references. One was pump-ins into the market, and I
showed you the blue and orange chart. Those are all the dealers that sold into the Orange market, irrespective of how close they were to that market. There was expert testimony that looked at group averages and those group averages, I believe, were the nine closest dealers to Atkission which showed, for example, that its advertising expenses were much lower and that its gross profits were higher.

MR. GRAHAM: I just know that in one reference you said they were the second from the last performing dealer.

MR. CLOUARTE: Right. And that related to overall MSR compliance, so since 2012 they were at the bottom except for that one year when they were the last one next to the bottom of all Chrysler dealers in Texas.

MR. GRAHAM: Gotcha. Is Chrysler attempting any efforts on other dealers as well, or just this one?

MR. CLOUARTE: I'm not sure. There wasn't any evidence in the record on that, to be honest with you. I'm not sure I'm the one to answer that question either, I'm just their outside guy. But in terms of there wasn't any record evidence on that point.

MR. GRAHAM: Okay.

MR. CLOUARTE: I'm not trying to avoid your question but that's my understanding of our parameters.
MR. DUNCAN: And I understand Mr. Clouarte's hesitation. I spoke to both counsel before the meeting and I would alert the board, the board is limited to its decision-making to the evidence in the record. You can ask questions and they may have an answer but if they give you that answer, I told them to tell you when it's not in the record, and if it's not in the record, you shouldn't use it in any way, you shouldn't use it to make a decision one way or the other.

MR. CLOUARTE: I think you said you'd whack us with your award.

(General laughter.)

MR. GRAHAM: I have a couple more.

MR. PALACIOS: Go ahead, feel free.

MR. GRAHAM: So this dealer purchased this in 2008. Would that have required Chrysler's approval at that time?

MR. CLOUARTE: Yes, sir.

MR. GRAHAM: I would assume that you did a financial review of the dealer in 2008.

MR. CLOUARTE: Certainly.

MR. GRAHAM: And so I'm trying to wrap my head around this discussion about the dealer, according to your testimony, does not meet some of the financial
requirements because it sounds like the investment that he's made in this dealership doesn't qualify because he's not technically the distinguishing number owner, it's the actual dealership. And so I'm trying to understand. Obviously that was a significant factor in your decision, and if his investments didn't count, how was he ever going to properly finance it to begin with?

MR. CLOUARTE: At the time dealers come into play, they sign what's called a working capital agreement that sets forth that working capital requirement, and at the time there was a representation by the dealership that it indeed had those funds and that it would meet those working capital guidelines. I don't have it in the excerpt that I gave you. What I will show you is if you flip to Exhibit 37(k) in your packet, each month under the dealer agreement -- while you're getting there -- each month the dealer agrees to electronically submit true and accurate financial statements to Chrysler, which is no different than any other motor vehicle manufacturer I know.

And if you look at that first page of Exhibit R-37(l), on lines 28 through 30 in the middle of the page, on the right-hand column there's something called working capital, and you'll see there's a guide figure listed there and there's an actual figure listed there.
Now, this is December 2014, the time when Chrysler made its decision to terminate and sent out the notice of termination. It was approximately 500 grand less than the requirement.

So in due respect, it's not Chrysler's decision about how the dealer represented its working capital. Case in point in this, all the way up to the next exhibit, October 2015, that's Exhibit 38(k), in that same column the dealership reflected this time even more less working capital, 700,000 in deficiency. So this was the last statement, this was three months prior to the hearing in this case, nine months after the protest was filed, the dealership is still reflecting a deficiency of nearly 700,000.

Now, in November of 2015 is when the change goes into effect and the reorganization of its alleged current assets and current liabilities to swap these numbers. So Chrysler doesn't have -- any manufacturer, for that purpose, doesn't have the financial documents of the dealership, the dealership does and the dealership reports it, and this is how it was reported all the way up to three months prior to the hearing.

MR. GRAHAM: Did they ever fail to meet their obligation to Chrysler? Would that have been a component?

MR. CLOUARTE: In terms of financial
obligations? Again, I don't believe there was any record
evidence of that, and that's probably all I can say is
there was no record evidence of failure to meet
obligations to Chrysler. I just don't know that.

MR. GRAHAM: And so I'm just trying to
understand if one of the primary issues with the dealer is
their financial strength but they meet all their
obligations. So I just wanted to ask the question.

MR. CLOUARTE: Well, let me answer it this way.
You'll see most dealerships don't finance their own
inventories, they have a floor plan provider. There was
no indication that the floor plan was out of trust or not
paid. With respect to other vendors, I don't know. And
I'm sure, certainly as the dealer members know, the
manufacturer typically won't ship or invoice a vehicle
until they're paid, and that's typically, in the normal
dealership sense, through a floor plan lender.

MR. GRAHAM: I think the only other question I
have is did this dealer own other dealerships or lines? I
guess I could ask the dealer or the other representative.

MR. CLOUARTE: This dealership does own two
other Chrysler stores. And I believe -- I'll let Mr.
Crocker speak to it -- I don't recall but I think they own
other manufacturers -- actually, I know, Toyota, for
example in Orange, but may own other dealerships as well.
MR. GRAHAM: So this dealer owned three total Chrysler locations.

MR. CLOUARTE: That's correct.

MR. WALKER: Four, according to the record.

MR. GRAHAM: Four Chrysler.

So was there a reason that you told him he needed to spend 50 percent of his time at one location when he owned four locations?

MR. CLOUARTE: Very good question, because that would be hard to do, wouldn't it? So his other locations, if you look back at that dealer agreement, there's more than one line, Mr. Atkission inserted the name of somebody else, and typically that somebody else was the general manager. At the Orange store, Mr. Atkission represented that he would be there a majority of the time. So for some reason, this dealer agreement is different than the others, and there is record evidence on that.

Back to the obligations point, one thing that kept coming up was the fact that he didn't spend money on advertising, on signage, on inventory, so perhaps while he may have been meeting obligations, the record evidence was very clear his obligations were pretty minimal. So working cap is an essential part of a dealership's operations.

MR. GRAHAM: That's all. Thank you.

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MR. PALACIOS: Thank you, Board Member Graham.

Mr. Walker.

MR. WALKER: So I understand you're just the hired gun. So I think the record reflect that Mr. Atkission owns four Chrysler dealerships. Is that not correct? Three? And so when I went through my records right here last night and the night before and the night before, I don't have a copy of the franchise agreement. Is this a copy of the franchise agreement that I'm holding right here?

MR. CLOUARTE: So if you look at tabs 27(b) and then 28(a), those two make up -- and I didn't give you each of the ones, there's one for Chrysler-Dodge-Ram and then there's another one for Jeep, which are virtually the same other than different lines, and that had to deal with purchase of Jeep.

MR. WALKER: So point to me where it says in the dealer franchise agreement that he is going to dedicate 50 percent of his time to that dealership.

MR. CLOUARTE: If you flip to Exhibit 27(b) and page 2 of that, the top two lines are highlighted. It says: Dealer represents, blah-blah-blah, he'll be physically present during most of it operating hours. Mr. Atkission testified -- and I can give you a record site if you'd like it -- testified that that would mean a majority
of the time, he agreed. He then estimated --

MR. WALKER: That's not what it says. It says:
The dealer represents that at least one of the people
will be present in the dealer's facility during operating
hours.

MR. CLOUARTE: During most of its operating
hours.

MR. WALKER: It says one, it doesn't say him.

MR. CLOUARTE: And then if you go back to the
first page, in terms of dealer management, he's the one
sole individual listed.

MR. WALKER: There's three other people listed
on the lines below that.

MR. CLOUARTE: In paragraph 3? And those three
represent at the time who the percent owners were, not the
managers. So that's the difference between paragraph 2
and paragraph 3.

MR. WALKER: So you have two other franchise
agreements with Mr. Atkission also. Is that correct?

MR. CLOUARTE: For the other dealerships.

MR. WALKER: Do you have a copy of those
attached?

MR. CLOUARTE: They were not part of the
record. There was solely testimony on that. They weren't
submitted exhibits so they weren't admitted at the
hearing, and the testimony was that the other two dealerships chose to identify someone in addition to Mr. Atkission on paragraph 2 under dealer management.

MR. WALKER: So let's talk about MSR, minimum sales requirements for the marketplace, and when I read this, I have a hard time -- I kind of get what it is, we have sales meetings with our sales people and this is what we think the expected market is out there to go sell against, but without going into elaborate details, I never saw in the record any kind of computation of how you come up with what is MSR.

MR. CLOUARTE: And I'm going to do my best not to contradict the record. It looks at the state market share for each of the vehicle segments in which Chrysler, Jeep, Dodge and Ram competes.

MR. WALKER: Let's take a pickup truck, for example. That's a good one.

MR. CLOUARTE: And there's different segments of pickup trucks so let's just say it's a heavy duty pickup truck. Let's say Chrysler has 10 percent of that market in the State of Texas. It then looks at the registrations of heavy duty pickup trucks in the Orange sales locality, so it takes the big pie of the State of Texas and then looks at the little pie to determine how many registrations of the heavy duty pickup trucks were
made. It then applies that state market share. So let's say there were 100 heavy duty pickup trucks registered in 2015 and the state market share was 10 percent, it would apply 10 percent to the 100 or expected MSR of 10.

MR. WALKER: So when we take into consideration this MSR -- and are you from Texas?

MR. CLOUARTE: Went to school and lived here for some time, yes, sir.

MR. WALKER: So we commonly refer to Orange as being the Golden Triangle, it's Beaumont, Port Arthur, Orange. There's three cities -- well, you could add Nederland to that if you wanted to -- Orange being the smallest of the towns over there. Is that MSR that you're considering, is that encompassing the Beaumont market or just the Orange market? Because Orange is -- I don't know, the population of Orange is probably not more than maybe 10,000. I don't know what it is but it's pretty small.

MR. CLOUARTE: It considers the Orange pie.

MR. WALKER: Just the Orange pie.

MR. CLOUARTE: Correct. And there's different pies for the different adjacent markets, and it just considers the registrations within that Orange pie.

MR. WALKER: So when you consider his piece of the pie, you only consider Orange, and he's the only
dealer in Orange. Well, I can assure you that two Chrysler dealers or Ford dealers couldn't survive in Orange because there's not that many people live there, and the people are going to tend to gravitate, most likely, to the big city which is Beaumont. Do you have a dealership in Beaumont?

MR. CLOUARTE: Yes. And one thing about MSR, it counts -- using my prior example of ten for a heavy duty pickup, it counts not only the dealership sales within the Orange pie, it would consider sales outside that pie to get to that ten. So it could sell one in Topeka, Kansas or in Beaumont. That would be two for the ten it would need to sell.

MR. WALKER: So Mr. Atkission bought this dealership in 2008, and I assume it was a Chrysler dealer prior to that time?

MR. CLOUARTE: That's correct. There was a buy-sell transition.

MR. WALKER: And so was that dealership currently housed in the same facility?

MR. CLOUARTE: Correct.

MR. WALKER: And what were the -- and I know it's maybe not totally comparable, but what were the sales of that day and time compared to what they are today?

MR. CLOUARTE: To be honest with you, I do not
know, and I do not believe that was in record evidence.
I'm sure my colleague Mr. Crocker will supplement that if
that's not accurate.

MS. LINGO: My apologies for the distraction, sir. I do not believe that that is evidence in the
record.

MR. WALKER: It's not in the record?

MS. LINGO: I do not believe it is.

MR. WALKER: That's why I asked the question
because I didn't find it either. And the reason I asked
the question is because I could go put a Chrysler
dealership in Marfa, Texas or out in West Texas and maybe
there's just not a market to sell Chrysler cars or
trucking or whatever it might be, and no matter how good a
dealer you are or how bad you are, you just may not
succeed based on the marketplace. And I read the law
2301, it requires that Chrysler has to take and either
come back to this board and say that there's not enough
market to manage a Chrysler dealership in that location,
or Chrysler has the responsibility to the citizens of the
State of Texas, according to the law, that they will
replace Mr. Atkission's dealership within a reasonable --
is what the wording says -- amount of time with another
dealer.

And so what would be the expectation -- and I
know you're the hired gun and maybe we ought to be speaking to Chrysler here instead of you -- but what is Chrysler's expectation going forward on this?

MR. CLOUARTE: Two points. I will tell you the record evidence is clear that Chrysler intends to go back into Orange immediately if the termination is permitted. It's an important market. And the second point I want to make to you, referring back to 57(1), is that I think there is a market for the Chrysler product in Orange, as reflected by this exhibit, as reflected by the number of sales. The problem here is they just weren't being made by the local dealer, to the detriment of the consumers. So I hope that answers the question.

MR. WALKER: It does somewhat. But I know that we are living in a totally new environment in car sales today because of the internet, and my kids don't buy a car the way you and I bought cars in the past. We don't get in our vehicle and go to the end of the street and walk up and down the lots, my kids go on the internet to buy a car today. And so the world is changing around us, and if my son sees that he can buy a Chrysler-Dodge-Ram in Houston, maybe, for $500 less than he can buy it in Beaumont, he's probably going to drive over to Houston and go pick up a car.

MR. CLOUARTE: And I don't disagree. Times are
changing, dealers are adapting to that. This dealership
didn't adapt to it. The record was replete with written
conferrals with the dealer that said: Internet manager,
none; you need to hire an internet manager. At the time
of the hearing, the advertising position at the dealership
wasn't filled. So I don't disagree with you, but changing
times requires changes in operations, which were not being
made by the dealership here. And I will tell you Chrysler
counseled this dealership in 2008 but concertedly from
2012 until the time of the termination notice.

MR. WALKER: I have one other question. I'm
going to skip the Cecil money, I never have understood
what that means or where it came from, but it's not
important. One thing that bothered me when I read all
these records was the mention constantly of the bag over
the sign, and do you have a picture of the bag?

MR. CLOUARTE: Yes. If you look at I think
it's Exhibit 150.

MR. WALKER: I think of a bag as a garbage bag,
I think of a bag as something I carry my groceries in.

MR. CLOUARTE: If you'll look at Exhibit 150,
it's reflected on pages 2 and 3.

MR. WALKER: That's what you're calling a bag?

MR. CLOUARTE: That's what the record evidence
was that it was -- I think the testimony was a plastic
MR. WALKER: That looks like a sign to me in that picture. So that's the bag?

MR. CLOUARTE: Yes.

MR. WALKER: That's kind of the way they make signs today, isn't it, is they take and print them on --

they use a tarpaulin today and they print tarpaulin and they go put them on the billboards on the highway and so forth. They take them off and they change them out.

Basically they're a tarpaulin bag is what they really are. That's how they make signs today. That is the bag, though?

MS. HARDY: But there are franchise standards that these are hard plexi that go on the facility standards that wouldn't allow something like this.

MR. PALACIOS: Suffice to say it's not a trash bag.

MR. WALKER: That was bothering me that it was a trash bag up there.

MS. HARDY: Could I ask a quick question? Can you briefly summarize the process, the timing before the dealer went into letter of cure and then how much time after he received the letter of cure he had to improve performance?

MR. CLOUARTE: Sol starting in October 2012,
Chrysler started a concerted effort of focusing on performances issue of Atkission. It recognized the importance of the Orange market and wanted to help the dealership improve and help the customers have more convenient access. From that point on until December 2013, the counseling continued, and in December 2013, a notice of default was issued under the sales and service agreement, and I have it in your packet, Exhibit 64, in December 2013.

MS. HARDY: So when the original counseling started, though, did the dealer understand ultimately what this could result in if performance didn't improve? It's not like they went a year, 12 or 15 months, and then all of a sudden FCA dropped -- it wasn't a surprise to the dealer?

MR. CLOUARTE: It definitely wasn't a surprise.

The initial conferral letter in October of 2012 is Exhibit 58. Mr. Tunic, there was evidence that he had a meeting with Mr. Atkission about where this all would lead to. That led to the notice of default in December 2013, the notice of termination a year later. That could have happened within six months of that December 2013 date, but Chrysler extended the cure period for an entire year and then issued the December 2014 notice of termination.

MS. HARDY: Thank you.
MR. PAINTER: How did you determine sales under 57(1)? How is that determined?

MR. CLOUARTE: There are companies that go collect data from DMVs, such as Texas, that look at the registration data, and they will extract the registration data and then ink out all the customer name and address except for the zips. The manufacturer then buys the -- another layer of vendor buy those data, buys that information and then prepares these reports.

MR. PAINTER: So it's based on addresses as to the number of pumped-in, what you call pumped-in.

MR. CLOUARTE: Right. So it goes in where those vehicles are registered in a census tract within that Orange pie. So it looks at the census tracts within the Orange pie and then slots those registrations in.

MR. PAINTER: And is any other dealership, Chrysler dealership of Mr. Atkission, are they making any of those pumped-in sales?

MR. CLOUARTE: That's an interesting question and the only way I can answer that is by looking at for this time period on this report. I will tell you there was no specific testimony on that point. Lord knows my eyes are going bad enough.

MR. PAINTER: It's small printing.

MR. CLOUARTE: It is. I apologize.
MR. PAINTER: Thank you.

MR. WALKER: There's no testimony on the record that reflects how Mr. Atkission performs at his other dealerships compared to this one?

MR. CLOUARTE: No. And I don't believe so, and I'm sure my colleague Mr. Crocker will bring that up. I don't recall that it was even offered.

MR. PAINTER: There is information that we received that said there's a total of seven dealerships that Mr. Atkission owns, so I'm assuming it's a mixture of Toyota, Chrysler and something else.

MR. CLOUARTE: I believe so.

MR. PALACIOS: Go ahead.

MR. GRAHAM: I'll keep this going, I guess. I have one short one and one long one. Actually, I just want to ask in regards to this document you just referenced which appears to be the letter -- well, that wouldn't be right. I suspect there was a document sent to the dealer to say if you don't do A, B, C and D, then you're going to get a letter of termination. Here's what you have to do to stop this train. And I thought that was going to be 63. Is that what I'm looking at? But that's dated October 2012, so maybe I'm in the wrong section. So let's go to December -- there it is, 64?

MR. CLOUARTE: If you look at page 5 of that
exhibit -- in the bottom right-hand corner it says 005 -- in bold, all caps, third paragraph from the bottom, I believe is the language that you're asking about.

