

No. **2022-7218**

**Official Order
of the
Texas Commissioner of Insurance**

Date: 02/09/2022

Subject Considered:

Texas Department of Insurance

v.

James Gerard Matysek

SOAH Docket No. 454-19-6623.C

General remarks and official action taken:

The subject of this order is James Gerard Matysek's public insurance adjuster license. This order revokes Mr. Matysek's license.

Background

After proper notice was given, the above-styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the Texas Department of Insurance (TDI) revoke Mr. Matysek's public insurance adjuster license. A copy of the proposal for decision is attached as Exhibit A.

TDI adopts the administrative law judge's proposed findings of fact and conclusions of law with changes to Findings of Fact Nos. 13, 27, and 29 as described in this order.

Legal Authority for Changes to the Proposal for Decision

The legal authority for the changes to the proposal for decision made in this order is TEX. GOV'T. CODE § 2001.058(e)(3), which provides that "[a] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines . . . that a technical error in a finding of fact should be changed."

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Findings of Fact Nos. 13, 27, and 29

As included in the proposal for decision, Finding of Fact No. 13 states:

In claims for the Jenkses and Mr. Davis, Mr. Matysek failed to provide requested information to the insurance company as required by policy.

The reference to the Jenkses in this finding is an error. The record in this case and the discussion in the proposal for decision demonstrate that Mr. Matysek failed to provide requested information to Mr. Davis' and the Pricketts' respective insurance companies, not the Jenkses' company.¹ This technical error is corrected below.

As included in the proposal for decision, Finding of Fact No. 27 states:

Mr. Matysek attempted to obtain additional sums after a compromise settlement had been reached and paid between the insurance company and the Hartmans.

Also, as included in the proposal for decision, Finding of Fact No. 29 states:

Mr. Matysek made baseless allegations that: Safeco or its counsel sent a sniper to the Graffs' roof; Hochheim Prairie Farm Mutual Insurance Association (Hochheim) wanted to kill or injure policyholders; Allstate was intent on killing the Jenkses; a person involved in the inspection process used chemical agents and toxins in the Jenkses' house, concealed weapons or neurotoxins in his anus, and was affiliated with the Mafia; an engineer involved with the [sic] Mr. Tran's inspection process had a drinking problem; a contractor engaged in sexual and racist activity on Mr. Tran's roof; Ms. Mensinger sought male companionship from Mr. Matysek; Hochheim and its counsel attempted to kill a previous client; and Hochheim abused the elderly and attempted to kill the Hartmans.

The references to the Hartmans in these two findings are errors. The record in this case and the proposal for decision demonstrate that: (1) Mr. Matysek attempted to obtain additional sums after a compromise settlement had been reached and paid between the insurance company and the Hermeses, not the Hartmans; and (2) Mr. Matysek made

¹ See Proposal for Decision, pages 18–20 (discussing allegations related to the Jenkses), pages 27–29 (discussing allegations related to the Pricketts), page 43 ("For the claims of the Pricketts and Mr. Davis, Mr. Matysek failed to provide requested information to the insurance company.")

baseless allegations that Hochheim attempted to kill the Hermeses, not the Hartmans.² These technical errors, as well as a typographical error (improper use of the word “the”) in Finding of Fact No. 29, are corrected below.

Findings of Fact

1. Findings of Fact Nos. 1–12, 14–26, 28, and 30–36 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Finding of Fact No. 13 as contained in Exhibit A, the following finding of fact is adopted:

In claims for the Pricketts and Mr. Davis, Mr. Matysek failed to provide requested information to the insurance company as required by policy.

3. In place of Finding of Fact No. 27 as contained in Exhibit A, the following finding of fact is adopted:

Mr. Matysek attempted to obtain additional sums after a compromise settlement had been reached between the insurance company and the Hermeses.

4. In place of Finding of Fact No. 29 as contained in Exhibit A, the following finding of fact is adopted:

Mr. Matysek made baseless allegations that: Safeco or its counsel sent a sniper to the Graffs' roof; Hochheim Prairie Farm Mutual Insurance Association (Hochheim) wanted to kill or injure policyholders; Allstate was intent on killing the Jenkses; a person involved in the inspection process used chemical agents and toxins in the Jenkses' house, concealed weapons or neurotoxins in his anus, and was affiliated with the Mafia; an engineer involved with Mr. Tran's inspection process had a drinking problem; a contractor engaged in sexual and racist activity on Mr. Tran's roof; Ms. Mensinger sought male companionship from Mr. Matysek;

² See Proposal for Decision, pages 12–13 (discussing allegations related to the Hartmans), pages 32–33 (discussing allegations related to the Hermeses), pages 49–50 (“Mr. Matysek made baseless allegations and unprofessional comments during his representation of the following clients . . . the Hermeses, by alleging that Hochheim abused the elderly and attempted to kill the Hermeses Additionally, while representing the Hermeses, Mr. Matysek attempted to obtain additional sums after a compromise settlement had been reached.”).

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Hochheim and its counsel attempted to kill a previous client; and Hochheim abused the elderly and attempted to kill the Hermeses.

Conclusions of Law


The conclusions of law contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

Order

It is ordered that James Gerard Matysek's public insurance adjuster license is revoked.

DocuSigned by:

FC5D7EDDFFB4F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

75578E954EFC48A... _____
James Person, General Counsel

DocuSigned by:

27ADF3DA6BAF4B7... _____
Justin Beam, Assistant General Counsel



<p>TEXAS DEPARTMENT OF INSURANCE, Petitioner</p> <p>v.</p> <p>JAMES GERARD MATYSEK, Respondent</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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**SOAH DOCKET NO. 454-19-6623.C
TDI NO. 9284**

TEXAS DEPARTMENT OF INSURANCE,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
JAMES GERARD MATYSEK,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) brought this disciplinary action against the Respondent, James Gerard Matysek. Staff alleges that Mr. Matysek violated the Texas Insurance Code and demonstrated his lack of fitness as a public insurance adjuster by: failing to conduct business fairly; making misrepresentations to the insurer; engaging in the unauthorized practice of law; failing to prepare his clients' claims in accordance with their policies; engaging in fraudulent transactions; failing to provide accurate damage estimates; failing to protect the confidential information of his clients; making repeated, inappropriate and unsubstantiated claims against the insurer and other parties; attempting to extort money from an insurer for the actions of an independent adjuster; and demonstrating overall lack of competence and trustworthiness. Staff seeks to revoke Mr. Matysek's public insurance adjuster license. The Administrative Law Judge (ALJ) finds that Staff established violations sufficient to support revocation of Mr. Matysek's license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no disputed issues of notice or jurisdiction in this case. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing on the merits was held via the Zoom videoconferencing platform on February 1-4, 2021, before ALJ Linda Brite of the State Office of Administrative Hearings. Staff attorneys Stephanie Andrews and Cassie Tigue represented Staff. Mr. Matysek appeared and

represented himself. The record closed on April 23, 2021, upon submission of written closing briefs.¹

II. APPLICABLE LAW

The Texas Insurance Code authorizes the Department to regulate the business of insurance in this state.² The Department's regulatory purview includes complaint resolution and investigation of violations of the Insurance Code and related rules, such as alleged misconduct by insurance agents and adjusters.³ For a violation of the Insurance Code, the Department may revoke, suspend, or deny renewal of a license, place the license holder on probation if the license holder was suspended, assess an administrative penalty, or issue a reprimand.⁴ After notice and opportunity for a hearing, the Department's Commissioner may cancel or revoke an authorization if the holder of the authorization is found to be in violation of the Insurance Code or a Commissioner rule.⁵ Staff bears the burden of proof on these allegations.⁶ The standard of proof is by a preponderance of the evidence.⁷

A licensee is required to maintain a place of business in this state that is accessible to the general public and maintain records required by Insurance Code chapter 4102.⁸ Further, a licensee must keep a complete record of each of his transactions as a public insurance adjuster.⁹ The records

¹ Mr. Matysek's closing briefs included factual assertions, documents, and images not introduced at the hearing. Because the evidentiary record closed upon conclusion of the hearing on February 4, 2021, these matters were not considered in the preparation of this Proposal for Decision. On June 1, 2021, Mr. Matysek filed a motion for continuance. Because the hearing on the merits already concluded, the motion for continuance is hereby denied.

² Tex. Ins. Code § 31.002(1).

³ Tex. Ins. Code §§ 31.002(3), 521.002.

⁴ Tex. Ins. Code § 4005.102.

⁵ Tex. Ins. Code § 4102.201(a)(1).

⁶ 1 Tex. Admin. Code § 155.427.

⁷ *Granek v. Texas St. Bd. of Med. Examn'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

⁸ Tex. Ins. Code 4102.106(a).

⁹ Tex. Ins. Code § 4102.110(a).

must be maintained for at least five years after the termination of the transaction and open to examination by the Commissioner.¹⁰

A license holder may not use a name different from the name under which the license holder is currently licensed in advertisements, solicitations, or contracts for business unless the name is used under a valid assumed name certificate as provided by Texas Business and Commerce Code chapter 71.¹¹ An agent must register any assumed name or additional office by filing with the Department a completed form with the required fee.¹²

Licenseses must prepare each claim for an insured in accordance with the terms and conditions of the insurance contract under which recovery is sought.¹³ A licensee may not divulge to any other person, except as the law may require, any information obtained, except at the direction of his employer or the client for whom the information is obtained.¹⁴

A licensee may receive a commission for service as a public insurance adjuster consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or other method of compensation.¹⁵ A licensee is entitled to reasonable compensation from the insured for services provided by the licensee on behalf of the insured, based on the time spent on the claim and expenses incurred, until the claim is paid or the insured receives a written commitment to pay from the insurer.¹⁶ A licensee may not accept any payment that fails to conform with these parameters.¹⁷

¹⁰ Tex. Ins. Code § 4102.110(b).

¹¹ Tex. Ins. Code § 4102.162.

¹² 28 Tex. Admin. Code § 19.902(c).

¹³ Tex. Ins. Code § 4102.102.

¹⁴ Tex. Ins. Code § 4102.153.

¹⁵ Tex. Ins. Code § 4102.104(a).

¹⁶ Tex. Ins. Code § 4102.104(b).

¹⁷ Tex. Ins. Code § 4102.104(d).

Pursuant to Insurance Code § 4102.005, the Commissioner has adopted a code of ethics for public insurance adjusters in 28 Texas Administrative Code § 19.713. The code of ethics for public insurance adjusters provides in relevant part:

- Licensees must conduct business fairly with their clients, insurance companies, and the public.¹⁸
- Licensees must not make a misrepresentation, in violation of Texas Insurance Code chapter 4102, to an insured or to an insurance company in the conduct of their actions as public insurance adjusters.¹⁹
- Licensees must have appropriate knowledge and experience for the work they undertake and should obtain competent technical assistance, when necessary, to help handle claims and losses outside their areas of expertise.²⁰
- Licensees must not engage in the unauthorized practice of law, including the giving of legal advice to any person in the license holder's capacity as a public insurance adjuster.²¹
- Licensees must not disseminate or use any form of agreement, advertising, or other communication, regardless of format or medium, that is harmful to the profession of public insurance adjusting and that does not comply with Insurance Code chapter 4102, subchapter D, or other provisions of the Insurance Code.²²

The Commissioner may revoke a license on the basis of: material misrepresentation, with intent to deceive, of the terms of an insurance contract; engaging in a fraudulent transaction; and demonstrated incompetence or untrustworthiness in the conduct of the license holder's affairs under the license.²³ The Commissioner may also revoke a license under Insurance Code chapter 4102 on the basis of a cause that constitutes grounds for denial of an original license,²⁴

¹⁸ 28 Tex. Admin. Code § 19.713(b)(1).

¹⁹ 28 Tex. Admin. Code § 19.713(b)(3).

²⁰ 28 Tex. Admin. Code § 19.713(b)(6).

²¹ Tex. Ins. Code § 4102.156; 28 Tex. Admin. Code § 19.713(b)(7).

²² 28 Tex. Admin. Code § 19.713(b)(9).

²³ Tex. Ins. Code § 4102.201(a)(6)-(8).

²⁴ Tex. Ins. Code § 4102.201(a)(2).

such as a finding that the licensee is not trustworthy or is not of a moral character that reasonably ensures that the license holder will conduct the business of public insurance adjuster fairly and in good faith without detriment to the public.²⁵

III. DISCUSSION

At the hearing, Staff offered 21 exhibits and the testimony of eight witnesses:

- (1) Steven Badger, J.D. of Zelle, LLP;
- (2) Mark Tillman, J.D. of Tillman Batchelor, LLP;
- (3) Elizabeth Knight, J.D. of Tillman Batchelor, LLP;
- (4) Sandra Reiser of Liberty Mutual;
- (5) Stanton Strickland, J.D. of Mitchell Williams;
- (6) Michael Steven Wilson, J.D. of Perkins Law Group PLLC;
- (7) Richard Jeffery Gish, P.E., D.F.E. of BSC Forensics; and
- (8) Lewis Weldon Wright, IV of the Department.

Mr. Matysek offered no exhibits but testified on his own behalf. All offered exhibits were admitted.

A. Allegations and Evidence

Mr. Matysek holds a public insurance adjuster license originally issued by the Department on August 4, 2014.²⁶

²⁵ Tex. Ins. Code § 4102.053(a)(4).

²⁶ Staff Ex. 3; Transcript of Hearing on the Merits (Tr.) at 776-78.

