

No. **2023-7939**

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

Date: 05/04/2023

Subject Considered:

Texas Department of Insurance, Enforcement Division
v.
James Willie Sutton, Jr., and Shondra Shaunell Sparks

SOAH Docket No. 454-22-2184.C

General Remarks and Official Action Taken:

The subjects of this order are James Willie Sutton, Jr.'s adjuster all lines license and Shondra Shaunell Sparks' adjuster all lines license and life agent license. This order revokes Mr. Sutton's and Ms. Sparks' insurance licenses and additionally orders them to pay restitution, jointly and severally, in the amount of \$11,421.61 to Texas Farmers Insurance Company (Farmers).

Background

After proper notice was given, the above-styled case was heard by an administrative law judge (ALJ) for the State Office of Administrative Hearings. The ALJ wrote and filed a proposal for decision containing a recommendation that the Texas Department of Insurance (TDI) revoke Mr. Sutton's adjuster all lines license and Ms. Sparks' adjuster all lines license and life agent license and direct them to pay restitution, jointly and severally, in the amount of \$11,421.61 to Farmers. A copy of the proposal for decision is attached as Exhibit A.

Mr. Sutton and Ms. Sparks filed exceptions to the ALJ's proposal for decision, and TDI Enforcement staff filed a reply to Mr. Sutton and Ms. Sparks' exceptions.

In response to the exceptions, the ALJ recommended that no changes be made to the proposal for decision. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

COMMISSIONER'S ORDER

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SOAH Docket No. 454-22-2184.C

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The commissioner of insurance adopts the ALJ's proposed findings of fact and conclusions of law with changes to Conclusion of Law No. 12, described in this order.

Legal Authority for Change to Proposal for Decision

The legal authority for the change to the proposal for decision made in this order is Tex. Gov't Code § 2001.058(e)(1), 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 the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies [of the agency], or prior administrative decisions"

Conclusion of Law No. 12

Proposed Conclusion of Law No. 12 states:

The Department may direct a license holder to may direct the holder of an authorization to make complete restitution to each Texas resident, each Texas insured, and each entity operating in this state that is harmed by a violation of, or failure to comply with, the Insurance Code or a rule of the commissioner. Tex. Ins. Code § 82.053(a).

Proposed Conclusion of Law No. 12 contains an error in its statement of the applicable law by including the words " may direct a license holder to." Insurance Code § 82.053(a) states "[t]he commissioner may direct the holder of an authorization to make complete restitution" Insurance Code § 82.001 defined "authorization" to include a license, so Mr. Sutton and Ms. Sparks are both holders of authorizations, making the reference to a license holder in Proposed Conclusion of Law No. 12 unnecessary.

As adopted by this order, Conclusion of Law No. 12 is changed to:

The Department may direct the holder of an authorization to make complete restitution to each Texas resident, each Texas insured, and each entity operating in this state that is harmed by a violation of, or failure to comply with, the Insurance Code or a rule of the commissioner. Tex. Ins. Code § 82.053(a).

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Findings of Fact

The findings of fact contained in Exhibit A are adopted by the commissioner and incorporated by reference into this order.

Conclusions of Law

1. Conclusions of Law Nos. 1–11 and 13 as contained in Exhibit A are adopted by the commissioner and incorporated by reference into this order.
2. In place of Conclusion of Law No. 12 as contained in Exhibit A, the following conclusion of law is adopted:

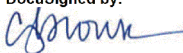
The Department may direct the holder of an authorization to make complete restitution to each Texas resident, each Texas insured, and each entity operating in this state that is harmed by a violation of, or failure to comply with, the Insurance Code or a rule of the commissioner. Tex. Ins. Code § 82.053(a).

Order

It is ordered that James Willie Sutton, Jr.'s adjuster all lines license and Shondra Shaunell Sparks' adjuster all lines license and life agent license are revoked.

It is further ordered that James Willie Sutton, Jr. and Shondra Shaunell Sparks must pay restitution, jointly and severally, in the amount of \$11,421.61 to Texas Farmers Insurance Company.

Mr. Sutton and Ms. Sparks must send proof of payment of the restitution to TDI within 30 days of the date of this order, to EnforcementReports@tdi.texas.gov.

DocuSigned by:

FC5D7EDDFFB4F8...

Cassie Brown
Commissioner of Insurance

COMMISSIONER'S ORDER

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Recommended and reviewed by:

DocuSigned by:
Jessica Barta
5DAC5618BBC74D4... _____
Jessica Barta, General Counsel

DocuSigned by:
Barbara Lazard-Hernandez
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Barbara Lazard-Hernandez, Attorney

**Before the
State Office of Administrative Hearings**

**Texas Department of Insurance, Enforcement Division,
Petitioner**

v.

**James Willie Sutton, Jr., and
Shondra Shaunell Sparks,
Respondents**

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Carol Hale, CLERK

Before the
State Office of Administrative Hearings

Texas Department of Insurance, Enforcement Division,
Petitioner

v.

James Willie Sutton, Jr., and
Shondra Shaunell Sparks,
Respondents

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department or TDI) brought this action to revoke the insurance licenses held by James Sutton, Jr., and Shondra Sparks (Respondents) and to require Respondents to make restitution to Texas Farmers Insurance Company in the amount of \$26,378.75. Staff alleges that Respondents violated the Texas Insurance Code by engaging in fraudulent or dishonest acts or practices and misappropriating money belonging to an insured. Staff further alleges that Respondents failed to respond to a Department written inquiry within 15 days or the deadline extension.

The Administrative Law Judge (ALJ) finds that the preponderance of the evidence supports Staff's allegations and recommends that Respondents' insurance licenses be revoked, and they be ordered to pay \$11,421.61 in restitution.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

The hearing on the merits was held on September 13, 2022, at the State Office of Administrative Hearings (SOAH) via videoconference. Attorney Anna Kalapach represented Staff. Respondents represented themselves. Attorney Scott Doyen represented Texas Farmers Insurance Company. The hearing concluded that day and the record closed with the submission of closing arguments on November 1, 2022. Jurisdiction and notice were not contested, so those matters are addressed solely in the findings of fact and conclusions of law below.