MR. GRAHAM: Okay. So it's the bold caps that state clearly. Okay. Thank you.

MR. PALACIOS: Any other questions, Board Member Graham? Feel free.

MR. GRAHAM: No, thank you.

MR. WALKER: I have one more question. The very first question I asked today was would the parties please identify themselves as to what they do here. You're the hired gun, this is the hired lawyer that works, Katherine is, and we have a man by the name of Todd?

Would you tell me what you do for Chrysler, please?

MR. TUNIC: (Inaudible - speaking from audience.)

MR. PALACIOS: Please come forward.

MR. WALKER: Would you please explain to me your job and why you're here today, what you do for Chrysler?

MR. TUNIC: I'm responsible for all the dealer network activities in the region, buy-sells, open points, new dealers, working with dealers on sales and service upgrade, so anything to do with the dealer network.
MR. WALKER: So if I wanted to open a Chrysler franchise, you're the person I would go to?

MR. TUNIC: Yes, sir.

MR. WALKER: And you handle how big of an area?

MR. TUNIC: Texas, Louisiana, Mississippi, Arkansas, Oklahoma and the Memphis part of Tennessee.

MR. WALKER: Okay. Thank you.

MR. PAINTER: Could I ask you a question too?

MR. TUNIC: Yes, sir.

MR. PAINTER: How many interactions did you have with the Atkission dealership?

MR. TUNIC: Personally, twice at the dealership.

MR. PAINTER: Thank you.

MR. TREVIÑO: I was looking at your slide here showing the dealers above and below the MSR line. How many dealers are above the line and how many are below the line? I didn't see it in the record but I guess you could kind of count the dots, if you will, but I was just looking at the dispersion, just wondering. It's 151, slide 20.

MR. CLOUARTE: Mr. Treviño, I know I had that in my notes last night.

MR. TREVIÑO: That's okay. But it's not a 50-50 split, is it?
MR. CLOUARTE: No. It's higher than 50-50.

MR. TREVIÑO: Okay. Thanks.

MR. CLOUARTE: And Mr. Painter, to your question to Mr. Tunic about how many times did he confer, the record evidence was two. The area sales manager, who is the day-to-day contact, was in constant contact electronically, in person and over the phone, as well as some other. Mr. Tunic can't handle all those areas so he has either placement managers underneath him that call on the dealerships as well.

MR. PAINTER: And then he reports to Mr. Tunic?

MR. CLOUARTE: Yes.

MR. PAINTER: Okay. Thank you.

MR. PALACIOS: Mr. Clouarte, I have a few questions for you. I believe Board Member Walker asked about the other two Chrysler dealerships. You're not sure how those dealerships perform?

MR. CLOUARTE: In terms of the record evidence, no.

MR. PALACIOS: In the sales and service agreements with those two Chrysler dealerships, you mentioned that I guess in terms of the requirement, the time commitment for Mr. Atkission was not 50 percent because he had, I guess, general managers assigned there. And then you said for whatever reason the Orange store he
didn't have a general manager listed. So I guess my question is was the expectation that he would actually be at this store at the time of signing, he would always be at this store 50 percent, knowing that he had two other stores?

MR. CLOUARTE: Yes.

MR. PALACIOS: And why was that? So you were okay with him not being at the other stores?

MR. CLOUARTE: Not saying that. I think the manufacturer can only go with what the dealer puts down on the dealer agreement and the dealer had represented that there would be other managers at those other stores. So this one was different for some reason that Mr. Atkission decided to put down.

MR. PALACIOS: Okay. But that wasn't necessarily your expectation, that was just for whatever reason Mr. Atkission put down that he would be there 50 percent.

MR. CLOUARTE: I think Chrysler's expectation is that the dealer commit to whatever it committed to in the dealer agreement.

MR. PALACIOS: Okay. Mr. Treviño asked the question regarding the dealers that do not meet the MSR in your network. At any given time, do you know approximately what percentage of your dealers meet or do
not meet MSR?

MR. CLOUARTE: Mr. Palacios, in consideration of what the record evidence was, I recall it was in the ALJ decision for a particular time period, it was, I'm want to say, 70-something percent.

MR. PALACIOS: It was actually 42 percent do not meet MSR, from what I recall. So this is not unusual then for a dealer not to hit MSR.

MR. CLOUARTE: I will say that dealers -- I wouldn't agree with that.

MR. PALACIOS: Or say 30 percent even.

MR. CLOUARTE: That may be, but to the amount that this dealership was under its MSR objective, that is remarkable.

MR. PALACIOS: Okay. But you just said with your numbers 30 percent don't meet MSR, so how was this one unusual?

MR. CLOUARTE: In the fact that it was repeatedly at the bottom, 150 out of 150, that one exhibit that we looked at, that's the remarkable nature of this particular dealership.

MR. PALACIOS: Okay. I want to get into these Cecil dollars because I am very, very confused. Looking at the PFD, the ALJ -- and FCA, I need some clarity here -- there is an assertion now as to who the dealer is
and who the dealer isn't. According to the ALJ, the dealer is Atkission Chrysler, the actual dealership, it is not Mr. Atkission. Is that your assertion?

MR. CLOUARTE: And that was Mr. Atkission's testimony.

MR. PALACIOS: In terms of the dealer, the tangible operator that's there, is it Mr. Atkission? And I know it sounds like a rhetorical question but it is important. Is it Mr. Atkission or is it Atkission Chrysler?

MR. CLOUARTE: Yes. I appreciate that question. If you look at Exhibit 27 which is the dealer agreement, that also identifies the dealer as Cecil Atkission Orange, LLC.

MR. PALACIOS: Okay. So based on that premise, I guess one of the grounds for termination is that there was no investment into the dealership. I guess everybody acknowledges that there was $6,250,000 that were put in, but because, I guess, FCA and the ALJs are taking a position that Cecil Atkission Chrysler is the dealer, that there was no investment. I mean, that's what I'm trying to get my head around. Is that what you're telling me, that since the dealer is Cecil Atkission Chrysler and not Mr. Atkission, there was no investment put into the dealership because Cecil Atkission Chrysler is the dealer?
Is that your position?

MR. CLOUARTE: Yes, based on the plain reading of the statute.

MR. PALACIOS: Okay. So therefore, the $6,250,000, I guess doesn't exist in terms of investment.

MR. CLOUARTE: Correct. I referred to a cash management account with an interest bearing account of a 4 percent guaranteed return whether the dealership made money or not. That's what that money seemed to be. It wasn't an investment in advertising, it wasn't an investment in inventory, it wasn't an investment in personnel.

MR. PALACIOS: How do you know that? I mean, the money was put into the dealership. How do you know what was that money used for?

MR. CLOUARTE: That is a good question.

MR. PALACIOS: Okay, but you just said it wasn't used for inventory. How do you know that?

MR. CLOUARTE: When you look at group average with the surrounding dealerships, they were always different, and that's record evidence. When you look at the testimony of the personnel with respect to the pay plans.

MR. PALACIOS: Okay. So you're saying it wasn't maybe up to his peers but it was possibly used. I
mean, that $6 million wasn't sitting in a cash account. I don't have the balance sheet but it was used for something, obviously, I would think.

MR. WALKER: So can I ask while we're here?

MR. PALACIOS: Go ahead.

MR. WALKER: So I have the same question and that's why I didn't want to get into the Cecil because it's so confusing to me. The record is disputed, I think, as to whether or not the money has been actually put into the dealership or not. I think the $6 million in the record says that he said I put this much money into the record. Is that not correct? There's no here's the receipts.

MR. PALACIOS: I don't think there's a dispute. It's on the books of the dealership. I think everybody acknowledges the money was put --

MR. WALKER: The record says it's disputed.

MR. PALACIOS: It's disputed as to how it's classified, whether it's a payable, and I'll get into that question later as well.

MR. WALKER: Because I'm confused about where that money infusion goes and whether it really existed or not.

MR. CLOUARTE: And I might, in all due respect, I'm not sure it's reflected as an investment of the
dealership, because when I look at the left-hand side of the balance sheet, I'm not seeing that $6.2-, nor was it ever. And there was never any record evidence or explanation by the dealership of any identifiable use of those monies. The only testimony was as to the repayment in terms of interest at 4 percent. So again, I think we're constrained by the record here.

MR. PALACIOS: Well, it's a very, very important point because one of the causes for termination has to do with the fact of lack of investment on behalf of the dealer, which in my world, the dealer is Mr. Atkission. I guess in FCA's world, Atkission Chrysler, this abstract entity, is the dealer, and I guess my question is how is this abstract entity going to pump money into itself but for the person that owns 100 percent of it.

MR. CLOUARTE: And I'll tell you it's not Chrysler, it's Chrysler following the state statute that defines dealer in that manner.

MR. PALACIOS: Okay. Well, again, that's a totally new definition for me.

Okay. So let's get back into this $6,250,000 that there seems to be some dispute as to how it should be accounted for. Reading the ALJs' PFD, on page 27 of the ALJs' PFD, I'll read, again, there's some question about
how this money should be classified, and then it says -- let me see if I can find this real quick -- according to FCA, the money should be classified as an investment. Again, as I understand it, based on everything I've read, the $6,250,000 was recorded as a note payable by Atkission Chrysler, payable to Mr. Atkission, which collected 4 percent. So according to, I guess, your own people, that money, since the assertion it was never going to be paid back, it should have been classified as an investment. Do you agree with that statement? I don't remember exactly who from your company said that.

MR. CLOUARTE: And if you think about the definition of working cap, it's current assets minus current liabilities. If you put it in as let's call it a debt, a long-term debt that's never expected to be repaid, it doesn't even hit that equation.

MR. PALACIOS: It doesn't hit working capital, I agree, but it does hit net worth. So again, do you believe it should have been reclassified?

MR. CLOUARTE: I think the only way I can answer that is based on the record evidence is that Chrysler can only go based on what the financial statements were. The dealership was on notice since 2012, at least, that its working capital was deficient. It never said it had it, it never tried to change its
financial statements.

MR. PALACIOS: I understand. Okay. We're talking two different things. There's working capital and there's net worth. Because again, this is important, because one of the factors for termination was that his net worth was low. You said earlier that there was -- I'll use your words -- a scheme concocted to reclassify the note to paid-in capital. Are you a CPA?

MR. CLOUARTE: I'm not.

MR. PALACIOS: Do you believe that that journal entry is improper or fraudulent? Is that, to your knowledge, improper or fraudulent?

MR. CLOUARTE: I will tell you that the record evidence was, and that the ALJs found, it was done in response to this protest. And if you look at Exhibit 161 which is the last exhibit in your packet, on November 12, 2015, which was two to three months before the start of this hearing, at the bottom of page 1 the CFO Chuck Fullman [PHONETIC] is asking expert CPA Carl Woodward: Should the re-class be permanent? And on the following page: Should we be uniform with all of our eight stores? If a CFO is asking a litigation CPA what to do and whether it just applies to this dealership for this specific period of time, that's I think reasonable inferences that it was done for purposes of this
litigation.

MR. PALACIOS: Okay. But that doesn't mean it's a scheme. I'm just trying to clarify whether or not because your assertion there -- you didn't say it but you said a scheme concocted. That sounds like cooking the books, doing something illegal, something improper. This is not improper, is it?

MR. CLOUARTE: Chrysler is not suggesting that there as anything improper, it's just pointing out the fact that it was done three months prior to and never done the prior eight years. And it's also different than what was reported to the IRS as late as December 2014, which is reflected in Exhibit 159. It wasn't low net worth, it was negative net worth reported to the Feds.

MR. PALACIOS: All right.

MR. INGRAM: Let me ask a quick question.

MR. PALACIOS: Go ahead.

MR. INGRAM: You had said that they modified -- we were talking about how they modified the financials, and I see under 37 and 38 your different financials. Is there one in here that shows it after he modified it?

MR. CLOUARTE: That's a good question, Mr. Ingram. I wish I'd included it. Starting in November of 2015 is when you saw the modification take place, so November 30. They would have had to submit it by, I
think, December 15 of 2015, so a month and a half before the hearing. It's not in this book.

MR. INGRAM: It's not in this book.

MR. CLOUARTE: It was in evidence, though.

MR. PAINTER: And I have a question on the 4 percent that's being paid every year of $250,000, 4 percent of what?

MR. CLOUARTE: Four percent of whatever Cecil monies were put into the dealership.

MR. PAINTER: Do you know how much that he was paid or does it reflect that?

MR. CLOUARTE: No. What is reflected is the retained earnings of a minus -- for example, on 37(1), 2.9. So that, too, was a fuzzy part of the hearing.

MR. PAINTER: Thank you.

MR. INGRAM: So just to follow up, I was kind of assuming he had a floor plan but it looks like he did not have a floor plan.

MR. CLOUARTE: He did have a floor plan and his goal was to try to pay that off as vehicles came in and out. If you look at, for example, 37(1) on line 26, it says total floor plan liability of 1.2.

MR. INGRAM: What page are you on?

MR. CLOUARTE: I apologize. It's R-37(1), page 1, line 27 which is right above the working cap
calculation -- excuse me -- line 26, total floor plan liability, 1.2.

MR. INGRAM: I guess what's throwing me off is this very last exhibit in one of the very first emails or letters he's talking about re-classing the floor plan debt due Cecil. So I guess part of it is split? So part of the floor plan is floored and part of it is not. All right, I get it.

MR. PALACIOS: Mr. Clouarte, if the dealership is terminated, you stated that you are planning on putting a new dealer in. Do you know if the plan is to put it in the same location or are you going to move?

MR. CLOUARTE: There was testimony to the fact that that location -- Mr. Tunic testified that that location would be acceptable. He also testified that there's lots of dealerships -- and he wasn't necessarily agreeing with Mr. Atkission's testimony -- that had highways right in front of it with construction that sell their MSR.

MR. PALACIOS: In that same area?

MR. CLOUARTE: I apologize, Mr. Palacios, I can't recall the exact location, but within Texas.

MR. PALACIOS: I understand Mr. Atkission had requested to move the facility and I guess there's questions about whether the i's were dotted and the t's
were crossed and so forth, but is there, I guess, resistance from FCA to move the point?

MR. CLOUARTE: I'm trying to answer that within the record. There certain was resistance to the concept proposed by Mr. Atkission, and I say concept, that's using -- it's in here in the dealership's own words, there never was a formal proposal to relocate. And so I don't know that I can -- all I can answer based on the record evidence is that the concepts that were advanced were not approved. I don't know if that satisfies your question. And I guess I'd answer it this way, using Mr. Tunic's testimony, he would be satisfied with that existing location, just with a different operator who was more aggressive and willing to take care of the customer.

That concept that I referred to is Exhibit 76 in a letter from the dealership. In the third paragraph it says: The outline submitted to you was never intended to be a formal proposal or request for approval of the relocation, but was submitted to show the concept of what could be done. So my recollection of the evidence at the hearing was there wasn't much evidence on the relocation issue because there never was a permittable kind.

MR. PALACIOS: Because my understanding was that it was kicked back because it wasn't detailed enough, that it didn't have -- and I guess the question normally
when a dealer requests permission to relocate is the
requirement that he have the location, all the blueprints
in place before he submits? Do they really have to go
through all that before they're even --

MR. CLOUARTE: And I may have the timing
slightly off, but I think in November of 2013, Mr.
Atkission presented the idea which was rejected and said
send us more information, for example, drawings,
renderings, that type of thing. They weren't presented
for another seven months, without much more information.

MR. WALKER: But the land was purchased for the
dealership. Correct? It could be disputed but there was
supposedly testimony that there was two to three acres
purchased next door to the current dealership, next door
to his Toyota dealership to put the Chrysler dealership
next door to that, and Chrysler didn't like the fact that
they were going to be subordinate to Toyota, with their
location being not as visible.

MR. CLOUARTE: And the one part that I might
disagree with was that last part. I think it was the
proposal was that there was an intermingling between the
two, there wasn't a separation between the two of the plan
that was put forward on that piece of property to which
you refer.

MR. WALKER: Well, I think the record reflects,
if I'm not mistaken, that FCA was concerned about being somewhat subordinate to Toyota with visibility to the location being not as visible as Toyota was going to be by being next door. I don't know, I've never been there, but the road was apparently built up and maybe they didn't have as high visibility because of a bend in the road. I don't know what it was.

MR. CLOUARTE: And I recall that. I think the testimony was that the frontage along the frontage road was substantially less, or something to that effect.

MR. WALKER: Something to that effect. That is correct.

MR. PALACIOS: I have a question again about the facility. From everything I've read, I think one thing that everybody agrees with is the facility is in poor condition, so if you were to install another dealer in that location, I assume then you would start from slab up and build a new facility?

MR. CLOUARTE: I'm not sure I can speak to that because it's not in the record evidence. I think we would certainly want something like Mr. Atkission gave us in Exhibit R-3 with commitments to do certain things.

MR. PALACIOS: So I guess that commitment at this existing location was never discussed with Mr. Atkission as an option? Was it ever discussed?
MR. CLOUARTE: Well, it certainly was promised in 2008 and discussed throughout the entire time period: you've got to do something. And the four bullet points were not even done, much less anything else.

MR. PALACIOS: The location he's at right now is leased. I understand Mr. Atkission purchased property not too far from the existing property that he owns. I guess my question is why is there resistance to allowing him to build on property that he owns rather than property that he leases?

MR. CLOUARTE: Well, I don't think there's any record evidence to suggest there's resistance to having him build something. The record evidence, I think, was that the plans he submitted were inadequate. In fact, there was testimony they contradicted what the plan said. So there was confusion on the dealership's part about what they want.

MR. WALKER: So let me kind of clarify something that he just said right there. Cecil Atkission bought the dealership in 2008, he paid $500,000, I believe, for the physical assets of the piece of property and the buildings, he paid $150,000 in good will for the dealership, so he's got $650,000 invested in the deal. He just said that the facility is leased. My interpretation of lease, and maybe I'm wrong here, is that he's leasing...
that maybe from his own self. Who owns the physical facility?