1. Allegations Related to Mr. Miller²⁷

On April 4, 2016, Mr. Miller hired Mr. Matysek to represent him in a claim with Allstate Insurance Company (Allstate).²⁸ Mr. Matysek never returned Mr. Miller's calls. Mr. Miller attempted to send Mr. Matysek a letter by certified mail; however, Mr. Matysek had relocated his place of business from San Marcos to Georgetown and failed to notify Mr. Miller of his new address.²⁹ Mr. Miller attempted to contact Mr. Matysek for over a year with no response. Mr. Miller filed a complaint with the Department.³⁰ Mr. Matysek admitted that he lost the file while moving.³¹ Mr. Matysek's failure to maintain records and respond to Mr. Miller resulted in a significant delay in the resolution of his claim.³² In response to Mr. Miller's complaint, Mr. Matysek discussed and sent to the Department information, pictures, and documents regarding completely separate insureds.³³

Staff alleges that Mr. Matysek: (1) failed to contact Mr. Miller or respond to his calls for over a year after being hired; (2) moved without notifying him; and (3) lost his file, causing significant delay in resolution of his claim.

²⁷ Staff Ex. 1 Notice of Hearing (NOH) Factual Allegations 5-11. Full names of the insureds were not disclosed in the NOH or exhibits.

²⁸ Staff Ex. 4 at 58-60.

²⁹ Staff Ex. 4 at 113.

³⁰ Staff Ex. 4 at 53-57.

³¹ Staff Ex. 4 at 82-86, 112-17, 258-59; Tr. at 1084.

³² Staff Ex. 4 at 54.

³³ See Staff Ex. 4 at 82 ("Allstate destroyed one of my policyholder's property and on another occasion almost electrocuted one of my policyholders."); Staff Ex. 4 at 83 ("Allstate has destroyed property before my very eyes and then not paid for it. They have abandoned widows and elderly people and they destroyed the life savings and livelihoods of people."); Staff Ex. 4 at 145 ("Please pass this on to our supervisor immediately we dealing [*sic*] with an emergency claim situation with Allstate. As in immediate since the adjuster is armed."); Staff Ex. 4 at 69-108, 112-259 (emails containing unrelated information and attachments).

With regard to the record keeping, Mr. Matysek testified that he moved offices and “[s]tuff does get lost.”³⁴ Mr. Matysek admitted at the hearing to losing Mr. Miller’s file.³⁵

2. Allegations Related to Rucci LLC (Rucci)³⁶

On April 12, 2016, Rucci hired Mr. Matysek to represent the company in its claim with Nationwide Insurance Company (Nationwide).³⁷ During his representation of Rucci, Mr. Matysek sent an email to an unrelated third party that contained sensitive information about Rucci’s claim. That unrelated third party was in active litigation with Nationwide and was also a client of Mr. Matysek. On September 22, 2016, Nationwide filed a complaint against Mr. Matysek with the Department.³⁸

When questioned during TDI’s investigation about sending information to unrelated third parties, Mr. Matysek admitted that he made a mistake and stated “[his] finger either slipped and selected them as [he] hit [‘]send[’] or the phone had a glitch in the communication.”³⁹

Staff alleges that Mr. Matysek sent an email to an unrelated third party that contained sensitive information from Rucci’s claim.

³⁴ Tr. at 1036.

³⁵ Tr. at 1084.

³⁶ NOH Factual Allegations 12-15.

³⁷ Staff Ex. 5 at 265.

³⁸ Staff Ex. 5 at 263-66.

³⁹ Staff Ex. 5 at 274, 276.

3. Allegations Related to the Graffs⁴⁰

The Graffs filed a claim with Safeco Insurance of America (Safeco)⁴¹ with a loss date of March 8, 2016, asserting storm damage to their property.⁴² Around April 8, 2016, Safeco issued a payment in the amount of \$1,301.97, at which point the Graffs indicated their public insurance adjuster would take over.⁴³ On August 15, 2016, the Graffs hired Mr. Matysek to represent them in their supplemental claim.⁴⁴ On the same day, Mr. Matysek faxed a letter demanding re-inspection.⁴⁵

Mr. Matysek sent an estimate of \$503,330.59 in damages, which was 72 times the amount of Safeco's estimate.⁴⁶ Mr. Matysek is compensated with a percentage of any claim payment as commission for his work as a public insurance adjuster.⁴⁷ Safeco found no additional damage but hired an engineer to re-inspect the property. That engineer determined that there were minimal weather-related damages.⁴⁸

During the course of this claim, Mr. Matysek wrote that certain engineering firms would not be allowed on the Graffs' property "without a peace officer being present as well." Mr. Matysek continued, "If any of these firms is chosen, we demand Safeco pay for 2 constables or Sheriff's Deputies or funeral detail package to be present as witnesses as well."⁴⁹ In response

⁴⁰ NOH Factual Allegations 16-24.

⁴¹ Safeco is an affiliate or subsidiary of Liberty Mutual Group. Tr. at 179, 268.

⁴² Tr. at 296.

⁴³ Staff Ex. 6 at 394-95.

⁴⁴ Staff Ex. 6 at 395.

⁴⁵ Staff Ex. 6 at 395.

⁴⁶ Staff Ex. 6 at 395.

⁴⁷ Tr. at 914.

⁴⁸ Staff Ex. 6 at 395; Tr. at 297.

⁴⁹ Staff Ex. 6 at 395.

to these statements by Mr. Matysek, Safeco obtained the legal services of Mark Tillman and Elizabeth Knight.⁵⁰

On May 19, 2017, Mr. Matysek filed a second claim asserting hail damage to the Graffs' property from a separate event. Safeco inspected the property and paid the claim. Mr. Matysek sought additional money under the policy.⁵¹ Mr. Matysek invoked a re-inspection clause but then failed to submit to an examination under oath (EUO) or provide other documents needed to process the claim as requested by Safeco and required by the insurance contract.⁵²

Mr. Matysek asserted that the Graffs were attempting to repair the damage to their property and that the delay by Safeco was preventing them from selling their home. However, at the time of Mr. Matysek's assertion, more than a year had passed since the Graffs had already sold their home.⁵³ Mr. Matysek claimed Safeco harassed the Graffs, destroyed their private property, and obstructed their claim,⁵⁴ but he did not offer evidence at the hearing to support these claims.

Staff also produced evidence that Mr. Matysek claimed Safeco sent a sniper to the Graffs' residence. During the Department's investigation, Mr. Matysek presented the Department with a photo of a man on a roof, claiming that the alleged sniper "matches the DC and Michigan Shooters"⁵⁵ and that Safeco "ha[s] a History of hiring strange and unscrupulous individuals[.]"⁵⁶ Ms. Knight testified that Mr. Matysek also sent the same photo in his work on a claim for the Graffs with Farm Bureau Insurance Company (Farm Bureau), claiming Farm Bureau was the insurer who sent the sniper to murder his client.⁵⁷ With regard to the alleged sniper, Mr. Matysek

⁵⁰ Tr. at 84-85; 268-69.

⁵¹ Staff Ex. 6 at 395.

⁵² Staff Ex. 6 at 288, 302, 308, 323.

⁵³ Staff Ex. 6 at 388-89; Tr. at 277-78.

⁵⁴ Staff Ex. 6 at 295-96.

⁵⁵ Staff Ex. 6 at 355.

⁵⁶ Staff Ex. 6 at 295.

⁵⁷ Tr. at 280-81.

sent the following correspondence to Safeco, its counsel at Tillman Batchelor, LLP, and the Department:

- Here is a photograph of the person on [the Graffs'] commercial property laying in sniper position for some reason.⁵⁸
- This photograph by itself is quite alarming and disturbing and we to this day have not [*sic*] reason or explanation as to why someone was on [the Graffs'] roof laying in prone position at the same time [the Graffs are] being asked to give an Examination Under Oath or to appear in a set location to meet Tillman [Batchelor], LLP in a hotel or office building.⁵⁹
- The entire process of dealing with Safeco, Liberty Mutual and Farm Bureau on [the Graffs'] properties have [*sic*] been totally bizarre to say the least but the picture of a gentleman laying in sniper position on [the Graffs'] roof definitely takes the cake and I had to sound the alarm as loud as I could in this matter.⁶⁰
- We fully believe that Safeco/Liberty Mutual or someone from Tillman Batchelor, LLP posted a sniper, [stalker] and definite trespasser on [the Graffs'] property.⁶¹

At the hearing, Mr. Matysek did not offer evidence showing the man depicted was a sniper.

When questioned at the hearing about the sniper claims, Mr. Matysek stated that if there is a person on a roof in prone position, he will look into it and ask people about it. Mr. Matysek acknowledged he "may have gone over the top," but the Graffs' claim "was the largest insurance claim that [he] ever had."⁶²

The following quotes are taken from Mr. Matysek's correspondence to Safeco, Tillman Batchelor, LLP, and the Department regarding the Graffs' claim:

⁵⁸ Staff Ex. 6 at 687; Tr at 302.

⁵⁹ Staff Ex. 6 at 687; Tr at 302-03.

⁶⁰ Staff Ex. 6 at 687; Tr at 303.

⁶¹ Staff Ex. 6 at 352; Tr at 304.

⁶² Tr. at 1047.

- We need these psycho lawyers removed[.]⁶³
- We are really really tired of dealing with absolute buffoons and idiots on this claim.⁶⁴
- So we are dealing with a very, very, very sick and sadistic company called Safeco and its parent company called Liberty Mutual and an even sicker law firm called Tillman Batchelor, LLP hired to be a hound dog guarding the bank of Safeco in this situation.⁶⁵
- We demand that your firm pay the \$65,000 for your tortious interference in my contract as well as the contract between Safeco and Mr. and Mrs. Graff for your interference in the claims process.⁶⁶
- While your fat and obnoxious law firm cashed money and billed hours to rip off a policyholder, the sole reason for your firm's existence is to harm policyholders in Texas and other states.⁶⁷
- You are in deep, deep doo-doo now based on the facts.⁶⁸
- Let me remind you over and over again you piece of trash attorney.⁶⁹

Additionally, Mr. Matysek stated the following to his client and to counsel for Safeco: "That is a provision under the policy you used as an act of bad faith which has never been resolved and we have grounds to seek action. There is no statute of limitation on appraisal in a Safeco or Liberty Mutual policy and we called for appraisal well within the statute of time."⁷⁰

⁶³ Staff Ex. 6 at 352; Tr at 304.

⁶⁴ Staff Ex. 6 at 326.

⁶⁵ Tr. at 305.

⁶⁶ Tr. at 305.

⁶⁷ Tr. at 305.

⁶⁸ Tr. at 305-06.

⁶⁹ Tr. at 306.

⁷⁰ Tr. at 306.

Staff alleges that Mr. Matysek: (1) sent an estimate 72 times greater than Safeco's estimate, despite the engineer determining that there were minimal weather-related damages; (2) obstructed resolution of a claim by refusing to provide requested documentation and obstructing an EUO; (3) sent false information to Safeco; (4) made inflammatory statements and unsubstantiated claims regarding Safeco and its counsel, including an allegation that Safeco sent a sniper to Mr. Graff's property; and (5) engaged in the unauthorized practice of law.

4. Allegations Related to the Hartmans⁷¹

On April 30, 2016, the Hartmans filed a claim for hail damage with Hochheim Prairie Farm Mutual Insurance Association (Hochheim). On or about August 15, 2016, the Hartmans hired Mr. Matysek.⁷² Mr. Matysek and Hochheim disagreed about the property damage amount,⁷³ so on September 2, 2016, Hochheim demanded an appraisal per the policy terms.⁷⁴ Mr. Matysek did not appoint an appraiser even after the Hartmans requested he do so. Ms. Hartman was unaware that Mr. Matysek had not appointed an appraiser until she was notified in an EUO.⁷⁵ According to Staff, Mr. Matysek delayed appointing an appraiser for more than two months without his clients' knowledge or consent.⁷⁶

Mr. Matysek asserted that there was serious structural damage to the Hartmans' property and made the following statements to Hochheim via email:

- Loss of life could very easily occur in the next storm or cold front. The back of the house may pull the rest of the house down the hill.⁷⁷

⁷¹ NOH Factual Allegations 25-31.

⁷² Staff Ex. 7 at 959-62.

⁷³ See Staff Ex. 7 at 1064.

⁷⁴ Tr. at 593-94.

⁷⁵ Staff Ex. 7 at 1113.

⁷⁶ Tr. at. 594-96.

⁷⁷ Staff Ex. 7 at 978; Tr. at 601.

- We do not think this house is tenable with good conscious [*sic*][.]⁷⁸
- We believe this house will have to be totaled due to the wind damage[.]⁷⁹
- There is structural building collapse type damage which has occurred[.]⁸⁰
- The house is now ruined So now the house cannot be fixed. The entire end floor and ceiling and gaps between the floors has shifted. The windows are popping out of the wall like a fish brought up from the bottom of the ocean. Fish brought up from the bottom experience the bends and their eyes pop out and out of socket . . . The property is totaled[.]⁸¹

However, Hochheim's engineer reports showed no structural damage existed.⁸² Even after the engineer reports were prepared, Mr. Matysek sent an email on June 19, 2017, stating that the "first and second floors no longer align . . ." and that there was "huge movement and gaps in between layers of the structure."⁸³ Mr. Matysek was entitled to a 7% fee from the final settlement amount.⁸⁴

Staff alleges that Mr. Matysek: (1) delayed appointing an appraiser after Hochheim demanded an appraisal, without the Hartmans' knowledge or consent; (2) made material misrepresentations to Hochheim about the extent of the property damage; (3) sent unprofessional and dishonest communications to Hochheim and the Hartmans; and (4) either cannot properly and accurately assess damage or intentionally made false statements in an attempt to over-inflate the final settlement amount.

⁷⁸ Staff Ex. 7 at 987.