II. DISCUSSION

At the hearing, Staff offered 46 exhibits into evidence, which were admitted, and called Gregg Luttrell and Respondents as witnesses; additionally, as a result of discovery sanctions, paragraphs 8–34 of the Original Petition were deemed admitted.¹ Respondents testified on their own behalf and did not offer any documentary evidence. The facts of consequence are not in dispute and, therefore, set out below summarily.

¹ TDI Ex. 6; TDI Ex. 8.

A. BACKGROUND AND EVIDENCE

Respondents both hold licenses issued by the Department. Shondra Sparks holds an adjuster all lines license, and a life agent license.² James Sutton holds an adjuster all lines license.³

1. The Policy

Respondents had a homeowners insurance policy with Texas Farmers Insurance Company (Farmers).⁴ The territory manager for Farmers, Gregg Luttrell, reviewed Respondents' claim and the investigative materials.⁵ Luttrell highlighted operative provisions of the policy. Respondents' policy covered personal property damaged or destroyed by fire at actual cash value and replacement value.⁶ Actual cash value is the "the reasonable replacement cost at time of loss less deduction for depreciation."⁷ *Replacement* cost value, by contrast, is the cost to actually replace an item in today's market.⁸ To recover replacement cost, "[t]he property must be actually repaired or replaced."⁹ To prove that the property has been actually replaced, Luttrell explained, an insured must submit an invoice or receipt.¹⁰ These requirements were explained to Respondents several

² TDI Ex. 9.

³ TDI Ex. 10.

⁴ TDI Ex. 11.

⁵ Tr. at 18 (Luttrell Dir.).

⁶ TDI Ex. 11 at Bates 94.

⁷ TDI Ex. 11 at Bates 116.

⁸ Tr. at 20 (Luttrell Dir.); TDI Ex. 11 at Bates 94, 101.

⁹ TDI Ex. 11 at Bates 128, 144 (emphasis added).

¹⁰ Tr. at 22 (Luttrell Dir.); TDI Ex. 11 at Bates 128 (subsection D, ¶ B).

times throughout the claim process.¹¹ Respondents' policy also required them to submit to an examination under oath (EUO) at such place and time as Farmers may reasonably designate.¹²

2. The Loss

On May 14, 2018, a fire at Respondents' residence damaged a 12' x 24' storage shed and personal property in and around the shed.¹³ On May 21, 2018, Respondents filed a claim, which included the following personal property¹⁴:

- a. 26 pairs of jeans;¹⁵
- b. a meat slicer;¹⁶
- c. a drone;¹⁷
- d. 103 DVDs;¹⁸
- e. a camera;¹⁹
- f. a dining set;²⁰
- g. stereo equipment;²¹ and
- h. saws.²²

¹¹ TDI Ex. 16 at Bates 173 (June 18, 2018); TDI Ex. 17 at Bates 176 (July 9, 2018); TDI Ex. 18 at Bates 236 (Aug. 14, 2018); Tr. at 22, 25, 30-31 (Luttrell Dir.).

¹² TDI EX. 11 at 28 (Bates 141) (Section I.3.a.5.iv).

¹³ TDI Ex. 12 at Bates 161; TDI Ex. 17 at Bates 196; Tr. at 31-32 (Luttrell Dir.).

¹⁴ TDI Ex. 12 at Bates 161.

¹⁵ TDI Ex. 18 at 242 (item 519); TDI Ex. 38 at Bates 1415.

¹⁶ TDI Ex. 18 at Bates 241 (item 279).

¹⁷ TDI Ex. 32 at Bates 327 (item 457).

¹⁸ TDI Ex. 32 at Bates 321-322, 327-28 (item 527).

¹⁹ TDI Ex. 32 at Bates 324 (item 124).

²⁰ TDI Ex. 32 at Bates 324 (item 114).

²¹ TDI Ex. 32 at Bates 327 (items 507 and 508).

Concurrently, Respondents authorized Farmers to obtain financial transaction information, which Farmers would later use to obtain information pertaining to returns from retailers.²³

On May 24, 2018, Farmers notified Respondents that it was conducting an investigation, requested supporting documentation for the replaced damaged items, and restated the policy requirements relating to the claim process.²⁴

By letter dated July 9, 2019, Farmers explained the total estimated replacement cost value, depreciation, actual cash value, and “the amount of money that is available to them to recover” “should they replace the items that they lost in this estimate.”²⁵

After Farmers settled Respondents claim at the actual cash value,²⁶ Respondents sought to recover replacement value by submitting to Farmers the purchase receipts of various items they represented they had replaced. Farmers in turn paid Respondents for the difference between the actual cash value they had already received and the replacement value. As it turns out however—and critical to this action—Respondents returned the items to the retailers for a full refund, or cancelled the purchase before delivery, and never informed Farmers that any of the items had been returned. These transactions are detailed below.

²² TDI Ex. 34 at Bates 440 (items 377-78).

²³ TDI Ex. 14 (Sparks; May 29, 2018); Ex. 15 (Sutton; May 18, 2018); Tr. at 28-29, 51 (Luttrell Cross).

²⁴ TDI Ex. 13 at Bates 165-66; TDI Ex. 11 at 29 (Bates 141); Tr. at 24-26 (Luttrell Dir.).

²⁵ Tr. at 33 (Luttrell Dir.); TDI Ex. 17 at Bates 201.

²⁶ TDI Ex. 16; TDI Ex. 5 at Bates 60; TDI Ex. 34 at Bates 389 (item 5).