MR. CLOUARTE: There was a lease in evidence with a third party. I think the $500,000 you're referring to was purchase of equipment and other assets, so the lifts, perhaps special tools, any existing used inventory, new inventory.

MR. WALKER: So it's not the actual physical facility. I thought it was for the facility.

MR. CLOUARTE: That's my understanding of the arrangement.

MR. WALKER: So if Chrysler -- I keep saying Chrysler, I know you probably like to be called FCA -- if FCA, if this board makes a determination that we need to cancel the franchise, FCA has no binding hold on the facility. Is that correct? You don't how the facility, so another dealer -- if Memo goes in there and puts in a Chrysler dealership, he's going to have to go and find a facility and build a new location. Is that correct?

MR. CLOUARTE: Find a location with an existing facility or construct.

MR. WALKER: He would either need to go rent something or he would need to go and build a facility that is suitable that meets your needs and requirements. Correct?
MR. CLOUARTE: Correct.

MR. WALKER: And not necessarily going back to the same location. Correct?

MR. CLOUARTE: Not necessarily. It may open up to -- well, I don't think I should go farther, it's not record evidence.

MR. PALACIOS: Mr. Clouarte, as an option to termination, was there ever any discussion with Mr. Atkission perhaps to assist him in selling the dealership?

MR. CLOUARTE: Absolutely, and I believe it was record evidence that Mr. Tunic had a discussion with the dealership about finding a letter to find a buyer and provide assistance in that regard.

MR. GRAHAM: If the dealership is -- who would stand to benefit once another dealer is put in place? Would that be Chrysler? Would Chrysler sell that market area?

MR. CLOUARTE: Let me do my best to answer in the record evidence. Manufacturers -- well, I'm going to speak on FCA's behalf, doesn't buy or sell, can't. The record evidence was consumers hopefully would benefit by having an aggressive local dealer, hopefully new jobs, more tax revenue. That was the record evidence about who would benefit.

MR. GRAHAM: So what you're saying is there is
no record evidence on whether or not someone would write a 
check to put a dealership in that location. Is that what 
you're saying?

MR. CLOUARTE: Correct.

MR. GRAHAM: I want to just address one other 
thing, and that is in your franchise agreement -- what 
section was that again? I lost my spot.

MR. WALKER: Twenty-seven.

MR. CLOUARTE: Twenty-eight.

MR. GRAHAM: It lists the dealer as Cecil 
Atkission Orange. That is the dealer name which is a 
company on the agreement. Does Chrysler require a company 
that's a dealer to have a dealer principal?

MR. CLOUARTE: Two answers: there wasn't any 
record evidence of that, and two, I simply do not know. I 
don't know if there's individuals around the country or 
there's a prescription of entity, I'm not sure.

MR. WALKER: That man over there that does this 
for Chrysler every day, why don't you ask him that 
question?

MR. GRAHAM: Is there someone here for FCA that 
can answer that question? Because I feel like that's a 
very important question to this matter.

MR. DUNCAN: You can't add to the record.

MR. GRAHAM: Can't add to the record. Okay.
MR. DUNCAN: Correct. If you're going to
decide on this, you have to decide based on the record.

MR. GRAHAM: So what you're telling me is that
in the course of the litigation, that was never asked or
never came up.

MR. CLOUARTE: In the course of the admitted
evidence.

MR. GRAHAM: Correct. Okay. I mean, I'm
talking to myself now, but okay.

(General laughter.)

MR. WALKER: So we really don't know -- David,
so we're getting into some areas here that to me are
concerning about how the process works because the board
has never seen all of the records. Okay? We don't know
all of the testimony. I've read the book here and it
doesn't give us a transcript of all the hearings, so we
really don't know what was and was not submitted into
evidence. And when I talked to you yesterday about some
of this, you said if I wanted to see that, it's boxes and
boxes of goods. For example, I never saw the franchise
agreement, which I called you about yesterday, and it's
today being presented to us here and it was a part of the
evidence, but if I were to look at my board packet, I
never know whether or not it is or is not a part of the
testimony.
So it's kind of hard in my mind that we're here making a huge decision, and I know we're relying upon people here, attorneys that were there hopefully during most of this testimony and somebody is trying -- I guess Michelle was there maybe during the testimony. No? So somebody has to say that it's not a part of the record or it was, because who studied the records?

MR. DUNCAN: We get a copy of the record.

MR. WALKER: Did you study the record so you know that it was or was not part?

MS. LINGO: I read over 1,200 pages over the Christmas holidays.

MR. WALKER: Thank you. And I read a bunch myself.

MS. LINGO: I did as much as I possibly could. I will tell you that the parties to the case know the case far better and that the ALJs considered each piece of evidence, whether to admit it into evidence, whether it was relative and probative, and then weighed the veracity of the evidence and the testimony, and then they issued their PFD. We are required by law to use that process.

MR. WALKER: I understand the law and I understand all of that. I've been here for seven years now doing this. And one of the things that kind of -- you know, here's something that bothers me also -- and not
throwing rocks at anybody in the room -- but here is a
200-page document that was put on my desk here today with
information that Mr. Clouarte would like us to look at,
and I'm trying to sit here, he's talking and he's saying
this page and this page. I have never had the opportunity
to review his document, so he's asking me to kind of look
at what he's presenting to me, comprehending what I'm
reading and comprehending what he's saying at the same
time. It really is not fair, in my mind.

And I've been in the court of law probably as
many times as most of you lawyers in the room because I
own a trucking company and tend to get sued a lot, but
generally, in a court of law all parties are provided with
the documentation prior to the case being tried so that
you can understand and review the documents so that it's
not a bunch of surprises to everybody in the room. Why do
we not have the process here where the board is presented
this kind of stuff prior to this meeting so that I can be
knowledgeable of what he is presenting to us without me
having to sit here and try to -- he's given me a
voluminous packet of stuff which is nice to have, but how
do I review it and listen and comprehend? I'm just not
that smart.

MR. INGRAM: Just as a counterpoint, it's not
really up to us to re-look at every single item of this
case. I mean, certainly if it is brought to us by the
speakers, we can look at particular items but it's really
not up to us just to re-hear the case.

MR. WALKER: It's not up to us to try the case.
You're right. It's not up to us to try the case in this
room. But the reason -- and Blake, you've been here
almost as long as I have -- the reason this board was
created originally, this agency, not this board but all of
us, and that you're a dealer and I'm a trucker and she's a
manufacturer, is so that when we get to points like where
we're at today with a franchise dispute between a dealer
and a manufacturer, that there's representation on our
board that instead of it being TxDOT where somebody didn't
really have anybody that was a car dealer on their agency
and didn't have somebody that was a manufacturer, that was
a voice that we could sit down in a room.

And I know that some of you remember Ramsay
Gillman, and Ramsay was a great guy, he was a dealer on
this board and he was one of the guys, and Victor
Vandergriff, that created the Department of Motor
Vehicles, and they always spoke, they were very vociferous
about making sure that everybody had a represented voice
to speak before the public as to whether or not we should
cancel a franchise or whether we shouldn't cancel a
franchise, or the things that affect all of us as parties
to what the agency oversees.

So we're here today to speak and to listen to what the public -- I'm not saying FCA is right or wrong or Mr. Atkission is right or wrong, but we're here today and it's a huge, it's a financial decision for both of these companies that we're making a decision on. FCA wants to sell cars, Mr. Atkission sure doesn't want to lose his investment, so I mean, we're evaluating here something that's very, very important that needs to be reviewed and studied by all of us and taken very seriously. We shouldn't come to this meeting today or any other day with the assumption that, well, I'll just think about it when I get there and listen, but we're making huge decisions that affect people's lives here.

MR. PALACIOS: Point well taken, Board Member Walker. Thank you. Appreciate your input.

Are there any other questions for Mr. Clouarte?

If not, I have one question, not for Mr. Clouarte but for counsel, and I think before we get to Mr. Atkission's attorney, we'll take a break after that. So any other questions?

(No response.)

MR. PALACIOS: Thank you very much. We appreciate your time up here.

MR. CLOUARTE: Thank you.
MR. PALACIOS: Mr. Duncan, I have a question for you. The board members received an amicus brief that was filed by TADA and I will try my best to summarize. It was a lengthy document, or I guess for them it was a short document, but in essence, the gist of the briefing concerns the factors that were considered in the ALJs' decision. My understanding is when a letter of termination is sent out, the manufacturer must state the specific causes and reasons for termination. In the filing sent to the ALJ, there were three specific reasons that were noted in the letter of termination. I guess during the hearing at the SOAH court, those three then turned into seven factors.

The concern, I guess the point raised in the amicus brief is that when a letter of termination is sent out, the specific factors to be considered are only those factors that are enumerated in the letter of termination, so I guess this would be akin to let's say somebody is in a trial facing offenses, and they know what the offenses are but during that trial the prosecutor throws out additional offenses, says by the way, you're charged with these three additional offenses. So the concern now is that there were additional reasons, I guess, that were put before the ALJs during the hearing, in which case would have put Mr. Atkission in an unfavorable position.
What is your opinion on that?

MR. DUNCAN: So my view, having read TADA's brief and the replies, this is not a single thing, it's a process. So yes, the manufacturer puts the dealer on notice and cites specific reasons for their proposed termination, but once the notice of hearing is sent, the notice of hearing is very clear that the board must consider, and therefore, because the ALJ -- the language in the statute is that the ALJ is acting on behalf of the board, the ALJ is basically given power by the board to go and read this. To speak to the concern that Member Walker had, the board is your eyes and ears, listening to the witnesses, their demeanor, reading all of the exhibits that they provide, and coalescing all of that into a recommendation.

Once it is sent to hearing, another provision of the statute applies, and it says the board shall consider all existing factors, including. So to limit the board to the notice provided by the manufacturer ignores the statute.

MR. PALACIOS: Well, my point has more to do with the actual SOAH hearing, not this board. I understand the board can look at all seven factors but the issue is what about the --

MR. DUNCAN: In order to get it in front of the
board, the SOAH judge is not going to say, okay, the manufacturer listed three things, we're not going to consider anything else, because the statute demands that the board consider all existing circumstances, including a list, and so they are going to ask questions and they are going to request and probably demand that the parties bring them evidence. Now, for example, if a manufacturer were to put a dealer on notice and say we think your sales performance is poor and that's all it said, and they went into hearing and either there was no evidence, neither party presented evidence or all of the evidence favored the dealer on all of the other factors and everything else that was going on at the dealership, then obviously the ALJs would find for the dealership.

But I don't believe that the legislature's intent, when they wrote a section saying what the board must consider when it's considering this action is constrained by another section of the statute that says the manufacturer must put the dealer on notice. One of the basic tenets of statutory construction is that there are two sections and they appear to be in conflict. Number one is they're not. That's the number one rule of statutory construction: find a way to read them so they're not in conflict. And to me, the way to read these two that they're not in conflict is the board must
consider everything, and the parties showed up at the hearing prepared to present evidence on everything because that's what the statute says.

MR. PALACIOS: Okay.

MR. DUNCAN: It's a step-wise process. The manufacturer puts the dealer on notice. If there's a hearing scheduled, if there's a referral to SOAH by the director, the section of statute that the director lists is all existing factors including, and the list of factors. So then it's, okay, you better show up prepared to talk about everything.

MR. PAINTER: The stuff that was presented by FCA this morning, has that been entered into the record with the ALJ?

MR. DUNCAN: Everything that's in this notebook.

MR. PAINTER: So they're just rehashing what they have already done, bringing out their important points or what they consider important points, and then we have a report from the ALJs as to what occurred during the hearing and what was presented, and then they make a judgment based on all of the evidence that they saw and heard and read and what was presented there, so we're just getting kind of a summary of the important points.

MR. DUNCAN: Correct.
MR. PAINTER: Okay. Thank you.

MR. PALACIOS: All right. If there are no other questions, I'd recommend we take about a five-minute recess. We'll come back and then we'll go to Mr. Atkission's counsel.

(Whereupon, at 9:59 a.m., a brief recess was taken.)

MR. PALACIOS: Okay, folks, let's get moving.

Before I recognize Mr. Crocker, I want to turn this over to Mr. Duncan to address a few points.

MR. DUNCAN: David Duncan, general counsel, since we're back on the record.

Members, when Mr. Walker was discussing the large group of exhibits that was provided, the board presents parties with an opportunity to do oral argument and many times they need demonstrative exhibits to make their points, so that's the reason you all were given this. The way the process is set up by legislation and by board practices, when a complicated matter like this needs to be considered by the board, the statute says you will send it to SOAH, an ALJ looks at it -- that's something I referred to earlier -- and once the ALJ has reviewed the evidence and made a record and written a PFD, the statute then says the board is limited in how it can consider that PFD.
Those 2001.058(e) factors that we always read tell the board what you are and are not allowed to do, and when you get a PFD back, you can only change a finding, fact or conclusion of law if you determined that the judge did not properly apply or interpret the applicable law, prior administrative decision on which the administrative law judge relied on is incorrect or should be changed, there's a technical error in a finding of fact, and if you do that, you have to state in writing the specific reason and legal basis for any change made. So it's clear that the legislature and the process the way it's structured is not designed for the board to re-review the record. I mean, that is not really why you're here and what you're supposed to do. The record is built, the judges have made a recommendation based on the record, and to review the entirety of the record is to reconsider the judges' weighing of the evidence, and that .058(e) section says that's not what you're supposed to do.

So I just wanted to add that to Mr. Walker's comments and point out that the only reason that these would be here at all is because the board does provide an opportunity for oral argument and it does allow the parties to refer to specific exhibits. We've talked to the parties' counsel and told them to limit themselves to the record, and both parties have either provided only
citations to statute or documents from the record, and again, it's just to illustrate their points.

Thank you.

MR. PALACIOS: Thank you, Mr. Duncan.

I'd like at this point to recognize Mr. Crocker, who will be speaking on behalf of Atkission Chrysler and Mr. Atkission.

MR. CROCKER: Thank you very much, Mr. Chairman and members of the board. I'm Bill Crocker. I practice law here in Austin.

First, I want to thank all of you for your service to the State of Texas and to the Texas motor vehicle industry. I particularly appreciate the sacrifice you make to serve on this board, and thank you also for allowing enough time for a full presentation of this case. That is a huge benefit to you, I hope. It's certainly a benefit to the parties who are before you.

Let me turn and introduce my client, Cecil Atkission, this gentleman right over here who has been sitting by me and trying to keep me from being so restless that I exploded. Don't be deceived by his unassuming and easygoing appearance, please. After graduating from Burnet High School, he attended West Texas State University in Canyon. He's been in the car business since 1975; he's been a franchise dealer since 1982; he
currently owns and operates 19 franchises in seven Texas dealerships. His franchises include the Chrysler, Dodge, Jeep, Ram, Chevrolet, Buick, Cadillac, Ford, Lincoln and Toyota lines. His dealerships are spread from Del Rio to Kerrville to Orange. He personally pilots any of the three airplanes he owns, including one jet, to keep up with those dealerships. He is not a good car dealer, he is an excellent car dealer. I think you will recognize that as we proceed through this presentation.

Why are you here hearing this case today? That seems to be an issue that you're dealing with, and I've got to tell you I've never sat through anything that epitomized more the admonition that's given to every young lawyer: there are two sides to every story. I was about to die to give you the other side of the story and explain the answers to some of your questions. You're here because only you can enter a final order in a proceeding like this and because you have real world background and experience to understand the issues that you're hearing. You're the final filter. Sometimes you stand in the gap when nobody else has understood what they were hearing before. Your obligation is to review the proposal for decision prepared by the ALJs who heard this case and I have taken the liberty of supplying you copies of some of the statutes that you're going to be dealing with.
The first one is this Government Code, Section 2001.058, talking about findings of fact and what you can do and what you can't do. It says that you are required to adopt the proposal for decision prepared by the ALJs unless you find that they did not properly apply or interpret applicable law. It's my obligation to point out to you some glaring errors in the proposal for decision which are the result of the ALJs not properly applying or interpreting applicable law.

Cecil and I -- Cecil Atkission is a first-name guy. He advertises his first name on all his dealerships. It's Cecil who is selling you a car. We're actually sorry to be here this morning and sorry to be troubling you about this matter. But for a very erroneous interpretation and application of the law, we probably wouldn't be here. But for that error, Cecil's Chrysler dealership in Orange, which is the subject of this proceeding, would have been fixed or sold long ago, with Chrysler's approval and to Chrysler's satisfaction.

That dealership is in the worst location you will have ever seen for a car dealership. He has been working to relocate it since the time he bought the dealership in 2008. Not long before he was notified of Chrysler's intention to terminate the franchise, he finally closed on the purchase of enough land to move the
dealership to a site adjacent to his Toyota dealership in Orange. It was understood between him and Chrysler at the time he bought the dealership that they wanted it relocated and wanted it moved two miles down the road, two miles down Interstate 10 in Orange, adjacent to his Toyota dealership. He's been trying to do that ever since. He had a five-year lease. That lease is up and he can move any time.

His first relocation proposals were more conceptual -- and you heard some of that -- than detailed plans. Neither the concept nor the plans were satisfactory to Chrysler. Around the time he received Chrysler's termination notice, he developed a new and of course more expensive site plan for the relocation of the dealership. Again, he submitted a concept rather than a detailed plan. But Chrysler refused to even consider the proposal and flatly rejected the idea of relocating the dealership. When we tried to protest that rejection, first your staff and then the ALJs who were hearing the termination case ruled that asking Chrysler for approval to fix the dealership by relocating it was a violation of the statutory stay that is applied by statute, and it's by Section 2301.803 of the Occupations Code, and you have a copy of that before you. I've taken the liberty of printing the pertinent portions of it in red for you.
You can see that that statute provides that anyone in a contested case like this one who is notified of a statutory stay -- and everybody was and normally is in a matter that comes before the board or is filed with the board -- may not do anything that would affect a legal right, duty or privilege of another party in the case. Asking Chrysler for approval to relocate the dealership -- which is required by the Chrysler franchise agreement, you can't just do that on your own if you're a car dealer -- was deemed a violation of the statutory stay by both your staff and the ALJs. And I'm here to tell you that asking Chrysler for approval to sell the dealership would also be deemed a violation of that stay under that construction of the statute.