⁷⁹ Staff Ex. 7 at 987; Tr. at 600.

⁸⁰ Staff Ex. 7 at 988; Tr. 602.

⁸¹ Staff Ex. 7 at 1464; Tr. at 603.

⁸² Staff Ex. 7 at 605; *see* Staff Ex. 7 at 1296-98 (Dec. 8, 2016), 1261-67 (Jan. 31, 2017), 1450-51 (May 9, 2017), 1320 (engineer report).

⁸³ Staff Ex. 7 at 1498.

⁸⁴ Staff Ex. 7 at 959.

5. Allegations Related to Ms. Zimmerhanzel⁸⁵

On August 22, 2016, a claim was filed on Ms. Zimmerhanzel's policy with Safeco related to damage from a toilet that had overflowed and damaged her house.⁸⁶ Shortly thereafter, the property was inspected and a payment was made.⁸⁷

On April 4, 2017, Ms. Zimmerhanzel hired Mr. Matysek to represent her on a separate wind/hail claim that she subsequently filed on May 3, 2017.⁸⁸ Mr. Matysek sent an estimate for damages to Safeco which included damage from the 2016 claim that Safeco had already paid. Mr. Matysek sent an estimate for \$353,866.52 for the dwelling but failed to segregate damages from the two different claims.⁸⁹ Ms. Knight testified that despite being asked multiple times to segregate the claims, Mr. Matysek refused to provide an estimate detailing the damage related solely to the wind/hail claim.⁹⁰

On June 9, 2017, Donan Engineering inspected the property and found no storm openings in the roof of the house but some missing shingles on one side of a shed, and significant old damage, wear and tear, and foundation movement. No repairs were recommended.⁹¹ Safeco then chose a second engineer from a list provided by Mr. Matysek.⁹² On August 17, 2017, Nelson Forensics inspected the property and concluded that there were no safety issues at the home and the insured could continue living there.⁹³ Nelson Forensics failed to find any hail or wind related

⁸⁵ NOH Factual Allegations 38-48.

⁸⁶ Staff Ex. 9 at 1893; Tr. at 484.

⁸⁷ Staff Ex. 9 at 1893-94.

⁸⁸ Staff Ex. 9 at 1894; Tr. at 307.

⁸⁹ Staff Ex. 9 at 1895, 1956, 1993; Tr. 308-09.

⁹⁰ Tr. at 309.

⁹¹ Staff Ex. 9 at 1895, 2033-63 (engineer report), 2251-59.

⁹² Staff Ex. 9 at 1895.

⁹³ Staff Ex. 9 at 1897, 2064-131 (Nelson Forensics evaluations), 2274-341.

damage but did find “numerous issues with wear and tear, deterioration, and differential movement.”⁹⁴

On September 19, 2017, Safeco invoked appraisal on the wind/hail claim.⁹⁵ Pursuant to the policy, Mr. Matysek was required to appoint an appraiser for his client.⁹⁶ Mr. Matysek failed to appoint an appraiser and instead responded to Safeco, “[A]re the appraisers expected to dig in [Ms. Zimmerhanzel]’s poop and urine and determine the extent of damage at the residence?”⁹⁷ On October 3, 2017, Safeco invoked appraisal on Ms. Zimmerhanzel’s plumbing claim.⁹⁸

Ms. Knight testified that Mr. Matysek represented to Safeco that Ms. Zimmerhanzel had no working toilet when she actually did.⁹⁹ Mr. Matysek sent the following correspondence to Safeco regarding Ms. Zimmerhanzel’s bodily functions:

- Going number 2 or defocating [*sic*] is a big deal for an elderly woman and we need this issue addressed in official letterhead as falls for senior citizens is one of the leading causes of death and we need to know if you are just wanting to kill off this widow or what she is supposed to do at this point because she is pooping live feces into the ground at this point and this is a violation of the law to launch live fecal matter into the ground.¹⁰⁰
- We need a law firm response on where Mrs. Zimmerhanzel is supposed to take a dump, defecate, go number 2, poop, or discharge her feces in the mean time [*sic*].¹⁰¹

⁹⁴ Staff Ex. 9 at 1899.

⁹⁵ Staff Ex. 9 at 900; Tr. at 315.

⁹⁶ Staff Ex. 9 at 12163-64.

⁹⁷ Staff Ex. 9 at 1901.

⁹⁸ Staff Ex. 9 at 1901-02; Tr. 315.

⁹⁹ Tr. at 319.

¹⁰⁰ Staff Ex. 9 at 2200; Tr. at 322.

¹⁰¹ Staff Ex. 9 at 2199; Tr. at 321.

- [W]e have been met with residence [*sic*] about what a senior citizen cares more about than more people is where to go number 2 or poop without falling down and breaking a hip doing number 2 or poop.¹⁰²
- [E]xplain where she is to dwell and use the restroom immediately as her feces is being dumped out raw into the ground and the septic run off is headed toward Granger Lake[.]¹⁰³

Mr. Matysek admitted at the hearing that he called Innovation Property Network and misrepresented that he was Ms. Zimmerhanel's son in an attempt to obtain a referral to Jenkins Restoration to obtain a warranty on the work done by Jenkins Restoration.¹⁰⁴

Additionally, Mr. Matysek demanded "an abeyance and abatement of appraisal until Safeco and Liberty Mutual accept on [*sic*] or more of the estimate provided and allow the remaining contractors access to the property to come up with an undisputed value of the loss."¹⁰⁵ Ms. Knight testified that a disagreement as to value leads to an appraisal.¹⁰⁶

Staff asserted that throughout Mr. Matysek's involvement in the claims, he represented that Ms. Zimmerhanel's house and bathroom conditions were unlivable.¹⁰⁷ Mr. Matysek stated that: the house was "split in half";¹⁰⁸ damage caused a "giant waterfall";¹⁰⁹ the "roof is mangled, damaged and destroyed";¹¹⁰ the dwelling "had been blown apart during the tornado";¹¹¹ and "the

¹⁰² Staff Ex. 9 at 1902.

¹⁰³ Staff Ex. 9 at 1973; Tr. at 321.

¹⁰⁴ Staff Ex. 9 at 1902-03; Tr. at 483.

¹⁰⁵ Staff Ex. 9 at 2160.

¹⁰⁶ Tr. at 285.

¹⁰⁷ *See e.g.*, Staff Ex. 9 at 1901, 1911-12, 1934-35; Tr. at 314-15, 484-86.

¹⁰⁸ Staff Ex. 9 at 2146.

¹⁰⁹ Staff Ex. 9 at 1907.

¹¹⁰ Staff Ex. 9 at 1908.

¹¹¹ Staff Ex. 9 at 1908.

house is destroyed and nothing is salvageable.”¹¹² Mr. Matysek opined that Safeco was lucky Ms. Zimmerhanzel was “not dead yet” and was “living in what is a shell of a house now hoping it does not collapse on her.”¹¹³ Mr. Matysek wrote to Safeco, “What did she do to you sick sick, psychotic people.”¹¹⁴ Safeco attempted to provide Ms. Zimmerhanzel with alternative living arrangements, but Mr. Matysek either found a problem with it or stated that Ms. Zimmerhanzel wished to stay in her home.¹¹⁵

Mr. Matysek sent photos to Safeco alleging sloppy caulking on Ms. Zimmerhanzel’s roof. Ms. Knight testified that when both Safeco’s and Ms. Zimmerhanzel’s appraisers investigated, neither appraiser found the depicted caulking on the roof.¹¹⁶

Ms. Knight testified that Ms. Zimmerhanzel’s claims were not resolved until after she hired an attorney around August 2018.¹¹⁷ An appraiser was designated within a month of that attorney’s involvement.¹¹⁸ The appraisal awards for the two claims were issued in December 2018.¹¹⁹

Mr. Matysek disclosed Ms. Zimmerhanzel’s claim information to an unrelated third party, Steve Badger, who was not involved with the claim.¹²⁰

Staff alleges that Mr. Matysek: (1) refused to provide separate estimates for Ms. Zimmerhanzel’s different claims; (2) provided an estimate that was 120 times greater than

¹¹² Staff Ex. 9 at 1908.

¹¹³ Staff Ex. 9 at 1898, 1934, 1968-69; Tr. at 318.

¹¹⁴ Staff Ex. 9 at 1900, 1935; Tr. at 320.

¹¹⁵ *See e.g.*, Staff Ex. 9 at 1898, 1970-71, 1972-73, 1975, 1993-94; Tr. at 314-15, 484-86.

¹¹⁶ Tr. at 342-43.

¹¹⁷ Staff Ex. 9 at 2437; Tr. at 315, 322-23. *See* Staff Ex. 9 at 2429.

¹¹⁸ Staff Ex. 9 at 2429-33.

¹¹⁹ Staff Ex. 9 at 2437.

¹²⁰ Tr. at 324; Staff Ex. 9 at 1897, 2146.

Safeco's estimate, despite two inspectors who characterized the damage as wear and tear and foundation movement; (3) obstructed resolution of the claim by failing to appoint an appraiser; (4) made multiple false representations; (5) sent inappropriate and unprofessional emails; and (6) disclosed Ms. Zimmerhanzel's claim information to unrelated third parties.

6. Allegations Related to the Jenkses¹²¹

On May 12, 2017, the Jenkses signed a contract with Mr. Matysek for representation on their April 13, 2017 claim with Allstate.¹²² Staff maintains that during his representation, Mr. Matysek made unsubstantiated and inappropriate statements to Allstate, as follows:

- Everyone I know eats off a table with toilet waterfalls and sleeps in bed with sheetrock dust falling in it.¹²³
- We certainly would think that at least bringing a FEMA trailer on the property for this poor woman to sleep in and eat off a none [*sic*] toilet water table would be authorized.¹²⁴
- We have informed [the Department of Elderly Care and Abuse] that Allstate is intent on killing this policyholder. I have to make that statement based on my vast dealing with Allstate relating to property claims in Texas.¹²⁵
- Good hands Euthanasia program fully in effect. So if I am wrong in any way shape form or fashion, please step up to the plate and execute some other plan besides Operation Kill Senior Citizens 2017.¹²⁶

Neither Staff nor Mr. Matysek presented evidence of any actual danger to the policyholder.

¹²¹ NOH Factual Allegations 54-57.

¹²² Staff Ex. 11 at 4514-16, 4433.

¹²³ Staff Ex. 11 at 4842.

¹²⁴ Staff Ex. 11 at 4843.

¹²⁵ Staff Ex. 11 at 4843.

¹²⁶ Staff Ex. 11 at 4903.

Mr. Matysek made the following statements by report/complaint or by email to the Department:

- We need TDI to come out and scrub the property for chemical agents and toxins that this individual may Have [*sic*] put in the house yesterday.¹²⁷
- I am fearful of the intent of this person based on his demeanor and he was walking as if he had something up His [*sic*] anus or was concealing weapons or neurotoxins being released in the house.¹²⁸
- We need Allstate to answer the question of was this person armed, did this person have a devices [*sic*] in his underwear or in his anus packaged away?¹²⁹
- We need to know if the purpose of him wearing such a long shirt was to conceal weapons or object such as firearms or recording devices in his underwear or anus.¹³⁰
- We need [Allstate personnel] to give a detailed reason as to why this person was at the location, for whom he was providing security or protection, what his appropriate shirt size and length should be, what if anything he was wearing underneath his clothing, inside his underwear and whether he had any device or weapon inside his anal cavity. I am deadly serious in this question to the Texas Department of Insurance. This is not a bizarre question or a question to be taken lightly.¹³¹
- We need the property claims handled with proper care and consideration and we certainly do not need a Mafia Presence at the house. Allstate acts like it is part of the Mafia, yesterday was the first day that Allstate has shown itself to possibly be affiliated with the Mafia.¹³²
- This certainly was a very bizarre situation and we believe the person present may have been sent from the Mafia to make sure that Allstate stays in line with the agenda of the Mafia rather than paying for damage owed.¹³³

¹²⁷ Staff Ex. 12 at 5200.

¹²⁸ Staff Ex. 12 at 5200.

¹²⁹ Staff Ex. 12 at 5200.

¹³⁰ Staff Ex. 12 at 5200.

¹³¹ Staff Ex. 12 at 5200.

¹³² Staff Ex. 12 at 5200.

¹³³ Staff Ex. 12 at 5201.

- We need to know in detail what was under his shirt and in or inside his underwear and anal cavity.¹³⁴

Mr. Matysek did not present evidence during the hearing to support these claims.

Staff alleges that Mr. Matysek: (1) made unsubstantiated allegations about Allstate's interactions with the Jenkses; and (2) made baseless allegations regarding a person that assisted Allstate with the inspection process.

7. Allegations Related to Mr. Tran¹³⁵

On or around May 2016, Mr. Tran hired Mr. Matysek to represent him on his April 29, 2016 claim for hail storm damage with Safeco.¹³⁶ Mr. Tran and Safeco had different damage estimates, and on July 1, 2016, Safeco requested that Mr. Tran appoint an appraiser.¹³⁷ Mr. Matysek stated the following to Safeco's counsel, Mr. Tillman:

- Your engineer and appraiser harassed [appraiser] Richard Barkkume so much that Mr. Barkkume has now quit and refuses to do the appraisal regardless of fee arrangement.¹³⁸
- So there is a real drinking problem after all at the engineering firm. Or they are just quite desperate for drinking cash.¹³⁹
- Your psychopath on the other side has now harmed the interest of Mr. Tran.¹⁴⁰
- Yes I do say and I have experienced a drinking problem with Safeco appraisals.¹⁴¹

¹³⁴ Staff Ex. 12 at 5195.

¹³⁵ NOH Factual Allegations 58-67.