3. Actual Cash Value Recovery

Jeans & Meat Slicer

Respondents purchased 26 pairs of jeans from a JC Penny in Mobile, Alabama, for \$1,137.95 on July 26, 2018,²⁷ and returned the jeans on August 1, for a refund.²⁸ Sutton purchased a meat slicer from MobileFixture in Mobile, Alabama, for \$8,290.53 on July 30, and returned the meat slicer on August 1, for a refund.²⁹ Respondents submitted receipts to Farmers but did not disclose that the items had been returned for a refund. On August 14, Farmers paid an additional \$557.83 for the jeans,³⁰ and an additional \$4,027.05 for the meat slicer.³¹

Drone, Camera, Dinning Set, and Stereo Equipment

On August 21, Respondents purchased a drone for \$1,082.49 from Best Buy;³² a camera for \$648.42,³³ and a dining set for \$973.17 from Sam's Club³⁴; and stereo equipment for \$8,443.48 from Magnolia Audio Video.³⁵ On August 24,

²⁷ TDI Ex. 27 at Bates 259 (receipt). The evidence shows that Respondents purchased an additional 25 pairs of jeans from Dillard's on August 1, 2018, for \$1,099.73. TDI Ex. 38 at 82 (Bates 1119), Bates 1251-253 (jeans); TDI Ex. 5 at Bates 64. However, Staff does not allege that these were returned.

²⁸ TDI Ex. 5 at Bates 60, 63. Tr. at 62 (Luttrell Dir.).

²⁹ TDI Ex. 5 at Bates 63.

³⁰ TDI Ex. 18 at Bates 242 (item 519); TDI Ex. 32 at Bates 317 (item 519 shows seven entries, for a total of 51 items; the ALJ presumes that the first six, representing 26 pairs of jeans, represent the jeans returned to JC Penny. These entries appear in the following amounts: \$433.00, \$21.65, \$43.30, \$21.65, \$16.58, \$21.65, which equal \$557.83); TDI Ex. 38 at Bates 1196; TDI Ex. 5 at Bates 63.

³¹ TDI Ex. 5 at Bates 63 (showing deposit on August 15, 2018); TDI Ex. 18 at Bates 241 (item 279); TDI Ex. 38 at Bates 1196.

³² TDI Ex. 19 (purchase receipt).

³³ TDI Ex. 21 (purchase receipt).

³⁴ TDI Ex. 21 (purchase receipt).

³⁵ TDI Ex. 25 (purchase receipt);

Respondents returned the drone, the camera, and the dining set for a refund.³⁶ On August 25, the stereo equipment order was canceled before it was delivered.³⁷

DVDs

On August 24 (presumably while returning the drone), Respondents purchased 103 DVDs from Best Buy for \$1,112.77,³⁸ and returned approximately 79 of the DVDs for a refund of approximately \$842.42 between on September 1 and September 4, 2018.³⁹

On August 29, Respondents submitted the purchase receipts for the drone, camera, dinning set, stereo equipment, and DVDs to Farmers, stating “I’m sending you copies of the receipts for items that have been replaced.”⁴⁰

On September 13, 2018, Farmers paid the following additional amounts:

- a. \$541.24 for the drone;⁴¹
- b. \$324.21 for the camera;⁴²
- c. \$466.54 for the dining set;⁴³

³⁶ TDI Ex. 20 (drone, return receipt); TDI Ex. 22 (camera, dining set, return receipt).

³⁷ TDI Ex. 5 at Bates 64-65 (showing a refund of \$8,443.48 from Magnolia).

³⁸ TDI Ex. 26 (showing purchase receipts for 25 DVDs for \$257.38; 25 DVDs for \$270.35; 29 DVDs for \$314.69; and 25 DVDs for \$270.35).

³⁹ TDI Ex. 5 at Bates 70 (showing three refunds from Best Buy in amounts of \$270.35, \$270.35, and \$314.69).

⁴⁰ TDI Ex. 37 at Bates 576-77, 878; TDI Ex. 40 at Bates 1422.

⁴¹ TDI Ex. 32 at Bates 327 (item 457); TDI Ex. 38 at 1196. TDI Ex. 5 at 70 (payment received on 9/14/2018); Tr. 48-50 (Luttrell Dir.).

⁴² TDI Ex. 32 at Bates 324 (item 124); TDI Ex. 38 at Bates 1196; TDI Ex. 5 at Bates 70 (showing receipt on 9/14/2018); Tr. at 54 (Luttrell Dir.).

⁴³ TDI Ex. 32 at Bates 324 (item 114); TDI Ex. 38 at Bates 1196; TDI Ex. 5 at Bates 70 (showing receipt on 9/14/2018); Tr. 54 (Luttrell Dir.).

- d. \$4,005.20 for the stereo equipment.⁴⁴ and
- e. \$525.30 for the DVDs.⁴⁵

Saws

On December 4, Respondents purchased a chainsaw and a power cutter from Wiseman Hardware, Inc., for \$3,299.45.⁴⁶ Three days later, on December 7, Respondents returned the saws for a refund.⁴⁷ Respondents submitted the receipts to Farmers but did not disclose that the items had been returned for a refund.⁴⁸ On March 12, 2019, Farmers paid Respondents an additional \$974.24 for the chainsaw.⁴⁹

These transactions are summarized in the table below.

⁴⁴ TDI Ex. 38 at Bates 1196; TDI Ex. 5 at 70 (showing receipt on 9/14/2018); Tr. 58 (Luttrell Dir.). TDI Ex. 32 at 327 (items 507 and 508) (\$3,247.48 (item 507) + \$757.72 (item 508) = \$4,005.20)

⁴⁵ TDI Ex. 32 at Bates 321-22, 327-328 (item 527); TDI Ex. 38 at Bates 1196; TDI Ex. 5 at Bates 70 (payment received on 9/14/2018).

⁴⁶ TDI Ex. 29 (purchase receipt).

⁴⁷ TDI Ex. 30 (return receipt); Tr. at 69-72 (Luttrell Dir.).

⁴⁸ TDI alleged that the receipts for the saws were also submitted to Farmers on August 29, 2018. This is clear error, however, because the saws were not purchased until December of that year.

⁴⁹ TDI Ex. 34 at Bates 440 (item 377); TDI Ex. 38 at Bates 1196. Why the power cutter was not covered is not in evidence.