The statutory stay is being interpreted to prohibit a request to fix or sell a troubled dealership after it receives a notice of termination. That is both contrary to good judgment and legally wrong. Good judgment would welcome anything that might fix a problem at any time. And it's legally wrong because it is a simple request for approval to do something that cannot possibly affect a legal right, duty or privilege of anyone. Whatever you do with this case, you must not let that interpretation or application of the law stand. It is not only dead wrong, it will destroy a major purpose of
the law you are charged with administering, and that purpose is to facilitate reasonable and workable business solutions. To use the language of the statute as it has been used is a classic improper interpretation and application of the law. It's incorporated in the PFD. You must now allow that to stand.

Let's look at another statute, a portion of which you have before you, Occupations Code, Section 2301.453. Very simple, short statute, it's the little one. It says for any involuntary termination of a dealership or a dealership franchise, the franchisor must send a written notice of termination that states the specific grounds for termination. You've got a copy of Chrysler's notice of termination. That's the letter that is in your packet that I put up there with some highlighting on it. You have a copy of that notice of termination, it's the letter dated December 14, it's in your folder. It sets out three specific grounds for termination.

Look at page 2 with me. You see the underlined title, and I've highlighted it for you, that says: Your dealership's failure to meet it sales performance obligations. That is Chrysler's first specific ground for termination. What that means is Chrysler wants the dealership to sell more new vehicles. Chrysler wants to
increase its market penetration or market share.

   Look now at page 8, if you will --
correction -- let's stop on 6 first -- I'm sorry, it is
target 6 I wanted to call your attention to. Look at page 6. Chrysler lists there what it calls other factors
affecting dealer's sales performance. One is titled DEALER signages obligations, the next is titled DEALER's
management and sales obligations, the last one is titled on the next page DEALER's advertising and sales
promotions. These three bullet points contain reasons for or conditions Chrysler thinks may be causing the
dealership's low sales volume. They are not grounds for termination.

   The highlighted paragraph on page 7, you see right under the last bullet point, make it clear that the alleged material breach of its sales obligations is the first specified ground for termination of the dealership.
   Please note the highlighted language says: Because the dealers is in material breach of its sales performance obligation and because dealer has failed to cure its material breach of these sales performance obligations, what was then the Chrysler Group has to right to terminate and is hereby terminating each of their four dealer agreements. They had one dealer agreement for each of the four lines in each Chrysler dealership. The so-called
three other factors were clearly not specified as grounds for termination.

Member Painter, we're going to be talking about this like it's an indictment, and that's pretty close to the fact, and they're in the lesser included offenses. Immediately below the language I just read is the second ground for termination: Your dealership's failure to meet its working capital obligations. On the next page you see the same highlighted language that clearly specifies that allege that alleged failure as a ground for termination. Right below that paragraph is another ground for termination: Your dealership's failure to meet its net worth obligations is grounds for termination. The language may be a little inconsistent but the underlining and the highlighted paragraph below it clearly identify this as the third specific ground for termination, three counts.

Why do we care how this document is written and what it says? Remember what we talked about when we looked at 2301.458 -- correction, .453, I believe it is -- the dealer must be provided written notice of the specific grounds for the proposed termination. It is critically important to understand that there are only three grounds for termination specified in the notice. These are the allegations the dealership must refute in order to defend
its franchise, and they are as follows: the dealership, one, hasn't sold enough new cars and trucks; two, has insufficient working capital; and three, has insufficient net worth.

Let's look at the first ground up close: the dealership hasn't sold enough new cars and trucks. Cecil Atkission would be the first person in this room to agree that is true. He knows that better than anybody. The dealership has a lousy location, it had it when he bought it. He bought it with the intention and understanding with Chrysler that it would be relocated down the road where his Toyota dealership is. It has not made a profit since construction began on Interstate 10 in front of it in 2010. After years of construction work, Interstate 10 is now elevated so that the view from the front of the dealership is a delightful solid wall supporting the approach to an overpass that's on down the road from the dealership. The roof of the dealership is barely visible from the eastbound lanes of Interstate 10 and none of the dealership is visible at all to westbound drivers.

Access is equally poor. People looking for the dealership can't find it and can't get to it once they know where it is. You heard about they want a dealer who will take care of customers. Cecil Atkission has taken care of every customer who had been there. The complaints
that Chrysler had in the hearing that they shared in the
hearing were from people who couldn't find the dealership,
and that's all. Thank goodness it's the only dealership
location that Cecil has that he does not own, he can leave
it on 30 days notice, he doesn't want to spend a nickel on
that current location.

Chrysler can't repair or maintain the old sign
in front of the dealership but it was still charging a
rental or maintenance fee for it at the time of the
hearing. That bag is a canvas bag. You'd think somebody
in Orange might have a sail-making background, but it is a
heavy duty canvas bag with the required advertising --
it's not the current required advertising because that's a
flavor of the month thing with Chrysler, they change their
signs pretty frequently -- but at any rate, it's got all
the brands shown on the sign and it is not a plastic
garbage bag. And a new sign costs the better part of
$100,000. It's hard to get or keep good people at such a
bad location. Increased advertising for that dealership
hasn't worked at all. So we agree that the sales by the
dealership are way too low.

What's the impact of low sales on Chrysler's
market share in the market area served by the dealership?

One or two of you had a question that touched on that.

You might have missed it in the ALJs' proposal for
decision because it wasn't there, but if you get into the back of the book -- as we used to call it when it was the math book where the answers were -- at the time of the hearing, Chrysler's market share in that market area was 113.82 percent of Chrysler's average market share in Texas, and average market share in Texas is Chrysler's benchmark. Over the previous three years it had average 103.47 percent but was never lower than 97.6 percent. The dealership's lack of sales is only hurting Cecil Atkission, it is definitely not hurting Chrysler. That's a poor reason to terminate a dealer who is investing millions in the effort to represent the brand.

Second and third specified grounds -- my time is running short and I've got to hurry -- low working capital and low net worth. The record will show that Cecil Atkission has operated franchise dealerships so well through the years that he's been able to buy the Orange Chrysler dealership, capitalize it, and then put an additional $6.25 million in it to keep it afloat. It is undisputed that amount was put into the dealership by Cecil Atkission, that's the Cecil money, and all of it is still there. He had the money put into the dealership recorded as a loan. The records reflect that the dealership had no other debt other than a small floor plan debt on new vehicle inventory. Cecil's goal is to
maintain a $5,000 floor plan balance on each floor planned new unit. That way he gets a reduced price on his insurance on his inventory.

None of his dealerships floor plan used cars. The Orange dealership never failed to pay its employees, pay its bills or maintain a floor plan financing arrangement for new vehicle inventory. It is true that at the time for the hearing the dealership had lost approximately $4 million, most of it since the interstate construction started. So why does Chrysler think the dealership has inadequate working capital and net worth? Because Cecil accounted for the money he put into the dealership as a loan rather than equity.

At the time of the hearing, the dealership had over $2 million on hand in working capital and net worth, loaned to the dealership by Cecil personally. That has been a longstanding practice to capitalize his dealerships with what he calls and accounts for as loans, and he pays himself the same rate of interest that his floor plan financing sources charge him. His documentation of the loans is bookkeeping entries. The Orange dealership is a single owner limited liability company. For most legal purposes and for most tax purposes -- for all tax purposes it's what's called a disregarded entity, commonly maintained only as a tort liability shield.
In Cecil's case, making a loan to the Orange dealership was like moving money from one pocket to another pocket in the same pair of pants. This is why Chrysler wants to terminate him because he put the money that is invested in the dealership on the wrong line. We tried to reconstruct, but still Cecil wants it shown as a loan by owner, and Chrysler doesn't even have a line for that. And that was that effort to recast the loan that he has made to the dealership, it has been made in increments over time.

I'm going to run out of time. What are we going to do? Mr. Chairman, might I continue just a little bit. I need to respond to some of the answers.

MR. PALACIOS: In full deference to FCA, I'm inclined to limit your time at this point, Mr. Crocker, but perhaps during the questioning perhaps your point might come out.

Any questions for Mr. Crocker?

MR. WALKER: Of course.

MR. PALACIOS: Board Member Walker.

MR. CROCKER: Bless you. Thank you.

MR. WALKER: Let's start off with the record reflects maybe at the time of the record that Mr. Atkission owns seven franchise car dealerships, I believe is what the record reflects. Nineteen? Seven?
MR. CROCKER: Six at that time, seven now.

MR. WALKER: Six. But I heard you just say he has 19 franchises.

MR. CROCKER: Franchises. Some of those franchises are grouped together in one dealership location. He owns seven dealership locations currently.

MR. WALKER: How do you do that? Educate me for a second.

MR. CROCKER: A lot of people do it. It's common in the industry.

MR. WALKER: I'll let Michelle explain it to me maybe.

MS. LINGO: The testimony in record evidence indicates Mr. Atkission testified at the time of his testimony he had six dealerships that are franchise and one that is used.

MR. WALKER: Six and one.

MS. LINGO: So six locations that are franchise and one.

MR. WALKER: He said 19 just a minute ago.

MS. LINGO: So at each dealership you can have more than one franchise at a dealership.

MR. WALKER: In other words, you can have a Ford and a Chevrolet and a Chrysler and a Toyota all under the same roof?
MS. LINGO: Yes, sir. And you could even have Chrysler, Dodge, Ram and Jeep under the same roof.

MR. WALKER: So a Dodge, a Chrysler, a Ram and a Jeep are four different franchise agreements?

MR. CROCKER: Four different franchise agreements.

MS. LINGO: And that is at the time of the testimony.

MR. WALKER: So let me ask this question, Mr. Crocker, how many franchise agreements does Mr. Atkission have at this location in Orange, Texas, this one particular location? Don't count Toyota.

MR. CROCKER: Four.

MR. WALKER: Four?

MR. CROCKER: He's got Dodge, Jeep, Chrysler and Ram.

MR. WALKER: So now let's go to the next question I have because now we're getting into some things I don't know about. We're trying to take away the Chrysler franchise?

MR. CROCKER: All four.

MR. WALKER: I never saw where it said we're taking four franchises away, it said that we're -- so they're trying to take all four.

MR. CROCKER: It's in here and it's in that
highlighted language that I read hurriedly. I can understand why you missed it.

MR. WALKER: We had a lot of reading to do in the last four or five days.

MR. CROCKER: I understand that. The last sentence on their magic paragraph is: Chrysler has the right to terminate and is hereby terminating each dealer agreement. That means all four of them, they referred to all four dealerships.

MR. WALKER: Jeep, Chrysler, Dodge and Ram. All four of those are going to be canceled if FCA gets their request.

MR. CROCKER: Yes, sir.

MR. INGRAM: I have a question. I'm trying to get over the hurdle of understanding how you're interpreting the statutory stay. You're implying that the way that it was interpreted by the ALJ is that it hindered you from providing a solution to Chrysler.

MR. CROCKER: Prohibited.

MR. INGRAM: Okay. Prohibited.

MR. CROCKER: And our position is it was improperly applied to our circumstance because the request for permission to do something cannot affect a legal right, duty or privilege of any party.

MR. INGRAM: Well, so I guess I'm stuck on the
fact that a stay is basically freezing it, in my opinion. It's freezing it in place just as it is.

MR. CROCKER: That's exactly right.

MR. INGRAM: But you're saying that you would like to be able to allow them to also submit this plan that would satisfy the problem.

MR. CROCKER: Exactly.

MR. INGRAM: But that's not a stay.

MR. CROCKER: That is stayed. We were prohibited from doing that. We would be prohibited from asking permission to sell the dealership.

MR. INGRAM: Right. But under the Occupations Code there is a stay.

MR. CROCKER: There is a stay, but it only applies to some act that's going to affect a legal right, duty or privilege of a party. It doesn't do that. Our request for permission doesn't do that. It doesn't take a right away from anybody. It doesn't inhibit them from doing any duty they have. It doesn't interfere with any privilege they have.

MR. INGRAM: So it if didn't inhibit you from you providing the proposal, it wouldn't inhibit them from rejecting it.

MR. CROCKER: It should have not inhibited us but it was defined to prohibit us, not just inhibit but
prohibit. As this provision was defined or interpreted
and applied, it was applied -- and it's in the PFD, just
like the mystery money that I hope you'll ask me a
question about -- it was interpreted to prohibit us from
asking permission to relocate, from asking permission to
sell to John Doe. Cecil has got to either fix this
dealership or sell it, one of the two.

MR. INGRAM: I'm having a hard time. David, can I jump to you? Perhaps you could help me a little bit
more with the statutory stay part, because I feel like
he's trying to have his cake and eat it too.

MR. DUNCAN: Member Ingram, I'm constrained to
agree with you. Because a manufacturer with a franchise
agreement has the ability to evaluate and potentially
contest a relocation or a sale under the Code, a request
to relocate or sell triggers legal rights and obligations
under their franchise agreement and under the statute. I
don't know how that's not affecting a legal right or duty
of another person. I just think it's clear that it does, and the ALJs did as well.

MR. CROCKER: The distinction there, if I may
add to that answer, Mr. Ingram, is that you've got to
distinguish between asking permission to do something
which doesn't interfere with anybody's rights, duties or
privileges, and moving the dealership without permission
which would, in fact, interfere with rights, duties or privileges and would interfere with the right of Chrysler to approve the relocation site.

MR. INGRAM: Okay. Let me jump away from that then. So Mr. Atkission bought the dealership in 2008. Is there any testimony in the record -- and I want to make sure that my attorneys are also listening.

MR. CROCKER: We all do.

MR. INGRAM: I'm sorry. In case I jump off the tracks, I want to make sure somebody puts me back on. So I guess I understand that there was a number of attempts to provide a simple request, if you will, to relocate. I'm trying to figure out was there testimony as to why there was not a more wholehearted attempt that provided plans and more structure to the request versus these one-page letters saying would you agree.

MR. CROCKER: Here's two parts to that answer. Number one, he hadn't finally secured the land on which it was to be located until shortly before this proceeding. And number two, it's a whole lot smarter to submit a concept, a would you take -- in your business and in the one my clients deal with too -- would you allow us to do this, rather than go get plans from an architect and spend a fortune trying to show what this would be. And that's all that he did or wanted to do was submit a concept.
The first concept was we're going to consolidate parts of the two dealerships. Chrysler didn't like that. And so the second concept was we're going to have two separate freestanding facilities, totally complete and totally separated, side by side, with equal visibility, I might add, to the street, to Interstate 10. And Chrysler refused to consider the concept and rejected the idea that they would consider a proposal to relocate. That's when we tried to protest. And we didn't interfere with anybody's rights or duties doing that either. That is a legitimate right that has been interfered with that Cecil Atkission has to come to you and say they're being unreasonable, we want to relocate and they won't even consider the concept. We were told that we were barred by statute from making that proposal.

MR. INGRAM: I'm sorry to interrupt you. So the land was finally acquired after the stay was in place?

MR. CROCKER: No. It was finally acquired before the notice of termination was given and before this proceeding started so that there was no stay in effect until this proceeding had started.

MR. INGRAM: So then that concept letter, if you will, once the property was acquired, that's prior to stay?

MR. CROCKER: There are two concept letters.
One concept was with the dealerships combined, maybe two of those, I'm not sure -- and all this is in the record -- and then the second concept was two separate freestanding facilities.

MR. INGRAM: And the second one was prior to the stay or after the stay?

MR. CROCKER: After the stay, shortly, very shortly after the stay. We thought we were offering a settlement proposal, and I can't discuss settlement proposals, and I won't do that, that's outside the record. But what we did was totally within the record.

MR. INGRAM: And just following along the same line of this thought, you said that there as a five-year lease. When was that lease up? Was that part of the record?

MR. CROCKER: Right after '13.

MR. INGRAM: So the lease was up in 2013?

MR. CROCKER: I believe that's correct. He thought he had to have a five-year lease in order for Chrysler to approve his purchase of a dealership. He already owned -- all of this is in the record -- he owned the Toyota dealership two miles down the road. He bought the Chrysler dealership with the intention of relocating it and Chrysler's encouragement that it be relocated side by side with the Toyota dealership. He couldn't get the
land. He was dealing with -- and again, this is in the record -- people who were hard to deal with, and he couldn't get the land that was necessary to put the dealership there until shortly before the notice of termination.

MR. PAINTER: The lease that he had when he bought the place was a five-year lease. The lease was not with Chrysler, it's with a private individual?

MR. CROCKER: It's with the disappointed dentist who thought he was going to make a million dollars in the car business that he bought the dealership from. He owned the property -- that's in the record also -- he owned the property and he still owns the property, he the dentist. It was leased from him. The five-year lease has expired; he's been there on a month-to-month tenancy since then. The dentist is happy to take the money.

MR. PAINTER: After Mr. Atkission purchased the dealership, did he in writing notify Chrysler that he was dissatisfied with it and at the end of the lease would like to move to a different location.

MR. CROCKER: He had discussions with Chrysler before and during the time he was buying the dealership. Chrysler was encouraging him at that time and he was responsive to the encouragement to relocate it. He wanted to relocate it, Chrysler wanted it to be relocated. That
occurred long ago.

MS. HARDY: Is that documented anywhere?

MR. CROCKER: It's in the testimony.

MS. HARDY: It is in the testimony? Okay.

MR. CROCKER: There's sworn testimony to that.

MR. PALACIOS: Mr. Crocker, regarding, I guess, the issue about selling the dealership, was that subject every brought up between Mr. Atkission and Chrysler. I know you said there was a stay I guess towards the end, but prior to that FCA gave testimony and said that they had encouraged Mr. Atkission -- I'm not maybe stating verbatim what was said, but there was some discussions regarding a buy-sell.

MR. CROCKER: They went to him and wanted a letter from him to them to authorize them to find him a buyer for the Chrysler dealership. The Chrysler dealership doesn't have much value unless you can link it with the Toyota dealership. That wouldn't be part of the deal and so that's why he was not excited about letting Chrysler go find a buyer for the dealership. That's way before the termination. And Chrysler in good faith came to him and said, Let us find you a buyer. But they can't handle the Toyota part of the deal and might not, and so he was reluctant to sign that kind of a letter putting the dealership on the market without the package.
MR. INGRAM: I'm sorry. I was reading part of the time that you said that. Could you go over that again? He didn't want to do the deal because he felt like they had to be sold in a duo?