¹³⁶ Staff Ex. 13 at 5396; Tr. at 325-26.

¹³⁷ Staff Ex. 13 at 5220.

¹³⁸ Staff Ex. 13 at 5280; Tr. at 326.

¹³⁹ Staff Ex. 13 at 5280; Tr. at 327.

¹⁴⁰ Staff Ex. 13 at 5280; Tr. at 327.

¹⁴¹ Staff Ex. 13 at 5280; Tr. at 327.

- So what am I supposed to do now Mr[.] Boutique Law Firm[?] Your appraiser has damaged the interest of Mr[.] Tran as Mr[.] Barkkume already knew it was going to be a difficult appraisal but he didn't want to be stalked by someone needing extra drinking money[.]¹⁴²

However, Mr. Barkkume refuted Mr. Matysek's assertions in his May 30, 2017 email:

At no time has [the Safeco appraiser] acted inappropriate or harass in any way shape or form. He has only left two very polite voice mail messages and has sent two appropriate emails

[Mr. Matysek] returned my call late morning on 5/19/2017 to let me know that it was ok I would not be the appraiser and that he had let 'them' know I did not want to be the appraiser since I was being harassed. I asked [Mr. Matysek] why he would say that and to fix what he had said as it is not true by my account.

After I received a copy of the email [Mr. Matysek] had written I immediately called and requested [Mr. Matysek] write another email explaining that I did not say [the Safeco appraiser] acted inappropriate or harassed in any way and that [Mr. Matysek] had mis-represented my statements and reason for not wanting to be his appraiser.¹⁴³

When questioned at the hearing about the appropriateness of the Mr. Matysek's statements regarding Mr. Barkkume, Mr. Matysek responded, "A misunderstanding, I guess is what – a misunderstanding or maybe I don't listen."¹⁴⁴

According to Staff, Mr. Matysek made misrepresentations to Safeco and his client about the damage and repairs. For example, Mr. Matysek included damage from a 2015 claim in Mr. Tran's 2016 claim.¹⁴⁵ Moreover, Mr. Matysek sent a final invoice to Safeco demanding payment for depreciation, representing that repairs were made, when several of the invoiced repairs

¹⁴² Staff Ex. 13 at 5280; Tr. at 327.

¹⁴³ Staff Ex. 13 at 5279.

¹⁴⁴ Tr. at 1062.

¹⁴⁵ Tr. at 325, 329.

had actually not been done.¹⁴⁶ Mr. Matysek told Mr. Tran that the property needed destructive testing, when it was neither recommended nor needed.¹⁴⁷

Mr. Matysek did not obtain an appraiser for Mr. Tran as required.¹⁴⁸ Approximately a year after Safeco requested appraisal, Mr. Tran contacted Safeco directly about how he could not get in touch with Mr. Matysek and did not know what to do.¹⁴⁹ An appraiser was not appointed until Mr. Tran hired an attorney.¹⁵⁰

Staff alleges that Mr. Matysek engaged in the unauthorized practice of law by making the following statements to his client and Tillman:

- I will consult with Mr[.] Tran to determine on what actions such as the special hearing in court Mr[.] Tran may seek under the Consumer Bill of Rights. He may choose to do both appraisal and seek a discrimination claim.¹⁵¹
- I am filing a discrimination complaint on Safeco this evening. Safeco has violated every policy and Fair Claims practice known to mankind[.]¹⁵²
- You violated the appraisal clause of the contract by forcing a roof consultant on us and filled both appraisal chairs and umpire chairs in a preconceived network of deceit and the contractor further violated the consumer bill of rights.¹⁵³
- We will be appointing our appraiser and filing numerous complaints of interstate commerce violations later today.¹⁵⁴

¹⁴⁶ Tr. at 278, 329-30.

¹⁴⁷ Staff Ex. 13 at 5273; Tr. at 330-31.

¹⁴⁸ Tr. at 333-34.

¹⁴⁹ Tr. at 287.

¹⁵⁰ Tr. at 333.

¹⁵¹ Staff Ex. 13 at 5286; Tr. at 332.

¹⁵² Staff Ex. 13 at 5285; Tr. at 332-33.

¹⁵³ Staff Ex. 13 at 5285; Tr. at 332-33.

¹⁵⁴ Staff Ex. 13 at 5289; Tr. at 333.

Mr. Matysek testified that sometimes he has to give legal advice.¹⁵⁵ He explained that he is not a lawyer but gives advice about insurance policies because “it’s a gray area.”¹⁵⁶

Mr. Matysek sent to an unrelated third party an email which included details of Mr. Tran’s claim and his physical address.¹⁵⁷

Mr. Matysek sent the following communications to Safeco representatives and Tillman in relation to a photo of a man sitting on a roof:¹⁵⁸

- It is blatantly obvious that the ladder assist people were just walking on the roof. Grinding their genitalia into the roof. Making shadow symbols on the roof.¹⁵⁹
- It is obvious we can’t resolve sexual, vandalism and racial activity on a roof in appraisal.¹⁶⁰
- If I am incorrect please respond in regards to what is owed for grinding Mr. Tran’s [r]oof and displaying hate and other symbols on his and his neighbor’s roof?¹⁶¹
- Mr. Tran is in fetal position now and will have to issue a protective order against having anyone else from Safeco come visit his home.¹⁶²
- We will be filing hate crimes and more charges against Safeco if Safeco intends to come and further damage the property.¹⁶³

¹⁵⁵ Tr. at 1034.

¹⁵⁶ Tr. at 1081.

¹⁵⁷ Staff Ex. 13 at 5285; Tr. at 331.

¹⁵⁸ Staff Ex. 13 at 6135-40, 6144, 6146.

¹⁵⁹ Staff Ex. 13 at 6133; Tr. at 335.

¹⁶⁰ Staff Ex. 13 at 6133; Tr. at 336.

¹⁶¹ Staff Ex. 13 at 6133; Tr. at 336.

¹⁶² Staff Ex. 13 at 6133; Tr. at 336.

¹⁶³ Staff Ex. 13 at 6133; Tr. at 336.

- Why else would someone destroy Mr. Tran's roof and shingles if not because he is Vietnamese and they hate him[?]¹⁶⁴
- I will be sending this to the Texas Department of Insurance as we have a Sex act being performed on the roof. It appears that the roof assist was busy grinding the shingles with his shoes so he could find a special spot to grind.¹⁶⁵
- Is this a case of bad underwear, something hanging causing and [*sic*] itch, or what exactly he was doing and why he needed to straddle the roof like this.¹⁶⁶
- We demand a Sphincter ectomy [*sic*].¹⁶⁷
- Mr. Tran we will need to file a Sphincter Muscle attack on your roof from the last Safeco sponsored inspection. If I am incurred about the placement of the Sphincter and other lower extremities causing damage to Mr. Tran's roof please specify what I was able to capture.¹⁶⁸

Ms. Knight opined that the photos provided by Mr. Matysek did not warrant such outrageous statements and his statements were inappropriate.¹⁶⁹

Staff alleges that Mr. Matysek: (1) obstructed claim resolution; (2) knowingly, willingly, and purposefully made a misrepresentation to the insurance company; (3) refused to prepare the claim in accordance with policy terms; (4) engaged in the unauthorized practice of law; (5) sent details of Mr. Tran's claim to unrelated third parties; and (6) sent unprofessional and inappropriate communications to Safeco and its counsel.

¹⁶⁴ Staff Ex. 13 at 6134; Tr. at 337.

¹⁶⁵ Staff Ex. 13 at 6147; Tr. at 337-8.

¹⁶⁶ Staff Ex. 13 at 6147; Tr. at 338.

¹⁶⁷ Staff Ex. 13 at 6147; Tr. at 338.

¹⁶⁸ Staff Ex. 13 at 6148; Tr. at 338.

¹⁶⁹ Tr. at 339.

8. Allegations Related to the Mensingers¹⁷⁰

On July 11, 2017, the Mensingers filed a hail damage claim with Safeco.¹⁷¹ On July 13, 2017, the Mensingers hired Mr. Matysek to represent them.¹⁷² Mr. Matysek made the following statements to Safeco:

- You are ripping off and abusing senior citizens on a fixed income and now making them wait because you are just lazy, Lazy, Lazy[,] [*sic*]¹⁷³
- [Y]ou vandalized their temporary repair and caused additional leaks on the roof by walking on too many areas of the roof.¹⁷⁴
- Yes, you damaged the mitigation, the eave and roof system by walking past the supported areas of the roof. I got of [*sic*] the roof but you stayed on the roof for a prolonged period of time.¹⁷⁵
- TDI should be following Safeco and Liberty Mutual with a set of handcuffs instead of investigating contractors. We have found, located and pinpointed a ring of criminal activity and we need TDI to step in and stop this Monster in its tracks.¹⁷⁶

Mr. Matysek did not present evidence at the hearing to substantiate these claims.

Staff alleges that Mr. Matysek made distasteful, unprofessional, rude, and inappropriate statements. Mr. Matysek made the following statements to the Department about his clients:

- I have in my possession voice mails after 9pm from [Ms. Mensinger] calling me after 9pm [*sic*] in the evening telling me that her husband is asleep and leaving me

¹⁷⁰ NOH Factual Allegations 68-76.

¹⁷¹ Staff Ex. 14 at 6994.

¹⁷² Staff Ex. 14 at 6742.

¹⁷³ Staff Ex. 14 at 6233; Tr. at 340.

¹⁷⁴ Staff Ex. 14 at 6233; Tr. at 341.

¹⁷⁵ Staff Ex. 14 at 6233; Tr. at 341.

¹⁷⁶ Staff Ex. 14 at 6289-90; Tr. at 343.

long messages and this is not the only time she called me while [Mr. Mensinger] was asleep.¹⁷⁷

- So I am not certain as to why she is calling me at or after 7pm, after 9pm or after 2 am. Maybe she is looking for male companionship or something.¹⁷⁸
- Honestly, I think she was expecting me to abuse her on the phone at 2am or something and she may have been craving that form of abuse.¹⁷⁹

When the Mensingers contacted Mr. Matysek for his endorsement of a check, Mr. Matysek responded, “I can’t drop everything to go sign a check” and “I am sorry but you are telling you are [*sic*] busy people but no one is busier than I am right now.”¹⁸⁰ In response, the Mensingers terminated their contract with Mr. Matysek, stating that Mr. Matysek “made it sooo [*sic*] much more difficult and work and time intensive.”¹⁸¹

Mr. Matysek testified that Ms. Mensinger called at 8:00 p.m. complaining that Mr. Matysek’s name was on the check and she could not cash it, when he wanted to watch America’s Got Talent.¹⁸²

Staff alleges that Mr. Matysek: (1) sent inappropriate and unprofessional communications to the Department, Liberty Mutual, Tillman, and the Mensingers; and (2) obstructed resolution of the Mensingers’ claim.

¹⁷⁷ Staff Ex. 14 at 7157; Tr. at 344-45.

¹⁷⁸ Staff Ex. 14 at 7157; Tr. at 345.

¹⁷⁹ Staff Ex. 14 at 7157; Tr. at 345.

¹⁸⁰ Staff Ex. 14 at 6259.

¹⁸¹ Staff Ex. 14 at 6252, 6257-58; Tr. at 348.

¹⁸² Tr. at 1015.

9. Allegations Related to the Pricketts¹⁸³

On or about August 28, 2017, the Pricketts submitted a claim to Home Owners of America Insurance Company (HOAIC) for damage alleged to have occurred during Hurricane Harvey.¹⁸⁴ The Pricketts hired Mr. Matysek to represent them on or about October 17, 2017.¹⁸⁵ HOAIC's counsel, Mr. Wilson, testified that Mr. Matysek failed to provide requested documentation.¹⁸⁶ According to Mr. Wilson, HOAIC made requests for documents, and some documents finally came from the Pricketts, but Mr. Matysek never provided the requested information.¹⁸⁷

HOAIC sent an independent adjuster to the Pricketts' home to assess the potential damage.¹⁸⁸ During the course of the inspection, the independent adjuster made inappropriate and racist remarks regarding potential contractors.¹⁸⁹ HOAIC disavowed the remarks and issued an apology.¹⁹⁰

Staff asserts that subsequently, Mr. Matysek threatened to turn over a video of the racist remarks to the local TV station as a tactic to settle the claim.¹⁹¹ Mr. Matysek sent the following communications to HOAIC and its counsel regarding the independent adjuster's comments:

- [T]he video will be public record and produced to stay on file if a confidentiality agreement and settlement is not released. I will be forced to provide it in other HOAIC claims if this case is not settled and sealed.¹⁹²

¹⁸³ NOH Factual Allegations 77-82.

¹⁸⁴ Staff Ex. 15 at 7436.

¹⁸⁵ Staff Ex. 15 at 7189, 7226; Tr. at 608-09.

¹⁸⁶ Tr. at 586-87.

¹⁸⁷ Tr. at 609.

¹⁸⁸ Tr. at 610.

¹⁸⁹ Tr. at 612.

¹⁹⁰ Tr. at 612.

¹⁹¹ Tr. at 616-17.

¹⁹² Staff Ex. 15 at 9511; Tr. at 615.