Item	Purchase Date⁵⁰	Return/Cancellation Date⁵¹	Payment Issue Date	Amount Recovered as Depreciation⁵²
Jeans	7/26/2018 ⁵³	8/1/2018 ⁵⁴	8/14/2018 ⁵⁵	\$557.83 ⁵⁶
Meat Slicer ⁵⁷	7/30/2018	8/2/2018	8/14/2018	\$4,027.05
Drones ⁵⁸	8/21/2018	8/24/2018	9/13/2018	\$541.24
Camera ⁵⁹	8/21/2018	8/28/2018	9/13/2018	\$324.21
Dining Set ⁶⁰	8/21/2018	8/28/2018	9/13/2018	\$466.54
Stereo Equipment ⁶¹	8/21/2018	8/25/2018	9/13/2018	\$4,005.20
DVDs ⁶²	8/24/2018	9/1-4/ 2018	9/13/2018	\$525.30
Saws ⁶³	12/4/2018	12/7/2018	3/12/2019	\$974.24
Total				\$11,421.61

⁵⁰ TDI Exs. 6 and 8 (purchase dates, deemed admitted).

⁵¹ TDI Exs. 6 and 8 (return/cancellation, dates deemed admitted).

⁵² TDI Exs. 6 and 8 (depreciation amounts, deemed admitted).

⁵³ TDI Ex. 27 at Bates 259 (receipt); TDI Ex. 5 at Bates 60 (debit card statement); Tr. at 62 (Luttrell Dir.).

⁵⁴ TDI Ex. 5 at Bates 63.

⁵⁵ TDI Ex. 18 at Bates 242 (item 519); TDI Ex. 32 at Bates 317 (item 519); TDI Ex. 38 at Bates 1196; TDI Ex. 5 at Bates 63 (showing payment received on 8/15/2018).

⁵⁶ TDI Ex. 18 at Bates 242 (item 519); Tr. at 63. The \$1,099.08 amount staff references in its closing brief appears to include all 51 pairs of jeans, not just the 26 pairs in dispute here.

⁵⁷ TDI Ex. 23 (purchase order); TDI Ex. 24 (return receipt); TDI Ex. 5 at Bates 61, 63; Tr. 42–46 (Luttrell Dir.); TDI Ex. 18 at Bates 241 (item 279); TDI Ex. 38 at Bates 1196.

⁵⁸ TDI Ex. 19 (purchase receipt); TDI Ex. 20 (return receipt); TDI Ex. 32 at Bates 327 (item 457); TDI Ex. 38 at Bates 1196. TDI Ex. 5 at 70 (payment received on 9/14/2018); Tr. at 48-50 (Luttrell Dir.).

⁵⁹ TDI Ex. 21 (purchase receipt); TDI Ex. 22 (return receipt); TDI Ex. 32 at Bates 324 (item 124); TDI Ex. 38 at Bates 1196; TDI Ex. 5 at 70 (showing receipt on 9/14/2018); Tr. at 54 (Luttrell Dir.).

⁶⁰ TDI Ex. 21 (purchase receipt); TDI Ex. 22 (return receipt); TDI Ex. 32 at Bates 324 (item 114); TDI Ex. 38 at Bates 1196; TDI Ex. 5 at 70 (showing receipt on 9/14/2018); Tr. at 54 (Luttrell Dir.).

⁶¹ TDI Ex. 25 (purchase receipt); TDI Ex. 5 at Bates 64-65; TDI Ex. 32 at Bates 327 (items 507 and 508); TDI Ex. 38 at Bates 1196; TDI Ex. 5 at Bates 70 (showing receipt on 9/14/2018); Tr. at 58 (Luttrell Dir.).

⁶² TDI Ex. 26 (purchase receipt); TDI Ex. 5 at Bates 70; TDI Ex. 32 at Bates 321-322, 327-328 (item 527); TDI Ex. 38 at Bates 1196; TDI Ex. 5 at Bates 70 (payment received on 9/14/2018).

⁶³ TDI Ex. 29 (purchase receipt); TDI Ex. 30 (return receipt); Tr. at 69-71 (Luttrell Dir.); TDI Ex. 34 at Bates 440 (item 377); TDI Ex. 38 at Bates 1196.

After receiving payments from Farmers totaling \$206,650.74, on February 27, 2019, Respondents submitted a supplemental contents list seeking an additional \$45,000.⁶⁴

4. The Examination Under Oath

Because of the large amount of the supplemental contents list, questions about whether they existed in the storage shed, its size, and questions related to receipts,⁶⁵ Farmers informed Respondents that it wished to take an EUO.⁶⁶

The EUO occurred on April 26, 2019.⁶⁷ Respondents were asked to bring documents substantiating purchase and ownership of the claimed property, including all “receipts, bills of sales, invoices, order confirmations, shipping confirmations, bank statements, credit card statements.”⁶⁸

During the EUO, Sutton was shown a picture of the meat slicer⁶⁹ and the purchase receipts for the stereo equipment⁷⁰ and the jeans,⁷¹ and stated that all

⁶⁴ TDI Ex. 40 at Bates 1595.

⁶⁵ Tr. at 34 (Luttrell Dir.); Tr. at 94-95 (Luttrell Cross).

⁶⁶ TDI Ex. 35 at Bates 446.

⁶⁷ TDI Ex. 36.

⁶⁸ TDI Ex. 36 at Bates 449-450; Tr. at 36 (Luttrell Dir.).

⁶⁹ TDI Ex. 38 at 52 (Bates 1089), Bates 1232 (meat slicer).

⁷⁰ TDI Ex. 38 at 79 (Bates 1116), Bates 1236 (stereo equipment).

⁷¹ Tr. 122:3-14; TDI Ex. 38 at 82 (Bates 1119), Bates 1251-53 (jeans).

were “at home.”⁷² Sutton was also shown the purchase receipt for the drone and confirmed that the drone was replaced.⁷³

Similarly, during the EUO, Sparks was shown the purchase receipts for the stereo equipment,⁷⁴ the jeans,⁷⁵ and the DVDs;⁷⁶ she stated that the stereo equipment and the DVDs were in her home;⁷⁷ and that she still owned all the jeans.⁷⁸

On July 23, Farmers requested documentation, including unredacted credit card or debit card statements used to purchase and return several items.⁷⁹

Based on the result of the investigation, by letter dated October 10, Farmers denied further coverage on grounds that Respondents failed to cooperate, failed to provide the requested documentation, including the credit card or debit card statements, and because of Respondents’ false representations regarding the purchases and false statements under oath.⁸⁰ Farmers further informed Respondents that it intended “to seek indemnification in the amount of \$26,378.75

⁷² TDI Ex. 38 at 52-53 (Bates 1089) (meat slicer); TDI Ex. 38 at 80 (Bates 1117-18) (stereo equipment); TDI Ex. 38 at 82 (Bates 1119) (jeans).