MR. CROCKER: Well, the two dealerships together are worth more than either one of them is worth separately, and the Chrysler dealership in its present location is not worth very much at all. And as a result, he didn't want to just sell the Chrysler dealership for nothing. I don't know how much he had in it then, he's gone over six and a quarter million dollars in it now and he really didn't want to walk away from all that money if Chrysler was just going to sell the Chrysler dealership or find a buyer for the Chrysler dealership.

MR. INGRAM: I guess as a business person I'm trying to make the jump as to I'm trying to move this store, I would like to have this piece of property but I can't get it. I looked at a map of the area, it looks like there's a lot of other property around, it seems like I just would find a different piece.

MR. CROCKER: He's a very patient man. The only way these two dealerships really are going to be really profitable to anybody is to have them so close together that they can have some -- they can feed off each other. Like you would put four used car dealerships on
the four corners of a location and everybody likes that arrangement because other people draw traffic that you can use. And that's the same dynamic in the new car business, particularly in Orange where there are only four dealerships in the town. All of that, again, is in the record.

MR. TREVIÑO: Mr. Crocker, could you elaborate a little bit on the understanding from the very beginning about moving the dealership? Because it wasn't in any of the materials that I saw but apparently was in the record.

MR. CROCKER: It was in the record, it was several things in the record that were in the record that were not in the PFD, and you'd have had to go get the testimony. And I will tell you, you don't want to go get the testimony and all the exhibit that go into one of these hearings, nobody should invest that much time. You deserve a summary from the parties, from your counsel, and you don't really want to go into the details like that, but you do need a full summary, a full and complete summary.

Now then, let me be sure I understand your question. I got sidetracked, I sidetracked myself. Forgive me.

MR. TREVIÑO: Sure. You mentioned that there was an understanding from the very beginning that this
dealership should be moved.

MR. CROCKER: Yes.

MR. TREVIÑO: And in the materials that I saw, I didn't see that come across in any kind of meaningful way, but apparently it is part of the record, and if it's not, I don't want to hear about it.

MR. CROCKER: It is part of the record.

MR. TREVIÑO: But if it is part of the record, I just wanted you to elaborate on that to get a better understanding of that.

MR. CROCKER: Cecil testified at the time of the hearing that when he bought the dealership, Chrysler was there to give him his franchise and they talked about relocating the dealership. It was Chrysler's expressed desire, their representative's expressed desire that the dealership be relocated, and it was his expressed desire to Chrysler that the dealership be relocated. That's at the time of the acquisition of the dealership. It's no more than that but no less than that.

MR. TREVIÑO: Does staff have a comment on that?

MR. AVITIA: Member Treviño, your question about relocation information being in the record, the ALJs do talk about the relocation issue starting on page 8 of the proposal for decision.
MR. TREVIÑO: Right, I did see that. But what I was getting at was a discussion that there was some discussion prior to or during the purchase of the dealership. That's what I was referring to.

MS. LINGO: Yes, Member. Mr. Crocker is indeed very accurate and very correct when he says that Mr. Atkission gave testimony that prior to the signing of the contract for purchase agreement that there were some discussions about relocation. That is in testimony. To reemphasize the point that Daniel Avitia is making is that that was considered by the ALJs and that the portions regarding the relocation were considered by the ALJs and the ALJs' findings were that that is not appropriate for this consideration.

MR. TREVIÑO: Thank you.

MR. WALKER: A quick question I guess for Michelle or David. Can you explain to me, Mr. Crocker made a mention about Chrysler selling the franchise. I don't know how a car dealer franchise works. Does Chrysler or Ford or GM, let's just say that today we cancel Mr. Atkission's dealership, how does Chrysler go about creating a new dealer? Do they say Johnny, what will you offer us for this dealership, or is it hey, if you're financially, we will give you this authority to go do it. Like if I wanted to get an NFL football team -- I
think the last one was Bob McNair, he paid $500 million to the NFL to get the franchise and they split it amongst the teams. So how does a franchise work with a car dealership with respect to is Chrysler going to sell the franchise again or do they just give it to the next guy that shows the ability to do that?

MS. LINGO: Member Walker, in this particular case, the testimony is that Chrysler has an intention to establish a franchise dealership in Orange and that they intend to go with a new and different dealership, dealer principal.

MR. WALKER: Didn't answer my question.

MR. PALACIOS: I think Ms. Hardy could probably answer that question.

MS. LINGO: Because I'm trying to answer it within the frame of the evidence in record, and the answer to your question is that there are a number of ways that that can happen that were not discussed in the testimony or at the hearing, but the franchise is not going to transfer. Under the law it establishes that a new entity or a new dealer principal will need to come in and apply for a franchise license.

MR. PALACIOS: Board Member Walker, I guess to answer that, Board Member Hardy, can you address Member Walker's question regarding the actual -- regarding a
termination and reacquisition.

MS. HARDY: Reacquisition, again, sometimes you have to vet out candidates based on the health of the candidate financially, experience in the business and so forth, if they've had franchises before, we'll look at previous performance. So you need to be a qualified candidate, but that can be an open proposal process that's out there. Some dealers may have raised their hands, sometimes they're brought forth, it just depends, but there is a vetting out process that an individual has to go through before they can be approved for a franchise agreement.

MR. WALKER: All that I understand, but the one thing that has never been answered to me is do I have to pay for that or do I just get it given to me.

MS. HARDY: Yes. There's investment required.

MR. PALACIOS: Let me answer, I guess, to follow up on Board Member Hardy, just from my experience, the investment typically in a car dealership involves two primary investments. Typically the biggest dollar amount is regarding blue sky. That is the value of the right to own the franchise, so good will, I guess is the common word in business vernacular. And then the other would be fixed assets and so forth, and then I guess a third would be real estate if there's real estate involved. In the
case of a termination, the dealership in essence goes back to the manufacturer in which case if they then reappoint the dealership, there would be no blue sky involved, so whoever would follow up in this particular case would not have to pay blue sky, they would only be responsible for paying for the cost of whatever hard assets are available in the dealership.

MR. WALKER: But FCA does not own any hard assets with respect to this franchise.

MR. PALACIOS: No.

MR. WALKER: Yes, Mr. Crocker?

MR. CROCKER: May I respond to your question?

MR. WALKER: Yes, sir.

MR. CROCKER: The dealership, the factory will never take money for its franchise.

MR. WALKER: You've answered that question.

MR. CROCKER: It awards the franchise and then the dealer makes the investment he is describing.

MR. WALKER: I get that part of it. I just didn't know if there was ever --

MR. CROCKER: And when we talk about Chrysler finding a buyer, they're talking about finding somebody else to buy the franchise, not them.

MR. WALKER: It could be Mr. Palacios, who owns a car dealership.
MR. CROCKER: Absolutely.

MR. TREVIÑO: Mr. Crocker, could you briefly talk a little bit about the Cecil money and the investment?

MR. CROCKER: I would be delighted. Thank you.

MR. TREVIÑO: But briefly, please, if you could, in the interest of time.

MR. CROCKER: There was an old judge I heard use the phrase "mercifully brief, please be mercifully brief." I will.

The reason you don't understand the Cecil money is because you've never seen anybody disregard assets period that are on a financial statement. That's what the ALJs did. Six and a quarter million dollars went into that dealership from Cecil's other pocket and it went on the books as loans, and they were not documented in the classic way that people document loans, therefore, the ALJs said it's not a loan, and they disregarded Chrysler's suggestion in their brief that said it's a capital contribution with no terms of repayment. The ALJs quoted that on page 27 of their PFD, and they wound up disregarding those assets totally just because they were on the wrong line. That money is on the books in the dealership but it's neither fish nor fowl, as far as the ALJs were concerned, and so they disregarded it.
If you've ever filed a financial statement and put something on the wrong line and instead of having it understood that it goes on this line and that's where we'll count it, and instead just disregard it. You put your life insurance net worth of your policies on the wrong line on the financial statement you gave the bank so they're not going to give you credit for it. They'll at least come back and tell you put it on the right line.

MR. WALKER: What line was it on?

MR. CROCKER: It was on the short-term loans line which is what he was having them use the dealership money for, the money he had invested, a lot of it, because he likes to replace the floor plan on the cars that he has in inventory, and that's a short-term use.

MR. WALKER: How much money as on the short-term notice on the statement?

MR. CROCKER: I honestly can't remember but the total that was shown on the statement would add up to six and a quarter million dollars. Part of it was four million plus worth of losses. It was split between what wasn't being used at the moment for floor plan and what was being used at the moment for floor plan, and that's why those two had to be added together to find out how much money Cecil had in the dealership cash right then. It was over $2 million for both net worth and working
capital, if you treat those funds correctly.

MR. INGRAM: Member Walker, it's tab 37, I believe you'll see it that it's 1.2 million.

MR. PALACIOS: For the record, what time period do these financials -- you're reading from this manual that was presented by FCA, what's the time period?

MR. INGRAM: This is January to December.

MR. PALACIOS: What year?

MR. CROCKER: Fifteen.

MR. PALACIOS: Who gave us this?

MR. INGRAM: FCA.

MR. INGRAM: I want to go back to the real estate, but I don't want to jump off Cecil yet until everybody is done with the Cecil money.

MR. PALACIOS: I just have a question, Mr. Crocker. I guess looking at the information presented in the ALJs' PFD, the dealership has always been in a negative net worth situation.

MR. CROCKER: On paper only.

MR. PALACIOS: On paper. Yes. On paper. So my question then, given that, why did the bookkeeper just not simply do a reclassification?

MR. CROCKER: That's what we tried to do in November before the hearing and that was what Chrysler was poking fun at, to some degree, because it was a last ditch
effort to try to get them to understand where the money was. I believe, if you look at that statement you have before it that is the dealership's operating statement for the year-end of 2014 -- I'm sorry -- Cecil's money at that point in time would include -- I don't want to misstate this -- floor plan liability plus total -- no, I think at that point in time it had all been consolidated in other notes and contracts. It's down on line 42, it's three million, seven, twenty-one Cecil had in the dealership at that point in time. That was the line that Chrysler said -- the Chrysler manual, Chrysler didn't instruct this, but if you have a note from owner, it's supposed to go in other notes and contracts. It's three million, seven, twenty-one is the cash money he had in the dealership available at the time.

And the ALJs completely did not understand that, completely decided that they would ignore that asset represented in that fashion. There's almost no other debt, there's nothing but short-term current debt, just operating debt.

MR. WALKER: The 3.7 million is long-term debt.

MR. CROCKER: That's exactly right, and it was properly reclassified as a long-term debt because Cecil was not making a short-term demand to be repaid, all he wanted was interest on it.
MR. WALKER: So what you're saying is that Mr. Atkission infused cash, not as stockholder equity but he said I'm going to lend the dealership let's call it $3.7 million, you owe me this money back. And I've kind of gotten into some of these in our own companies, but you really should have another document that's a promissory note that exists that says: Hey, here's where there's a note that I'm lending this money to you that's been signed by Mr. Atkission as the loaner and as the lendee, both of those parties. Did that document exist?

MR. CROCKER: No.

MR. WALKER: You've got to have a separate transaction here.

MR. CROCKER: I understand that, and that is the norm. He's dealing with two pockets in the same pair of pants.

MR. WALKER: Well, I do that too. But you still have to have a document that shows that this is how we run our business.

MR. CROCKER: In my opening statement, I mentioned that his documentation for those loans has been bookkeeping entries, period. The money is there. And if he wanted to, he could move it down into equity, and as an LLC as a disregarded entity, he could do that with no tax consequences. He doesn't keep books that way, he never
MR. PALACIOS: Mr. Crocker, I think I missed this. Can you explain to me again the 2015 year-end financials show a $3.7 million --

MR. CROCKER: I think I'm looking at '14 rather than '15. See right up at the top is it the '14 statement? Six of one, half a dozen of the other

MR. PALACIOS: Okay. So I'm just trying to account for the $6.25 million.

MR. CROCKER: You have to add to that retained earnings of $3 million negative.

MR. INGRAM: He lost $3 million.

MR. CROCKER: He had lost the money, the money he lost.

MR. WALKER: So you're adding owner's equity of a negative $2 million that he's lost in the deal, plus you're adding the long-term debt, that's where they're coming up with the 6 million investment in the dealership.

MR. CROCKER: Exactly. That's how the 6.25- was accounted for, and that's 2.973- negative dividends.

MR. DUNCAN: If I may, members, if you will look at the findings of fact on page 70.

MR. WALKER: Whose book?

MR. DUNCAN: The actual PFD, the proposal for
decision, in the findings of fact from 51 to 54, 51 does
give a classification that the ALJs find the unsecured
subordinated debt lacking the paperwork normally expected.
But that is what they call it.

MR. WALKER: What page, David?

MR. DUNCAN: Sorry. Page 70 of the PFD, findings of fact 51 through 54 specifically talk about the amounts, what the judges found. I just wanted to point you to their conclusion.

MS. HARDY: And if I heard you right, most of the 6.2- was to offset floor plan expenses?

MR. CROCKER: Yes. He doesn't want to owe anybody anything except GMAC or Ford Motor Credit, or whoever it is, $5,000 per new unit because that way he gets cheaper insurance. And he did not have 100 percent of that done in the Orange dealership because -- just because, but about half of the floor plan amount for the dealership, as you can tell by looking at the statement, was his money as opposed to the floor plan source's money.

MS. HARDY: Okay. I guess I would hope any investment into the store would have seen additional tangible impact maybe on advertising, promotion, signage, more inventory, all those things that would have changed performance.

MR. CROCKER: He doesn't want to build a new
sign, he can't keep good people there because they don't
like to work in that -- it's hard to keep good people
there, let's put it that way, and the advertising he has
invested in has not worked, people can't find it.

MR. GRAHAM: And so at the end of the day --
we've talked about this Cecil money now for quite a long
time -- at the end of the day, what we're being told is
that in the course of a determining factor on the three
items listed in the termination agreement, two of which
are related to --

MR. CROCKER: No cash.

MR. GRAHAM: -- no cash, in weighing those two
items, the 6.2 million Cecil money that was in the wrong
line item was not given any consideration.

MR. CROCKER: That is correct. And the
dealership had plenty of net worth and plenty of working
capital money in hand. It never failed to pay its bills.
Any dealership that doesn't have adequate working capital
will have that kind of problem. And the rest of that is,
therefore, those two of the three specific bases for
termination fail, can't be sustained. That leaves you
with just one which is statutorily insufficient based on
the statement at the bottom of 455: the desire of a
manufacturer, distributor or representative for market
penetration does not by itself constitute good cause. So
this matter should be dismissed because Chrysler can't
carry its burden of proof.

MS. HARDY: When net working capital is
insufficient, there's usually regular notice to a dealer
on that point. Is that in the record that that was done?

MR. CROCKER: No such notice was ever given.

He's done that in every dealership that he owns. That's
the way he operates all his dealerships. Two others of
them are Chryslers. And some of the factories have -- and
I believe this is in the record -- some of the factories
have a line item in their financial statement that says
notes due owners, and that's considered under most
circumstances to be invested equity, invested capital.

For tax reasons, people wanted to loan the money to the
dealership back when it was just corporations rather than
buy stock and have a tax consequence of getting the money
back out.

MR. CLOUARTE: Just for the purpose of the
record, FCA US does object to that statement that nothing
was included in the record with regard to notice of
working cap deficiencies.

MS. HARDY: Thank you.

MR. CROCKER: Nothing that I remember, let me
put it that way. If he says they did talk -- well, they
sent some notice letters, those letters that you've got in

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your thing, and they mentioned. Cecil disregarded them, for whatever reason, didn't think they surely could mean that problem.

Any other questions?

MR. WALKER: Just a quick question. I don't think it's going to reflect in the record probably. Let's go back to the 19 franchise dealerships. Can you kind of just, without getting real specific, can you give us an idea where Mr. Atkission's realm of domicile is?

MR. CROCKER: I gave you just a thumbnail sketch. They're in Del Rio, Uvalde, Kerrville, Burnet, someplace just southwest of San Antonio -- what's the name of that town down there, Cecil, real close to San Antonio, I thought -- Hondo and Orange.

MR. WALKER: So primarily in the southwest, southern part of Texas, close to San Antonio.

MR. CROCKER: Everything except Orange is west of Interstate 35.

MR. WALKER: So this is the only dealership really -- well, this and Toyota.

MR. CROCKER: This and Toyota are both over in Orange.

MR. WALKER: And everything else is kind of over on the western half of the state, southwest.

MR. CROCKER: Exactly.
MR. WALKER: Okay. Thank you.

MR. INGRAM: I would like to go back to the real estate just real quickly.

MR. CROCKER: Certainly.

MR. INGRAM: Mr. Crocker, I'm reading directly from the PFD, so I won't try to read all of it because I don't want to bore you, but it looks like in the PFD -- and I'm on page 9 of the PFD -- that towards the end of 2013 he acquired the land that was necessary for building the dealership next to Toyota. That's what it looks like.

It says: In 2011 through 2013 he purchased the land next to his Toyota dealership. And I don't want to get ahead of you if you want to get to it. It's page 9 of the PFD.

And so I'm jumping now then, it looks like in November 2013 it was the first ever request letter, and that makes sense because it seems like he had just acquired the property and now he provided a request letter. That makes sense. Then Chrysler came back and said that they needed a lot more details, and then in December 2013, Daniel Fritz actually called and emailed him explaining that they needed more information. And then going down to page 10, in February of the next year, Mr. Fritz also toured the property with Mr. Atkission and he reminded him about the request for more information. Then in July 2014, eight months after submitting the first
one, he provided to FCA a few details about the proposed relocation, specifically a one-page plat which, according to, I guess, the testimony, was unsettling to FCA in that it still lacked the information needed to evaluate the relocation request and it was a different layout than explained to Mr. Fritz previously.

So I'm struggling with why during all of this time, there's a significant amount of time that we did not get the information that was needed to Chrysler and we didn't make the plans and we didn't do all of the things. I understand that it's an expense, but you've got to get plans for its approval.

MR. CROCKER: I may need to apologize to you. I had recalled that there were three purchases of land -- I may be wrong about that -- and that the two smaller purchases were much closer, much later than that one purchase. The first purchase was probably not sufficient for the relocation of the dealership, and the last two purchases I think occurred after 2013 and were incorporated in the concept.

Cecil, am I wrong about that?

MR. ATKISSON: (Speaking from audience.) That's correct.

MR. CROCKER: And again, this will have been the testimony at the hearing. The last two pieces
purchased enabled the separate freestanding facilities, and it was that concept that was offered when he finally got those last two pieces of land. He was negotiating with the City of Beaumont for one of them and with people who were very hard to deal with on the other one.

MR. INGRAM: So those last two pieces were purchased when? In the record do we know?

MR. CROCKER: At the end of the day, it really doesn't make any difference.

MR. INGRAM: Okay. Why?

MR. CROCKER: I use my acid test question of: So what? The point is that the stay is inappropriately applied to a request to relocate or to sell. That's the whole purpose here. It doesn't make any difference what the fact structure was, and I think I can defend the fact structure I've given you, but it really doesn't -- we shouldn't be sidetracked into the details of the fact structure. Just view it as a simple request to relocate.

Forget about whatever land it was, whatever kind of dealership it is, or anything, it's a simple request to relocate or a simple request to sell a dealership, either one after notice of termination, and we are prohibited from requesting the approval to relocate or we are prohibited from requesting approval for a sale because of the stay. That is an improper application of
the stay. You do not want to saddle the dealerships of Texas -- the dealers of Texas with that interpretation of the statute.

And it doesn't make any difference about the facts, let's don't get caught up. I got caught up in my presentation to you trying to answer some of the questions I was dying to answer sitting over there and used up too much time. There's still big issues we needed to talk about we haven't touched.

MR. GRAHAM: I have a question for counsel, if I could right quick. Would you just explain -- I mean, I think it may be obvious but I don't want to assume anything -- section 8 of the items that we are to consider that states that apparently no consideration is to be given on a single basis to sales penetration in the market area.

MR. CROCKER: You have it on your desk in front of you if you want to look at it.

MR. GRAHAM: Well, I just wanted to get -- I mean, I think it's pretty clear but I just don't want to make any assumptions that that in itself is not an item that a manufacturer can try to terminate a dealer for. Correct?

MS. LINGO: You are correct. It is an element of the statute that a manufacturer may not terminate
solely for the reason that a manufacturer desires greater market penetration.

MR. GRAHAM: Just wanted to make sure my understanding was correct, so thank you very much.

MR. CROCKER: Any further questions, Mr. Chairman?

MR. PALACIOS: Any further questions?

MR. CROCKER: I would be delighted to answer several but I can't offer them.

MR. PALACIOS: I understand.

Are there any other questions for Mr. Crocker?

(No response.)

MR. PALACIOS: Okay. Thank you, Mr. Crocker.

MR. CROCKER: Thank you.

MR. PALACIOS: Okay. Fellow board members, as you know -- well, let me go over a couple of things and then I'll ask Mr. Duncan to go over, I guess, our options. As we all know, we have been presented with a proposal for decision from the administrative law judges and that decision essentially is a decision to terminate Mr. Cecil Atkission's franchise in Orange, Texas. We have seven factors that we must consider, including all relevant circumstances, and I will say that this is a very, very important case. This is something that I know all of you take very, very seriously and we need to make sure that we
have thoroughly reviewed the factors and listened to the testimony before we render a decision.

But before we go any further, I want to just reach out to Mr. Duncan, and again, if you would just please go over, I guess, the options that we have as a board.

MR. DUNCAN: And I would point to the introduction that Mr. Avitia made where in addition to we have gone over several times the 2001.058(e) wording stating you may change a finding of fact or conclusion of law made by an ALJ or vacate or modify an order issued by the ALJ only if the agency determines: (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under another section, or prior administrative decisions; (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or (3) that a technical error in a finding of fact should be changed. The agency shall state in writing the specific reason and legal basis for any change made under this subsection.

In addition to that, you could adopt the PFD as it is, or as Mr. Avitia referred to, we have in past cases -- you may recall the wonderful Audi case, we remanded it to the SOAH ALJ for consideration of
additional facts. So there's always that possibility as well that if there is some question you feel was unanswered in the ALJs' consideration, you can refer it back to them with a specific direction to elicit from the parties specific factual information.

MR. PAINTER: May I ask also that you give a definition in a civil case, preponderance of the evidence and evidence beyond a reasonable doubt, two separate things.

MR. DUNCAN: Very different standards. Thanks, Sheriff Painter. The standard in this case is that the manufacturer must prove by a preponderance of the evidence that they have proven that the factors warrant termination.

In the executive summary in footnote 1, we've given the definition of preponderance of the evidence. It's on page 3 of 15 of your executive summary or the materials. Black's Law Dictionary defines preponderance of evidence to mean the greater weight of the evidence, superior evidentiary weight, though not sufficient to free the mind wholly from reasonable doubt is still sufficient, to include to a fair and impartial mind to one side or the other. Basically it's 51 percent, 50.1 percent, that's the way lawyers refer to it.

Versus in a criminal case, beyond a reasonable
doubt is a much higher standard. I think the best analogy I've ever heard is -- and I've seen this actually used in front of a jury -- you put a mouse in a box, you open up the box and there's a hole so you're pretty sure the mouse is gone, you put a mouse and a cat in a box and you open up the box and the mouse is gone and there's a hole, did the cat eat the mouse or did the mouse get out? That's a reasonable doubt. There's just a sliver of doubt in your mind whether the cat ate the mouse or the mouse got out of the hole. So it's a much higher standard, it means if there's just a shade of doubt in your mind, you should probably find for the defendant.

In a civil case like this and by statute it's preponderance of the evidence in this case which is just tilting the scale slightly to one side.

MR. WALKER: So David, under the amicus brief that's been filed by TADA in this case by Ms. Phillips, she states that: The Texas Department of Motor Vehicles board, not SOAH but the board, is to determine as to whether good cause has been established by the manufacturer, distributor or representative for the proposed termination. This responsibility does not fall on the department as referred to in the proposal for this decision. Under the law under Section 2301.453, after a hearing the board shall determine whether the party
seeking the termination or discontinuance, as established by a preponderance of the evidence, that there is good cause for the proposed termination. Although the board may delegate its powers, the power to issue a final order is not delegated in termination of any dealership. The board has ultimate final say in terminations of a dealership.

True or false?

MR. DUNCAN: Absolutely correct.

MR. WALKER: And it says here that even though they can delegate powers, that there has to be the preponderance of all the evidence has to show in favor of the manufacturer. Is that correct?

MR. DUNCAN: That's correct. But you are limited in how much you can change a PFD and that you're not supposed to revisit the evidentiary considerations of the ALJs, to re-hear the evidence and reconsider what they did unless they were clearly wrong on a fact or clearly wrong on the law. That's a generalization.

MR. PAINTER: And then you have to specify what?

MR. DUNCAN: Very clearly. You would have to go through, if we were to draft such an order, it would go through, state the reasons and then state the specific findings of fact and conclusions of law that you found to
be wrong. It would go through and pull them out and say they were wrong and replace them presumably with something else.

MR. INGRAM: It seems like one of the findings of fact that Mr. Crocker is stressing most often is the statutory stay aspect, and so I'm just trying to work through if that is an incorrect finding of fact in the way that it was handled by the ALJs.

MS. LINGO: Member Ingram, Michelle Lingo, for the record.

The characterization and the argument, I believe, is very, very creative. However, the law in Occupations Code 2301.803 requires that a person who's affected by a statutory stay imposed by the chapter, by Chapter 2301, may request a hearing to modify, vacate or clarify the extent and the application of the statutory stay. By statute, that hearing in this contested case is at SOAH in front of an ALJ. So if two parties who are a part of a contested case matter, if one presents to the other, well, I'd rather do a buy-sell and I present and everybody is happy and no one complains or no one brings forward a problem but the matter is dismissed, that's fine. When you skip the step of asking and seeking an order -- which is one of the few times that an interim order could come here during a contested case hearing for
you to decide is the clarification of the statutory stay -- in absence of that, we have no problem.

In this case, Atkission brought forward a complaint that the request to relocate was denied, FCA responded and said, I have a plea to the jurisdiction, there's a statutory stay in place. And our letter, the staff's letter back to Atkission didn't say you can't, it said the proper procedure to do this is to ask the ALJ for permission to ask for a hearing, present your evidence to the ALJs. The ALJs have ruled with a letter, it's an order and said the relocation issue is inappropriate in this hearing, we don't have anything before us. Then our letter came out saying it's not a ripe issue right now but here's how you get to us. And they could have, they didn't go forward with that letter, they didn't attempt that, but that is the proper procedure.

MR. INGRAM: Well, I guess I understood it until the very end and you said that they could have but didn't.

MS. LINGO: Yes. Member Ingram, they were on the cusp of going into the hearing on the termination matters. The ALJs ordering letter, order letter number 8, indicated the parties had agreed to the procedural schedule for a long, long time, that they weren't going to pull back, and they didn't have that in front of them, so
the ALJ declined the relocation issue.

With regard to how the staff approached it, we had the complaint and we had the plea to the jurisdiction asserting that that is not appropriate at that time because there is a statutory stay. And our letter said, That's correct, there's a statutory stay in place, here's the best way to get, you could have, you can, you have to follow the procedure. So we didn't actually say no, you can't do this, we pointed them in the right direction of what it is that you have to do, and .803 lays that out for you. You have to go to the ALJs and ask -- a hearing has to be conducted by the ALJs at SOAH. At hearing you ask to modify, vacate or clarify the extent and the application of the statutory stay, and then once you have an order in hand, that order can be appealed. An interim interlocutory order could come back before you, but they were already down the road and ready to go.

MR. GRAHAM: And so they never took that step?

MS. LINGO: That's correct.

MR. WALKER: Who issued the stay?

MS. LINGO: It's automatic based on the statute just as soon as the protest is filed, and then when we issue a letter assigning the mediators, we tell them it's in place.

MR. WALKER: The mediators or the ALJ?
MS. LINGO: The mediators. When the mediators letter goes out saying we've assigned mediators, it notifies them the statutory stay is in place in accordance with the statute, and when Daniel Avitia's letter of notice of hearing goes out, it reminds you that the statutory stay is in place, continues to be in place.

MR. WALKER: I thought the stay meant that the manufacturer couldn't take any further actions to disrupt the ongoing business of the dealer.

MS. LINGO: Well, that certainly could be considered violation of a statutory stay if that happened. It's basically status quo. The manufacturer continues to provide vehicles, the dealership continues to sell, and the statutory stay imposed by the chapter remains in effect until vacated or until the proceeding is concluded by final order or decision.

MR. WALKER: But how does the statutory stay affect the request for movement of the dealership? Why would that affect that?

MS. LINGO: Sir, as part of FCA's response and plea to the jurisdiction, they did assert that they would then be forced to defend themselves on two fronts instead of having one, so their rights and obligations are affected. I mean, they make the argument that that statutory stay is in place as protection to them as well.
and that a consideration of a relocation request makes them stop and have to evaluate it. And the letter that they sent that is part of the evidence in the record, that they sent in response to that request to relo said, once again, I don't have enough information. And they were very prompt, they did it in less than one month, they said I don't have the information. I believe one of the items cited is that you didn't give me, for example, the square footage of the facility you're proposing.

MR. WALKER: Well, it was that you didn't give me a drawing of the facility, that's what it was.

MS. CARAWAY: But that would have been a separate hearing before the ALJ.

MR. WALKER: But it couldn't be presented, apparently, because if there's a stay, you can't take and present anything going forward, and Chrysler basically says we're not going to look at it because there's a stay in place due to the fact that there's a proceeding going on to terminate the dealership.

MS. LINGO: It is possible as a matter of judicial efficiency that the stay can be lifted for the limited purpose of allowing that.

MR. WALKER: And how would Mr. Crocker or Mr. Atkission have requested that?

MS. LINGO: Under the law they would have
requested a hearing before the ALJ and gotten an order 
either lifting the stay to allow for that limited purpose 
of allowing that to be either a separate proceeding or 
added to the current proceeding, and the order to whoever 
it's not favorable could have taken an interim appeal to 
this board. But it could have been if that was judicially 
efficient and appropriate.

MR. PALACIOS: Thank you, Ms. Lingo.
Do we have any other questions before we 
proceed?
(No response.)

MR. PALACIOS: Hearing none, I will entertain a 
motion. Board Member Graham, let me just ask is this a 
decision in favor of the ALJs' motion?

MR. GRAHAM: You know, I think we've got --
MR. PALACIOS: If not, I want to take a recess.
MR. GRAHAM: Yes. Let's take a recess.
MR. PALACIOS: Given the complexity and the 
severity of this case, I'd like to take a recess.

MR. WALKER: Wait, wait, wait. Let's think 
about what you're doing. Are you taking a recess or are 
you asking to go into an executive session? A recess 
means we're going to take a break and go to the bathroom. 
What are we doing?

MR. PALACIOS: This is a recess. We want time
to confer with counsel.

MR. WALKER: That's an executive session.

MR. PALACIOS: We can't do it in executive session.

MR. WALKER: I think you can.

MR. PALACIOS: Counsel?

MR. DUNCAN: If one member wants help drafting a motion, I can help one member draft a motion and not be in executive session.

MR. WALKER: But you have the right, I believe, to go into executive session, it's posted on our agenda that we can call an executive session.

MR. PALACIOS: I guess my concern is I don't want to make any decisions in executive session.

MR. WALKER: We can always go into an executive session to confer for legal advice. We can't take and go in there and draft something, but we can go into an executive session and discuss what the options are that the board has before them as presented from legal counsel. True or false?

MR. DUNCAN: Yes, but that's all we could discuss.

MR. PALACIOS: I just want to make clear then that if we go into executive session that this case, we don't discuss the merits, we don't discuss any testimony.
MR. WALKER: No decision can be made.

MR. PALACIOS: There will be no decisions made.

MR. WALKER: But we can get legal advice as to what options are available to us as a board. That is correct.

MR. DUNCAN: We couldn't draft a motion.

MR. WALKER: That is correct.

MR. PALACIOS: Again, I'm more concerned with drafting Board Member Graham's motion, but if you'd like some time to confer with counsel, I'm open to that, but again, it will be a very, very, very brief meeting, and then you'll confer with Board Member Graham.

MR. INGRAM: If you're saying that you can confer privately --

MR. PALACIOS: Well, I think Board Member Walker wants to confer.

MR. WALKER: I just would like to know what all of our options are. I mean, I've got some good ideas about what all options are available to the board. There's multiple things we can do, obviously.

MR. PALACIOS: Let's go ahead and break. I will call this board into executive session. It is approximately 11:39. I can assure you there will be no decisions rendered regarding this case. We will not discuss the merits of the case either way, we just need
some time to -- there's the script.

We will go into closed session under Texas Government Code, Sections 551.071, 551.074 and 551.076. I anticipate being in executive session for no more than ten minutes. We'll convene in open session after that. With that, we're recessed.

(Whereupon, at 11:39 a.m., the meeting was recessed, to reconvene this same day, Thursday, January 5, 2017, following conclusion of the executive session.)

MR. PALACIOS: It is 12:01 p.m. on January 5, 2017, and the Board of the Texas Department of Motor Vehicles is now in open session. We want to take note that no action was taken in closed session.

At this point I believe we have a motion to be presented by Board Member Graham.

MR. GRAHAM: Thank you, Chairman.

I do have a motion, I'll be glad to make that motion, and of course, if it receives a second, I'll be glad to give my thought process behind where I'm going with this. So I'll begin by making a motion: I move to remand this case back to the State Office of Administrative Hearings to further clarify the legal status of the dealer's financial contributions to the business and how that money does or does not support the manufacturer's proposed termination under their December
19, 2014 termination letter, sections beginning on page 7, working capital obligations, and page 8, net worth obligations. That is my motion, sir.

MR. PALACIOS: Thank you, Board Member Graham.

Do I hear a second?

MR. TREVIÑO: I'll second.

MR. PALACIOS: All right.

MR. GRAHAM: So here's where I'm going with this. On the document from Chrysler Group, dated December 19, 2014, they list three primary items to which if those are not resolved, this franchise agreement will be terminated. Those items are sales performance, the second item is meeting the working capital obligations, and the third item is meeting the net worth obligations. How the court weighed and determined the investment -- obviously the dealer has made an investment, it's in the financials but I don't really understand why that wasn't considered for that dealer in the findings. And if it is considered or was considered, then that takes those two items out, leaving only the third item which is sales performance which can't be considered on its own basis.

So for me, I don't get it, I don't understand, and I think that there needs to be further clarification on why the financial investment was not considered in this process.
MR. PALACIOS: Thank you for your comments, Mr. Graham.

Board Member Walker.

MR. WALKER: So when we remand -- if we vote to remand this back to SOAH, does it go back to the same two administrative law judges, or is it potluck draw, or what happens?

MR. DUNCAN: SOAH utilizes their resources as they see fit. My guess is it will go back to the same two ALJs. They're familiar with the evidentiary record -- I mean, assuming they're still there, I don't know if they're still employed there, they may not be. So when it goes to resources, that is SOAH's call. Again, my guess is honestly, best use of resources, they already know the background, they have the files, they're familiar with the parties and their position. So I'd say the most efficient use, but I'm not SOAH.

MR. WALKER: But none of these cases would ever go back to an ALJ that is on our staff that works for us. We only do Lemon Law and warranties. Is that correct?

MR. DUNCAN: Yes, sir.

MR. WALKER: So this has to go to the state pool of ALJs.

MR. DUNCAN: By statute it has to go to SOAH.

MR. WALKER: Which means that it's potluck draw
that we get somebody that understands car franchises and dealerships, although to be an ALJ you have to be a licensed attorney in the State of Texas.

MR. DUNCAN: Correct.

MR. WALKER: But I know a lot of lawyers, and David wouldn't know the first thing about drafting a real estate contract, maybe.

MR. DUNCAN: I don't know how many district court judges know that much about auto franchise, but it's the job of the parties and their lawyers to go and convince the judge.

MR. WALKER: Thanks.

MR. PALACIOS: I will say I have very grave concerns to remand this case back to the ALJs. To address your concerns, there is the possibility that it's going back to the very same ALJs who could not answer your question but mine. Quite frankly, I think the ALJs completely misinterpreted basic accounting principles, basic understanding of how legal entities are formed, who's a dealer and who's not, and to remand this back to these same people, I think we're going to be sitting right back where we are again with an explanation that none of us understand. That's my opinion.

This is, I will say for the record, one of the most egregious misinterpretations of, again, basic
accounting principles. I got my CPA 30 years ago here in Texas and this is basic accounting that the ALJs just completely missed, and I have grave concerns about sending this right back to those same people.

MR. WALKER: I couldn't agree with you more on the ALJs just lack of not getting a lot of things, I thought. But I wasn't there at the hearing.

So David or Michelle, let's talk about the stay for a second. So does the stay stay in place?

MS. LINGO: Yes, sir, until a final decision is made. So it is currently in place as we speak.

MR. WALKER: But the parties can request that we consider --

MR. PALACIOS: Limit it to the motion.

MR. WALKER: Limit to the motion. Okay.

MR. GRAHAM: I'm wondering if counsel has any input to the board in regards to the cause and effect of those options.

MR. DUNCAN: I think the motion is sufficiently specific to give SOAH direction on what it is the board was confused about. I think that there is something for them to consider.

And we could conceivably, Member Walker, ask SOAH to assign different judges, but again, I have no authority to tell them that or to deliver any kind of
message from the board that the board things these judges didn't get it right. It's their call who they assign. And other than that, I would say this motion does ask a question that is sufficiently specific that I think the SOAH judges would be able to direct the parties to bring them additional evidence and argument.

MR. WALKER: Call for the vote.

MR. PALACIOS: Well, we do have a motion and we do have a second so I will go ahead and call for a motion. All those in favor of Board Member Graham's motion to remand this case specifically regarding the issue of the cash contributions back to the SOAH judge, all in favor please signify by raising your right hand.

(A show of hands: Board Members Caraway, Graham, Ingram, Painter, Treviño and Walker.)

MR. PALACIOS: Okay. We have an affirmative from Board Member Graham, Board Member Ingram, Board Member Walker, Board Member Treviño, and Board Member Painter, and Board Member Caraway.

All opposed to remanding it back please signify by raising your right hand.

(A show of hands: Board Members Hardy and Palacios.)

MR. PALACIOS: Board Member Hardy and myself. So it stands six to two decision to remand the case back
to the SOAH judge. Thank you very much.

In consideration of time now, I know this case took a little longer than we'd expected, we are going to defer some of the reports. The Projects and Operations report that was to be given by Ms. Judy Sandberg, and Jeremiah Kuntz on the Performance Quality Recognition Program update we'll defer for the next meeting. So with that, we will proceed to item number 5, Finance and Audit reports, and I'd like to ask that Sandra Menjivar-Suddeath please come forward.

MS. MENJIVAR-SUDDEATH: Good afternoon. For the record, my name is Sandra Menjivar-Suddeath, and I'm the Internal Audit director. I'm presenting item 5.A, the Internal Audit Division status report. The status report begins on page 16 and is a briefing item only.

The first item of the Internal Audit Division status is our current fiscal year 2017 Audit Plan status. Currently we're working on three engagements. The first one is the registration and title refactoring single sticker post-implementation review that is related to data reliability of the COGNOS reports. We are still in field work on that but we will be finishing field work in the next couple of weeks. Once we finish field work, we'll be working with management on any potential findings that we have at that moment.
The next one is a new item, it's a management or board request, and in the 2017 plan we left a placeholder for a potential management or board request. Since the last meeting we had a management request from the Information Technology Services to do an organizational review as an advisory service, which differs from an audit. As an advisory service, the nature and the scope of the project is decided before we go and start the work. The advisory service is an organizational review of the application service section of ITS. We'll be looking at research allocation, training, any items to help the division improve its efficiency and effectiveness.

The last item is the oversize/overweight permitting audit report. We've finalized our report in November and it is on page 18. The objective of the audit was to determine whether the Texas Department of Motor Vehicles validates, updates and communicates route restriction information on a timely basis to ensure routes are safe for permitted oversize and overweight loads. This is in our new report format which we provide a rating on. The overall rating was a five which is the highest you can get. We had no findings. In fact, we actually found that the Motor Carrier Division has significant controls in place to ensure that permitted routes are
entered into the Texas Permitting and Routing Optimization System within five years of receiving the notice from TxDOT, and that carriers are notified of any restriction change within the same day. So overall, the process for providing oversize/overweight permits and interim restrictions is pretty good.

MR. WALKER: Can I just real quick ask you a question here?

MS. MENJIVAR-SUDEATH: Yes, sir.

MR. WALKER: It's always been a concern of mine and the trucking industry's as to these bridge hits. There's been multiple bridge hits where the trucking industry, so to speak, has torn down bridges. Did you look into what are the root causes of why oversize loads hit the bridges and what can we do to maybe reduce that number?

MS. MENJIVAR-SUDEATH: We did not. Most of those bridge hits, however, are for unpermitted loads, so these are people that either didn't have a permit or did not follow the route restriction. I believe the most recent one in Salado was the fact that they did not follow their route, if I remember.

MR. WALKER: And that's what my question is, did we do a study that says what's causing bridge hits is not due to our permitting but is due to unregulated carriers
or unpermitted carriers not getting permits that are causing those problems?

MS. MENJIVAR-SUDEATH: No, we did not. We focused only on what we're doing internally to make sure that we're doing everything in our power to make sure that those can be avoided.

MS. BREWSTER: Mr. Chairman, if I may?

MR. PALACIOS: Yes, please.

MS. BREWSTER: For the record, Whitney Brewster, executive director.

I myself, Shelley Mellot, Jimmy Archer, we monitor every single one of those and we work with DPS to identify what the root cause was. Since my time at the agency, the two reasons are because, one, either they did not get a permit, or they were off route, and there is a third, they did not provide the proper dimensions of their load. So those three things. And we've looked at it very, very closely. We take them individually and work with local law enforcement who are on the scene.

MR. WALKER: And we're still being sued because of a bridge hit that has -- where are you looking?

MS. BREWSTER: I'm looking for our general counsel.

MR. WALKER: We have the lawsuit, alleged lawsuit down where the bridge fell on top of a car and
killed the lady but the guy didn't have a permit.

MR. INGRAM: So can we skip the legal?

MR. WALKER: Yes. That's okay.

MS. MENJIVAR-SUDEATH: Are there any other questions on the audits?

(No response.)

MS. MENJIVAR-SUDEATH: Thanks. The last part is just our coordination with the State Auditor's Office. We sent them the coordination of investigation letters which is for the first quarter of fiscal year 2017 where we talk about any hotline complaints we have. We provide our written response and we provide them information with an internal referrals that we have.

The other thing is the State Auditor's Office is still doing their compliant process audit, they're still in planning, they hope to wrap that up in the next couple of weeks and provide us a more solidified scope for their engagement, which once I have that information, I will provide it to you guys.

Thank you.

MR. PALACIOS: Thank you, Sandra.

Let's move on now to the 2016 end of year reports to be presented by Ms. Linda Flores and Sergio Rey.

MS. FLORES: For the record, my name is Linda
Flores. I'm the chief financial officer for the agency. And with me I have Sergio Rey. He's the director of Accounting.

And we have in front of you item 5.B, 2016 end of year report. This is a briefing of the annual financial report and the report of nonfinancial information for year ended August 31, 2016. In the interest of time, we are going to just give you some highlights of the agency's financial position at the end of August 31.

MR. REY: Good afternoon, Chairman Palacios, board members, Ms. Brewster. For the record, my name is Sergio Rey, director of Accounting. And as Ms. Flores mentioned, this is the annual financial report for fiscal year ended August 31, 2016.

The annual financial report was submitted to our oversight agencies in November and it was completed within the Generally Accepted Accounting Principles guidelines set by the Governmental Accounting Standards Board and the reporting requirements set by the Comptroller's Office. The annual financial report is not an audited document, however, the data is compiled and produced by the Comptroller's Office into the state's Comprehensive Annual Financial Report, which is then audited by the State Auditor's Office.
I'd like to first start off with addressing a correction in the Exhibit 1, statement of net assets. This is a correction on the printed document, and if you look at your briefing book on page 37, in the last column the total noncurrent liabilities, there was a data entry error on the formula in the printed document. The information itself or this error did not affect the bottom line in the presentation, in the printed document, nor did it affect the bottom line in the state accounting system. Now, even though the Comptroller's Office does rely on the data in the state accounting system, we still submitted a revised version of the exhibit and updated all of our documentation and we're updating all the information that we have submitted to oversight agencies.

Going back to page 36, that's the beginning of the exhibit of the statement of net assets, or commonly known as the balance sheet, to highlight the differences between 2015 and 2016 we've shown the comparisons here, and I'd like to point out that the changes really are based on our method of finance. We have more general revenue Fund 1 appropriations compared to last year, therefore, that's why we see the $28-1/2 million increase from 2015.

On the total assets side, just like on the other side of the equation, our liabilities and fund
balance increased the same amount. The increases on that side are due to increases in our accounts payable, and again, our fund balance, the increase is a result of the additional general revenue Fund 1 appropriations for the year.

MS. FLORES: And if I can just add, this is all general revenue, this is not the DMV Fund, so this is part of the overall statewide general revenue picture.

MR. REY: On the next slide we move on to Exhibit 2 which is the statement of revenue, expenditures and changes in net assets, or as commonly known, the income statement. At the top you'll see the information related to revenues, and again, the fact of additional general revenue Fund 1 money increased our legislative appropriations on this side of the equation, and definitely our biggest chunk of our revenue is our licenses, fees and permits of which we saw a 1.58 percent increase which matches the anticipated natural growth forecasted for that category.

As far as expenditures are concerned, we did have an increase of $11 million. The two major categories here I'd like to highlight are professional fees and services and our other operating expenses. The section of other operating expenses really is the bulk of our license plate production of which we expended more on our
purchases of license plates. And we'll talk a little bit more about the professional services in our next schedule which is coming up next.

Are there any questions?

(No response.)

MR. REY: All right. Well, we'll talk about the annual nonfinancial report. The annual nonfinancial is in your briefing documents at page 66 and 67, or 69.

As far as the nonfinancial, these are statements that were formally as part of the AFR, but with changes, now our oversight agency, the Governor's Office, requires these on a separate document that was presented to them in December. They are eight schedules that we were required to present, of which on page 66 and 67 there is a briefing document pretty much explaining each of those and the highlights of each of them, but I'd like to focus on the last one, the professional consulting fees and legal services fees.

Our next slide presents a pie chart which highlights the expenditure categories that comprise this schedule. The percentages that you see here show how much of the expenditures for each category for each of the specific years which is kind of separate from the fact that we did have an increase of almost $7 million worth of professional fees in 2016 over 2015. Now, this figure
matches exactly our figure in the income statement for this category of the same name, and again, the major categories that saw these increases are the information technology services, data processing services, and the computer services statewide technical center, or the data service center.

This concludes the overview and the highlights of both the annual financial report and the nonfinancial report. I'd like to take this opportunity to thank and recognize our financial reporting team who helped prepare this document. With us over here we have Irma Rodriguez, revenue manager, Brenda Stephens, our team lead for the financial reporting team, and the other members of the financial reporting team are Barbara Bonner and Ed Weissbeck.

MR. PALACIOS: Mr. Rey, Ms. Flores, thank you so much for your presentation, and we thank the Accounting staff for all of your efforts. As I said before, we can't operate without good information on a timely basis, and everything that you do for us gives us so much leverage and so much ability to do our job better, so we're in great appreciation for all you do.

MS. FLORES: That concludes the end of year financial reports, and with that, we can move on to item 5.C which is the quarterly financial report, our first
quarter 2017. With me is Renita Bankhead. She's the assistant chief financial officer.

And this presentation should look very familiar to you. We identify the revenues for the first quarter. We've decided to highlight the DMV Fund because as you know, that went into existence September 1, and for the first quarter through November we have collected slightly more than we anticipated to collect. We projected $48.7-, we actually collected approximately $50 million. A lot of that is driven by the one dollar automation fee that we're collecting between September and December. With the implementation of the process and handling fee, that drops down to 50 cents, but for the first four months of the year, we actually did benefit from that significantly.

MR. WALKER: So what impact will it have once we go to the 50 cents instead of the dollar?

MS. FLORES: We're anticipating to collect approximately $12 million out of the automation fee, whereas, before we were collecting $24-, so 50 cents will get us $12-.

MR. WALKER: But how is that going to affect our overall budget?

MS. FLORES: We had already anticipated that. Knowing that the process and handling fee would go into effect January 1, we built that into our projections. But
even so, we did bring a little bit more than we anticipated, so hopefully that continues. We watch that every month. I know that for the month of December, which is not reflected in any of your information here, we saw another bump from the process and handling fee from early renewals and we collected about $200,000 from the process and handling.

MR. WALKER: So are vehicle registrations where we expect them to be, or a little lower or a little higher?

MS. FLORES: Actually, the registration fees are lower than what we had hoped they would be. We don't really have any metrics that I can point to to say this is why. We do see less registered vehicles than we have seen in the past.

MR. WALKER: Why is that?

MS. FLORES: We're still trying to figure out whether it's single sticker, the syncing up of inspections and registration, or we're just not growing as much as we thought we would grow as far as registered vehicles. We have seen we're just not hitting what we projected to hit.

MR. INGRAM: Ms. Flores, Raymond and I are trying as hard as we can to get those cars out there.

MR. PALACIOS: Please help us.

(General laughter.)
MR. WALKER: So permitting revenue we know is down. We've talked about that every time and there's no reason that that would be up, although there's going to be a slight uptick in that this year probably. So registrations, we really hadn't anticipated a downturn in that, had we?

MS. FLORES: We also have seen some other changes that were implemented. For example, the child support blocks. If parents are 180 days behind on their child support payments, they are being blocked from registrations. But again, I don't have any specific metrics that I can point to to say the agency changed this and this was the impact. It's just a whole lot of different factors.

MR. WALKER: I didn't even know about that. So if you're behind on child support, you can't register your car?

MS. FLORES: Yes, sir. You're blocked from registering your vehicle at the county.

MS. BREWSTER: Mr. Chairman, if I might?

MR. PALACIOS: Yes, please.

MS. BREWSTER: Just a point of clarification that the registration percentages are still a 1.6 percent increase, however, it is not at the rate that we originally anticipated which was around 2-1/2 percent. So
I don't want to give the impression that we are down, it's that our projections are not as high as we thought, and it could potentially be a signal of just a smalling economy.

MR. WALKER: But we have to keep in mind that Linda has told this board numerous times over the last six months that we are operating on a very, very thin margin because of the process and handling fees, so any kind of glitches we need to know about because we have to adjust it.

MS. FLORES: And that's a good segue into the other revenue, and as we mentioned, our revenue overall is down, less than we anticipated, but that's not to say that we're not collecting. We've collected $428 million overall, so we are slightly under our projection. We do anticipate that we'll see an uptick probably in March because that's our biggest deposits for registrations, so we'll have one year's whole experience with the syncing up of the registrations and inspections and we'll have a better idea of what's going on in March. But as you mentioned, we know that oversize/overweight, the permits are still down. All our projections took those into account.

MR. WALKER: You'll see a little uptick in that this year.

MS. FLORES: Any uptick would be welcome.
The other thing I wanted to mention was My Plates. The vendor has deposited approximately $10.8 million to general revenue. Their obligation, if I can remind the board, is $50 million over the five-year contract that we have with them. That contract was put in place in November 2014, so they have until '19 to meet their obligation. We believe they're going to meet their obligation in the fall of this year, so they're doing very well.

MR. WALKER: Good job, Steve.

MS. FLORES: And with that, I'll turn it over to Ms. Bankhead to kind of give you an overview of the expenditures.

MS. BANKHEAD: Good afternoon. For the record, my name is Renita Bankhead. I'm the assistant chief financial officer, and I'm going to talk a little bit about expenditures. This is our first quarter expenditures. This will be found on page 88 of your materials.

As of the end of the first quarter, November 30, we had $27.2 million of expenditures and about 50 percent of that was related to the agency's core mission, and that is the contract services and freight and reproduction for plates, registration and titling materials, so about 50 percent of our expenditures so far
are related to that. And the rest is salaries, that's the other big piece of our budget, and as of the end of the first quarter, we had about a 7 percent vacancy rate, so we're doing better on our vacancies than we have been doing in the past, but it's pretty much where it's kind of been recently.

In addition to the expenditures that are shown on this chart, we also have $69.8 million in encumbered obligations, and most of that is the grants for ABTPA and the professional services related to Deloitte and the rest of our encumbrances for the Data Center.

That takes us over to the capital budget. As of the end of the first quarter, we've spent about $3 million. Half of that consists of the payments to the Department of Information Resources for Data Center, and that's pretty much one month worth of expenditures. And the reason why that's so high is we have some upfront costs that we have to pay at the beginning of the fiscal year. We also had some costs at the end of last fiscal year that we kind of had some issues with, so they didn't get paid until September, so that's why that number is so high. But we do have sufficient funds in our budget to pay for the entire Data Center contract, we're not in the situation we were in the past where we were short, we have plenty of funds for that.
Other significant expenditures are for automation and the first quarter expenditures are pretty much evenly split between RTS refactoring and our eLICENSING program. The other major category is the county growth and enhancement, and this program started piloting in November. As of the last report that we received from Enterprise Project Management, they have finished about 15 percent of the sites and the project is going pretty well from what we've found. So that's the other big percent there, that 17 percent for county growth and enhancement.

So that ends my portion of the presentation.

Are there any questions?

MR. PALACIOS: Any questions for Ms. Bankhead?

(No response.)

MR. PALACIOS: Okay. Thank you very much for your presentation.

We'll now move on to the relocation of the San Antonio Regional Service Center.

MS. FLORES: Again, moving on to item 5.D, this is not a briefing, this is an approval requested of the board. We are requesting approval to relocate the San Antonio Regional Service Center onto approved commercially leased property no later than August 31, 2017. This would be a ten-year lease.
The property address is 15150 Nacogdoches Road.

It's approximately 16 miles from our current location and our current location, we're actually co-located in the TransGuide in San Antonio off of 410. That particular property, TxDOT had an agreement with the City of San Antonio for space, and so we've been getting kind of squeezed in our location and we believe that the new location will give us the needed space that we need. We are leasing approximately 3,900 square feet. It is in a commercial property site, retail, and the cost over the ten years is approximately $880,159.

MR. WALKER: So is that the building, that Armstrong McCall, whatever it is?

MS. PIERCE: Yes. It's the one to the right of that and it kind of goes around the curve.

MR. WALKER: You're talking about where the black car is parked?

MS. PIERCE: For the record, Ann Pierce, Finance and Administrative Services Division deputy director.

The location is actually to the right. The photos that we got they took it kind of head-on at Armstrong McCall, but it's that same strip center and they look very similar.

MR. WALKER: So why did we move to a more non-
centralized location, Ann, instead of saying -- why did we not try to stay centralized to the general population there?

MS. PIERCE: We actually looked at numerous properties and it came down to availability of space and parking as been a big issue, as you well know from the Houston project. And we looked at probably 20 or 30 different properties, narrowed it down, and then some landlords were not inclined to follow the requirements that TFC sets forth, and this was the best property that we found and it meets the needs of the agency and it gives us the space that we need to run our business.

MR. WALKER: And we did a ten-year lease on this?

MS. PIERCE: Yes.

MS. FLORES: That's the standard for new leases is to do a ten-year lease. You'll see in the next item where it's not a ten-year lease.

MR. WALKER: And I know that we went through this process in Houston and one of the reasons that we didn't select is because we didn't want the general public to be put into an unsafe neighborhood and that was a concern that we really had in Houston. Is this a relatively safe environment, that we're not putting people into the ghettos, so to speak?
MS. PIERCE: Yes, sir. That was one of the considerations and why we narrowed out some of those other properties.

MS. CARAWAY: Is this an increase in square footage?

MS. FLORES: It's an increase of usable square footage. Yes, ma'am.

MR. WALKER: What's the difference?

MS. PIERCE: Usable.

MR. WALKER: I didn't get that, but go ahead.

MS. FLORES: That concludes our presentation.

MR. WALKER: What is the picture to the right here with the vacant parking lot there?

MS. PIERCE: That's the parking area where the trucks can be parked and pulled through.

MR. WALKER: That looks like a different shopping center.

MS. PIERCE: It's actually adjoining it and the landlord owns both sides and he's going to do some re-striping for us to make that available to us.

MR. TREVIÑO: Do you actually get a lot of commercial trucks?

MS. PIERCE: At this particular site, yes.

MR. WALKER: But in Houston I don't think we ever have any, do we?
MS. PIERCE: They do have some but not nearly as much as San Antonio demands.

MR. PALACIOS: Okay. Thank you, Ms. Flores. Any other questions?

MR. GRAHAM: No. I'd just make a motion, and before I make the motion, I would add that I presume that there's going to be ongoing -- there could be minor changes with this throughout the process, so I would probably recommend doing a motion that gives some latitude to the staff and to the executive director to be able to not be nailed down on every little detail.

MS. FLORES: If I could. The lease has actually already been negotiated with the landlord. The Texas Facilities Commission is actually the owners of the lease, and so we're asking that the board approve the lease but TFC actually negotiates the lease on our behalf, so these are the rates that have been approved.

MR. WALKER: Just out of curiosity, what if we voted no, what happens to TFC?

MS. FLORES: They would cancel the agreement. And they have indicated to the actual landlord that they're waiting on our board to approve this before moving forward, but there is a cancellation clause.

MR. GRAHAM: Okay. I move that the board delegate to the executive director, or her designee, the
authority to approve all necessary agreements for
relocation of the San Antonio Regional Service Center to
15150 Nacogdoches Road, San Antonio, Texas, including a
lease through the Texas Facilities Commission, no later
than August 31, 2017, with an estimated cost of year one
of $179,500 of one-time costs, $130,877 annual ongoing
costs, and a ten-year lease not to exceed $880,159. In
addition, I also move to authorize the agency's executive
director, or her designee, to approve any amendments with
the approval of the chairman.

MR. INGRAM: Second.

MR. TREVIÑO: Second.

MR. PALACIOS: Okay. We have a motion by Board
Member Graham and two seconds, Board Member Ingram, I
heard first, and Treviño. Any discussion?

(No response.)

MR. PALACIOS: All in favor of the motion
please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you very much, Ms. Pierce and Ms. Flores.

I will move on now to the renewal of the
commercial lease property for the El Paso Regional Service
Center.

MS. FLORES: Thank you, Chairman.
This request is a request of the board to approve renewing the current El Paso Regional Service Center commercial lease for another five-year period. The total projected lease cost should not exceed $301,653.42 over the next five years.

We have been at this current location since 2002. The address is 1227 Lee Treviño Drive, Suite 100, in El Paso, Texas. We've actually been on that street itself since 1992. So we had a different office, we moved it to this current location in 2002, but we've been in the general area since 1992. This is a five-year lease renewal agreement. Again, the Texas Facilities Commission will handle the lease agreement for us. The lease term doesn't end until October but we would like some time in order to negotiate any kind of renovations or changes that we would like for the landlord to consider, so we'd like a little lead time in order to do that.

As I mentioned, the square footage is approximately 3,700 square feet. We have approximately nine staff in El Paso: a regional manager, a coordinator, and seven customer service representatives. And all of our regional service centers, as Ms. Pierce has reminded me, are undergoing adds of physical security, badges, card readers. This particular area, the equipment has already been installed.
And that concludes our presentation.

MR. PALACIOS: I'll add, Mr. Walker, this location is a very safe area. Actually, El Paso is a very safe city. In fact, it is the safest city in America, just for the record.

MR. WALKER: I'm sure it's better than Chicago, from what I've been hearing on the radio.

(General laughter.)

MR. PALACIOS: Yes, considerably.

Any questions for Ms. Pierce or Ms. Flores?

(No response.)

MR. PALACIOS: Mr. Painter.

MR. PAINTER: Mr. Chairman, I make a motion to authorize the DMV's executive, or her designee, to finalize and approve the renewal purchase for the El Paso Regional Service Center lease for a five-year term, beginning November 1, 2017 through October 31, 2022. Also, authorize the executive director, or her designee, to approve any amendments to the lease with the approval of the chairman.

MR. PALACIOS: Motion by Mr. Painter.

MR. WALKER: Second.

MR. PALACIOS: Second by Board Member Walker.

Any discussion?

(No response.)
MR. PALACIOS: All in favor of Mr. Painter's motion please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you very much, Ms. Bankhead, Ms. Pierce and Ms. Flores.

Let's move on now quickly to item number 7, specialty plate designs. What happened to the plate?

MR. DUNCAN: Actually, Mr. Chairman, if you don't mind me jumping back. I was out of the room when I understand Mr. Walker asked a question about bridge hits, whether we had been sued for any bridge hits, and the answer is no. We did get a claim on the Salado hit.

MR. WALKER: We never have been sued but we were threatened to be sued.

MR. DUNCAN: That's correct.

MR. WALKER: Mr. Ingram shut me down, though, on that deal.

MR. INGRAM: I just wanted legal counsel here.

MR. WALKER: Rightly so.

MR. PALACIOS: Okay. Thank you, Mr. Duncan. I'll turn it over now to Mr. Jeremiah Kuntz to discuss the specialty plate designs.

MR. KUNTZ: Good afternoon. For the record, Jeremiah Kuntz, director of the Vehicle Titles and
Before you are three plates for your consideration. The three plates are listed over here. We have the Colorado School of Mines, a carbon fiber plate, and the University of Iowa. And in the interest of time, I will end my presentation.

MR. WALKER: These are My Plates proposals?
MR. KUNTZ: All three of these are My Plates proposals.

MR. WALKER: He's had pre-sales of 250 plates on all of these?
MR. KUNTZ: Yes. Under our current contract with My Plates, it requires that they pre-sell 200 license plates before it goes to production.

MR. WALKER: Steve, do you have 200 of these sold, each one of them?
MR. KUNTZ: They do the pre-sales after you adopt them.

MR. WALKER: Can you tell me what carbon fiber means? Is that some kind of acronym?
MR. KUNTZ: Carbon fiber is a design look.

MR. WALKER: I didn't know if that's a school or something or what it is.
MR. KUNTZ: It's essentially a black plate.

When carbon fiber is used in manufacturing, you can
generally see the fibers through the epoxy when it's applied, and so that's the look you would get when carbon fiber is used to make a piece, or plastic basically.

MR. INGRAM: Mr. Chairman, can I move that we approve all three plates as designed?

MR. PALACIOS: There's a motion by Board Member Ingram to accept all three plates.

Do I hear a second?

MR. PAINTER: Second.

MR. PALACIOS: Second by Board Member Painter.

All in favor please signify by raising your right hand.

(A show of hands: Board Members Caraway, Graham, Hardy, Ingram, Painter, Treviño, and Walker.)

MR. PALACIOS: We have approved from Board Members Ingram, Graham, Painter, Hardy, Treviño, Walker and Caraway.

All opposed?

(A show of hands: Board Member Palacios.)

MR. PALACIOS: One opposed, that would be me.

Thank you so much, Mr. Kuntz.

MR. WALKER: Chief Rodriguez would be proud of you.

(General laughter.)

MR. PALACIOS: Got to carry on the tradition,
Let's move on now to agenda item number 9, rules and adoptions. This now is regarding Title 43, Texas Administrative Code, Chapter 215, that will be presented by Counsel David Duncan, Daniel Avitia, and Bill Harbeson.

MR. DUNCAN: Members, David Duncan, general counsel.

This is hopefully the end of a very long saga. This rule has been proposed three times. This is the third attempt at adoption. We ran the clock out on two of them, and on this one we proposed it with many of the changes that had been suggested by commenters in the first two rounds. We did receive four comments on the current proposal. Those were submitted by TADA, the Texas Auto Dealers Association, the Texas Independent Auto Dealers Association, Gulf States Toyota, and Buddy Ferguson.

We had a meeting with many of those parties about all of the issues that were submitted and comment went through our proposed responses to those comments, and by the end of that meeting had reached agreement when we subsequently sent out a redraft of the language, primarily from the advertising Subchapter H, and reached agreement by all the parties that the language was acceptable. So as I understand it, we have no current outstanding
comments in opposition to the adoption of this rule with
the language changes we've made.

    MS. BREWSTER: Mr. Chairman, just a point of
clarification. We met with all of the parties.

    MR. DUNCAN: Correct.

    MS. BREWSTER: You said many, so I just wanted
to clarify that we met with all of them.

    MR. DUNCAN: Everyone who submitted a comment
was at the meeting.

    MR. PALACIOS: Okay. Thank you.

    MR. INGRAM: I hate to cut any of the time out
in the spotlight but for the interest of time, it's my
great honor to actually move that the board approve the
notice of re-adoption and the adoption of the amendments
new section and repeals to Chapter 215 as recommended by
staff.

    MR. TREVIÑO: I'll second.

    MR. PALACIOS: Okay. We have a motion by Board
Member Ingram to accept the changes, second by Board
Member Treviño. All in favor please signify by raising
your right hand.

    (A show of hands.)

    MR. PALACIOS: Motion passes unanimously.

Thank you very much, gentlemen.

    MR. GRAHAM: Good work.
MR. INGRAM: How long was that, two years?

MR. DUNCAN: And for the record, Mr. Richards has worked on this since the beginning and he was shaking his head saying they're not going to actually pass it. He went through many, many, many rounds of revisions on this rule.

MR. TREVIÑO: Thank you for your hard work.

MR. PALACIOS: Appreciate it. Thank you.

(Applause.)

MR. PALACIOS: Okay. Let's move on now to Title 43, Texas Administrative Code, Chapter 218, Motor Carriers, to be presented by Mr. Bill Harbeson and Jimmy Archer.

MR. HARBESON: Mr. Chairman, my name is Bill Harbeson. I'm the director of the Enforcement Division here at the Texas Department of Motor Vehicles.

This is again item number 10 found at page 444 of your board books. These rules are today before you for adoption. Again, in the interest of brevity, I'll summary exactly what these rules are. This is the work of the Household Goods Advisory Committee which met over the period of the last year and came up with various to the rules that both streamlined the industry for the carriers and also provide consumer protection matters.

After publication, we received one comment.
That was from John Esparza of the moving association, Southwest Movers Association, and Mr. Esparza's comment was that he was in favor of the rules as published.

MR. WALKER: Can he do that? He's on the committee.

MR. HARBESON: Mr. Esparza?

MR. WALKER: Wasn't he on the committee?

MR. HARBESON: No, he was not.

MR. WALKER: Oh, Les was, I guess.

MR. HARBESON: No, sir. Mr. Esparza was in attendance for all the meetings and Mr. Esparza, of course, was instrumental in asking for the committee to move forward and made the nominations of the carrier members of the committee. In addition to the carriers, of course, there was law enforcement members and public members, in addition to staff.

So unless there are any questions, I am asking the board to approve these rules.

MR. PALACIOS: Any questions for Mr. Harbeson or Mr. Archer?

MR. PAINTER: I make a motion to approve.

MR. WALKER: Second.

MR. PALACIOS: Okay. We have a motion from Board Member Painter to approve, second by Mr. Walker. All in favor of the motion please signify by raising your
right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you very much, Mr. Harbeson, Mr. Archer.

We'll move on to agenda item number 11, Title 43, Texas Administrative Code.

MR. DUNCAN: Again, members, David Duncan, general counsel.

These are amendments to implement legislation from the past legislative session, House Bill 2739, which allowed any situation where you are required to provide proof of identity, you're allowed to use a concealed handgun license in lieu of that. You may recall that we had done a different package that implemented this for many of our rules. Some of our rules were open at that time and you can't put one while it's pending, so now we're going back and cleaning up the last of our rules. So this is just a statutory implementation to clean up the last few rules where ID is required.

MR. PAINTER: Question.

MR. DUNCAN: Yes, sir.

MR. PAINTER: It's no longer a concealed handgun license, it's open carry.

MR. DUNCAN: We're cleaning up the terminology.

License to carry a handgun. Yes, sir. And we're
clarifying the terminology in these changes as well.

Thank you for pointing that out.

MR. TREVIÑO: I move that the board approve the proposed amendments to Chapter 206 and 221 for publication in the Texas Register for public comment.

MS. HARDY: Second.

MR. PALACIOS: Motion by Board Member Treviño to approve the proposed amendments, second by Board Member Hardy. Any discussion?

(No response.)

MR. PALACIOS: All in favor of the motion please signify by raising your right hand.

(A show of hands.)

MR. PALACIOS: Motion passes unanimously.

Thank you very much, gentlemen.

MR. WALKER: We've got one more.

MR. PALACIOS: There's another page there.

Yes. Okay. We're getting down to the finish line, folks.

Hang in there.

Agenda item number 12, Title 43, Texas Administrative Code, Chapter 218, Motor Carriers, to be presented by Mr. Archer and Mr. Harbeson.

MR. ARCHER: Thank you, Mr. Chairman, members of the board. For the record, my name is Jimmy Archer, director of the Motor Carrier Division.
For the board's consideration, I'm proposing amendments to 43 Texas Administrative Code, Chapter 218, to be published in the Texas Register linked to motor carrier registration. Most of the proposed amendments are the result of over 16 meetings of the motor carrier credentialing working group, and the working group included personnel from the Motor Carrier Division, Enforcement Division, General Counsel's Office, and the IT Division.

Our mission was to expand the web enabling capabilities of the MCCS, Motor Carrier Credentialing System, and to facilitate certain enhancements to MCCS. The underlying purposes were to improve the credentialing process, protect consumers who use the services of motor carriers, and to automate the credentialing process to ultimately enable all carriers to apply online. This is, like I said, the result of almost a year and a half of meetings to fully web enable this. I can go into detail if you'd like me to, but basically we're asking for more information on the front end when the carriers apply for credentials and also enable them to do it online themselves. So I'll be happy to answer any questions.

MR. WALKER: I move that the board approve the proposed amendments, repeal and the new sections of Chapter 218 for publication in the Texas Register for
public comment.

    MS. HARDY: Second.

    MR. PALACIOS: Motion by Board Member Walker, second by Board Member Hardy. All in favor of the motion please signify by raising your right hand.

    (A show of hands.)

    MR. PALACIOS: Motion passes unanimously.

Thank you very much, Mr. Archer, Mr. Harbeson.

We have one item left that we need to go into executive session, so I will say we are now going into closed session. It is 12:58 p.m. on January 5, 2017. We'll go into closed session under Texas Government Code Sections 551.071, 551.074, 551.076. For those of you in the audience, I anticipate being in executive session for approximately ten minutes and we'll reconvene in open session after that.

    With that, we're recessed from public meeting and going into executive session.

    (Whereupon, at 12:58 p.m., the meeting was recessed, to reconvene this same day, Thursday, January 5, 2017, following conclusion of the executive session.)

    MR. PALACIOS: It's approximately 1:17 p.m. on January 5, 2017. The Board of the Texas Department of Motor Vehicles is now in open session. We want to note that no action was taken during closed session.
Okay, folks, it looks like we have reached the end of our agenda unless there's any further business. Is there any further business?

MR. INGRAM: I move we adjourn.

MR. PAINTER: Second.

MR. PALACIOS: Motion by Board Member Ingram, second by Board Member Painter. All in favor?

(A chorus of ayes.)

MR. PALACIOS: Let the record reflect the vote is unanimous. It is now 1:18 p.m. We are adjourned.

(Whereupon, at 1:18 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TxDMV Board
LOCATION: Austin, Texas
DATE: January 5, 2017

I do hereby certify that the foregoing pages, numbers 1 through 185, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Motor Vehicles.

/s/ Nancy H. King 1/12/2016
(Transcriber) (Date)

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