- So if we can reach a policy limits agreement across the board there is no reason to look at the remaining 1 hour of this video and other videos in our possession.¹⁹³
- I will be sending this video to the Texas Department of Insurance field office here in Victoria for their commentary on what we should do at this point if we cannot get this matter resolved sooner than later.¹⁹⁴
- I don't see what if any kind of leg the carrier has to stand on at this point and this is not my first encounter with a situation such as this. The last time I faced this much of a scandal we received a full policy limit check in a UPS envelope the very next day with a claim release document to sign.¹⁹⁵
- A smart and informed insurance company would not want public scrutiny or any of this to see the light of day.¹⁹⁶

Mr. Matysek would have received a percentage of the settlement pursuant to his contract with the Pricketts.¹⁹⁷ When questioned about these tactics during the hearing, Mr. Matysek simply stated that the Pricketts could not live in their house.¹⁹⁸

According to Staff, Mr. Matysek used personal attacks and unsubstantiated allegations while handling claims. Mr. Matysek made the following statements to and about HOAIC, its counsel, and other involved parties:

- TDI will be given more information regarding this video and the attempted murder on the part of [attorney for HOAIC] as he attempted to injure and possibly kill one of the witnesses on this claim file.¹⁹⁹
- As far as illegal. [*sic*] Trespassing and attempted murder are very serious matters which may need to be addressed.²⁰⁰

¹⁹³ Staff Ex. 15 at 7188; Tr. at 614.

¹⁹⁴ Staff Ex. 15 at 7193; Tr. at 614.

¹⁹⁵ Staff Ex. 15 at 7193; Tr. at 615.

¹⁹⁶ Tr. at 615-16.

¹⁹⁷ Staff Ex. 15 at 7225-27.

¹⁹⁸ Tr. at 1068-69.

¹⁹⁹ Staff Ex. 15 at 9511; Tr. at 618.

²⁰⁰ Staff Ex. 15 at 9511; Tr. at 618.

- I will be filing attempted murder and hostage charges in the meantime and let you answer to TDI and the State Bar Association about your actions. Is this a Mafia owned company because your maneurism [*sic*] yesterday was similar to Tom Cruise actions when he found out he was working for the mob.²⁰¹
- This is Barbarism, torture and death camp maximum infliction of injury treatment and we will need to respond with fire department and EMS evacuation protocols and have an evacuation plan put in place immediately[.]²⁰²
- I will change my comment to Barbarians as only a barbarian would act in such a manner and make Allstate look good at this point. I never thought I would see the day but you have far surpassed them on bad and barbaric behavior.²⁰³
- You people are sick, sick, sick and evil people. [T]his is not a Nazi concentration camp designed to inflict injury, this is a home insured by your company and the Pricketts have guaranteed coverage for additional living expenses and you can't keep an adjuster on the claim long enough to report back to the evil empire death ship apparently.²⁰⁴

Staff alleges Mr. Matysek engaged in the unauthorized practice of law, by stating to his client and HOAIC, “We have clear evidence of breach of contract, breach of fiduciary responsibility, falsifying claims information, obstruction. Racism, prejudice. Trespassing, and collusion between HOAIC and Allstate to rip off [the Pricketts].”²⁰⁵

Staff alleges that Mr. Matysek: (1) failed to provide requested documentation; (2) attempted to use an inappropriate comment of a third party to extort money from the insurance company; (3) lodged personal attacks to shock and annoy the insurance company into settlement; and (4) engaged in the unauthorized practice of law.

²⁰¹ Staff Ex. 15 at 8712; Tr. at 619.

²⁰² Staff Ex. 15 at 7209; Tr. at 620.

²⁰³ Staff Ex. 15 at 7210; Tr. at 621.

²⁰⁴ Staff Ex. 15 at 7420; Tr. at 622.

²⁰⁵ Staff Ex. 15 at 9578; Tr. at 623.

10. Allegations Related to Mr. Davis²⁰⁶

On August 29, 2017, Mr. Davis filed a claim with Hochheim for Hurricane Harvey damage.²⁰⁷ After paying out the claim, Hochheim received a letter of representation from Mr. Matysek on December 18, 2017.²⁰⁸ Hochheim requested additional repair documents and other information from Mr. Matysek, but he did not provide them.²⁰⁹ On January 23, 2018, Hochheim requested an EUO of Mr. Davis as part of its investigation.²¹⁰ Mr. Matysek refused to allow an EUO²¹¹ and failed to provide the requested documents.²¹² Mr. Wilson testified that these actions delayed the resolution of Mr. Davis's claim²¹³ and resulted in Mr. Davis being in breach of his contract with the insurance company.²¹⁴

During his representation of Mr. Davis, Mr. Matysek wrote to Hochheim, “[You] attempted to kill and cause bodily injury to the last client of mine.”²¹⁵ Mr. Matysek accused Mr. Wilson, counsel for Hochheim, of attempting to kill another one of Mr. Matysek's clients, by “knowingly [starting] [an] EUO with a diabetic on [an] insulin pump locked away from food and nourishment.”²¹⁶ However, Mr. Wilson testified he provided an opportunity for that client, Mr. Prickett, to end the EUO, and that Mr. Prickett stated he was fine to continue for a few more minutes.²¹⁷

²⁰⁶ NOH Factual Allegations 84-88.

²⁰⁷ Staff Ex. 16 at 9941; Tr. at 626.

²⁰⁸ Staff Ex. 16 at 9656, 9770-72, 9941; Tr. at 627.

²⁰⁹ Staff Ex. 16 at 9710, 9941; Tr. at 627.

²¹⁰ Staff Ex. 16 at 9710, 9729, 9942; Tr. 627.

²¹¹ Staff Ex. 16 at 9736-37, 9844-45, 9886, 9888-89, 9892-93; Tr. at 587-88, 590-91, 627-28.

²¹² Staff Ex. 16 at 9942.

²¹³ Tr. at 628.

²¹⁴ Staff Ex. 16 at 9942; Tr. at 628, 634-35.

²¹⁵ Staff Ex. 16 at 9844; Tr. at 634.

²¹⁶ Staff Ex. 16 at 9932; Tr. at 587-90.

²¹⁷ Staff Ex. 15 at 7574-75.

Mr. Matysek wrote to the Department that Mr. Wilson was “a dangerous, very dangerous, and extremely totally out of control attorney[.]”²¹⁸

On February 9, 2018, a letter from Mr. Davis’s attorney terminated Mr. Matysek’s representation of Mr. Davis and directed him to cease and desist from all activities on his client’s behalf.²¹⁹ Mr. Matysek refused to acknowledge the termination, stating, “I have been contacted by a law firm about termination of my services but I have not been contact[ed] through proper channels and methods.”²²⁰ On February 13, 2018, Mr. Matysek demanded payment from Hochheim, after being terminated when the claim was not yet resolved.²²¹ Mr. Wright testified that there are limited provisions for expenses that may be charged related to services under a contract that may terminate prior to a settlement.²²²

Staff alleges that Mr. Matysek: (1) refused to allow an EUO and failed to provide requested documents; (2) sent unprofessional and inappropriate communications; (3) refused to acknowledge Mr. Davis’s termination letter; and (4) demanded payment despite being terminated before resolution of the claim.

²¹⁸ Staff Ex. 16 at 9932, 9964; Tr. at 635.

²¹⁹ Staff Ex. 16 at 9738.

²²⁰ Staff Ex. 16 at 9739-42, 9900-02, 9942; Tr. at 628-30.

²²¹ Staff Ex. 16 at 9900-01 (“I have spent at least 16 hours at the property and with commuting to an[d] from the property I have 20 hours in time at the property. During the estimate creation on this estimate, our computer crashed and we purchased another computer and had to purchase a new computer. My Xactimate license expired and I had to pay for the renewal license to continue the estimate on this file. [. . .] I am guaranteed payment for moneys recovered on this claim[.]”); Tr. 630-31.

²²² Tr. at 833, 880.

11. Allegations Related to the Hermes²²³

On August 30, 2017, the Hermes filed a claim with Hochheim for Hurricane Harvey damage.²²⁴ They hired Mr. Matysek to represent them on January 19, 2018.²²⁵ On March 13, 2018, Hochheim and the Hermes reached a compromise settlement.²²⁶ Hochheim issued payment of \$7,000, which was accepted by the Hermes according to the settlement agreement.²²⁷

On April 17, 2018,²²⁸ and April 26, 2018,²²⁹ Mr. Matysek sent additional emails to Hochheim regarding the claim. Mr. Matysek wrote, “The property must be fully restored to preloss and pre damage condition,” and “Hochheim Prairie is ignoring repair estimates and not issuing payments in a timely manner.”²³⁰ On April 26, 2018, Hochheim reminded Mr. Matysek that the claim was closed.²³¹ On August 24, 2018, Mr. Matysek sent Hochheim and the Department a quote for masonry work, requesting an immediate response to whether Hochheim would “accept this quote for masonry and agree to fix all the masonry on the home in rapid fashion so that this claim may finally be put to rest.”²³² Mr. Matysek further wrote, “[The] information is extremely time sensitive and this matter is not over and must immediately go to appraisal if we cannot reach an agreement on the chimney, brick work, cabinets in garage and windows damaged at the property.”²³³

²²³ NOH Factual Allegations 89-96.

²²⁴ Tr. at 637.

²²⁵ Staff Ex. 17 at 10003; Tr. at 637.

²²⁶ Staff Ex. 17 at 9985; Tr. at 637-39, 641.

²²⁷ Staff Ex. 17 at 10003; Tr. at 637.

²²⁸ Staff Ex. 17 at 10008; Tr. at 639-41.

²²⁹ Staff Ex. 17 at 10008; Tr. at 640-41.

²³⁰ Staff Ex. 17 at 10008; Tr. at 640.

²³¹ Staff Ex. 17 at 10008; Tr. at 641.

²³² Staff Ex. 17 at 10006-08; Tr. at 639, 641-42.

²³³ Staff Ex. 17 at 10006; Tr. at 642.

After the conclusion of the claim, Mr. Matysek stated the following to Hochheim and the Department:

- A formal complaint of public endangerment and abuse of the elderly is being filed for attempting to kill this couple and abusing a person with a brain injury.²³⁴
- I am filing a complaint for blockade of communication on the Part of Hochheim Prairie during critical crisis periods concerning Hurricane Harvey victims and will be taking up this matter with local zoning officials.²³⁵
- Hochheim Prairie deliberately withheld information, photographs and more from the engineer.²³⁶

At the hearing, Mr. Matysek did not present evidence to substantiate his claims.

Staff alleges that Mr. Matysek: (1) persisted in demanding additional payment after Hochheim and the Hermeses entered into a settlement agreement; and (2) made unsubstantiated and inappropriate allegations against Hochheim.

12. Allegations Related to the Ramoses²³⁷

The Ramoses filed a claim with Hochheim for Hurricane Harvey damage.²³⁸ After Hochheim paid the claim on October 10, 2017,²³⁹ the Ramoses hired Mr. Matysek to represent them on February 3, 2018.²⁴⁰ On March 9, 2018, Mr. Matysek sent emails to Hochheim asserting the following damage to the property:

²³⁴ Staff Ex. 17 at 10006; Tr. at 643.

²³⁵ Staff Ex. 17 at 10006; Tr. at 643.

²³⁶ Staff Ex. 17 at 10007; Tr. at 643.

²³⁷ NOH Factual Allegations 97-100.

²³⁸ Staff Ex. 18 at 10014; Tr. at 646.

²³⁹ Staff Ex. 18 at 10014; Tr. at 646.

²⁴⁰ Staff Ex. 18 at 10024; Tr. at 646.

- The center beam upstairs cracked and [sic] rolled.
- The chimney is pushed in.
- The upper row of bricks has been lifted and twisted.
- [T]he house is untenable and unsafe[.]²⁴¹

Hochheim incurred engineer fees to investigate Mr. Matysek's representations of the home.²⁴² The engineer's investigation established that there were no structural conditions as claimed by Mr. Matysek.²⁴³ Mr. Wilson testified that the center beam Mr. Matysek claimed was "cracked and rolled" was a decorative beam that was not structural, and it was neither cracked nor rolled.²⁴⁴

Staff alleges that Mr. Matysek: (1) was not competently assessing damage or purposefully misled the insurance company to gain additional payment; and (2) accused the insurance company of attempting to injure the policy holder.

13. Allegations Related to Ms. Apostolo²⁴⁵

On September 5, 2017, Ms. Apostolo filed a claim for Hurricane Harvey damage with Hochheim.²⁴⁶ On September 10, 2017, Hochheim issued payment to Ms. Apostolo for the damage covered by the policy.²⁴⁷ On February 26, 2018, Mr. Matysek gave notice of representation to Hochheim and disputed the amount of loss.²⁴⁸ On March 2, 2018, Hochheim requested an appraisal

²⁴¹ Staff Ex. 18 at 10021.

²⁴² Staff Ex. 18 at 10154; Tr. at 647-48.

²⁴³ Staff Ex. 18 at 10155-75 (engineer report); Tr. at 647-48, 723-25.

²⁴⁴ Tr. at 648.

²⁴⁵ NOH Factual Allegations 101-106.

²⁴⁶ Staff Ex. 19 at 10442; Tr. at 649.

²⁴⁷ Staff Ex. 19 at 10442-45; Tr. at 650.

²⁴⁸ Staff Ex. 19 at 10268, 10270-81; Tr. at 650.

since the parties disagreed on the amount of loss.²⁴⁹ Mr. Matysek failed to appoint an appraiser pursuant to the policy²⁵⁰ and stated, “At this time the claim is abeyance of Appraisal. The appraisal process is on hold, in abeyance[.]”²⁵¹ Neither party presented evidence of the basis of the purported abeyance.