⁷³ TDI Ex. 38 at 81 (Bates 1118), at Bates 1250.

⁷⁴ TDI Ex. 37 at 112-13 (Bates 563-64) (stereo equipment), Bates 692.

⁷⁵ TDI Ex. 37 at 121 (Bates 572), Bates 707-09 (jeans).

⁷⁶ TDI Ex. 37 at 116 (Bates 567), Bates 694-700.

⁷⁷ TDI Ex. 37 at 113-14 (Bates 564-65) (stereo equipment), 117 (Bates 568) (DVDs); Tr. at 141, 143 (Sparks Cross).

⁷⁸ TDI Ex. 37 at 124 (Bates 575) (jeans).

⁷⁹ TDI Ex. 39 at Bates 1594.

⁸⁰ TDI Ex. 40.

due to your misrepresentations related to the depreciation recovery submission and subsequent payments noted herein.”⁸¹

5. The Section 38.001 Inquiry

Based on its finding that Respondents made misrepresentations or engaged in fraud, Farmers reported the activity to the Department.⁸² On August 19, 2021, the Department sent a written inquiry to Respondents, under Texas Insurance Code section 38.001, which requires responses within 15 days.⁸³ In response, Respondents stated that they did not know when specific items were purchased, how much they paid for those items, or the date they no longer owned those items.⁸⁴ In response to questions regarding Farmers’ October 10, 2019 letter, Respondents answered that they had not returned and did not intend to return any of the \$26,378.75.⁸⁵

On October 6, the Department sent Respondents a second inquiry, requesting unredacted copies of credit card, debit card, and bank statements.⁸⁶ On October 11, Respondents requested an extension until October 28, to respond, which the Department promptly granted.⁸⁷ On that date, Respondents’ then-

⁸¹ TDI Ex. 40 at Bates 1598.

⁸² Tr. at 98 (Luttrell Cross).

⁸³ TDI Ex. 41 at Bates 1601-1608.

⁸⁴ TDI Ex. 41 at Bates 1614-1616.

⁸⁵ TDI Ex. 41 at Bates 1618; Tr. at 74 (Luttrell Dir.).

⁸⁶ TDI Ex. 42 at Bates 1641 (¶¶ 11 and 12).

⁸⁷ TDI Ex. 42 at Bates 1644.

attorney, Frank King, responded that the credit card information was confidential and “security concerns prevent transmission of this information on an unsecure channel.”⁸⁸ The Department, in turn, directed King to find a secure method, suggesting several options, and again extended the deadline to respond.⁸⁹ On November 5, King notified the Department that he no longer represented Respondents.⁹⁰

The Department further attempted to obtain the requested information. On November 18, it notified Respondents that they had not provided a complete response to the October 6 inquiry and granted them additional time to respond.⁹¹ The notice re-stated that the outstanding information included copies of their credit card, debit card, and bank statements.⁹² In bold, the notice further warned Respondents that:

The failure to provide information requested by the department in the inquiry dated October 6, 2021, may constitute a violation of TEX. INS. CODE § 38.001. The department may seek to take disciplinary action against you for failing to respond to the inquiry. This disciplinary action can include revocation of your licenses.

You have one last opportunity to comply with the department’s original request for information dated October 6, 2021. The outstanding requests that you have not completed are re-stated below. If you do not provide the requested information within 15 days, the department may choose pursue [sic] all disciplinary action available at

⁸⁸ TDI Ex. 42 at Bates 1650-51.

⁸⁹ TDI Ex. 42 at Bates 1670.

⁹⁰ TDI Ex. 42 at Bates 1673 and 1674.

⁹¹ TDI Ex. 43.

⁹² TDI Ex. 43 at Bates 1696-97.

a public proceeding docketed at the State Office of Administrative Hearings.⁹³

Again, Respondents did not respond.⁹⁴

B. RESPONDENTS' EVIDENCE

Respondents did not dispute any of the foregoing facts. Instead, their testimony and their cross examination of Luttrell generally focused on Farmers' and the Department's motives in prosecuting this action and whether an insured was allowed to return items.⁹⁵

C. APPLICABLE LAW

The Texas Insurance Code authorizes the Department to regulate the business of insurance in this state and to take disciplinary action against agents who violate the law or rules related to insurance.⁹⁶ In particular, the Department may take disciplinary action against a license holder for misappropriating, converting to the license holder's own use, or illegally withholding money belonging to an insurer⁹⁷ or engaging in a fraudulent or dishonest act or practice.⁹⁸

⁹³ TDI Ex. 43 at Bates 1696 (emphasis original).

⁹⁴ In this proceeding, Respondents continued to resist producing the requested information in discovery. This became the subject of discovery sanctions, which, among other penalties, deemed factual allegations 8 through 34 of the Original Petition as admitted. TDI Ex. 3 at 38, 40; TDI Ex. 4; TDI Ex. 5; TDI Ex. 6; TDI Ex. 7; TDI Ex. 8.

⁹⁵ Tr. 79-80, 82, 98 (Luttrell Cross).

⁹⁶ Tex. Ins. Code §§ 31.002(1), (3), 4005.102.

⁹⁷ Tex. Ins. Code § 4005.101(b)(4)(A).

⁹⁸ Tex. Ins. Code § 4005.101(b)(5).