Mr. Matysek represented that the house was “untenable and a biological hazard,”²⁵² and the house was a “total loss and 100% destroyed beyond any conceivable repair.”²⁵³ Mr. Wilson testified that Mr. Matysek delayed resolution of the claim despite asserting the homeowner had no place to reside.²⁵⁴

Mr. Matysek stated to Hochheim, its counsel, and the Department, that Hochheim and its counsel were “deliberately and intentionally invoking appraisal and other intimidation factors to intimidate, dupe, threaten, and steer policyholders away from what is legally owed and the City of Victoria clearly lists code and other items required on roof replacements.”²⁵⁵ Mr. Matysek further stated, “So come and do your job and inspect this widow[’]s home, property, and stop destroying people[’]s lives and threatening people with brain injuries and other ailments[.]”²⁵⁶ Mr. Matysek did not present evidence to support his claims.

Ms. Apostolo had two separate properties, each with a claim being submitted.²⁵⁷ Mr. Wilson testified that the policies excluded local building codes, and while one building had a

²⁴⁹ Staff Ex. 19 at 10442-43; Tr. at 650.

²⁵⁰ Staff Ex. 19 at 10443.

²⁵¹ Staff Ex. 19 at 10442; Tr. at 650-51.

²⁵² Staff Ex. 19 at 10284; Tr. at 655.

²⁵³ Tr. at 655.

²⁵⁴ Tr. at 656.

²⁵⁵ Tr. at 657.

²⁵⁶ Tr. at 657.

²⁵⁷ Tr. at 653.

chimney, the other did not. However, Mr. Matysek made the same claims on both properties for a chimney cricket/saddle upgrade to address building code violations.²⁵⁸

Staff alleged that Mr. Matysek: (1) purposefully delayed resolution of Ms. Apostolo's claim by failing to appoint an appraiser pursuant to the policy; (2) made unsubstantiated allegations and inflammatory statements; and (3) made claims for a chimney upgrade on a property that did not have a chimney.

14. Allegations Related to Gomez and Apis²⁵⁹

After Hurricane Harvey, Gomez and Apis filed a claim for damages with Hochheim.²⁶⁰ On March 15, 2018, Gomez and Apis hired Mr. Matysek to represent them on their Hurricane Harvey claim and then filed an additional, separate claim on March 16, 2018, for hail damage.²⁶¹ An adjuster went to the property in September 2017, February 2018, and April 2018, and estimated the total damage.²⁶²

On March 21, 2018, Mr. Matysek stated the following to Hochheim:

- [T]he home is broke in half.²⁶³
- House is racked.²⁶⁴

²⁵⁸ Staff Ex. 19 at 10442; Tr. at 649.

²⁵⁹ NOH Factual Allegations 107-110. The genders of Gomez and Apis were not disclosed in the NOH, exhibits, or hearing.

²⁶⁰ Tr. at 659.

²⁶¹ Staff Ex. 20 at 10631, 10635-42; Tr. at 659.

²⁶² Staff Ex. 20 at 10631.

²⁶³ Staff Ex. 20 at 10631; Tr. at 660.

²⁶⁴ Staff Ex. 20 at 10631, 10634; Tr. at 660.

- Center beam, rafters and decking cracked.²⁶⁵
- Carports, sheds, all exterior structures destroyed.²⁶⁶

Mr. Matysek represented that the property had structural damage from wind-related racking.²⁶⁷ Hochheim sent an engineer to inspect the premises, and the inspection showed that there was no evidence of wind-related racking, sliding, overturning, uplift, or other structural shifting.²⁶⁸ According to Staff, Mr. Matysek's actions resulted in additional costs and unnecessary delay in resolving the claim.²⁶⁹

Staff alleges that Mr. Matysek: (1) either was incompetent to perform the duties and responsibilities of a licensed public adjuster or fabricated damage in an effort to force a settlement; and (2) caused additional costs and unnecessary delay in resolving the claim.

15. Allegations Unrelated to Specific Insureds²⁷⁰

Mr. Matysek had a website created using the name "Victoria Public Adjusters."²⁷¹ Mr. Matysek testified that he "had to threaten to blow up the building of GoDaddy for them to take [the website] down."²⁷² Mr. Matysek did not register the name "Victoria Public Adjusters" with the Department or obtain a license to operate under that name.²⁷³

²⁶⁵ Staff Ex. 20 at 10631, 10634; Tr. at 660.

²⁶⁶ Staff Ex. 20 at 10631, 10634; Tr. at 660.

²⁶⁷ Staff Ex. 20 at 10631; Tr. at 661.

²⁶⁸ Staff Ex. 20 at 10631, 10681-705 (engineer report); Tr. at 661, 727-28.

²⁶⁹ Staff Ex. 20 at 10828-38.

²⁷⁰ NOH Factual Allegations 111-112.

²⁷¹ Tr. at 32.

²⁷² Tr. at 32.

²⁷³ Tr. at 788-89.

Mr. Matysek had addresses on file with the Department for Taylor, Georgetown, San Marcos, Victoria, and Wimberley.²⁷⁴ However, Mr. Matysek's website stated he had satellite offices in Corpus Christi, Dallas, College Station, and Temple, but those locations were never registered with the Department.²⁷⁵

Staff alleges that Mr. Matysek: (1) engaged in the business of insurance using the name Victoria Public Adjusters without registering that name with the Department or obtaining a license to operate under that name; and (2) did not register satellite offices in Corpus Christi, Dallas, College Station, and Temple with the Department.

B. Mr. Matysek's Evidence and Argument

1. Statements and Testimony of Mr. Matysek Unrelated to Specific Insureds

With regard to the insurance industry and his tactics, Mr. Matysek testified, "A lot of things are gray areas. There's a lot of Wild West and lot of unwritten laws, a lot of gentlemen's agreements and a lot of things that happen."²⁷⁶ Mr. Matysek expanded, "Let's just call it what it is, the wild west, Romper Room, whatever you want to do. Let's just call it there. They hit hard; I hit hard."²⁷⁷ Mr. Matysek said, "I tried being reasonable. I tried being unreasonable. You throw spaghetti on the wall."²⁷⁸ During an EUO, Mr. Matysek stated his job was to "shake up the can of Coke to find out if there's a payment to be made or not."²⁷⁹

²⁷⁴ Staff Ex. 3 at 40-41.

²⁷⁵ Staff Ex. 21 at 10846.

²⁷⁶ Tr. at 937.

²⁷⁷ Tr. at 1018.

²⁷⁸ Tr. at 1039.

²⁷⁹ Staff Ex. 18 at 8083.

In explaining his methods, Mr. Matysek said he was “unconventional” and “innovative”²⁸⁰ and a “square peg trying to fit in a round hole, or a triangle, or a hexagon, or whatever it is trying to fit into a bunch of things.”²⁸¹ Mr. Matysek stated, “I have claims that require different tactics. . . . You’re trying to put this guy, James Matysek, into a box.”²⁸² Mr. Matysek testified that he “[seems] to attract all these little meteors and train wrecks.”²⁸³ With regard to the alleged violations, he pleaded “stupidity,”²⁸⁴ “ignorance,”²⁸⁵ and “James Matysek.”²⁸⁶

With regard to refusing to appoint an appraiser, Mr. Matysek testified that he has stopped appraisal before because the appraiser costs \$3,000 for \$4,000 to even go to the property, and the appraiser could then disappear for three months after going to the property.²⁸⁷ Mr. Matysek said there were many reasons why he did not “voluntarily send [his] clients into the butcher factory of appraisal.”²⁸⁸

With regard to the release of confidential claim information, Mr. Matysek admitted he sent confidential claim information to get attention.²⁸⁹ When questioned about some of the language in his communications, Mr. Matysek stated, “[R]egular communication didn’t seem to work,” and he

²⁸⁰ Tr. at 1026.

²⁸¹ Tr. at 946.

²⁸² Tr. at 1091.

²⁸³ Tr. at 1025.

²⁸⁴ Tr. at 1014.

²⁸⁵ Tr. at 1013, 1014.

²⁸⁶ Tr. at 1033.

²⁸⁷ Tr. at. 955 (“[E]verybody wants to know: Why would you stop somebody from going to appraisal? Because I’ve done it. I’ve done it, and I’ve seen it. And what’s bizarre is you can pay an appraiser. Both sides can pay their appraiser and then you come to that decision or that need to get an umpire in; and, you know, all of a sudden, you’ve got to come up with \$3,000 or \$4,000 cash to give that guy. [. . .] Then the guy comes to the property. Outside of a few things that I know of, that guy can disappear for three months. You don’t know if he’s alive; you don’t know if he’s dead. You don’t know if he’s got an online addiction, habit, whatever it is.”).

²⁸⁸ Tr. at. 957.

²⁸⁹ Tr. at 1029 (“Have I copied other people’s information onto something? Well, it’s because the Texas Department of Insurance seems to not care about doing anything – whenever I was complaining on something, I didn’t see any resolution; and so I went ahead and sent stuff across the board, whatever, trying to get attention.”).

“escalated his verbiage [] to find out exactly what would work.”²⁹⁰ When asked whether misrepresentation of facts is dealing fairly, Mr. Matysek responded, “Sometimes it’s a tactic.”²⁹¹

In a September 18, 2017 email, Mr. Matysek stated that “[r]espect, honesty and intent are part of professionalism.”²⁹² However, during his testimony, Mr. Matysek asserted that the word “professional” was broad.²⁹³ Mr. Matysek admitted he had “behaved in a manner that’s not professional at all times.”²⁹⁴ Mr. Matysek also stated he understood “how some people might be alarmed [by] language and tone.”²⁹⁵

2. Mr. Matysek’s Argument

In his closing briefs, Mr. Matysek argued that he is a whistleblower and that the Department is “enabling domestic terrorists to thrive in this country.”²⁹⁶ Mr. Matysek opined that the industry is broken.²⁹⁷ Mr. Matysek implied, without elaboration, that Tillman Batchelor,

²⁹⁰ Tr. at 1049.

²⁹¹ Tr. at 1085.

²⁹² Staff Ex. 9 at 2166.

²⁹³ Tr. at 1026-28 (“[Y]ou print a bunch of rules and laws that: You must be professional, professional, professional, professional, you know. Well, you know, professional football players, obviously, you know, that word is a fraud as general word ‘professional,’ you know.”), 1049-50 (“[‘Professional’] is a broad term[.]”).

²⁹⁴ Tr. at 1032.

²⁹⁵ Tr. at 1041 (“And everybody that came and testified, your time is valuable; and I can understand how some people might be alarmed on language and tone. I want to thank everybody for coming out to the hearing. It’s been informative to me. I obviously needed feedback and wanted to see where this is all going to go.”).

²⁹⁶ Fourth filing of Respondent’s Initial Briefs at 1.

²⁹⁷ Third filing of Respondent’s Initial Briefs at 3.

LLP,²⁹⁸ Hochheim,²⁹⁹ and Staff witness Mr. Gish³⁰⁰ engaged in some wrongdoing, which warranted Mr. Matysek's conduct.

Mr. Matysek contended that his diabetic client's EUO with Mr. Wilson should not have lasted until 5:30 p.m., because the courthouse closed at 5:00 p.m.³⁰¹ With regard to the allegations relating to Mrs. Mensinger, Mr. Matysek contended that Mr. Mensinger, not Mrs. Mensinger, was the policyholder.³⁰²

Mr. Matysek also argued that he was harassed and religiously persecuted during the hearing by the discussion of alcohol consumption.³⁰³ Mr. Matysek asserted that the Department lacks standards, definitions, or guidelines on what is professional behavior.³⁰⁴ Mr. Matysek offered to work with the Department to develop curriculum and training on ethics and professionalism.³⁰⁵

C. ALJ's Analysis

The Commissioner may revoke a public insurance adjuster license on the basis of a violation of Texas Insurance Code chapter 4102 or any rule adopted by the Commissioner under

²⁹⁸ Third filing of Respondent's Initial Briefs at 5 ("In regards to Tillman [Batchelor], LLP, What comes around goes around.").

²⁹⁹ Third filing of Respondent's Initial Briefs at 5 ("In regards to all the Hochheim Prairie Charges. They started the mess, let them finish the mess. . . . [T]hey are the most immature people I have ever met and since there is no professionalism they deserve none in return.").

³⁰⁰ Third filing of Respondent's Initial Briefs at 5 ("If a person is coming to investigate a hurricane and damage and he does not even know the wind speed of a hurricane he is not a professional and no professional courtesy is owed. He is a waste of dead air if he is not even professionally trained.").

³⁰¹ Third filing of Respondent's Initial Briefs at 5 ("In regards to attorney [sic] needing watches at court houses and not trapping a diabetic In [sic] a locked courthouse after hours, Mr. Wilson testified he left at 5:30. The court room was closed at 5PM. He violated the hours and was trespassing at the point the EUO was Interrupted [sic]. Mr. Wilson needs a watch and day planner and needs to stick to it.").

³⁰² Tr. at 1015.

³⁰³ First filing of Respondent's Initial Briefs at 3 ("My rights to an alcohol free workplace were denied. I was harassed and suffered religious persecution In [sic] this hearing.").

³⁰⁴ Third filing of Respondent's Initial Briefs at 4, 6.

³⁰⁵ Third filing of Respondent's Initial Briefs at 6.

this chapter.³⁰⁶ Staff alleges several violations of the Insurance Code and Commissioner rules as grounds for revoking Mr. Matysek's license. The ALJ finds that Staff met its burden of proof on some, but not all, of the alleged violations and recommends that the Commission revoke Mr. Matysek's license.

The alleged violations are addressed below.³⁰⁷

1. Failure to Maintain a Place of Business that is Accessible to Public and to Maintain Records (Tex. Ins. Code § 4102.106) and Failing to Keep Complete Records of Transactions (Tex. Ins. Code § 4102.110)

The Insurance Code provides that a licensee who is a resident of Texas or a business entity organized under Texas laws shall maintain in the place of business the records required by chapter 4102. A licensee shall also keep a complete record in Texas of each of the licensee's transactions as a public insurance adjuster, including: the name of the insured; the date, location, and amount of loss; a copy of the contract between the license holder and the insured; the name of the insurer and the amount, expiration date, and number of each policy under which the loss is covered.³⁰⁸ Such records must be maintained in Texas for at least five years after the termination of a transaction with the insured and open to examination by the Commissioner.³⁰⁹

With regard to Mr. Miller's claim, Mr. Matysek moved office locations without informing his client. Mr. Miller attempted but was unable to contact Mr. Matysek for over a year. Mr. Matysek admitted that he lost Mr. Miller's file while moving his place of business. By failing to maintain the required business records for Mr. Miller at his place of business and failing to maintain a complete record of his transactions for at least five years, Mr. Matysek violated Texas Insurance Code §§ 4102.106 and .110.

³⁰⁶ Tex. Ins. Code § 4102.201(a)(1).

³⁰⁷ The order of alleged violations has been rearranged from the NOH to track the ALJ's progression of analysis.

³⁰⁸ Tex. Ins. Code § 4102.110(a).

³⁰⁹ Tex. Ins. Code § 4102.110(b).

2. Using a Different Name than Licensed (Tex. Ins. Code § 4102.162); Failure to Timely Register Assumed Names and/or Offices (28 Tex. Admin. Code § 19.902(c))

A licensee may not use a name different from the name under which the license holder is currently licensed in an advertisement, solicitation, or contract for business unless the name is used under a valid assumed name certificate as provided by Texas Business and Commerce Code chapter 71.³¹⁰ An agent must register any assumed name or additional office by filing with the State Board of Insurance a completed form together with the required fee.³¹¹

Mr. Matysek created a website advertising his services and soliciting business under the name Victoria Public Adjusters. Mr. Matysek did not register this name with the Department or obtain a license to operate under this name. By using a name in his advertising that was different from his licensed name without filing or registering an assumed name, Mr. Matysek violated Insurance Code § 4102.162 and 28 Texas Administrative Code § 19.902(c).

3. Failure to Prepare Claim in Accordance with Terms and Conditions of Contract (Tex. Ins. Code § 4102.102)

Licensees must prepare each claim for an insured represented by the licensee in accordance with the terms and conditions of the contract of insurance under which recovery is sought.³¹²

The terms of the insurance contracts in this case required an appraisal and/or an EUO once invoked. For the claims of Mr. Tran and Ms. Zimmerhanel, Mr. Matysek refused to appoint an appraiser and failed to segregate damage from separate events as required by the policy. For the claims of the Pricketts and Mr. Davis, Mr. Matysek failed to provide requested information to the insurance company. In Mr. Davis's claim, Mr. Matysek failed to allow an EUO as required by policy. Mr. Matysek admitted that he intentionally delayed appraisal at times.

³¹⁰ Tex. Ins. Code § 4102.162.

³¹¹ 28 Tex. Admin. Code § 19.902(c).

³¹² Tex. Ins. Code § 4102.102.

Based on the foregoing, the ALJ concludes that Mr. Matysek violated Texas Insurance Code § 4102.102 by failing to prepare a claim in accordance with terms and conditions of the contract.

4. Knowingly Divulging Information Obtained to Another Person (Tex. Ins. Code § 4102.153)

A licensee may not divulge to any other person, except as the law may require, any information obtained except at the direction of the employer or the client for whom the information is obtained.³¹³

With regard to the claims of Rucci, Ms. Zimmerhanel, and Mr. Tran, Mr. Matysek sent claim information to an unrelated third party without permission. During the Department's investigation, Mr. Matysek claimed to the Department that his finger had slipped as he hit the button on his phone. However, during the hearing, Mr. Matysek admitted to sending claim information "across the board" to get attention.³¹⁴ Accordingly, the ALJ concludes that Mr. Matysek violated Texas Insurance Code § 4102.153 by divulging claim information to unrelated third parties.

5. Seeking Commissions and/or Accepting Payment for Services Mr. Matysek Did Not Provide (Tex. Ins. Code § 4102.104(a), (d))

A licensee may receive a commission for service provided under this chapter consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation.³¹⁵ He is entitled to reasonable compensation from the insured for services provided by the license holder on behalf of the insured, based on the time spent on the claim and expenses incurred by the license holder, until the claim is paid or the insured receives a

³¹³ Tex. Ins. Code § 4102.153.

³¹⁴ Tr. at 1029.

³¹⁵ Tex. Ins. Code § 4102.104(a).

written commitment to pay from the insurer.³¹⁶ A public insurance adjuster may not accept any payment that violates these parameters.³¹⁷

Staff alleges that with regard to Mr. Davis's claim, Mr. Matysek sought payment for services he did not provide when he demanded payment despite Mr. Davis obtaining legal counsel and terminating Mr. Matysek's contract prior to the claim resolving. Staff contends that because Mr. Matysek was terminated prior to a settlement being reached, he was not entitled to payment.

On February 9, 2018, Mr. Davis's attorney sent Mr. Matysek a letter terminating Mr. Matysek's representation.³¹⁸ Mr. Matysek refused to acknowledge the termination and subsequently demanded payment "for moneys recovered on this claim[.]"³¹⁹ Department employee Mr. Wright testified that there are limited provisions for expenses that may be charged related to services under a contract that may terminate prior to a settlement.³²⁰

The immediate language of Mr. Matysek's demand for payment appears to refer to a percentage commission, but payment is not explicitly described. Other parts of Mr. Matysek's letter refer to hours invested in the claim and computer expenses.³²¹ Under Texas Insurance Code § 4102.104(b), Mr. Matysek is entitled to reasonable compensation for time spent and expenses incurred on a claim, until the claim is paid or the insured receives a written commitment to pay from the insurer. It is unclear whether Mr. Matysek was demanding compensation and expenses to which he may be entitled or a percentage commission to which he was not entitled. Therefore,

³¹⁶ Tex. Ins. Code § 4102.104(b).

³¹⁷ Tex. Ins. Code § 4102.104(d).

³¹⁸ Staff Ex. 16 at 9738.

³¹⁹ Staff Ex. 16 at 9901 ("I am guaranteed payment for moneys recovered on this claim[.]"); Tr. 630-31.

³²⁰ Tr. at 833, 880.

³²¹ Staff Ex. 16 at 9900 ("I have 2 hours time wrapped up with your adjuster. I have 3-4 hours wrapped up with your engineer onsite. I had my assistant on site for no less than 2 hours measuring the property. I have spent at least 16 hours on the property and with commuting to an [sic] from the property I have 20 hours in time at the property. During the estimate creation on this estimate, our computer crashed and we purchased another computer and had to purchase a new computer. My Xactimate license expired and I had to pay for the renewal license to continue the estimate on this file.").

insufficient evidence was presented to establish a violation of Insurance Code § 4102.104(a) or (d) by seeking payment to which he was not entitled.

6. Unauthorized Practice of Law (28 Tex. Admin. Code § 19.713(b)(7); Tex. Ins. Code § 4102.156)

Licensed public insurance adjusters must not engage in the unauthorized practice of law.³²² A licensee may not render service or perform acts that constitute the practice of law, including the giving of legal advice to any person in the licensee's capacity as a public insurance adjuster.³²³

Texas Government Code § 81.101(a) defines "the practice of law" to mean "the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined." In the context of insurance adjusting, "[a]n opinion concerning the valuation, whether it be repair cost or replacement cost, of a damaged piece of property" does not constitute the unauthorized practice of law.³²⁴

In the present case, Mr. Matysek discussed events as being grounds for legal action. With regard to the Graffs, Mr. Matysek discussed with his clients and Safeco that violated policy terms were grounds to "seek action" against Safeco and stated a claim would be within the statute of limitations. With regard to Mr. Tran, Mr. Matysek claimed he may seek a "special hearing in court" for "actions under the consumer bill of rights," "a discrimination claim,"³²⁵ and "interstate commerce violations."³²⁶ With regard to the Pricketts, Mr. Matysek stated to his client and HOAIC

³²² 28 Tex. Admin. Code § 19.713(b)(7).

³²³ Tex. Ins. Code § 4102.156.

³²⁴ *Unauthorized Prac. of L. Comm. v. Jansen*, 816 S.W.2d 813, 816 (Tex. App.—Houston [14th] 1991, writ denied).

³²⁵ Staff Ex. 13 at 5285-86; Tr. at 332-33.

³²⁶ Staff Ex. 13 at 5289; Tr. at 333.

that there was “clear evidence of breach of contract, breach of fiduciary responsibility, falsifying claims information, obstruction[,] [r]acism, prejudice[,] [t]respassing, and collusion.”³²⁷ Mr. Matysek admitted that he “sometimes [has] to give legal advice.”³²⁸

While Mr. Matysek’s statements went beyond an insurance adjuster’s domain of offering an opinion on repair cost or replacement cost, the evidence does not show Mr. Matysek claimed to be an attorney. Mr. Matysek’s statements appear to be baseless or empty threats of lawsuits, which are inadvisable, but by themselves do not constitute the unauthorized practice of law. Further, Mr. Matysek did not prepare any legal documents or claim to render any service requiring legal skill or knowledge. Therefore, the ALJ concludes that insufficient evidence was presented to establish Mr. Matysek violated 28 Tex. Admin. Code § 19.713(b)(7) or Tex. Ins. Code § 4102.156.

7. Misrepresentations to an Insured or an Insurance Company (28 Tex. Admin. Code § 19.713(b)(3)); Material Misrepresentation, with Intent to Deceive, of the Terms of an Insurance Contract (Tex. Ins. Code § 4102.201(a)(6)); and Fraudulent Transaction (Tex. Ins. Code § 4102.201(a)(7))

Licensed public insurance adjusters must not make a misrepresentation, in violation of Insurance Code chapter 4102, to an insured or to an insurance company in the conduct of their actions as public insurance adjusters.³²⁹ The Commissioner may revoke a license on the basis of material misrepresentation, with intent to deceive, of the terms of an insurance contract.³³⁰ The Commissioner may revoke a license on the basis of engaging in a fraudulent transaction.³³¹

Mr. Matysek made material misrepresentations and false statements during his representation of the following clients:

³²⁷ Staff Ex. 15 at 9578; Tr. at 623.

³²⁸ Tr. at 1034.

³²⁹ 28 Tex. Admin. Code § 19.713(b)(3).

³³⁰ Tex. Ins. Code § 4102.201(a)(6).

³³¹ Tex. Ins. Code § 4102.201(a)(7).

- the Graffs, by representing to the insurance company that the client was attempting to repair his home when the client had already sold the house a year prior;
- the Hartmans, by stating to the insurance company that there was structural damage and the building may collapse, when two engineers found no structural damage;
- Ms. Zimmerhanel, by misrepresenting to Innovation Property Network that Mr. Matysek was Ms. Zimmerhanel's son, and by misrepresenting to the insurance company that she was defecating on the ground because the home had no working toilet when in fact it did have a functioning toilet;
- Mr. Tran, by making false statements about why appraiser Richard Barkkume did not want to be involved in the claim, and by sending an invoice to the insurance company demanding payment for depreciation, representing that repairs were made, when several of the invoice repairs had not been done;
- the Ramoses, by stating to the insurance company that there was structural damage in that the center beam was cracked and rolled and house was unsafe, when the engineer found no structural damage after performing an inspection;
- Ms. Apostolo, by including a chimney upgrade in the damage estimate to the insurance company, when the property did not have a chimney; and
- Gomez and Apis, stating to the insurance company there was structural damage to the home, when engineer found no structural damage after performing an inspection.

The evidence shows that Mr. Matysek's misrepresentations regarding the insurance contract claims were made with the intent to deceive the insurance companies in order obtain higher payment, from which he was owed a percentage commission. Mr. Matysek characterized his misrepresentation of facts as a "tactic."³³²

Mr. Matysek argues that the insurance companies' or other parties' wrongdoing justifies his actions. The ALJ disagrees. Mr. Matysek did not present evidence substantiating the perceived wrongdoings. Even so, professionalism should be utilized even when—particularly when—dealing with difficult parties or parties who have engaged in poor behavior.

³³² Tr. at 1085.

Texas law defines fraud as “an act, omission, or concealment in breach of a legal duty, trust, or confidence justly imposed, when the breach causes injury to another or the taking of an undue and unconscientious advantage.”³³³ Here, Mr. Matysek’s intentional misrepresentations caused injury to his clients by delaying claim resolution and to the insurance companies by incurring additional costs to claim resolution. Therefore, the ALJ concludes Mr. Matysek engaged in fraudulent transactions.

By making material misrepresentations to the insurance companies while submitting claim information under insurance contracts, Mr. Matysek violated Insurance Code § 4102.201(a)(6) and (7) and 28 Texas Administrative Code § 19.713(b)(3),

8. Failure to Conduct Business Fairly with Clients, Insurance Companies, and the Public (28 Tex. Admin. Code § 19.713(b)(1))

Licensed public insurance adjusters must conduct business fairly with their clients, insurance companies, and the public.³³⁴

In addition to the misrepresentations previously addressed, Mr. Matysek made baseless allegations and unprofessional comments during his representation of the following clients:

- the Graffs, by alleging Safeco or its counsel sent a sniper to the client’s roof and by calling Safeco’s counsel a “piece of trash attorney”,³³⁵
- the Hartmans, by alleging Hochheim wants to kill or injure policyholders;
- Ms. Zimmerhanel, by gratuitously discussing her bodily functions and by calling Safeco and its counsel “sick, sick, psychotic people”,³³⁶
- the Jenkses, by alleging that Allstate was intent on killing the policyholder, and by alleging a person involved in the inspection process used chemical agents and

³³³ *Flanary v. Mills*, 150 S.W.3d 785, 795 (Tex. App.—Austin 2004, pet. denied).