Under section 38.001, a person must respond to a Department inquiry relating to any matter connected with the person’s transactions that the Department considers necessary for the public good or for the proper discharge of its duties no later than the 15th day after receiving it.⁹⁹ Upon request, the Department must give a 10-day extension of the time to respond to the inquiry.¹⁰⁰

For a violation of the Texas Insurance Code or Department rule, the Department may suspend, revoke, or deny renewal of a license.¹⁰¹ The Department may further direct a license holder to make restitution to each entity that is harmed by a violation of, or failure to comply with, the Texas Insurance Code or Department rule.¹⁰² The restitution shall be made in the form, amount, and within the period determined by the commissioner.¹⁰³

Staff bears the burden of proof on these allegations.¹⁰⁴

D. ARGUMENT AND ANALYSIS

At issue in this case is whether, by submitting receipts for recovery of replacement value on items that were returned, and by their responses to the EUO, Respondents misappropriated, converted, or illegally withheld money belonging to

⁹⁹ Tex. Ins. Code § 38.001(c).

¹⁰⁰ Tex. Ins. Code § 38.001(c).

¹⁰¹ Tex. Ins. Code § 4005.102(2); *see also id.* §§ 82.051 (authorizing the commission to cancel or revoke an authorization); 82.001 (including “license” in the definition of “authorization.”).

¹⁰² Tex. Ins. Code §§ 82.052(4), .053(a).

¹⁰³ Tex. Ins. Code § 82.053(b).

¹⁰⁴ 1 Tex. Admin. Code § 155.427; *Granek v. Tex. St. Bd. of Med. Exam’rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

an insured; or engaged in fraudulent or dishonest acts or practices.¹⁰⁵ Also at issue is whether by failing to respond to the Department's written inquiry, Respondents violated Texas Insurance Code section 38.001.

Staff argues that, that by knowingly and intentionally submitting receipts to Farmers to recover replacement value on items that were not replaced, Respondents engaged in fraudulent or dishonest acts or practices in violation of Texas Insurance Code section 4005.101(b)(5).

Respondents argue that (1) they acted in the private capacity and (2) nothing forbade them from returning the items. Staff argues that the Insurance Code does not distinguish between fraudulent and dishonest acts while engaged in the business of insurance or as a private matter.¹⁰⁶ This, Staff argues, is supported by Department precedent and the importance that the Department places on being honest, trustworthy, and reliable.¹⁰⁷ The ALJ agrees. Section 4005.101 does not distinguish between fraudulent or dishonest acts committed while engaged in the business of insurance or in some other capacity. That section applies both to *applicants* and license holders.¹⁰⁸ The statute would make no sense if the Department could deny a *license application* only for acts committed while engaged in the business of insurance. The statute is clearly meant to address actions taken outside the business of insurance.

¹⁰⁵ Tex. Ins. Code § 4005.101(b)(4)(A), (b)(5).

¹⁰⁶ Tex. Ins. Code § 4005.101(b)(5).

¹⁰⁷ See 28 Tex. Admin. Code § 1.502(c).

¹⁰⁸ Tex. Ins. Code § 4005.101(b).

Less clear is the authority to order restitution for actions taken in a private capacity. The applicability of Chapter 82 sanctions strongly leans toward protecting insureds against wrong acts of insurers and license holders engaged in the business of insurance.¹⁰⁹ Nevertheless, that chapter also applies to “an individual” who “holds an authorization.”¹¹⁰ And restitution may be ordered in favor of “each entity operating in this state.”¹¹¹ Thus, this language is broad enough to encompass ordering any license holder to pay restitution for a violation of the Insurance Code or Department rule, even if not engaged in the business of insurance. Therefore, the ALJ concludes that the Department is authorized to direct Respondents to pay restitution to Farmers for actions taken while not engaged in the business of insurance.

1. Fraudulent or Dishonest Acts

The items for which Respondents sought replacement value were returned. The jeans and the meat slicer, purchased on July 26 and 30, respectively, were both returned on August 1, 2018. Although the date of submission to Farmers is not in evidence, Respondents received additional payment on August 14, 2018, for the difference between ACV and the replacement cost. This circumstantial evidence shows that Respondents submitted the receipts to Farmers in the interim, representing that the items were replaced. Respondents accepted payment for the difference without informing Farmers that the items were returned.

¹⁰⁹ See Tex. Ins. Code §§ 82.002, .054.

¹¹⁰ Tex. Ins. Code § 82.002(b)(2)(B); see Tex. Ins. Code § 82.001 (defining authorization to include a license).

¹¹¹ Tex. Ins. Code § 82.053(a).

The drone, the camera, the dining set, and the stereo equipment, purchased on August 21, were all returned to the retailers for a refund before the receipts for those items were submitted to Farmers on August 29, 2018, “for items that have been replaced.”¹¹² The evidence further shows that, at that time, Respondents were well aware that to recover replacement cost value, “[t]he property must be actually . . . replaced.”¹¹³ The DVDs, purchased on August 24, were returned just for a refund days later.

At their EUO on April 26, 2019, some eight months later, Respondents testified that the jeans, the meat slicer, the drone, the DVDs, and the stereo equipment were either at home, still in their possession, or indeed replaced—when they were not.

The saws were purchased on December 4 and returned on December 7. Respondents received replacement value on March 12, 2019. This circumstantial evidence shows that Respondents submitted the receipts to Farmers in the interim, representing that the items were replaced. Respondents accepted payment for the difference without informing Farmers that the items were returned.

The ALJ finds that that by submitting receipts for replacement value, and subsequently accepting payment for replacement value, for items that were not actually replaced, Respondents engaged in fraudulent or dishonest acts or practices.

¹¹² TDI Ex. 37 at Bates 576-77, 878; TDI Ex. 40 at Bates 1422.

¹¹³ TDI Ex. 11 at Bates 128, 144 (emphasis added); TDI Ex. 16 at Bates 173 (June 18, 2018); TDI Ex. 17 at Bates 176 (July 9, 2018); TDI Ex. 18 at Bates 236 (Aug. 14, 2018); Tr. at 22, 25, 30-31 (Luttrell Dir.).

2. Misappropriating, Converting, or Illegally Withholding Money of an Insurer

Based on the same facts, Staff argues that by making false representations to an insurance company, Respondents obtained money to which they were not entitled and, therefore, misappropriated, converted, or illegally withheld money belonging to an insurer in violation of Texas Insurance Code section 4005.101(b)(4). Staff further argues that by returning the items before Farmers issued payment for replacement value, Respondents intentionally misled Farmers into issuing checks to them for the replacement value for items Respondents did not actually replace. In support, Staff notes that many of the items never reached Respondents' home. Both the jeans and the meat slicer were purchased from retailers in Mobile, Alabama, between July 26 and July 30, 2018,¹¹⁴ and returned days later at the same retailers, never entering Texas.¹¹⁵ The stereo equipment was scheduled to be delivered to Respondents on August 26, 2018,¹¹⁶ but Respondents cancelled their order one day before, on August 25, 2018.¹¹⁷

The ALJ agrees. This evidence shows a clear intent to create the appearance of complying with the requirements for obtaining replacement value from Farmers without actually replacing the items. As such, Respondents were not entitled to the replacement value payments for those items. Accordingly, the ALJ find that Respondents misappropriated and converted money belonging to an insurer.

¹¹⁴ TDI Ex. 27 at Bates 259; TDI Ex. 23.

¹¹⁵ TDI Ex. 5 at Bates 63.

¹¹⁶ TDI Ex. 25.

¹¹⁷ TDI Ex. 5 at Bates 63 (The statement shows that the return to Magnolia Audio & Visual occurred on August 25, 2018 and credited to Respondents' account on August 27, 2018.).

Staff further argues that, by refusing to return the \$26,378.75 to Farmers, Respondents also illegally withheld money Farmers. The ALJ disagrees. The evidence shows that, in a letter whose stated purpose was “to advise [Respondents] of the grounds upon which the denial is being made based,” Farmers informed Respondents of its intention “to seek indemnification in the amount of \$26,378.75” due to Respondents misrepresentations.¹¹⁸ The ALJ does not construe this as a request or demand that Respondents repay this amount. Nor does the letter establish that, at that time, Farmers was legally entitled to that amount. Accordingly, the ALJ finds that Staff did not meet its burden of proof to show that Respondents illegally withheld money belonging to an insurer.

Staff further argues that Respondents should be required to pay restitution in the amount of \$26,378.75.54. However, Staff has not established that that is the appropriate amount. This amount—included in Farmers’ October 10, 2019 letter denying further coverage¹¹⁹—is conclusory and not supported by an itemized accounting. The letter references additional items purchased and returned to Bass Pro Shop; however, that evidence was not developed at the hearing or in briefs. Instead, the evidence shows that Respondents misappropriated and converted through fraud or misrepresentation \$11,421.61 in depreciation from Farmers that they were not entitled to. Accordingly, the ALJ finds that Respondents should be ordered to pay \$11,421.61 in restitution.

¹¹⁸ TDI Ex. 40 at Bates 1598.

¹¹⁹ TDI Ex. 40 at Bates 1598.

3. Failure to Respond to the Department Inquiry

Staff argues that Respondents' intentional refusal to provide a complete response to the Department's written inquiry not later than the date of the extension constitutes a violation of Texas Insurance Code section 38.001. Staff argues that although Respondents told Staff that they did not know the answers to questions in the inquiry, they could have looked at their records to find the answers.¹²⁰ The ALJ agrees. Respondents' representation that they did not know the dates, costs, date receipts were submitted, whether they received payment from Farmers,¹²¹ is not credible, particularly in light of the evidence that Respondents kept detailed records of their transactions, correcting the listing price of many items on Farmers valuation list¹²² and account balance information between 2014-2017.¹²³ The ALJ therefore finds that Respondents failed to timely respond to a section 38.001 inquiry.

E. RECOMMENDATION

Because Staff established that Respondents engaged in conduct for which they can be disciplined, Staff requests that Respondents' licenses should be revoked because Respondents' violations show a pattern of intent and willfulness. The ALJ agrees. The evidence shows that Respondents intentionally purchased items solely for the purpose of obtaining receipts, which they used to falsely represent that those items had been replaced, they made false statements under

¹²⁰ TDI Ex. 5 at Bates 59-72 and 77-85; and TDI Ex. 42 at Bates 1660-63.

¹²¹ TDI Ex. 42.

¹²² TDI Ex. 38 at Bates 1422-26

¹²³ TDI Ex. 38 at Bates 1429-35.

oath, resisted disclosing transactional and financial information in response to the Department's inquiry, and even in this proceeding resisted discovery and failed to comply with orders. Such behavior not only shows dishonesty and misrepresentation, but also frustrates the legitimate purposes of the Department's enforcement process.

For the reasons stated above, the ALJ recommends that Respondents' licenses be revoked. Additionally, because the evidence shows that Respondents misappropriated and converted to their own use money belonging to an insurer, they should be required to pay \$11,421.61 in restitution to Farmers. The ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Shondra Shaunell Sparks, individual identification number 1262421, holds an adjuster all lines license issued by the Texas Department of Insurance (Department) on October 24, 2013, and a life agent license issued by the Department on May 4, 2018.
2. James Willie Sutton, Jr., individual identification number 1262447, holds an adjuster all lines license issued by the Department on November 12, 2013.
3. Shondra Shaunell Sparks and James Willie Sutton, Jr., collectively, are the Respondents in this case.
4. On March 24, 2022, the Department mailed a Notice of Hearing to Respondents that contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

5. Respondents responded to the notice and requested to proceed to hearing.
6. The hearing convened on September 13, 2022, at the State Office of Administrative Hearings (SOAH) before Administrative Law Judge Christiaan Siano via videoconference. The Department appeared at the hearing, represented by Staff Attorney Anna Kalapach. Respondents appeared and were self-represented. The hearing was adjourned the same day.
7. In May 2018, Respondents suffered property damage at their home and, as a result, filed an insurance claim with their insurer, Texas Farmers Insurance Company (Farmers).
8. Respondents represented and claimed to Farmers that they had lost certain personal property stored in a storage shed on their property and sought to replace those items.
9. Respondents' policy with Farmers required them to actually repair or replace personal property to collect replacement cost.
10. Farmers notified Respondents that they would receive actual cash value only if they submitted invoices and receipts to recover depreciation for replacing or repairing property.
11. To recover depreciation and receive replacement value, Respondents purchased various items and obtained receipts for each purchase. The items included jeans, a drone, stereo equipment, a dining set, a camera, a meat slicer, DVDs, and saws.
12. However, Respondents did not replace the items. Within days after purchasing the items, Respondents returned the items to the retailers for a full refund, or cancelled the purchase before delivery. Respondents either never or only temporarily possessed the purchased items.
13. Knowing that they had returned the purchases or cancelled the purchases, Respondents then gave Farmers the purchase receipts and falsely represented that they had actually replaced the personal property items.

14. Farmers paid Respondents additional claims settlement payments for the personal property they falsely claimed.
15. Farmers did not know that Respondents had already returned the items or cancelled the purchases at the time Farmers issued those claims settlement payments.
16. Respondents received and obtained \$11,421.61 from Farmers through misrepresentation.
17. Respondents made false and dishonest statements to Farmers while under oath.
18. On October 6, 2021, the Department sent Respondents a reasonable written inquiry.
19. Respondents requested to extend the time to respond and requested the revised due date of October 28, 2021. Staff granted the request, but Respondents did not completely respond by that date.
20. On November 1, 2021, and again on November 18, 2021, the Department warned Respondents that their response to the inquiry was incomplete and requested a complete response. The Department also warned Respondents that the failure to provide information requested in the inquiry may constitute a violation of Texas Insurance Code section 38.001 and may result in disciplinary action, including the revocation of their licenses.
21. Respondents failed to provide a complete response to a Department written inquiry by the date of the extended deadline.
22. Staff filed written closing arguments on October 17, 2022, and Respondents filed responses to closing arguments on November 1, 2022, on which date the record closed.


IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter of this proceeding. Tex. Ins. Code §§ 82.051-.055, 84.021-.044, 4001.002, 4005.101-.102.

2. The Commissioner of Insurance has jurisdiction over this matter under Texas Insurance Code sections 82.051–82.055, 4001.002, 4005.101, 4005.102, 4054.301, 4101.051, 4101.053, and Texas Government Code sections 2001.051-2001.178.
3. SOAH has jurisdiction over all matters relating to the conduct of the proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
4. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
5. Staff has the burden of proof to establish a violation by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427; *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
6. Respondents engaged in fraudulent and dishonest acts or practices, in violation of Texas Insurance Code section 4005.101(b)(5).
7. Respondents misappropriated, converted, or illegally withheld money belonging to an insurer, in violation of Texas Insurance Code section 4005.101(b)(4)(A).
8. The Department's request for information was a reasonable request within the meaning of Texas Insurance Code section 38.001(b).
9. Respondents violated Texas Insurance Code section 38.001 by failing to provide complete responses to TDI's written inquiry not later than the extended due date.
10. After notice and opportunity for a hearing, the Department may cancel or revoke an authorization if the holder of the authorization is found to be in violation of, or to have failed to comply with, the Insurance Code or a rule of the commissioner. Tex. Ins. Code § 82.051.
11. All of the Respondents' licenses should be revoked.

12. The Department may direct a license holder to may direct the holder of an authorization to make complete restitution to each Texas resident, each Texas insured, and each entity operating in this state that is harmed by a violation of, or failure to comply with, the Insurance Code or a rule of the commissioner. Tex. Ins. Code § 82.053(a).
13. Respondents should be directed to pay restitution jointly and severally to Farmers in the amount of \$11,421.61.

SIGNED DECEMBER 12, 2022.



Christian Siano,
Presiding Administrative Law Judge

2023-7939

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Associated Case Party: Texas Department of Insurance/ Enforcement Division

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	12/12/2022 4:41:22 PM	SENT
Anna Kalapach		Anna.Kalapach@tdi.texas.gov	12/12/2022 4:41:22 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	12/12/2022 4:41:22 PM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	12/12/2022 4:41:22 PM	SENT

Associated Case Party: SHONDRA SHAUNELL SPARKS

Name	BarNumber	Email	TimestampSubmitted	Status
Shondra ShaunellSparks		shaunelltheadjuster@live.com	12/12/2022 4:41:22 PM	SENT

Associated Case Party: JAMES WILLIE SUTTON, JR.

Name	BarNumber	Email	TimestampSubmitted	Status
James WillieSutton, Jr.		mrsutton68@live.com	12/12/2022 4:41:22 PM	SENT

Exhibit B

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

January 10, 2023

Anna Kalapach

VIA EFILE TEXAS

James W. Sutton
Shondra Shaunell Sparks

VIA EFILE TEXAS

**RE: Docket Number 454-22-2184.C; Texas Department of Insurance
No. 24304 & 26870; Texas Department of Insurance/
Enforcement Division v. Shondra Shaunell Sparks and James
Willie Sutton, Jr.**

Dear Parties:

I issued a proposal for decision in this docket on December 12, 2022. On December 27, 2022, Respondents filed exceptions. On January 3, 2023, Staff of the Texas Department of Insurance replied. Having reviewed the exceptions and the reply, I recommend no changes to the proposal for decision.

The proposal for decision is ready for your consideration.

CC: Service List

2023-7939

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Associated Case Party: Texas Department of Insurance/ Enforcement Division

Name	BarNumber	Email	TimestampSubmitted	Status
Rachel Cloyd		Rachel.Cloyd@tdi.texas.gov	1/10/2023 12:59:00 PM	SENT
Anna Kalapach		Anna.Kalapach@tdi.texas.gov	1/10/2023 12:59:00 PM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	1/10/2023 12:59:00 PM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	1/10/2023 12:59:00 PM	SENT

Associated Case Party: SHONDRA SHAUNELL SPARKS

Name	BarNumber	Email	TimestampSubmitted	Status
Shondra ShaunellSparks		shaunelltheadjuster@live.com	1/10/2023 12:59:00 PM	SENT

Associated Case Party: JAMES WILLIE SUTTON, JR.

Name	BarNumber	Email	TimestampSubmitted	Status
James WillieSutton, Jr.		mrsutton68@live.com	1/10/2023 12:59:00 PM	SENT