³³⁴ 28 Tex. Admin. Code § 19.713(b)(1).

³³⁵ Tr. at 306.

³³⁶ Staff Ex. 9 at 1900; Tr. at 320.

toxins in the clients' house, concealed weapons or neurotoxins in his anus, and was affiliated with the Mafia;

- Mr. Tran, by alleging the engineer had a drinking problem, alleging a roof worker engaged in sexual and racist activity in appraisal, and calling a Safeco representative or contractor a “psychopath”,³³⁷
- the Mensingers, by alleging that Ms. Mensinger was seeking male companionship from Mr. Matysek;
- Mr. Davis, by alleging that Hochheim and its counsel attempted to kill a previous client;
- the Hermeses, by alleging that Hochheim abused the elderly and attempted to kill the Hermeses; and
- Ms. Apostolo, by alleging Hochheim sought to intimidate, dupe, and threaten policyholders and destroyed people's lives.

No evidence was presented to substantiate any of these allegations.

Additionally, while representing the Hermeses, Mr. Matysek attempted to obtain additional sums after a compromise settlement had been reached. While representing the Pricketts, Mr. Matysek attempted to extort money from HOAIC by threatening to release to the media a video of a third-party, independent adjuster making a racist and inappropriate comment.

Based on Mr. Matysek's abundant use of misrepresentations, baseless accusations, and unprofessional communications, the ALJ finds that Mr. Matysek failed to conduct business fairly with clients, insurance companies, and the public. As such, Mr. Matysek violated 28 Texas Administrative Code § 19.713(b)(1).

³³⁷ Staff Ex. 13 at 5280; Tr. at 327.

9. Communications Harmful to the Profession (28 Tex. Admin. Code § 19.713(b)(9))

Licensed public insurance adjusters must not disseminate or use any form of agreement, advertising, or other communication, regardless of format or medium, in this state that is harmful to the profession of public insurance adjusting and that does not comply with the Insurance Code and Department rules.³³⁸

The record establishes that Mr. Matysek made numerous misrepresentations, baseless allegations, and unprofessional comments during his representation of clients. These communications resulted in additional costs and delays in resolution of the claims. Mr. Matysek admitted that “some of his communications may be harmful.”³³⁹ Therefore, Mr. Matysek’s violated 28 Texas Administrative Code § 19.713(b)(9) because his communications were harmful to the profession of public insurance adjusting and did not comply with the Insurance Code and Department rules.

10. Failure to Have Appropriate Knowledge and Experience (28 Tex. Admin. Code § 19.713(b)(6))

Licensed public insurance adjusters must have appropriate knowledge and experience for the work they undertake and should obtain competent technical assistance, when necessary, to help handle claims and losses outside their area of expertise.³⁴⁰

Staff alleges that with the claims of the Graffs, the Hartmans, Ms. Zimmerhanel, Mr. Tran, the Ramoses, and Gomez and Apis, Mr. Matysek failed to accurately assess damage and grossly overestimated damage, demonstrating his lack of knowledge and experience and his failure to obtain necessary, competent technical assistance.

³³⁸ 28 Tex. Admin. Code § 19.713(b)(9).

³³⁹ Tr. at 1085.

³⁴⁰ 28 Tex. Admin. Code § 19.713(b)(6).

Frankly, the level of knowledge and expertise that Mr. Matysek actually has is unclear based on the evidentiary record. The ALJ finds that Mr. Matysek's knowledge is overshadowed by the dishonest tactics he regularly utilizes in his business practice. The credible evidence establishes that in many instances, Mr. Matysek was not attempting to provide reasonable estimates of damage or accurate descriptions of the damage. Therefore, the ALJ is unable to make conclusions about his actual level of knowledge or expertise. Accordingly, insufficient was presented to establish a violation of 28 Tex. Admin. Code § 19.713(b)(6).

11. Incompetence or Untrustworthiness (Tex. Ins. Code § 4102.201(a)(8)); Failure to Meet Requirement Regarding Trustworthiness and Moral Character (Tex. Ins. Code § 4102.053(a)(4))

The Commissioner may revoke a license on the basis of demonstrated incompetence or untrustworthiness in the conduct of the licensee's affairs under the license, as determined by the Commissioner.³⁴¹ A licensee must be trustworthy and of a moral character that reasonably insures that the licensee will conduct the business of a public insurance adjuster fairly and in good faith without detriment to the public.³⁴²

Mr. Matysek's numerous false statements and misrepresentations demonstrate his untrustworthiness in public insurance adjusting. Mr. Matysek lacks the trustworthiness and moral character to conduct public adjustor business fairly and in good faith. Therefore, Mr. Matysek fails to meet the requirements of Insurance Code § 4102.201(a)(4) and (8).

IV. CONCLUSION

Insurance Code § 4102.201(a)(1) authorizes the Department to revoke a public adjuster license for a violation of that chapter or a Department rule. Based on Mr. Matysek's violations of Insurance Code §§ 4102.053(a)(4), .102, .106, .110, .153, .162, .201(a)(6), (7), and (8), and 28 Texas Administrative Code §§ 19.713 (b)(1), (3), (9), and .902(c), the ALJ recommends revocation

³⁴¹ Tex. Ins. Code § 4102.201(a)(8).

³⁴² Tex. Ins. Code § 4102.053(a)(4).

of Mr. Matysek's Department-issued license. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

V. FINDINGS OF FACT

1. James Matysek holds a public insurance adjuster license issued by the Texas Department of Insurance (Department) on August 4, 2014.
2. Each of the following was Mr. Matysek's client and entered into a contract with Mr. Matysek, whereby Mr. Matysek would receive a percentage of the amount issued by the insurance company: Mr. Miller; Rucci, LLC; the Graffs; the Hartmans; Ms. Zimmerhanel; the Jenkses; Mr. Tran; the Mensingers; the Pricketts; Mr. Davis; the Ramoses; Ms. Apostolo; and Gomez and Apis.
3. In April 2016, Mr. Miller hired Mr. Matysek to represent him in a claim with Allstate Insurance Company (Allstate).
4. Subsequently, Mr. Matysek moved his place of business from San Marcos to Georgetown. During the move, he lost Mr. Miller's file.
5. Mr. Matysek did not inform Mr. Miller that he moved office locations.
6. Mr. Miller attempted to contact Mr. Matysek for over a year with no response.
7. Mr. Matysek created a website advertising his services and soliciting business under the name "Victoria Public Adjusters."
8. Mr. Matysek did not register the name with the Department or obtain a license to operate under the name "Victoria Public Adjusters."
9. The terms of insurance contracts require policyholders to assess damage from a single loss event, and upon request: provide additional information, appoint an appraiser, and submit to an examination under oath (EUO).
10. In claims for the Hartmans, Mr. Tran, and Ms. Zimmerhanel, Mr. Matysek refused to appoint an appraiser as required by policy.
11. In claims for Mr. Tran and Ms. Zimmerhanel, Mr. Matysek refused to segregate damage and assess damage from a single loss event as required by policy.
12. In claims for the Graffs and Mr. Davis, Mr. Matysek failed to allow an EUO as required by the policy.

13. In claims for the Jenkses and Mr. Davis, Mr. Matysek failed to provide requested information to the insurance company as required by policy.
14. With regard to the claims of Rucci, LLC, Ms. Zimmerhanzel, and Mr. Tran, Mr. Matysek sent claim information to an unrelated third party without permission.
15. On February 9, 2018, Mr. Davis, through counsel, terminated Mr. Matysek's contract, prior to resolution of the claim.
16. Subsequently, Mr. Matysek sought payment for services on Mr. Davis's claim.
17. Mr. Matysek sent baseless threats of legal action to insurance companies and clients.
18. Mr. Matysek misrepresented to the insurance company that the Graffs were attempting to repair their home, but the clients had already sold the house a year prior.
19. Mr. Matysek stated to the insurance company that there was structural damage to the Hartmans' building, but there was no structural damage.
20. Mr. Matysek misrepresented to the insurance company that Ms. Zimmerhanzel was defecating on the ground because her home had no working toilet, when it actually had a functioning toilet.
21. During a phone call, Mr. Matysek misrepresented to Innovation Property Network that he was Ms. Zimmerhanzel's son.
22. Mr. Matysek misrepresented to Safeco Insurance of America (Safeco) that appraiser Richard Barkkume quit due to harassment by the Safeco appraiser, when the Safeco appraiser actually conducted himself appropriately and professionally at all times with Mr. Barkkume.
23. With regard to Mr. Tran's claim, Mr. Matysek sent an invoice to the insurance company demanding payment for depreciation, representing that repairs were made; however, several of the invoiced repairs had not been done.
24. Mr. Matysek stated to the insurance company that there was structural damage to the Ramoses' home, but there was no structural damage to the house.
25. With regard to one of Ms. Apostolo's claims, Mr. Matysek included a chimney upgrade in the damage estimate to the insurance company, when that property did not have a chimney.
26. Mr. Matysek stated to the insurance company that there was structural damage to the home of Gomez and Apis, when there was no structural damage to the home.

27. Mr. Matysek attempted to obtain additional sums after a compromise settlement had been reached and paid between the insurance company and the Hartmans.
28. While representing the Pricketts, Mr. Matysek attempted to extort money from Home Owners of America Insurance Company by threatening to release to the media a video depicting a third-party independent adjuster making racist and inappropriate comments.
29. Mr. Matysek made baseless allegations that: Safeco or its counsel sent a sniper to the Graffs' roof; Hochheim Prairie Farm Mutual Insurance Association (Hochheim) wanted to kill or injure policyholders; Allstate was intent on killing the Jenkses; a person involved in the inspection process used chemical agents and toxins in the Jenkses' house, concealed weapons or neurotoxins in his anus, and was affiliated with the Mafia; an engineer involved with the Mr. Tran's inspection process had a drinking problem; a contractor engaged in sexual and racist activity on Mr. Tran's roof; Ms. Mensinger sought male companionship from Mr. Matysek; Hochheim and its counsel attempted to kill a previous client; and Hochheim abused the elderly and attempted to kill the Hartmans.
30. Mr. Matysek made unprofessional comments by: gratuitously discussing Ms. Zimmerhanel's bodily functions; calling Safeco and its counsel "sick, sick, psychotic people" and "piece of trash attorney"; and calling a Safeco representative or contractor a "psychopath."
31. Mr. Matysek's pattern of communication is harmful to the profession of public insurance adjusting.
32. Mr. Matysek lacks the trustworthiness and moral character to conduct public adjuster business fairly and in good faith.
33. On August 14, 2019, Staff of the Department filed a Notice of Hearing and sent it to Mr. Matysek.
34. On October 16, 2020, Order No. 11 was issued, setting the videoconference hearing and providing instructions for participation.
35. Together, the Notice of Hearing and Order No. 11 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint.
36. The hearing on the merits was held via videoconference on February 1-4, 2021, before Administrative Law Judge Linda Brite of the State Office of Administrative Hearings (SOAH). Staff attorneys Stephanie Andrews and Cassie Tigue represented Staff; Mr. Matysek represented himself at the hearing. The record closed on April 23, 2021, upon submission of written closing briefs.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.055, ch. 4102.
2. SOAH has jurisdiction to conduct the administrative hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law. Tex. Ins. Code § 4102.201(b); Tex. Gov't Code ch. 2003.
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051- .052; Tex. Ins. Code § 4005.104(b).
4. The hearing was conducted pursuant to the Administrative Procedure Act. Texas Gov't Code ch. 2001.
5. Staff had the burden of proof to establish grounds for revocation of Mr. Matysek's license. 1 Tex. Admin Code § 155.427.
6. The Department did not meet its burden of proof in establishing Mr. Matysek violated Insurance Code §§ 4102.104 or .156, or 28 Texas Administrative Code § 19.713(b)(6)-(7).
7. Mr. Matysek failed to keep and maintain records in violation of Insurance Code §§ 4102.106 and .110.
8. Mr. Matysek used a different name than licensed in violation of Insurance Code § 4102.162.
9. Mr. Matysek failed to timely register an assumed name in violation of 28 Texas Administrative Code § 19.902(c).
10. Mr. Matysek failed to prepare claims in accordance with the terms and conditions of the contract, in violation of Insurance Code § 4102.102.
11. Mr. Matysek knowingly divulged information obtained about clients to another person without permission, in violation of Insurance Code § 4102.153.
12. Mr. Matysek made misrepresentations to insureds and insurance companies in violation of 28 Texas Administrative Code § 19.713(b)(3).
13. Mr. Matysek made material misrepresentations, with intent to deceive, of the terms of an insurance contract, in violation of Insurance Code § 4102.201(a)(6).
14. Mr. Matysek engaged in fraudulent transactions in violation of Insurance Code § 4102.201(a)(7).

15. Mr. Matysek failed to conduct business fairly with clients, insurance companies, and the public, in violation of 28 Texas Administrative Code § 19.713(b)(1).
16. Mr. Matysek disseminated communications harmful to the profession of public insurance adjusting and that did not comply with the Insurance Code and Department rules, in violation of 28 Texas Administrative Code § 19.713(b)(9).
17. Mr. Matysek demonstrated untrustworthiness in the conduct of his affairs as a licensee, in violation of Insurance Code §§ 4102.053(a)(4), .201(a)(8).
18. Mr. Matysek's violations of the Insurance Code and Department rules are grounds for the Department to revoke a public adjuster license pursuant to Insurance Code § 4102.201(a)(1).
19. Mr. Matysek's public insurance adjuster license should be revoked.

SIGNED June 22, 2021.



LINDA H. BRITE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS