No. 2025-9138

Official Order
of the
Texas Commissioner of Insurance

Date: 02/12/2025

Subject Considered:

Texas Department of Insurance
v.
Brandon John Hild; Hild & Hild, LLC; and H&H Risk Partners, LLC

SOAH Docket No. 454-22-01093.C

General remarks and official action taken:

The subject of this order is the disciplinary action against Brandon John Hild; Hild & Hild, LLC (Hild & Hild); and H&H Risk Partners, LLC (H&H) (collectively, respondents). This order requires that Mr. Hild and H&H cease and desist from the unlicensed practice of premium financing. It also revokes Mr. Hild's general lines agent license with a property and casualty qualification and a life, accident, health, and HMO qualification; Hild & Hild's general lines agency license with a property and casualty qualification and a life, accident, health, and HMO qualification; and H&H's general lines agency license with a property and casualty qualification and a life, accident, health, and HMO qualification.

Background

After proper notice was given, the above-styled case was heard by two administrative law judges for the State Office of Administrative Hearings (SOAH). The administrative law judges made and filed a proposal for decision containing a recommendation that the commissioner issue an order requiring the respondents to cease and desist from premium financing unless properly licensed and to consider a sanction for the respondents commensurate to the gravity of the wrongdoing established. A copy of the proposal for decision is attached as Exhibit A.

Texas Department of Insurance (TDI) Enforcement staff, Mr. Hild, Hild & Hild, and H&H filed exceptions to the administrative law judges' proposal for decision.

In response to the exceptions, the administrative law judges recommended revisions to the proposal for decision. A copy of the administrative law judges' response to exceptions is attached as Exhibit B.

TDI adopts the administrative law judges' proposed findings of fact and conclusions of law in Exhibit A as revised consistent with Exhibit B, with changes to the findings of fact and conclusions of law as described in this order.

Legal Authority for Changes to Findings of Fact and Conclusions of Law

The legal authority for the changes 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 . . . ."

Presumed Waiver of or Failure to Assert Allegations Because They Were Not Addressed During Closing Argument

The proposal for decision says that TDI Enforcement staff appeared to waive allegations included in the first amended petition that the respondents failed to remit $40,000 because "[t]hese claims were not addressed in Staff's [closing argument] brief . . . ." As support for the presumed waiver, the proposal for decision cites SOAH's rule at 1 Tex. Admin. Code § 155.425(c).[1] TDI Enforcement staff filed an exception to this and cited places in the hearing transcript and admitted exhibits where the allegations were addressed.

The rule cited in the proposal for decision, 1 Tex. Admin. Code § 155.425(c), provides that an allegation contained in the notice of hearing "that is not addressed *during the proceeding* may be deemed waived" (emphasis added). Further, nothing in the Administrative Procedures Act, Texas Insurance Code Chapter 40, the memorandum of understanding adopted by the chief administrative law judge of SOAH and the commissioner of insurance and memorialized in 28 Tex. Admin. Code § 1.90, or previous

[1] *See* page 34 of the proposal for decision and footnote 136 on that page.

commissioner orders requires all allegations contained in a petition to be repeated and addressed in a closing argument brief to avoid having them waived.

The administrative law judges mention this exception in a footnote to a response to another of TDI Enforcement staff's exceptions, and in that response they also observe that the record consists of three days of testimony from eight witnesses and hundreds of pages of documentary evidence—but rather than relieving the administrative law judges from their duty to consider all allegations included in the notice of hearing and addressed during the proceeding, this illustrates the potential burden on the parties (not contemplated by statute or rule) that would be created if there were a requirement to repeat and address in the closing argument every allegation that was raised in the petition and addressed during the proceeding.

In response to TDI Enforcement staff's exceptions, the administrative law judges say they *did* address the allegations. The administrative law judges also say that even if TDI Enforcement staff did not drop the allegations, they failed to meet the burden of proof to prove the allegations. But the administrative law judges do not address a significant point of Enforcement staff's exception: that there is not a presumption that allegations not addressed in the closing brief or during closing arguments are waived. Because of that, this order addresses it—such a presumed waiver is not consistent with TDI's rules or past commissioner orders.

Applicability of Insurance Code § 4005.101(b)(4) When an Agent Misappropriates, Converts, or Illegally Withholds Money Belonging to an Insurer That Has Appointed an MGA

In addressing allegations of the respondents' actions concerning Towerstone, Inc. (Towerstone) and US Risk Insurance Group, Inc. (US Risk), the administrative law judges consider whether a managing general agent (MGA) can qualify as an insurer for purposes of disciplinary action against a licensee under Tex. Ins. Code § 4005.101(b)(4).[2] The administrative law judges conclude that the definitions of "insurer" and "agent" in Tex. Ins. Code § 4001.003 are not coextensive, and that an agent performing acts on behalf of an insurer does not become an insurer by such acts. They reiterate this point in response to TDI Enforcement staff's exceptions, quoting their language from the

[2] *See* proposal for decision page 55.

proposal for decision and emphasizing that their conclusion applies "for purposes of disciplinary action to be taken against a licensee" under Tex. Ins. Code § 4005.101(b)(4).

However, the question of whether an MGA qualifies as an insurer is irrelevant when the MGA has been appointed by an insurer, as provided by Tex. Ins. Code Chapter 4053, because the MGA holds money on the appointing insurer's behalf in a fiduciary capacity.[3] This money held by an MGA belongs to an insurer, so if a licensee misappropriates, converts, or illegally withholds the money, they are misappropriating, converting, or illegally withholding money belonging to an insurer, not an MGA attempting to qualify as an insurer. In multiple past orders, TDI has disciplined licensees under Tex. Ins. Code § 4005.101(b)(4) when they have failed to forward premiums to MGAs.[4]

In response to TDI Enforcement staff's exceptions, the administrative law judges say there was no evidence that any of the five insurers for whom Towerstone brokered policies had monies due that H&H withheld, and that, with respect to US Risk, TDI Enforcement staff did not meet the factual aspects of the misappropriation claim.[5] So, despite the unnecessary examination of whether an MGA can become an insurer and the incorrect conclusion that a licensee cannot be disciplined under Tex. Ins. Code § 4005.101(b)(4) if money is withheld from an MGA appointed by an insurer, it is not necessary to change a proposed conclusion of law or adopt a new conclusion of law on these points.

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[3] *See* Tex. Ins. Code § 4053.106.

[4] *See Texas Department of Insurance v. Lee Artis Anthony Hall,* Commissioner Order No. 12-0327, issued April 13, 2012 (Correcting a proposed finding of fact in a proposal for decision when the proposed finding of fact incorrectly referred to an MGA as an insurer when addressing a licensee's failure to forward a $678 premium payment to the MGA). *See also Subject Considered: Melissa Ann Espinoza*, Commissioner Order No. 11-0806, issued October 17, 2011; *Subject Considered: Glen Richard Davis*, Commissioner Order No. 3627, issued October 31, 2014; *Subject Considered: Edward M. Morris*, Commissioner Order No. 3685, issued November 20, 2014; and *Subject Considered: Leslie Glenn Oliver, Sharon Denise Oliver, Abilene Insurance Agency Inc.*, Commissioner Order No. 2022-7513, issued September 20, 2022, all of which discipline licensees under Tex. Ins. Code § 4005.101(b)(4) because the licensees failed to forward premiums to MGAs appointed by insurance companies.

[5] Administrative law judges' exceptions letter, page 6.

However, based on the discussion above, the commissioner declines to adopt Finding of Fact No. 73, which states, "In brokering the Fierro Inc. policies, Towerstone functioned as a managing general agent (MGA), not an insurer," and Finding of Fact No. 87, which states, "In its transactions with Hild & Hild and Mr. Hild, US Risk functioned as an MGA, not as an insurer," because those findings are irrelevant.

Requirement to Demonstrate That the Conduct at Issue under Insurance Code § 4005.101(b)(5) was Both Fraudulent or Dishonest and a Proper Basis for Discipline of an Insurance Licensee

In addressing whether Mr. Hild's and Hild & Hild's failure to cooperate with court orders from their litigation with AXO Insurance Services (AXO) was a violation of Tex. Ins. Code § 4005.101(b)(5), the proposal for decision appears to create a new two-part test for application of the section that go beyond the section's actual requirements by saying that TDI Enforcement staff failed to demonstrate that the conduct was both (1) fraudulent or dishonest and (2) a proper basis for discipline of an insurance licensee.

The administrative law judges mischaracterize the allegation when saying that an agency cannot "be presumed to have authority to take disciplinary action based on any and all conduct of a licensee." TDI Enforcement staff did not seek revocation based on "any . . . conduct," but rather on conduct that was alleged to be fraudulent or dishonest, and which the administrative law judges say was "undisputed that the Hild Entities did not cooperate with court orders in litigation with AXO, resulting in two contempt orders and associated fees and sanctions in addition to the final judgment."[6]

The commissioner rejects the conclusion that these two factors must both be shown to prove a violation of Tex. Ins. Code § 4005.101(b)(5) because, as the administrative law judges acknowledge, the section is broadly worded and does not limit "fraudulent or dishonest acts or practices" to the business of insurance. Further, such an application of Tex. Ins. Code § 4005.101(b)(5) is contrary to agency precedent.[7]

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[6] *See* proposal for decision, page 72.

[7] *See TDI v. Mark Griffin Meyer*, SOAH Docket No. 454-07-4010.C, adopted by Commissioner Order No. 09-0770, issued September 18, 2009 ("[T]his enforcement action relies on the broad authority conferred on the Department to sanction a license holder who has engaged in 'fraudulent or dishonest acts or practices' . . . . [T]he Department's ability to enforce against such conduct is not limited to activities constituting the practice of insurance."); *TDI v. Douglas Leon Ellis*, SOAH Docket No. 454-08-2133.C,

Consistent with this, the following changes are made to the proposed findings of fact and conclusions of law:

Proposed Finding of Fact No. 108 is not adopted by this order, and in its place the following statement from page 72 of the proposal for decision is instead adopted:

> It is undisputed that the Hild Entities did not cooperate with court orders in litigation with AXO, resulting in two contempt orders and associated fees and sanctions in addition to the final judgment.

Proposed Conclusion of Law No. 10 is renumbered and adopted as Conclusion of Law No. 11, and the following conclusion is adopted as Conclusion of Law No. 10:

> Mr. Hild and Hild & Hild are subject to sanctions for engaging in fraudulent or dishonest acts or practices by their failure to cooperate with court orders that resulted in contempt orders and associated fees and sanctions. Tex. Ins. Code § 4005.101(b)(5).

Respondents' Burden Once Violations Are Established

In their response to party exceptions, the administrative law judges say, "Staff bore the burden of proof in this proceeding, both to establish the alleged violations and show the appropriate sanction." This statement is incorrect because it ignores long-standing agency precedent concerning the burden of proof in TDI disciplinary proceedings.

The burdens on TDI Enforcement staff and the responding party are addressed in Commissioner Order No. 03-0703.[8] As provided by that order, the burden of proof on

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adopted by Commissioner Order No. 09-0771, issued September 18, 2009, ("The Department may discipline a license holder if it is determined that the holder 'has engaged in fraudulent or dishonest acts or practices.' The statute does not restrict the Department to acts or practices that relate solely to [the respondent's] activities as an insurance agent."); *TDI v. Warren Todd Chambers and Century Estates Planning, Inc.*, SOAH Docket No. 454-08-2132.C, adopted by Commissioner Order No. 09-0384, issued May 22, 2009, ("[T]his enforcement action relies on the broad authority conferred on the Department to sanction a license holder who has engaged in 'fraudulent or dishonest acts or practices' . . . . [T]he Department's ability to enforce against such conduct is not limited to activities constituting the practice of insurance.").

[8] *Texas Department of Insurance v. Ellen Roach Brumfiel,* Commissioner Order No. 03-0703, issued August 5, 2003.

TDI to warrant denial or revocation is to show by clear evidence that the act, omission, or commission has occurred. Once established that the alleged facts are true, the burden then passes to the applicant [or licensee] to show that although the acts have been committed, circumstances, facts, and conditions are present that allow the commissioner to look beyond the committed acts and grant the license to the applicant or allow the licensee to retain the license.[9]

This allocation of burden from *Brumfiel* was applied in the proposal for decision for the case *Texas Department of Insurance v. James Steven Brownhill*.[10] In it, the administrative law judge acknowledged the framework established by the commissioner and said that "it is initially TDI's burden to show that Respondent engaged in conduct that would allow TDI to revoke his license," and that "[i]f TDI makes this showing, then the burden shifts to Respondent to establish why his license should not be revoked in light of his wrongful conduct."[11]

In the case at hand, TDI Enforcement staff met their burden as established by *Brumfiel* and *Brownhill*, proving violations of Tex. Ins. Code §§ 101.102, 651.051(a)(1), and 4005.101(b)(4) and (5).[12] Conversely, the respondents failed to show that a penalty less than revocation is warranted.

Appropriate Sanction

Mr. Hild was previously warned about the potential consequences of misappropriation, conversion, or illegally withholding money belonging to an insurer and fraudulent or

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[9] *Id.*

[10] SOAH Docket No. 454-10-2299.C, adopted by Commissioner Order No. 11-0115, issued February 8, 2011.

[11] *Id. See also* the proposal for decision for *In Regard to the Application of Eduardo Inocente Iglesias for a General Life, Accident and Health License*, SOAH Docket No. 454-11-1370, adopted by Commissioner Order No. 11-0349, issued April 21, 2011. The proposal for decision for *Iglesias* was issued two months after *Brownhill*, and it includes the same language regarding the burden on parties as established by *Brumfiel*.

[12] *See* proposed Conclusions of Law Nos. 7–9 as revised in response to the parties' exceptions, concluding that Mr. Hild and H&H engaged in in premium financing without a license and made false representations, and that Mr. Hild and Hild & Hild misappropriated, converted, or illegally withheld money belonging to an insurer.

dishonest acts or practices.[13] He and the agencies he controls continued in the course of action he was warned against, as well as other violations of the Insurance Code, including making false representations;[14] ignoring demands for repayment; failing to remit, and misappropriating insurers' funds;[15] failing to comply with court orders, and facing contempt orders, fees, and sanctions for that defiance;[16] performing the unlicensed practice of premium financing;[17] and making false representations about an insured's payment of premiums and available funds.[18] In his exceptions to the proposal for decision, Mr. Hild tried to deflect blame for these actions onto his agencies, despite the fact that Mr. Hild is the designated responsible licensed person and the sole managing member of both Hild & Hild and H&H.[19]

On the question of what disciplinary action should be taken against Mr. Hild, Hild & Hild, and H&H, TDI considers it very important that licensees be honest, trustworthy, and reliable.[20] As listed in the preceding paragraph, the respondents have committed numerous acts that call into question their honesty, trustworthiness, and reliability. These fraudulent or dishonest acts and violations of the Insurance Code committed by Mr. Hild, Hild & Hild, and H&H, as determined during the hearing and described in this order, demonstrate that they are not fit to hold insurance licenses. Accordingly, this order adopts a twelfth conclusion of law as follows:

The licenses held by Mr. Hild, Hild & Hild, and H&H should be revoked.

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[13] *See* proposed Findings of Fact Nos. 117 and 120.

[14] *See* proposed Finding of Fact No. 48.

[15] *See* proposed Findings of Fact Nos. 65 and 118.

[16] *See* Finding of Fact No. 108, as adopted by this order.

[17] *See* proposed Finding of Fact No. 109, as revised consistent with the administrative law judges' response to party exceptions.

[18] *See* proposed Finding of Fact Nos. 113–115.

[19] *See* proposed Finding of Fact No. 5.

[20] *See* 28 Tex. Admin. Code § 1.502(c).

Findings of Fact

1. Proposed findings of Fact Nos. 1–72, 74–86, 88–107, and 109–125 as contained in Exhibit A and as revised consistent with Exhibit B are adopted and incorporated by reference into this order.

2. Proposed Findings of Fact Nos. 73 and 87 are not adopted.

3. In place of proposed Finding of Fact No. 108 as contained in Exhibit A, the following finding of fact is adopted:

> It is undisputed that the Hild Entities did not cooperate with court orders in litigation with AXO, resulting in two contempt orders and associated fees and sanctions in addition to the final judgment.

Conclusions of Law

1. Proposed Conclusions of Law Nos. 1–9 as contained in Exhibit A and as revised consistent with Exhibit B are adopted and incorporated by reference into this order.

2. Proposed Conclusion of Law No. 10 as contained in Exhibit A and as revised consistent with Exhibit B is instead adopted as Conclusion of Law No. 11 in this order.

3. In place of proposed Conclusion of Law No. 10 as contained in Exhibit A and as revised consistent with Exhibit B, the following conclusion of law is adopted as Conclusion of Law No. 10 by this order:

> Mr. Hild and Hild & Hild are subject to sanctions for engaging in fraudulent or dishonest acts or practices by their failure to cooperate with court orders that resulted in contempt orders and associated fees and sanctions. Tex. Ins. Code § 4005.101(b)(5).

4. Conclusion of Law No. 12 as follows is adopted by this order:

> The licenses held by Mr. Hild, Hild & Hild, and H&H should be revoked.

Order

It is ordered that Brandon John Hild and H&H Risk Partners, LLC cease and desist from the unlicensed practice of premium financing.

It is further ordered that:

Brandon John Hild's general lines agent license with a property and casualty qualification and a life, accident, health, and HMO qualification is revoked;

Hild & Hild, LLC's general lines agency license with a property and casualty qualification and a life, accident, health, and HMO qualification is revoked; and

H&H Risk Partners, LLC's general lines agency license with a property and casualty qualification and a life, accident, health, and HMO qualification is revoked.

Signed by:
FC5D7EDDFFBB4F8...

Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

Signed by:
Jessica Barta
5DAC5618BBC74D4...

Jessica Barta, General Counsel

Signed by:
Justin Beam
27ADF3DA5BAF4B7...

Justin Beam, Chief Clerk

2025-9138

Exhibit A

SOAH Docket No. 454-22-01093 **Suffix: C**

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS DEPARTMENT OF INSURANCE,
PETITIONER
V.
BRANDON JOHN HILD; HILD & HILD, LLC; AND H&H RISK PARTNERS, LLC
RESPONDENTS

TABLE OF CONTENTS

SOAH Docket No. 454-22-01093 **Suffix: C**

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS DEPARTMENT OF INSURANCE,
PETITIONER
V.
BRANDON JOHN HILD; HILD & HILD, LLC;
AND H&H RISK PARTNERS, LLC
RESPONDENTS

PROPOSAL FOR DECISION

The Staff of the Texas Department of Insurance (Department or TDI) seeks to revoke the general lines agency licenses held by Hild & Hild, LLC (Hild & Hild) and H&H Risk Partners, LLC (H&H), and the general lines agent license held by their owner, Brandon John Hild (collectively, Respondents) based on allegations that they engaged in fraudulent, dishonest, and/or criminal acts; engaged in unlicensed premium financing; misappropriated premiums; or otherwise violated insurance laws. Staff also seeks a cease and desist order prohibiting Mr. Hild and H&H from engaging in the business of premium financing and from making any collection

efforts against one of their former customers. After considering the evidence and applicable law, the Administrative Law Judges (ALJs) find that Staff proved Respondents engaged in unlicensed premium financing; made false statements to a premium finance company in connection with a premium downpayment; and misappropriated, converted, or illegally withheld funds belong to one insurer. The ALJs recommend the Commissioner of Insurance (Commissioner) issue a cease and desist order directing Respondents not to engage in the business of premium financing unless properly licensed, and suspend Respondents' licenses to engage in the insurance industry for a period of time the Commissioner believes will deter future violations.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

The hearing on the merits was held via Zoom videoconference on December 5-7, 2023, before ALJs Sarah Starnes and Pratibha J. Shenoy with the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Anna Kalapach represented Staff. Attorneys Eric J.R. Nichols and Jason Ray represented Respondents. The hearing concluded on December 7, 2023, and the record closed on March 8, 2024, upon the filing of the parties' written closing arguments.

II. APPLICABLE LAW

The Texas Insurance Code (Code) § 651.051(a)(1) prohibits a person[1] from negotiating, transacting, or engaging in the business of insurance premium financing unless the person holds a premium finance license issued by the Department.[2] The Code defines the relevant terms as follows:

- "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent in payment of the premiums on an insurance contract.[3]
- "Insurance premium finance company" means, among other things, "an insurance agent or broker making loans under this chapter who holds premium finance agreements made and delivered by insureds that are payable to the agent or broker or to the agent's or broker's order."[4]

An insurance agent does not engage in business as an insurance premium finance company by merely preparing or delivering a premium finance agreement on behalf of an insured.[5] However, if that agreement is held for the benefit of the agent—that is, if the agreement is for a loan that is payable to the agent or broker—

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[1] "Person" is defined to include business entities, as well as individuals. Tex. Ins. Code (Code) § 651.001(7).

[2] Code § 651.051(a)(1); *see also* 28 Tex. Admin. Code § 25.21(a)(1), (3) (specifying that a premium finance license is required if a person makes loans by entering into premium finance agreements with insureds and prospective insureds; or holds premium finance agreements made and delivered by insureds payable to the person).

[3] Code § 651.001(8).

[4] Code § 651.001(3)(C).

[5] Code § 651.002(a).

then the preparation or delivery of the agreement constitutes engaging in business as an insurance premium finance company and requires a premium finance license.[6]

The Commission may impose sanctions against an authorized person (meaning a person who holds a permit, license, or certificate issued by the Department) if the person violates laws pertaining to insurance premium financing.[7] Those sanctions may include an order that requires an authorized person to cease and desist from the activity deemed to violate the Code or the Department's rules.[8]

More generally, Code § 101.102(a) provides that "[a] person … may not directly or indirectly do an act that constitutes the business of insurance under this chapter except as authorized by statute." The "business of insurance" is broadly and circuitously defined to include "any kind of insurance business specifically recognized as constituting insurance business within the meaning of statutes relating to insurance."[9] If a person has engaged in insurance business without statutory authorization, the Commissioner is authorized to issue a cease and desist order.[10]

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[6] Code §§ 651.001(3)(C), .002(b).

[7] Code § 651.209(1) (Commissioner may "order a sanction under Subchapter B, Chapter 82" of the Code); *see also* Code §§ 82.001 (defining "authorization" for purposes of Code chapter 82), .051 (describing sanctions that may be imposed against holders of an authorization).

[8] Code § 82.052(2)(A). The Commissioner may also issue an *emergency,* ex parte cease and desist order against a person who violates laws pertaining to insurance premium financing. Code § 651.209(2) (Commissioner may issue a cease and desist order under Code chapter 83); *see also* Code § 83.051(1)(B) (authorizing emergency cease and desist orders against both authorized and unauthorized persons). Emergency authority was not invoked in this case.

[9] Code § 101.051(b)(8).

[10] Code § 101.103(a)(1).

The Commissioner may also take disciplinary action against a licensee who has willfully violated an insurance law in this state; has misappropriated, converted to the licensee's own use, or illegally withheld money belonging to an insurer or insured; or who has engaged in fraudulent or dishonest acts or practices.[11] Possible disciplinary sanctions include reprimands, assessment of administrative penalties, suspension of a license (including probated suspensions), or license revocation.[12]

Staff has the burden of proof in this proceeding.[13] The standard of proof is by a preponderance of the evidence.[14]

III. BACKGROUND

Mr. Hild received a general lines agent license with a property and casualty qualification in April 2003, and added a life, accident, health, and HMO qualification in July 2006.[15] He followed his mother into the insurance business and worked with her for the first few years of his career.[16]

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[11] Code § 4005.101(b)(1), (4), (5).

[12] Code § 4005.102.

[13] 1 Tex. Admin. Code § 155.427.

[14] *Granek v. Texas St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Sw. Pub. Serv. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213–14 (Tex. App.—Austin 1998, pet. denied).

[15] Staff Ex. 9 at TDI 000025.

[16] Transcript (Tr.) Volume (Vol.) 2 at 111, 115. The transcript consists of four consecutively paginated volumes: the Master Index (Volume 1) and one volume for each of the three days of the hearing (Volumes 2-4).

When Mr. Hild's mother retired, he joined two partners to form Ward, Moore, & Hild, LLC.[17] That agency received a general lines agency license in February 2009, with a property and casualty qualification and a life, accident, health, and HMO qualification. In 2012, when the partnership fell apart, Mr. Hild changed the agency's name to Hild & Hild.[18] Since 2012, Mr. Hild has been the sole owner and the designated responsible licensed person for Hild & Hild.[19]

In 2018, Mr. Hild formed H&H because he wanted to "separate some of the ties" Hild & Hild still had with the former Ward, Moore, & Hild, LLC.[20] Mr. Hild's new and renewing accounts now work through H&H instead of Hild & Hild.[21] Mr. Hild is the sole owner and the designated responsible licensed person for H&H; his mother never had a role in the new agency.[22] Like its predecessor, H&H holds a general lines agency license (issued April 2018), with a property and casualty qualification and a life, accident, health, and HMO qualification.[23]

Mr. Hild testified that H&H has grown significantly since it was established. It holds active affiliations with over a hundred insurers and places more than a

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[17] Tr. Vol. 2 at 117.

[18] Tr. Vol. 2 at 117, 119; Staff Ex. 10 at TDI 000044, TDI 000056; Staff Ex. 23. Mr. Hild explained that Hild & Hild was named for him and his mother. Tr. Vol. 2 at 117.

[19] Staff Ex. 10 at TDI 000056.

[20] Tr. Vol. 2 at 119.

[21] Tr. Vol. 2 at 120.

[22] Tr. Vol. 2 at 119; Staff Ex. 11 at TDI 000074.

[23] Staff Ex. 11 at TDI 000059.

thousand policies a year for several hundred customers, with almost $30 million in annual premium.[24] Throughout his career, Mr. Hild and his agencies have primarily served small business owners in blue-collar fields—like trucking companies or oil and gas companies that require insurance to legally operate.[25]

Staff's claims against Respondents involve several discrete subjects or transactions, and the evidence relevant to each is summarized in the separate discussions below. At the hearing, Staff had fifty-six exhibits admitted into evidence[26] and presented testimony from seven witnesses.[27] Respondents had ten exhibits admitted into evidence and presented testimony from Mr. Hild.

IV. CLAIMS RELATED TO FINANCING FIERRO INC. POLICIES

In 2019, Mr. Hild and his agency, H&H, renewed a large package of commercial insurance policies for his client, Fierro & Fierro Systems, Inc. (Fierro Inc.). Within two months, however, the policies were cancelled because Fierro Inc. was unable to pay the premiums. As discussed below, Staff has asserted several claims against Respondents relating to how the Fierro Inc. policies were financed and how the premiums payments were applied.

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[24] Tr. Vol. 2 at 121; Staff Ex. 11 at TDI 000059-63.

[25] Tr. Vol. 2 at 119-20.

[26] The exhibits admitted for each party are identified in the Master Index to the hearing transcript. Tr. Vol. 1.

[27] Staff's witnesses were Mr. Hild; Sarah Jessup, a manager with US Risk Insurance Group, Inc. (US Risk); Jane Marino, an employee of Imperial Premium Finance Solutions (IPFS); Amy McCarty, an employee of Towerstone, Inc. (Towerstone); Dave Barrett, an employee of RTC2 Partners, LLC d/b/a Risk Transfer Partners (RTP); Jeff Morris, a vice president of Berkshire Hathaway Homestate Company (Berkshire); and Lewis Wright, a Department employee.

A. EVIDENCE

1. Coverage Obtained for Fierro Inc.

Fierro Inc. was a trucking company in Midland, Texas, owned by Frank Fierro and his wife, Sydney Fierro. Their business was in the oil and gas industry, moving hazardous materials in tankers, and had very stringent insurance requirements.[28] Mr. Hild began working with the Fierros in early 2018, when their business was just starting out, and he found coverage and helped Fierro Inc. finance the 2018 policies through a premium finance agreement with Imperial Premium Finance Services (IPFS).[29] When those policies came up for renewal in 2019, Mr. Hild and H&H again served as Fierro Inc.'s agent. Mr. Hild said getting the renewal coverage in place was a bit of a last-minute scramble. After working to "get his premium where he could afford his renewal," Mr. Hild sent Mr. Fierro a proposal on Friday, February 8, 2019, when Fierro Inc.'s coverage was scheduled to expire at midnight that Sunday night.[30] Mr. Fierro ultimately accepted the proposal.

There were seven policies in the 2019 package, involving several brokers and insurers:

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[28] Tr. Vol. 2 at 85-86, 114, 174-75; Tr. Vol. 3 at 307; Staff Ex. 69 at 5-6; Staff Ex. 70 at 6. Staff Exhibits 69 and 70 are transcripts of the depositions of Ms. Fierro and Mr. Fierro, respectively. The videos of those depositions were admitted as Respondents' Exhibits 42 and 43. The ALJs have viewed the videos but are citing to the transcript pages for ease of reference.

[29] Tr. Vol. 2 at 175-77. The Fierros said they hired Mr. Hild after learning they had been defrauded by their previous agent; they blame that agent for the subsequent failure of their business. Staff Ex. 69 at 6-8, 15; Staff Ex. 70 at 7.

[30] Tr. Vol. 2 at 184.

- an auto liability policy with Berkshire Hathaway Homestate Insurance Company (Berkshire), brokered by Hild & Hild, with a $269,887 premium;[31]
- an excess liability policy with Hallmark Specialty Insurance Company (Hallmark), brokered by RTC2, LLC d/b/a Risk Transfer Partners (RTP), with a $91,000 premium;[32]
- a physical damage policy with Evanston Insurance Co., brokered by Towerstone, Inc. (Towerstone), with a $78,553 premium;
- a general liability policy with Navigators Specialty Insurance, brokered by Towerstone, with a $16,758 premium;
- a motor truck cargo policy with Markel Insurance Company, brokered by Towerstone, with a $13,230 premium;
- an excess liability policy with RSUI Indemnity Company, brokered by Towerstone, with a $75,000 premium; and
- a pollution policy with Axis Surplus Insurance Company, brokered by Towerstone, with a $32,071 premium.

Coverage for one policy was bound on January 24, and the rest were bound on February 11, 2019.[33] The premiums (including taxes and fees) owed by Fierro Inc. for the package of seven policies totaled $592,985.60 for one year of coverage.[34]

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[31] Though H&H was the listed agent for all other aspects of the Fierro Inc. renewals, Mr. Hild brokered this policy through Hild & Hild, apparently because that entity held an appointment with Berkshire while H&H did not. *See* Staff Exs. 10, 11.

[32] RTP's founder, David Barrett, explained that retail agents like Hild & Hild and H&H have direct appointments and can bind coverage with some carriers, but for others (particularly surplus or excess carriers) they must use wholesale brokers like RTP. Tr. Vol. 3 at 411-12, 414. In essence, the retail agent is a middleman between the insured and the wholesale broker, and the wholesale broker is a middleman between the retail agent and the carrier. Tr. Vol. 3 at 414.

[33] Tr. Vol. 3 at 330-31.

[34] Tr. Vol. 2 at 179-80; Staff Ex. 29 at HILD-TDI 000072-74.

2. Financing the Premiums

For an account like this, where large and varied amounts of coverage are required, it is common to have multiple lines of coverage placed with different carriers, working through several different brokers or managing general agents (MGAs).[35] It is also common for the insured to finance the premiums through a premium finance company.[36] Though some agencies have their own licensed and affiliated premium finance companies, Mr. Hild confirmed H&H and Hild & Hild never have.[37]

As they had with their 2018 policies, to pay for their 2019 policies, Fierro Inc. and H&H (as agent) entered into a Premium Finance Agreement with IPFS, dated February 18, 2019.[38] The Premium Finance Agreement required Fierro Inc. to pay a cash down payment of $143,435.90, or approximately 25% of the total premium.

Jane Marino, IPFS's assistant branch manager on the Fierro Inc. account,[39] explained that down payments are calculated at an amount that will cover any

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[35] Tr. Vol. 3 at 436-37. Mr. Barrett testified that the difference between a wholesale broker and an MGA is that an MGA would "actually underwrite [or bind] the policy" while a wholesale broker does not have binding authority with the carriers. A wholesale broker is "really just a middle person [in the] transaction" who approaches MGAs or carriers for them to quote and underwrite coverage. Tr. Vol. 3 at 426.

[36] Tr. Vol. 2 at 180-81.

[37] Tr. Vol. 2 at 182-83; *see also* Staff Exs. 12-14.

[38] Staff Ex. 29 at TDI 011714-16. The agreement is included in several other exhibits, as well.

[39] Tr. Vol. 3 at 306-07. Today, Ms. Marino is a Senior Collections Associate for IPFS.

minimum earned premiums (MEPs) on the policies being financed.[40] Mr. Barrett, RTP's founder and the broker for the Hallmark policy, agreed. He said an MEP represents "nonrefundable money" that an insurer is entitled to keep as soon as the insured has decided to bind coverage, even if the insured subsequently decides not to move forward or if the policy is cancelled.[41] As long as MEPs are collected upfront in the form of a down payment, Ms. Marino testified, IPFS can expect to be repaid even if the policies are terminated early.[42] There is inherently some risk of loss in the business of premium financing, she acknowledged, but IPFS minimizes that risk by setting the down payment at an amount that covers what the insurers are guaranteed, among other considerations.[43]

With Fierro Inc. responsible for a down payment of $143,435.90, the $449,549.70 premium balance was financed through IPFS in the Premium Finance Agreement.[44] IPFS paid the financed portion of the premiums to the carriers on the insured's behalf, and the agreement required Fierro Inc. to pay IPFS back in nine monthly payments of $51,543.76, beginning on February 24, 2019 (one month after the effective date of the earliest policy).[45]

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[40] Tr. Vol. 3 at 339.

[41] Tr. Vol. 3 at 417, 433-35. An MEP of 25% is the industry standard, but carriers may set a higher percentage for riskier policies. The Hallmark policy brokered by RTP had an MEP of 35%. Tr. Vol. 3 at 434-35.

[42] Tr. Vol. 3 at 339.

[43] Tr. Vol. 3 at 339-40, 363.

[44] Staff Ex. 59 at TDI 010153; Tr. Vol. 3 at 308-09, 370.

[45] Staff Ex. 59 at TDI 010153; Tr. Vol. 3 at 309, 331-32.

As the insurance agent, H&H was responsible for collecting the cash down payment from Fierro Inc. and forwarding it to the carriers, after withholding its commission.[46] The Premium Finance Agreement, which Mr. Hild signed, included an agent/broker representation by H&H that "all applicable down payment(s) have been received from the insured in immediately available funds."[47] Ms. Marino testified that IPFS relied on this representation and, at the time, believed H&H had collected the down payment from Fierro Inc., though they later learned that was not true.[48]

Mr. Hild testified that he understood his signature on the Premium Finance Agreement as Fierro Inc.'s agent meant "we have guaranteed that those funds [the down payment] are going to be made good by us," and if the insured's check bounced or they otherwise could not pay, Mr. Hild understood "that becomes our problem."[49] However, it was his "belief, and experience, that the finance company doesn't have an opinion on where the funding comes from as long as the funding is paid to them and they aren't incurring any losses associated [with] the down payment being short."[50]

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[46] Tr. Vol. 2 at 183; Tr. Vol. 3 at 309, 329, 429.

[47] Staff Ex. 60 at TDI 001080 (emphasis added); Tr. Vol. 3 at 312.

[48] Tr. Vol. 3 at 313, 315, 366.

[49] Tr. Vol. 2 at 196.

[50] Tr. Vol. 2 at 198. According to RTP's Mr. Barrett, it is common practice for insurers to bind the policies and then receive the down payment later, and it is "industry standard" to give the insured 20 days to pay an invoice. Tr. Vol. 3 at 428.

3. Fierro Inc.'s Inability to Pay

In fact, the Fierros were not able to pay the $143,435.90 down payment in full, and Mr. Hild knew that before he and Mr. Fierro signed the Premium Finance Agreement on February 18, 2019. The Fierros both testified that they knew they could not pay the full down payment and so Mr. Fierro asked Mr. Hild to help him break the down payment into installments.[51] Mr. Hild testified that on Friday, February 8, 2019—with pressure to bind coverage that day so Fierro Inc.'s coverage would not lapse at midnight on Sunday—he offered Mr. Fierro that "if he could come up with $80,000, that I would put his coverage in place and keep him from closing his doors."[52] He settled on the $80,000 figure, Mr. Hild said, because that sum "was enough to cover the obligations to everyone else. It just wouldn't be covering anything … coming towards us as an agency."[53]

Though Mr. Fierro had assured Mr. Hild that he could pay the $80,000, he wired only $40,000 to H&H, who received it on February 12, 2019.[54] With coverage already in place, Mr. Hild said he felt "backed into a corner" because most of the policies had MEPs, which meant that even if he asked to cancel the policies at that

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[51] Staff Ex. 69 at 21-22; Staff Ex. 70 at 13-15. The Fierros did not testify at the hearing but, as discussed *supra,* their depositions taken in this case were admitted into evidence.

[52] Tr. Vol. 2 at 185-86.

[53] Tr. Vol. 2 at 186. The evidence does not explain how Mr. Hild arrived at this $80,000 figure. The ALJs note that the $80,000 Mr. Hild said would "cover the obligations to everyone else" (other than H&H's commission) is far less than the $143,435.90 down payment that Ms. Marino said was calculated to make all the parties whole in the event of an early cancellation.

[54] Tr. Vol. 2 at 186; Staff Ex. 29 at TDI 011711.

point, the carriers were still contractually entitled to keep more of the premiums than Mr. Fierro's $40,000 payment would cover.[55]

In an effort "to try to work with [Mr. Fierro] and try to get him to that $80,000 number to be able to pay everybody else and keep him working,"[56] Mr. Hild had Mr. Fierro sign a letter (the Fierro Letter) dated February 15, 2019 (three days before signing the Premium Finance Agreement), stating:

> I, Frank Fierro, of Fierro & Fierro Systems, Inc. promise to pay the amount of $103,435.90 by April 31st, 2019. H&H Risk Partners, LLC will accept payments daily, weekly or monthly in any amount so long as $51,717.19 is paid each month (March & April) and the full amount of $103,435.90 is paid off by April 31st, 2019. Failing to make payments will result in cancellation of all current policies for Fierro & Fierro Systems, Inc.[57]

The Fierro Letter was not a loan agreement, according to Mr. Hild, and he testified that he and H&H did not give Fierro Inc. the $103,435.90 referenced in the letter. Instead, according to Mr. Hild, the letter was intended only to have Mr. Fierro

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[55] Tr. Vol. 2 at 187.

[56] Tr. Vol. 2 at 88, 187. Pointing to Mr. Hild's personal checking account records, Staff asserts that H&H did not have $103,000 available to loan. Mr. Hild disputes this and testified that H&H's business accounts had sufficient cash on hand, though he also disputes Staff's characterization of the letter as a loan. Tr. Vol. 2 at 92-93.

[57] Staff Ex. 27 at HILD-TDI 000064. In his deposition, Mr. Fierro denied signing the letter and said he never agreed to pay that much by April, but he also acknowledged that his signature was at the bottom of the letter. Staff Ex. 70 at 15-16. He also denied signing the Premium Finance Agreement, claiming his signature appeared to be forged and other parts of the agreement appeared to have been altered. Staff Ex. 70 at 17-19. Ms. Fierro also denied familiarity with the Premium Finance Agreement and the letter and said she suspected her husband had not really signed them. Staff Ex. 69 at 19-20, 24, 39-40. The significance of the April 31, 2019 deadline is unclear. Regardless, no party to this case has contended the documents were falsified.

acknowledge in writing how much he still had to pay towards the down payment, and that he understood the consequence of failing to do so. Mr. Hild said he hoped "that by putting this in writing [it] would give him a little more responsibility to make the payments."[58]

According to Ms. Marino, if an insured does not have the cash to make even the down payment on a Premium Finance Agreement, that would "throw up a red flag" because it calls into question whether the insured will be able to make the monthly installment payments.[59] Further, having a background agreement to pay the down payment in installments "jeopardizes [IPFS's] risk in the policy," she testified.[60] Had IPFS known that H&H had not actually received the cash down payment from Fierro Inc., as represented in the Premium Finance Agreement, she might have suggested cancelling the policies for nonpayment at the outset.[61]

In fact, Fierro Inc. failed to make any of the monthly installment payments due to IPFS under the Premium Finance Agreement.[62] Fierro Inc. also failed to pay the full balance of the down payment to H&H. Mr. Hild testified that in addition to the $40,000 Mr. Fierro had paid him on February 12, 2019, he also received a payment of $10,000 on March 4, and a $20,000 payment on April 2, 2019, bringing the total

[58] Tr. Vol. 3 at 188-89.

[59] Tr. Vol. 3 at 326-27.

[60] Tr. Vol. 3 at 316.

[61] Tr. Vol. 3 at 363-64.

[62] Tr. Vol. 2 at 200; Tr. Vol. 3 at 335, 364.

Fierro Inc. paid towards the down payment to just $70,000, or less than half of the $143,435.90 it owed.[63]

About two months after coverage incepted, IPFS notified H&H, Fierro Inc., the insurance companies, and the brokers that the policies would be cancelled for nonpayment, effective April 11, 2019.[64] Mr. Hild emphasized that the policies were cancelled because Fierro Inc. failed to make any installment payments to IPFS, not because of any issue with the timing or amount of the down payment.[65]

4. How H&H Applied Fierro Inc.'s Payments

Mr. Hild testified that of the $70,000 received from Fierro Inc., $67,753 was paid to Berkshire for the down payment associated with their auto liability policy.[66] He said Berkshire "expected to be paid before anyone else" and threatened to cancel Fierro Inc.'s policy if it could not collect the down payment from H&H. Because cancellation would put Fierro Inc. out of business, Mr. Hild testified, he prioritized Berkshire's payment.[67] IPFS had already paid the rest of the premium for the Berkshire policy, so the down payment paid Berkshire in full for its policy, which was by far the largest of the seven policies financed through IPFS.

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[63] Tr. Vol. 2 at 190-91; Staff Ex. 29 at TDI 011713.

[64] Staff Ex. 59 at TDI 010158-59; Tr. Vol. 3 at 310-11, 335-36, 362. As the finance company, IPFS does not have authority to cancel any policy, so IPFS's cancellation notices are effectively a request to the insurance companies to cancel, which they did. Tr. Vol. 3 at 336.

[65] Tr. Vol. 2 at 201.

[66] Tr. Vol. 2 at 191.

[67] Tr. Vol. 2 at 192, 218.

Mr. Hild also paid RTP $15,800 for the Hallmark excess liability policy, because that carrier had also been threatening cancellation.[68] RTP had already received the rest of the premium from IPFS, so after H&H paid the down payment, RTP was able to pay the full premium owed to Hallmark.[69] After paying RTP on Fierro Inc.'s behalf, H&H had paid the insurers more than it had collected from Fierro Inc., but Mr. Hild was still hopeful Mr. Fierro would be able to pay the balance of the down payment. He said, "we were rooting for Frank."[70]

Overall, Mr. Hild asserted, H&H was able to make good on its guarantee for the down payment due under the Premium Finance Agreement, and IPFS, the insurance companies, the brokers, and the MGAs all "made their money" even though the policies were subsequently cancelled. Only H&H ended up paying out of pocket and losing money on the Fierro Inc. account, Mr. Hild asserted.[71] He said H&H never recouped any of the funds it had paid to RTP on Fierro Inc.'s behalf.

5. Unwinding the Transactions and Repaying IPFS

When policies cancel, the insurers will withhold the premium they earned (either the MEP or a pro rata calculation for days the policy was in effect) before

[68] Tr. Vol. 2 at 192, 220.

[69] Tr. Vol. 3 at 430.

[70] Tr. Vol. 2 at 192-93, 219.

[71] Tr. Vol. 2 at 199.

returning the rest of the premiums they received to the finance company.[72] Likewise, the agents and brokers involved must return the unearned portion of their commissions, which they received when the insurers were paid.[73] If the insured never paid the portion of the premium that was supposed to be covered by the down payment, then the full amount of the insurers' earned premiums gets withheld from what they return to the finance company. In this case, that meant that after Fierro Inc.'s insurers withheld their earned premiums, IPFS received considerably less in returned premiums than it had paid out on Fierro Inc.'s behalf pursuant to the Premium Finance Agreement.[74]

Mr. Hild calculated that for the policies at issue, the total earned premiums—that is, the amount of the premiums the insurers were entitled to keep when the policies were cancelled in April 2019—came to $179,868 for the seven insurers.[75] Staff rejects this figure and asserts that Mr. Hild's calculation is based on no more than "a self-serving spreadsheet" that he created.[76] In any event, because H&H had guaranteed the down payment, Mr. Hild acknowledged he was responsible for paying most of what IPFS was still owed.[77]

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[72] Tr. Vol. 3 at 338. For example, Mr. Barrett testified that for the Hallmark policy RTP had brokered, H&H had to return $5,915 in unearned commissions to IPFS, and RTP had to return $59,150 in unearned commissions. Tr. Vol. 3 at 422, 444; Staff Ex. 61 at TDI 010472; Staff Ex. 62 at TDI 010494.

[73] Tr. Vol. 3 at 419.

[74] Tr. Vol. 3 at 314.

[75] Tr. Vol. 2 at 204; Staff Ex. 29 at TDI 011710.

[76] Staff's Reply to Respondents' Closing Argument (Staff's Reply) at 12.

[77] Tr. Vol. 2 at 205; Staff Ex. 29 at TDI 011710.

Ms. Marino testified that she had to expend effort over several months to collect from H&H. Once IPFS received the last of the carriers' return premiums on July 23, 2019, she calculated what remained owing and, in an email dated August 8, 2019, told Mr. Hild that H&H owed a total of $62,859.34 for the Fierro Inc. account.[78] This represented only what H&H owed as agent for the down payment and unearned commissions; Fierro Inc. still had a premium balance due that IPFS was separately trying to collect.[79] Ms. Marino's email referenced a phone conversation with Mr. Hild the week prior during which she believed they had reached an agreement for Mr. Hild to pay IPFS back in three payments of $20,953.11, to be paid three weeks apart beginning the following day.[80] Ms. Marino testified that IPFS had accommodated Mr. Hild's request to pay the balance in installments.[81]

On August 14, 2019, Ms. Marino emailed Mr. Hild again to remind him that the first payment had not been received as expected on August 9.[82] In response, Mr. Hild apologized for missing the payment and asked if the payments could instead start on Friday, August 16.[83] He did not meet that deadline, either, and Ms. Marino

[78] Tr. Vol. 3 at 348; Staff Ex. 60 at TDI 010183.

[79] Tr. Vol. 3 at 317.

[80] Staff Ex. 60 at TDI 010183; Tr. Vol. 3 at 317-18.

[81] Tr. Vol. 3 at 358.

[82] Staff Ex. 60 at TDI 010184; Tr. Vol. 2 at 320.

[83] Staff Ex. 60 at TDI 010185.

had to ask again on August 19 if payment could be promptly made.[84] Mr. Hild then made the first payment the following day, and made the second payment on September 6, 2019.[85]

In his emails with Ms. Marino, Mr. Hild objected to having to pay his agency's return commission, writing "it's a little lopsided that I'm paying back more than [Mr. Fierro] is and he shorted the down payment …."[86] He asserted that because Fierro Inc. had failed to pay the down payment, H&H was "already paying premiums he owes. I'm not paying back for him the unearned commission as well on something he never actually paid."[87] In response, Ms. Marino emailed Mr. Hild on August 20, 2019, reminding him that "the down payment and unearned commission are your agency responsibility," and that "[f]inance contracts should not be submitted for processing without the down payment being secured for payment."[88]

After H&H had made the first and second payments it owed to IPFS, Ms. Marino had to make repeated requests (on October 18, 21, and 22, 2019) for the

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[84] Staff Ex. 60 at TDI 010188.

[85] Staff Ex. 60 at TDI 010172, TDI 010223 (showing IPFS received a $20,000 wire transfer on August 20, and an $18,408.23 transfer on September 6, for return premium from the agent on the Fierro Inc. account). Mr. Hild and Ms. Marino both testified the payment amounts varied because H&H was credited for a late fee IPFS waived and for earnings on another account, which reduced the $20,953.11 payment amount they had previously agreed to. Tr. Vol. 2 at 213-14; Tr. Vol. 3 at 359. In addition, Mr. Hild was apparently successful in negotiating with RTP to reduce its MEP from 35% to 25%, which resulted in a $7,552.50 credit IPFS received on August 26, 2019. Tr. Vol. 3 at 342; Staff Ex. 60 at TDI 010172. IPFS does not appear to have applied that credit to what it collected from H&H on the Fierro Inc. account. Tr. Vol. 3 at 350-56; Staff Ex. 60 at TDI 010230.

[86] Staff Ex. 60 at TDI 010185-86.

[87] Staff Ex. 60 at TDI 010185-86.

[88] Staff Ex. 60 at TDI 010191.

third payment.[89] When payment was still not received, Ms. Marino's boss, branch manager Brent Bergin, stepped in and sent several more emails (on October 25, 28, and 30, 2019) asking for payment from Mr. Hild.[90] H&H finally made the third wire transfer on October 30, 2019.[91] Even after H&H had paid, IPFS was still owed over $14,000 from Fierro Inc., and had to write off the balance and turn the matter over to an attorney for collection.[92] According to Mr. Hild, once IPFS wrote off the rest of the Fierro Inc. balance in November 2019, the entire matter with the Fierro Inc. Premium Finance Agreement was resolved.[93]

Though it had taken more than six months after the policies had been cancelled to collect full payment from H&H, Ms. Marino did not dispute that ultimately, H&H paid everything it owed to IPFS on the Fierro Inc. account.[94] She testified that IPFS incurred financial losses on the Premium Finance Agreement for premium costs for the two months the policies were in force.[95] These losses she attributed to Fierro Inc., because they had not made their installment payments. Additionally, IPFS incurred more nebulous losses associated with the time and effort it took to collect what was owed from H&H. Ms. Marino testified:

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[89] Staff Ex. 60 at TDI at 010207-08, 010211.

[90] Staff Ex. 60 at TDI 010213-17; Tr. Vol. 2 at 322-23.

[91] Staff Ex. 60 at TDI 010172, TDI 010223 (showing IPFS received a $20,099.01 wire transfer on October 30, for return premium from the agent on the Fierro Inc. account); Tr. Vol. 3 at 323-24.

[92] Tr. Vol. 3 at 325, 372.

[93] Tr. Vol. 2 at 209.

[94] Tr. Vol. 3 at 360-61, 364-65.

[95] Tr. Vol. 3 at 325, 364.

> We ended up with the loss on the account, but I don't feel like that it was because of [H&H's] misrepresentation on the down payment, because [Mr. Hild] did end up paying that to us. The loss we had in regards to that [account] was staff efforts to recoup that money, which normally we wouldn't be having to spend our time and efforts to do that.[96]

The problems with the Fierro Inc. account did not sour IPFS on doing business with Mr. Hild, however. Ms. Marino testified that IPFS had done business with Mr. Hild and his agencies prior to the Fierro Inc. Premium Finance Agreement and continued to do business with them afterwards.[97] Mr. Hild also testified that the Fierro Inc. cancellations "had no effect on our ability to continue to write premium finance notes with IPFS."[98]

RTP and the Fierros also professed general satisfaction with how the failed efforts to renew and retain Fierro Inc.'s coverage panned out. Mr. Barrett testified that RTP was paid what it was owed by Mr. Hild in relation to the Fierro Inc. matter.[99] He has known and worked with Mr. Hild for many years and testified that he has "nothing bad to say" about Mr. Hild or their business dealings.[100] However, they rarely work together anymore, save for a few small accounts ("kind of legacy

[96] Tr. Vol. 3 at 367.

[97] Tr. Vol. 3 at 361.

[98] Tr. Vol. 2 at 198.

[99] Tr. Vol. 3 at 444.

[100] Tr. Vol. 3 at 441-42.

renewals") that RTP still has with Mr. Hild's agency.[101] Mr. Barrett said he would consider doing business with Mr. Hild again, but only if the potential account and commission were very large because Mr. Hild can be "tough to work with."[102] Specifically, he said Mr. Hild is aggressive in negotiating for cheaper premium pricing, making doing business with him feel like "kind of a beating."[103]

Mr. and Ms. Fierro testified that they were pleased with Mr. Hild's services. Though Fierro Inc. subsequently had to declare bankruptcy, they did not blame Mr. Hild for the failure of their business. Mr. Fierro felt the insurance coverage Mr. Hild obtained allowed them to stay in business longer than they otherwise would have.[104]

As discussed below in § V.A, Berkshire terminated its appointment, or agency contract,[105] with Hild & Hild over issues relating to the Fierro Inc. matter.

[101] Tr. Vol. 3 at 441-42, 449.

[102] Tr. Vol. 3 at 450.

[103] Tr. Vol. 3 at 442-43, 450.

[104] Staff Ex. 69 at 34-35; Staff. Ex. 70 at 20, 22, 26.

[105] Tr. Vol. 4 at 499, 501.

B. ANALYSIS

1. Premium Financing Without a License

Staff contends that Mr. Hild and H&H financed most of the down payment for Fierro Inc.'s 2019 policies, thereby engaging in the business of insurance premium financing without a license. In Staff's view, the $40,000 that Fierro Inc. wired to H&H on February 12, 2019, was a down payment on a loan agreement with Mr. Hild and H&H, which Mr. Hild then memorialized in the Fierro Letter that Mr. Fierro signed on February 15, 2019. In the Fierro Letter, Fierro Inc. promised to pay $103,425.90, a sum equal to the down payment Fierro Inc. had agreed to pay pursuant to the soon-to-be-signed IPFS Premium Finance Agreement, less the $40,000 Fierro Inc. had already forwarded to H&H. The Fierro Letter was "made payable to H&H" and the $103,425.90 balance was to be paid as consideration "for H&H's liability for the down payment," Staff argues.[106] This arrangement meets the statutory definition of a "premium finance agreement" and Mr. Hild's and H&H's conduct falls within the statutory definition of an "insurance premium finance company." Therefore, Staff asserts, Mr. Hild and H&H violated Code § 651.051, which requires a license for premium financing, and Code § 101.102, which more generally prohibits any act not authorized by statute that constitutes "the business of insurance."[107]

[106] TDI's Closing Arguments (Staff's Closing) at 4-5.

[107] Staff's Closing at 6-7.

In response, Mr. Hild and H&H deny that the Fierro Letter constituted a loan agreement and deny that they engaged in the business of premium financing or entered into a premium finance agreement with Fierro Inc. According to Respondents, the only premium finance agreement that Fierro Inc. had with respect to its renewal policies was the agreement signed with IPFS on February 18, 2019; the Fierro Letter merely reiterated that Fierro Inc. was responsible for paying the down payment, which was the portion of the premiums not being financed by IPFS.[108]

Mr. Hild's testimony regarding the circumstances precipitating the Fierro Letter was essentially uncontroverted. With their 2018 policies about to expire, the Fierros were not immediately able to pay the full down payment required for the renewal coverage Mr. Hild had lined up, so they asked Mr. Hild to allow them to pay the down payment in installments. This was in addition to the installment payments Fierro Inc. was committing to pay IPFS for the premium balance it was financing. Mr. Hild calculated that, for his purposes at least, receiving $80,000 of the down payment would be sufficient in the short run for him to feel comfortable proceeding with the transaction. After Mr. Fierro promised to promptly send H&H that amount, Mr. Hild and H&H bound Fierro Inc.'s coverage on February 8, 2019. However, Mr. Fierro wired only half of what he promised, which prompted Mr. Hild to draft the Fierro Letter. In it, Mr. Fierro acknowledged that he still owed $103,435.90, promised to pay in full by the end of April 2019, and acknowledged that Fierro Inc.'s policies would be cancelled for nonpayment if the balance was not

[108] Respondents' Response to TDI's Written Closing (Respondents' Closing) at 8, 13.

paid.[109] Though the Fierro Letter did not expressly reference a "down payment," insurance policies, or IPFS, the circumstances leave no doubt that the Fierro Letter was addressing the $103,435.90 that remained to be paid towards the $143,435.90 down payment that Fierro Inc. would owe under the Premium Finance Agreement that had been lined up with IPFS. Indeed, three days later, Mr. Fierro and Mr. Hild proceeded to sign the IPFS Premium Finance Agreement and Fierro Inc. formally committed to pay the $143,435.90 cash down payment.[110]

In having his client sign the letter, Mr. Hild argues that he was merely having Mr. Fierro acknowledge what he had previously agreed with Mr. Hild—that Fierro Inc. would pay H&H the full amount of the down payment so that the parties could get financing through IPFS for the rest of the policy premiums.[111] The reassurance was important to Mr. Hild because he had bound Fierro Inc.'s policies in reliance on Mr. Fierro's pledge to make the down payment, and once the policies were bound, H&H was liable for the down payment along with Fierro Inc.

The Code defines "premium finance agreement" as "an agreement by which an insured or prospective insured promises to pay to an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent in payment of the premiums on an insurance contract."[112]

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[109] Staff Ex. 27 at HILD-TDI 000064.

[110] Staff Ex. 27 at HILD-TDI 000065-66.

[111] Respondents' Closing at 14.

[112] Code § 651.001(8).

Respondents argue that the Fierro Letter cannot be construed as a premium finance agreement because they were not advancing or agreeing to advance any portion of the down payment for Fierro Inc., let alone charging interest for a loan. The letter was no more than a written acknowledgement by Fierro Inc. that it had committed to pay the down payment required by the Premium Finance Agreement with IPFS, according to Respondents. Mr. Hild asked for this letter because H&H had become responsible (as Fierro Inc.'s agent) for the entire down payment as soon as coverage was bound on Friday, February 8, 2019; he had gone out on a limb for his client and hoped the letter would reinforce Fierro Inc.'s obligation to pay as Mr. Fierro had promised.

The ALJs disagree with Respondents. The Fierro Letter had Fierro Inc. committing to pay H&H the balance of the insurance down payment because, in the IPFS Premium Finance Agreement, H&H was committing to pay the full amount of the down payment to Fierro Inc.'s insurers in the event Fierro Inc. did not. In other words, the Fierro Letter was given as consideration for H&H's promise in the IPFS Premium Finance Agreement to cover Fierro Inc.'s down payment if needed. This contractual promise to pay the insurers was effectively an advance of funds from H&H to Fierro Inc. to pay part of the premiums for Fierro Inc.'s insurance policies. The Fierro Letter was the insured's promise to repay the funds H&H had committed to advance.

Respondents also argue that, whatever the terms of the Fierro Letter, it cannot constitute a "premium finance agreement" because Mr. Hild & H&H do not come

within the definition of "an insurance premium finance company."[113] The Code defines "insurance premium finance company," in relevant part, as "an insurance agent or broker making loans under this chapter who holds premium finance agreements made and delivered by insureds that are payable to the agent or broker."[114] The ALJs find that this encompasses H&H's role in the transaction with Fierro Inc. Mr. Hild and H&H were both acting as "an insurance agent or broker" for Fierro Inc. and they made a loan to Fierro Inc. by contractually accepting the obligation to pay the premium down payment to Fierro Inc.'s insurers. H&H held a premium finance agreement—the Fierro Letter—that was made by Fierro Inc. and payable to H&H.

Finally, Respondents argue that even if the Fierro Letter could be termed a "premium finance agreement," Mr. Hild and H&H still would not be subject to sanction because the Code requires a license only if the person "contract[s] for, charge[s], or receive[s] directly or indirectly on or in connection with an insurance premium financing any charge."[115] In response, Staff correctly argues that the provision cited by Respondents is a definition that applies *in addition to* the provision relied upon by Staff. Code § 651.051(a)(1) provides a person cannot "negotiate, transact, or engage in the business of insurance premium financing" without a

[113] Respondents' Closing at 12.

[114] Code § 651.001(3)(C). Section 651.001(3) provides three definitions for "insurance premium finance company." Staff has not asserted that the other definitions apply. In their closing brief, Respondents cited the definition in § 651.001(3)(A) ("a person engaged in the business of making loans under this chapter by entering into premium finance agreements with insureds or prospective insureds") and contends H&H and Mr. Hild do not meet that definition. Respondents' Closing at 12. They did not address the definition actually relied upon by Staff.

[115] Respondents' Closing at 12 (citing Tex. Occ. Code § 651.051(a)(2)).

license. Such conduct constitutes a violation without regard to whether the unlicensed person has *also* contracted for or received a charge in connection with that business, as additionally prohibited by Code § 651.051(a)(2).

In conclusion, the ALJs find that H&H and Mr. Hild were engaging in the business of insurance premium financing when they committed to IPFS to pay the premium down payment on Fierro Inc.'s insurance policies, knowing that Fierro Inc. did not presently have the funds and would have to pay H&H in installments. To substitute the appropriate terms in the statutory definitions, the Fierro Letter constituted a "premium finance agreement" because it was

> an agreement by which an insured or prospective insured [Fierro Inc.] promises to pay an insurance premium finance company [H&H] the amount … to be advanced under the agreement [$103,435.90] to an insurer or to an insurance agent [Fierro Inc.'s insurers or their brokers/MGAs] in payment of the premiums on an insurance contract [the policies financed by IPFS].[116]

Further, H&H and Mr. Hild were acting as an "insurance premium finance company" because, as Fierro Inc's agent or broker, they made a loan and held a premium finance agreement [the Fierro Letter] that was made and delivered by insureds [Fierro Inc.] and payable to the agent or broker [H&H].[117] Because they did not hold a license to engage in premium financing, and because it is undisputed that

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[116] Code § 651.001(8).

[117] Code § 651.001(3)(C). The definition of "insurance premium finance company" relied on by Respondents in their brief would also apply. In signing the Fierro Letter, H&H and Mr. Hild "engaged in the business of making loans under this chapter by entering into premium finance agreements [the Fiero Letter] with insureds or prospective insureds [Fierro Inc.]." Code § 651.001(3)(A).

no exceptions to the licensure requirement apply,[118] Staff has met its burden of proving that Mr. Hild and H&H engaged in unauthorized, unlicensed business in violation of Code §§ 651.051(a)(1) and 101.102.

2. False Statement to IPFS

Staff also contends Mr. Hild and H&H falsely represented to IPFS that they had collected the entire down payment from Fierro Inc., which was a fraudulent and dishonest act subject to sanction under Code § 4005.101(b)(5). Specifically, in the IPFS Premium Finance Agreement, Mr. Hild, signing for H&H, represented that he had received "all applicable down payment(s) in immediately available funds" from Fierro Inc. when, in fact, he had received only $40,000 of the $143,435.90 down payment and was fully aware that Fierro Inc. could not yet pay the rest. Staff asserts this misrepresentation jeopardized IPFS's risk in the policies, and ultimately caused IPFS to lose time and effort collecting the rest of the down payment from H&H, and to write off a portion of the unearned premium the Fierros could not repay.[119]

In response, H&H and Mr. Hild acknowledge that H&H did not have the down payment when it signed the IPFS agreement but deny that this was dishonest or fraudulent because as soon as coverage was bound, H&H was responsible for the down payment even if Fierro Inc. was never able to pay. Therefore, Respondents

[118] Respondents' Closing at 19 ("Respondents each agree that they were not licensed as premium finance company [sic], and not excepted or exempted from licensure as a premium finance company.").

[119] Staff's Closing at 26-27.

argue, IPFS was never in any danger of not receiving the full down payment.[120] Respondents also emphasize that every party to the transaction *other than H&H* was ultimately made whole and received everything they were owed from Fierro Inc. and H&H, and that Fierro Inc.'s policies were finally cancelled because Fierro Inc. failed to pay the installment payments, not because the down payment had not been paid.[121]

Code § 4005.101(b)(5) provides that a license holder can be disciplined if they have "engaged in fraudulent or dishonest acts or practices." The Department's authority to impose such discipline is not conditioned on a showing that the fraudulent or dishonest act harmed another party.[122] There is no dispute that Mr. Hild and H&H were dishonest when they represented in the IPFS Premium Finance Agreement that "all applicable down payment(s) have been received from the insured in immediately available funds."[123] They are, therefore, subject to discipline for that dishonest act.

3. Mishandling or Misappropriation of Fierro Inc.'s Premiums

Staff alleges that Mr. Hild and H&H are subject to discipline pursuant to Code § 4005.101(b)(4) for misappropriating, converting, or illegally withholding money that they received from Fierro Inc.

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[120] Respondents' Closing at 38.

[121] Respondents' Closing at 39.

[122] The ALJs find harm was in fact shown, and it is discussed below in § VIII.B.1 as a factor the Commissioner may consider in the sanction analysis.

[123] Staff Ex. 29 at TDI 011715.

As described above, Fierro Inc. paid H&H a total of $70,000 towards the $143,435.90 premium down payment required for its policies: $40,000 wired on February 12; $10,000 wired on March 4; and $20,000 wired on April 2, 2019.[124] In its First Amended Petition, which is the live pleading in this case, Staff alleged that Mr. Hild and H&H failed to remit any of these funds "to IPFS, any MGA, or to any insurer."[125] In its closing brief, Staff revised this claim and now asserts only that Mr. Hild and H&H "failed to remit Fierro[Inc.]'s $30,000 in premium payments to an insurer, IPFS, or an MGA," after receiving those funds in March and April 2019.[126] Thus, Staff apparently no longer asserts there was any misappropriation of the first $40,000 paid by Fierro Inc.

Mr. Hild and H&H deny any misappropriation, citing Mr. Hild's testimony at the hearing where he explained that H&H paid $67,460.74 to Berkshire as the premium down payment for that insurance policy,[127] and paid $15,800 to RTP as the premium down payment for the Hallmark policy, which RTP had brokered.[128] These two payments exceeded the $70,000 actually received from Fierro Inc., meaning that not only did H&H not misappropriate Fierro Inc.'s funds, but it had actually

[124] Tr. Vol. 2 at 190-91; Staff Ex. 29 at TDI 011713.

[125] Staff's First Amended Petition at ¶ 49 (Aug. 25, 2022).

[126] Staff's Closing at 17.

[127] Tr. Vol. 2 at 191.

[128] Tr. Vol. 2 at 192.

come out of pocket to cover a part of Fierro Inc.'s shortfall.[129] Mr. Hild also testified that between these two down payments and the premium payments IPFS made to the insurers, both the Berkshire and Hallmark policies had been paid in full before they were cancelled.[130]

Staff seems to argue that Mr. Hild's testimony should be disregarded because, when testifying at the hearing, he was unable to point to any specific documents showing the $67,460.74 and $15,800 payments were made.[131] However, it is Staff, not Respondents, who bear the burden of proof, and Mr. Hild's testimony regarding these payments was uncontroverted. Moreover, his testimony was supported by other evidence in the record. In response to Staff's inquiries, RTP reported that it had received a $15,800 check from H&H dated March 19, 2019, remitted as a premium payment on Fierro Inc.'s policy.[132] And Mr. Morris, Berkshire's representative, testified that the Berkshire premium had been paid in full at the beginning of the policy term, which corroborates Mr. Hild's testimony that H&H had paid the down payment.[133] Contrary to Staff's allegations, a preponderance of the evidence shows that Mr. Hild and H&H remitted all of the funds received from Fierro Inc. to insurers.

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[129] Respondents' Closing at 26.

[130] Tr. Vol. 2 at 191-92.

[131] Staff's Closing at 17; Staff's Reply at 15.

[132] Staff Ex. 61 at TDI 010466, TDI 010469. In the same response, RTP also stated that H&H had paid $71,700 for the Fierro Inc. policy on March 5, 2019. However, representatives of IPFS and RTP both testified that, while H&H made the down payment, the $71,700 was paid by IPFS (not H&H) as the financed portion of the premium. Tr. Vol. 3 at 335, 417.

[133] Tr. Vol. 3 at 456.

In its First Amended Petition, Staff also alleged that Mr. Hild and H&H should have remitted Fierro Inc.'s payments to IPFS and/or that they "incorrectly remitted" premium payments to RTP that should have been paid to IPFS instead.[134] Staff's pleading suggested that Fierro Inc.'s policies might not have been cancelled if H&H had forwarded Fierro Inc.'s payments to IPFS instead of paying insurers directly.[135] These claims were not addressed in Staff's brief and appear to have been waived.[136] However, the ALJs note that these allegations are inconsistent with the parties' obligations under the IPFS Premium Finance Agreement, as well as witness testimony regarding where payments were supposed to be directed.

First, the Premium Finance Agreement provided that H&H was guaranteeing the down payment would be paid to "the insurance company or general agent," but it was not responsible for making the installment payments to IPFS.[137] In fact, the Premium Finance Agreement expressly stated that the agent was not authorized to receive the installment payments due to IPFS; instead, Fierro Inc. was supposed to

[134] Staff's First Amended Petition at ¶ 38, 41, 43.

[135] Staff's First Amended Petition at ¶ 37.

[136] *See* 1 Tex. Admin. Code § 155.425(c).

[137] In the Premium Finance Agreement, in Agent/Broker Representation 8, Mr. Hild warranted and agreed "to pay the down payment and any funding amounts received from Lender under this Agreement **to the insurance company or general agent** (less any commissions where applicable)." Staff Ex. 29 at TDI 011715 (emphasis added).

pay IPFS directly.[138] The agreement simply did not contemplate any payments would be made to IPFS by H&H. Ms. Marino, testifying for IPFS, confirmed this in her testimony, stating that H&H was responsible for forwarding the down payment directly to the insurance carriers and was not supposed to forward any portion to IPFS.[139] Mr. Barrett, testifying for RTP, also confirmed that when brokering a policy like the Hallmark policy, RTP will invoice the agent, expects to receive the down payment from the agent and the premium balance from the finance company, and remits payment to the insurer once all the funds have been collected.[140] There is no evidence to support the allegations in Staff's pleadings that Mr. Hild or H&H was ever supposed to remit any part of Fierro Inc.'s down payment to IPFS.

Because Staff has not shown that H&H mishandled or failed to remit any of Fierro Inc.'s funds, there is no corresponding basis for discipline pursuant to Code § 4005.101(b)(4).

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[138] In the Premium Finance Agreement, Fierro Inc. agreed that, as the insured, it would "**pay Lender [IPFS] at the branch office address shown above, or as otherwise directed by Lender**, the amount stated as Total of Payments in accordance with the Payment Schedule," and paragraph 11 provides that "**the agent or broker … is neither authorized by Lender to receive installment payments under this Agreement** nor to make representations … to the insured on Lender's behalf." Staff Ex. 29 at TDI 011714-15 (emphasis added).

[139] Tr. Vol. 3 at 329.

[140] Tr. Vol. 3 at 416-17.

V. CLAIMS RELATING TO UNEARNED COMMISSIONS ON FIERRO INC. POLICIES

A. BERKSHIRE

As discussed above, Berkshire was the insurer for Fierro Inc.'s auto liability policy, by far the largest in premium amount. When the policy cancelled, Berkshire repaid IPFS the unearned portion of the premium, and Hild & Hild was required to repay Berkshire the unearned portion of its commission. Beginning in July 2019, Berkshire tried to collect the unearned commission, but when it was still unpaid nearly a year later, Berkshire terminated all appointments and contracts with Hild & Hild and Mr. Hild. Staff asserts this is a basis for disciplinary action.

1. Evidence

Jeff Morris, Berkshire's Vice President of Marketing and Operations, explained that each month, typically in the first week, Berkshire emails agents a commission statement showing the policies they had earnings on, or in the case of a negative balance, which policy caused the negative balance.[141] In July 2019, Berkshire sent Hild & Hild a commission statement for June 2019 showing the agency earned a $122.19 commission for one client that month, but it owed Berkshire $18,585.72 in unearned commission for the cancelled Fierro Inc. policy, for an $18,463.53 balance due. The statement said the balance was due by July 20, 2019, and directed where to remit payment.[142]

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[141] Tr. Vol. 3 at 455, 457.

[142] Staff Ex. 64 at TDI 010503.

The following month, on August 9, 2019, Berkshire Senior Marketing Representative Molly Holcombe sent Mr. Hild and Hild & Hild an email with the July 2019 commission statement. Her email stated "I am contacting you to retrieve the unearned commission" for the cancelled Fierro Inc. commercial auto policy, which totaled $18,282.64 as of that date. She told Mr. Hild that the payment could not be made online, that "**a CHECK WILL HAVE TO BE MAILED,**" and provided a mailing address.[143]

Hild & Hild did not pay that amount, so the following month, Berkshire's commission statement carried "Past Due Notice" in large, bold type across the top. The commission statement for August 2019 showed Hild & Hild had earned a $122.20 commission on another account that month, and that amount was applied to the balance due. This reduced the balance due to $18,160.44, and the statement instructed Hild & Hild to remit payment to Berkshire by September 20, 2019.[144]

Berkshire proceeded to send commission statements with Past Due Notices to Hild & Hild each month for the next nine months. The statements reflected the commissions earned each month, deducted that amount from the commission balance carried forward from the prior month, and instructed Hild & Hild to pay Berkshire the amount due by the 20th of the month.[145] When those deadlines passed

[143] Staff Ex. 65 at TDI 010528-29 (emphasis in original).

[144] Tr. Vol. 3 at 466; Staff Ex. 27 at HILD-TDI 000004.

[145] Tr. Vol. 3 at 467; Staff Ex. 27 at HILD-TDI 000005-13.

without full payment, Ms. Holcombe often followed up with requests for payment via emails sent to Mr. Hild and Hild & Hild.[146] On October 25, 2019, she wrote "[Berkshire] still requires a payment of **$17,991.11.** … Let me know if you require anything further to resolve this promptly."[147] On November 21, 2019, she wrote "[Berkshire] still requires a payment of **$17,390.22.** … A check will have to be mailed. … Please let me know when this check is put in the mail."[148]

In the spring of 2020, Ms. Holcombe's emails resumed. On April 21, 2020, she wrote:

> Hi Brandon,
>
> [Berkshire] still requires a payment due to unearned commission. This balance has been due since July 2019. Currently, we require a payment of **$5,589.37.** I have attached your March statement. Please let me know if you require anything further to resolve this.[149]

An identical email was sent on May 21, 2020, but for a balance of $5,476.48.[150]

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[146] Mr. Hild suggested that part of why Hild & Hild did not respond to the emails was because they were directed to an employee who had left the agency. Mr. Hild and another employee were also copied on the emails, and he did not explain why neither of them responded, except to say that they were sent to Hild & Hild email addresses and he was working primarily through his new agency, H&H, by then. Tr. Vol. 2 at 171-72; Staff Ex. 64 at TDI 010508.

[147] Staff Ex. 65 at TDI 010528 (emphasis in original). This payment demand corresponds to the amount listed in the commission statement and Past Due Notice for September 2019, which instructed Hild & Hild to remit this amount by October 20, 2019. Staff Ex. 27 at HILD-TDI 000005.

[148] Staff Ex. 65 at TDI 010527 (emphasis in original). This payment demand corresponds to the amount listed in the commission statement and Past Due Notice for October 2019, which instructed Hild & Hild to remit this amount by November 20, 2019. Staff Ex. 27 at HILD-TDI 000006.

[149] Staff Ex. 65 at TDI 010526 (emphasis in original). This payment demand corresponds to the amount listed in the commission statement and Past Due Notice for March 2020, which instructed Hild & Hild to remit this amount by April 20, 2020. Staff Ex. 27 at HILD-TDI 000011.

[150] Staff Ex. 65 at TDI 010526. This payment demand corresponds to the amount listed in the commission statement and Past Due Notice for April 2020, which instructed Hild & Hild to remit this amount by May 20, 2020. Staff Ex. 27 at HILD-TDI 000012.

Mr. Morris testified that Berkshire never received any payment from Hild & Hild in response to any the Past Due Notices and demands. The amount owing changed only because credits were given for amounts Hild & Hild earned on other accounts during those months.[151] The Past Due statement sent for the month of May 2020—the final one sent prior to cancellation—showed that Hild & Hild still owed Berkshire $5,353.89 (of the original $18,585.72) in unearned commission for the cancelled Fierro Inc. policy.[152]

In his testimony, Mr. Hild acknowledged receiving all the Past Due Notices and monthly emails requesting payment but said he did not construe them as requiring any action on his part. Mr. Hild contended that none of the emails or commission statements showed an accurate amount due because the amount changed throughout the month, as Hild & Hild earned commissions on other policies.[153] Mr. Hild suggested that it would have been unreasonable to pay what he contended were "incorrect" requests for payment. He also testified that the requests for a check were "boilerplate, the same every month" and that Berkshire "requested money [but] it was not a demand."[154] To be a demand, he testified,

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[151] Tr. Vol. 3 at 459, 476.

[152] Staff Ex. 27 at HILD-TDI 000013.

[153] Tr. Vol. 2 at 263-64. For example, Mr. Hild testified that Mr. Holcombe's email sent on November 21, 2019, seeking payment of $17,390.22 (the total balance owed as of the end of October 2019) was sent after Mr. Hild had earned a $10,794.30 premium on November 9, 2019, meaning that the amount she was trying to collect was already outdated as of the date of her email. Tr. Vol. 2 at 270-73; Staff Ex. 27 at HILD-TDI 000006-07; Staff Ex. 64 at TDI 010508. That commission was reflected on the following month's commission statement and Past Due Notice and reduced the amount owed to $6,483.03 as of the end of November 2019. Staff Ex. 27 at HILD-TDI 000007.

[154] Tr. Vol. 2 at 265.

Berkshire would have to ask for "the exact accurate amount with the response that legal action would have followed" if not paid.[155]

Mr. Hild also felt payment was not really expected because it had been Hild & Hild's longstanding practice to keep a running balance with Berkshire, where any amounts owing to Berkshire were reconciled against commissions that Berkshire owed to Hild, with monthly statements sent showing the current balance. Any balance owing would be carried forward until it was eventually offset by earnings in future months.[156] Berkshire had always accounted this way, according to Mr. Hild, and in a decade of working with Berkshire "we never issued them a return to commission check … not once."[157] That is why, when he received the requests for payment and Past Due Notices in 2019-2020, he "chose to act in course and scope of how it had worked between … us for 10 years" and let the balance owing keep running without paying it off, even though Hild & Hild could afford to repay it.[158] Mr. Morris, however, denied that Berkshire ever consented to having Hild & Hild withhold payment for many months, or until the balance could be recovered against earnings on other accounts.[159]

[155] Tr. Vol. 2 at 265.

[156] Tr. Vol. 2 at 107, 109, 133, 139, 173.

[157] Tr. Vol. 2 at 138-40, 170.

[158] Tr. Vol. 2 at 107-08, 266.

[159] Tr. Vol. 3 at 471.

Because Hild & Hild had not repaid the unearned commission, Berkshire sent a letter dated June 18, 2020, notifying Hild & Hild that it was terminating all contracts and appointments with Mr. Hild and Hild & Hild "effective immediately."[160] Berkshire also sent letters to the Department and the Illinois Department of Insurance the same day, notifying them of the termination.[161] In the letter to the Department, Berkshire gave the following reason for the termination:

> The agency has failed to pay money due after their receipt of written demand. The amount due from the agency originated from a large return commission amount as a result of refund premium issued to an insured.[162]

Mr. Hild said he was surprised by the termination because he had not considered the Past Due Notices to be demand letters or anything that could cause the end of their contract with Berkshire.[163] He added that no one at Berkshire had ever suggested that his agency's contracts might be cancelled because of this balance owed.[164] After a decade of doing business with Berkshire, Mr. Hild testified, "it was a shock that this small amount of return commission was the straw that broke the

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[160] Tr. Vol. 3 at 468; Staff Ex. 27 at HILD-TDI 000001.

[161] Tr. Vol. 3 at 468-69; Staff Ex. 27 at HILD-TDI 000002-03. Mr. Wright, the Department's representative witness at the hearing, testified that insurers are statutorily required to notify the Department when an agent's appointment is terminated for cause. Tr. Vol. 4 at 510.

[162] Staff Ex. 27 at HILD-TDI 000002. The letter also alleged that the termination was "based upon a reasonable belief that said agency has engaged in activities that includes but is not limited to Texas Statutes and Codes Annotated section 4051.351, paragraph D." Respondent correctly points out that no such statute exists. The attorney who wrote this letter for Berkshire apparently intended to refer to Texas Insurance Code § 4051.351(b)(1)(D), which provides that certain statutory provisions applicable to insurers seeking to terminate a contract do not apply when an agent's contract is terminated because of "failure to pay the insurer money due to the insurer after receipt of a written demand."

[163] Tr. Vol. 2 at 108, 173.

[164] Tr. Vol. 2 at 133.

camel's back for them."[165] Mr. Morris, however, denied that there was anything unusual about the decision to terminate Hild & Hild under these circumstances. He testified that Berkshire will ordinarily terminate an agent who fails to remit unearned commissions for nearly a year.[166]

Mr. Hild testified that until he received the termination letter, he had assumed that the balance owed would be deducted from future commissions coming up. He had a client due to renew large policies in October and November 2020, and the commissions from those renewals would have paid Berkshire in full.[167] He suggested that the termination was actually against Berkshire's own interest because he had to move that customer to another carrier, meaning that Berkshire missed out on those renewals.[168] But once he received the termination notice, Mr. Hild said, he intended to pay the balance right away, understanding that "nothing else would be applied anymore" now that he no longer had a contract with Berkshire.[169]

Hild & Hild waited almost a month after the termination letter was sent before approaching Berkshire to resolve the matter.[170] On July 17, 2020, Mr. Hild's employee, Portland Wood, emailed Berkshire to acknowledge receipt of the

[165] Tr. Vol. 2 at 170.

[166] Tr. Vol. 3 at 471.

[167] Tr. Vol. 2 at 147, 170.

[168] Tr. Vol. 2 at 147, 170.

[169] Tr. Vol. 2 at 149.

[170] Tr. Vol. 2 at 147.

June 18, 2020 termination letter and ask for the total balance owed so she could mail a check.[171] Berkshire responded that $5,707.60 was still owing and provided addresses where the check could be mailed.[172] Ms. Wood sent a check in that amount dated July 21, 2020, but for some reason it was not cashed by Berkshire.[173] A second check was sent, again for $5,707.60, dated September 29, 2020.[174] Staff points out that this check was mailed four days after the Department sent a letter to Mr. Hild asking about the unreturned, unearned commissions that led Berkshire to terminate his and Hild & Hild's appointments.[175]

On November 24, 2020, Ms. Wood followed up by email to Berkshire's regional marketing manager, Travis Owens, stating "there seems to still be an issue and I am needing to get it resolved quickly."[176] The following day, Mr. Owens emailed Mr. Hild and Ms. Wood to confirm that payment had been received and that Berkshire had notified the Department that Hild & Hild "was in good standing."[177]

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[171] Staff Ex. 28 at HILD-TDI 000069.

[172] Staff Ex. 28 at HILD-TDI 000069. The addresses are the same as those provided at least three times in Ms. Holcombe's emails to Mr. Hild in 2019 and 2020. Staff Ex. 65 at TDI 010526-29.

[173] Staff Ex. 26 at TDI 010273, TDI 010275.

[174] Staff Ex. 26 at TDI 010276. This amount turned out to be a bit of an overpayment and Berkshire subsequently refunded Hild & Hild "around $210," according to Mr. Hild. Tr. Vol. 2 at 154, 167; Staff Ex. 28 at HILD-TDI 000067. Mr. Hild believes Berkshire still owes more to Hild & Hild because "there was continued earned premium on accounts we had placed with them up until October of 2020, and that was not accounted for in the return that we received." Tr. Vol. 2 at 167-68.

[175] Staff Ex. 25 at TDI 010244.

[176] Staff Ex. 28 at HILD-TDI 000067-68.

[177] Staff Ex. 28 at HILD-TDI 000067.

Mr. Morris confirmed that only Berkshire was impacted by Hild & Hild's failure to repay the unearned commission, and no insureds or consumers were affected.[178] Mr. Hild does not believe there was anything dishonest about how the commission issue with Berkshire was resolved.[179]

Staff witness Lewis Wright testified that in, in his experience,[180] an unearned commission "creates an instant demand for an agent to return the funds" to the carrier."[181] He asserted that an agent cannot rely on contingencies like anticipated business or expected future commissions to satisfy the immediate obligation to repay an unearned commission.[182] Mr. Wright also considered it "an aggressive form of debt collection" for Berkshire to have to withhold future commissions in order to satisfy Hild & Hild's current debt, though he acknowledged that the terms of the insurer's contract with the agent would dictate what collection remedies the insurer could pursue and it would not be illegal for an agency agreement to allow chargebacks against future income.[183] Mr. Wright also suggested that an insurer could be harmed if it was unable to collect an unearned commission because the balance sheets they

[178] Tr. Vol. 3 at 481; Tr. Vol. 4 at 540.

[179] Tr. Vol. 2 at 170.

[180] Mr. Wright is an administrative review liaison, serving as the primary point of contact between the Department's Enforcement Division and its Agent and Adjuster Licensing Office. Tr. Vol. 4 at 495. A former insurance agent and marketer, Mr. Wright has over 37 years' experience in the insurance industry. Tr. Vol. 4 at 495.

[181] Tr. Vol. 4 at 513.

[182] Tr. Vol. 4 at 513.

[183] Tr. Vol. 4 at 513, 534-35, 561-62.

report to regulators might be rendered inaccurate.[184] He said it was his "layperson's understanding … that there's a level of importance to the information."[185]

2. Analysis

Staff's brief contends Hild & Hild "misappropriated, converted, or illegally withheld money" belonging to an insurer (Berkshire), a violation subject to discipline pursuant to Code § 4005.101(b)(4).[186] Mr. Hild testified he had a decade-long history with Berkshire where the company allowed new commissions to offset unearned commission due until the balance was settled. Directly contrary to Mr. Hild's assertion is Mr. Morris's testimony that Berkshire never had such an arrangement with Hild & Hild, which is echoed in the multiple letters and communications wherein Berkshire demanded payment of the amount still owed.

Though some of Staff's subsidiary allegations are not supported by the evidence and/or not included in the First Amended Petition, the ALJs agree with Staff that Hild & Hild misappropriated, converted, or withheld money that belonged to an insurer—Berkshire. The amount due to Berkshire was final in the sense that the underlying policy had been canceled. By contrast, future premiums to be earned by Hild & Hild were contingent on its ability to close unrelated contracts, with no assurance to Berkshire that it would be made whole on the Fierro Inc. contract.

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[184] Tr. Vol. 4 at 515.

[185] Tr. Vol. 4 at 515.

[186] Staff's Closing at 17.

Berkshire made its position abundantly clear in its letters demanding payment. Ms. Holcombe's emails repeatedly requesting "a check" to "resolve [past due amounts] promptly" also disabused Mr. Hild of any mistaken belief that washing out the amount due against future commissions was acceptable. The fact that Berkshire chose to mitigate its exposure (against the unearned commission potentially not being returned) by withholding amounts due to Hild & Hild from unrelated accounts does not constitute tacit consent to let Hild & Hild slowly repay the unearned commission. If, as Mr. Hild suggests, it was Berkshire's established practice to allow such offsets, it makes no business sense that Berkshire would spend time and money sending monthly statements marked "Past Due Notice" and have its employee send frequent emails requesting an immediate resolution.

Mr. Hild's characterizations of Berkshire's letters as "not demands" is unconvincing. As an insurance agent who regularly reads and interprets complex contracts, Mr. Hild cannot claim confusion, particularly when the language in the letters is unambiguous. His comment that the amount was uncertain or already out of date by the time the Past Due Notices were received is also unpersuasive. Mr. Hild had only to call Berkshire or respond to one of Ms. Holcombe's emails to confirm the amount due, if indeed he had doubts.

At the same time, other of Staff's allegations in its brief are unsupported by the record and/or are not included in the First Amended Petition. The most serious of these is that Mr. Hild and Hild & Hild obtained the unearned premium from Berkshire in the first instance by fraudulent and dishonest acts or practices. Staff contends that, like IPFS, Berkshire was harmed by Mr. Hild's failure to disclose that

Fierro Inc. could not pay the entire down payment due.[187] Unlike IPFS, however, the record does not show that Berkshire factored liquidity risk into its decision to issue Fierro Inc.'s auto liability policy. Also, the evidence shows the representation regarding the down payment having been received in "immediately available funds" was made to IPFS in the Premium Finance Agreement, not to Berkshire directly.

Another unsupported contention is that Hild & Hild's failure to pay "affects the insurers' balances and the heavily regulated financial statements they must report for purposes of solvency."[188] This assertion is not in the First Amended Petition, and the only pertinent evidence before the ALJs is Mr. Wright's "layperson's understanding" of the impact to an insurer's balance sheets or regulatory reports. Moreover, the amount at issue—less than $20,000—is so small that it might not amount to more than a rounding error on Berkshire's financial statements. It was indisputably an amount owed to Berkshire, and its relative insignificance does not relieve Hild & Hild of the duty to promptly remit it, but any further harm is speculative.

Staff's allegation that Berkshire never received the first (July 2020) check from Hild & Hild is included in the First Amended Petition in the allegation that "[o]n July 21, 2020, Hild & Hild purportedly wrote a check to Berkshire for

[187] Staff's Closing at 20-21. Staff also contends Respondents may have falsified Mr. Fierro's signature on the IPFS Premium Finance Agreement and suggests Mr. Hild took advantage of the Fierros. These contentions are discussed in § VIII below.

[188] Staff's Closing at 19.

$5,707.60 [but] this check did not reach Berkshire[.]"[189] In closing argument, Staff contends the check did not reach Berkshire "because Hild & Hild never mailed it" and had "no tracking information, no mail log, or anything to prove their contention."[190] Respondents in this case do not have the burden of proof. Additionally, Ms. Wood emailed Berkshire on July 17, 2020 (a Friday), asking for the total balance owed, and the first check is dated July 21, 2020, the following Tuesday.[191] The evidence indicates a check for the amount then due was cut in July but was not received or was not cashed for unknown reasons, and a replacement check was sent in September 2020. The ALJs conclude that Staff proved misappropriation and illegal withholding of money belonging to Berkshire in violation of Code § 4005.101(b)(4), but not its other related allegations.

B. TOWERSTONE

When the Fierro Inc. policies were cancelled, Towerstone, the broker for five of those policies, asked Mr. Hild to repay the unearned commissions H&H had received. Mr. Hild delayed and deflected, and ultimately arranged to pay the finance company directly, rather than returning the unearned commission to Towerstone. Staff contends this is a basis for disciplinary action.

[189] Staff's First Amended Petition at ¶ 61.

[190] Staff's Closing at 20.

[191] Staff Ex. 26 at TDI 010275.

1. Evidence

Towerstone was the wholesale broker for five of the Fierro Inc. policies financed through IPFS. Amy McCarty, a senior associate broker and assistant vice president at Towerstone, explained that a wholesale broker is essentially an intermediary between an insured's agent or broker and the insurance carrier and finance company, and functions like an MGA.[192] An agent like Mr. Hild will request a policy through Towerstone, and Towerstone will obtain coverage, invoice the agent, and relay premium funds from the agent and finance companies to the carrier.[193] Once the policy is in force, the agent and Towerstone will each earn a commission on the transaction.[194] Because the agent is responsible for the premium down payment, according to Ms. McCarty, the agent will typically withhold their commission from the down payment and forward the remainder to Towerstone.[195]

When a policy is cancelled for nonpayment of premium, Towerstone is responsible for returning the premium and unearned commission to the finance company.[196] In the case of the cancelled Fierro Inc. policies, when IPFS pressed Towerstone to repay the return premium and unearned commission, Ms. McCarty was tasked with collecting the portions that were due from Mr. Hild so Towerstone

[192] Tr. Vol. 3 at 376, 397.

[193] Tr. Vol. 3 at 384.

[194] Tr. Vol. 3 at 398.

[195] Tr. Vol. 3 at 398.

[196] Tr. Vol. 3 at 408.

could return them to IPFS.[197] Ms. McCarty explained that for agents like Mr. Hild and H&H who had a long relationship with Towerstone, it could be customary for the agent to "balance out all of the money that they have due and all of the money that is coming back and … square up at the end of the month."[198] However, because the Fierro Inc. policies had been financed, Mr. Hild was not allowed to credit what was owed against his earnings on other accounts because the money had to be sent directly to the finance company.[199]

Between May 7 and May 20, 2019, Towerstone emailed Mr. Hild a copy of the cancellation endorsements for each of the five Fierro Inc. policies, and each was accompanied by a Towerstone invoice for the return premium and unearned commissions that had to be repaid to IPFS.[200] Each email included a reminder that "[t]his policy is financed, therefore the premium cannot be taken as a credit."[201]

On June 18, 2019, Ms. McCarty emailed Mr. Hild to advise him that IPFS had "already brought their lawyers to the table due to the delay in receiving returned premium from us."[202] She attached a spreadsheet showing that Mr. Hild owed a total of $53,576.90 to Towerstone (and ultimately, to IPFS) for the premium down

[197] Tr. Vol. 3 at 377.

[198] Tr. Vol. 3 at 392.

[199] Tr. Vol. 3 at 392.

[200] Staff Ex. 67 at TDI 010667-82.

[201] Staff Ex. 67 at TDI 010667, TDI 010670, TDI 010673, TDI 010677, TDI 010680.

[202] Staff Ex. 67 at TDI 010661.

payments and unearned commissions on five Fierro Inc. policies, and told him he could pay Towerstone or pay IPFS directly, if he preferred.[203] Of the $53,576.90 owed, $18,068.20 was for H&H's unearned commissions. Ms. McCarty emailed again on June 20, 2019, to convey how urgently Towerstone needed a response from him, writing that IPFS was "now also involving the carriers on this account" and "pulling out all the stops in trying to get this collected."[204]

At some point—apparently at Mr. Hild's suggestion—IPFS agreed to assume responsibility for collecting the unearned commissions from Mr. Hild and H&H.[205] Towerstone paid the return premiums and unearned commissions it owed to IPFS and then "stopped dealing with" the Fierro Inc. account, Ms. McCarty testified.[206] She explained that Mr. Hild and H&H still owed $18,068.20 in unearned commissions, it was just that Mr. Hild was no longer required to pay that sum to Towerstone; instead, IPFS had agreed to take over collection.[207]

The unearned commissions remained on Towerstone's books until the IPFS note was closed.[208] That is why, on May 3, 2022, Towerstone told the Department that H&H's "outstanding unearned commissions owed to Towerstone total

[203] Staff Ex. 67 at TDI 010660-66.

[204] Staff Ex. 67 at TDI 010660.

[205] Tr. Vol. 3 at 386, 388, 401; Staff Ex. 67 at TDI 010659.

[206] Tr. Vol. 3 at 402.

[207] Tr. Vol. 3 at 401-02.

[208] Tr. Vol. 3 at 408.

$18,068.20."[209] At some point after that letter (and about two years after the Fierro Inc. policies had been cancelled), Towerstone received notice from IPFS that the finance note was closed, and Towerstone "wipe[d] the books clean on this account."[210]

Ms. McCarty testified that today "the [Fierro Inc.] account has a zero balance" and Towerstone is not currently owed anything from any of the Respondents with regard to the Fierro Inc. policies.[211] She said Towerstone continues to do business with Mr. Hild and his companies, and the Fierro Inc. matter did not change their business relationship.[212]

In his testimony at the hearing, Mr. Hild simply denied ever owing any unearned commissions to Towerstone and said Staff's claim that he did "lacks merit."[213] He testified that "Towerstone doesn't pay us commissions. Therefore, there was nothing to return to Towerstone directly from commissions."[214] He did not address the substance of the claim, which is that he was supposed to return the unearned commissions to the broker (Towerstone) so the broker could repay the finance company that had paid them.

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[209] Tr. Vol. 3 at 405-06; Staff Ex. 67 at TDI 010593. This sum was provided in a letter sent by Towerstone's Associate General Counsel responding to a request for information from the Department.

[210] Tr. Vol. 3 at 402.

[211] Tr. Vol. 3 at 403.

[212] Tr. Vol. 3 at 403-04.

[213] Tr. Vol. 2 at 221.

[214] Tr. Vol. 2 at 222.

2. Analysis

In its brief, Staff contends that "by failing to provide Towerstone with a portion of the down payment containing premiums and by failing to return unearned commissions," Mr. Hild and H&H misappropriated, converted, and illegally withheld money belonging to an insurer in violation of Code § 4005.101(b)(4).[215] Staff states that because the Fierro Inc. policies "canceled due to nonpayment, H&H owed approximately $53,576.90 to Towerstone consisting of premiums owed and unearned commissions."[216]

At the outset, the ALJs note that Staff's reference to $53,576.90 being due from H&H is incorrect. Towerstone itself did not claim that amount was due from H&H. In its response to TDI's inquiry, Towerstone stated that the "outstanding unearned commissions owed to Towerstone total $18,068.20."[217] Attributing responsibility for the entire $53,576.90 to H&H is inaccurate.

Second, Staff did not show Towerstone is an insurer for purposes of Code § 4005.101(b)(4). Staff notes that "[a] portion of the down payment under the IPFS Premium Finance Agreement, which included premiums, should have been paid to Towerstone[,]" and cites Code § 4053.001(3), recognizing that Towerstone was an

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[215] The ALJs note that Staff's First Amended Petition lists claims related to Towerstone under "Multiple Instances of Misappropriation, Conversion, or Illegally Withholding Money Belonging to Insurer and Dishonest or Fraudulent Acts," appearing to encompass both subsections (4) and (5) of Code § 4005.101(b). Staff's First Amended Petition at ¶¶ 51-68. However, in closing briefs, Staff specified that these claims were made under Code § 4005.101(b)(4), so the ALJs analyze them accordingly.

[216] Staff's Closing at 22.

[217] Staff Ex. 67 at TDI 010593.

MGA.[218] Code § 4053.001(3) defines an MGA as "a person, firm, or corporation that has supervisory responsibility for the local agency and field operations of an insurer in this state or that is authorized by an insurer to accept or process on the insurer's behalf insurance policies produced and sold by other agents." Notably, that section also provides a definition of "insurer," which means "an insurance company, carrier, corporation, reciprocal or interinsurance exchange, mutual, association, county mutual insurance company, Lloyd's plan, or other insurance carrier authorized to engage in the business of insurance in this state."[219]

Code § 4001.003 provides another definition of "insurer," which means "an insurance company or insurance carrier regulated by [TDI]"[220] and provides an extensive list of covered entities. This section defines "agent" as "a person who is an authorized agent of an insurer … who performs the acts of an agent … by soliciting, negotiating, procuring, or collecting a premium on an insurance or annuity contract …." and explains what the term does not include.[221]

The definitions of "insurer" and "MGA" in Code § 4053.001 are not coextensive or overlapping. Staff suggests the distinction may not be determinative, arguing that "[b]ecause Towerstone stands in the shoes of the insurer … [Respondents] misappropriated, converted, and illegally withheld money belonging

[218] Staff's Closing at 22.

[219] Code § 4053.01(2).

[220] Code § 4001.003(6).

[221] Code § 4001.003(1).

to an insurer in violation of [Code] § 4005.101(b)(4)."[222] However, Code § 4053.001 does not indicate that, because an MGA may be authorized to do various acts on behalf of an insurer, the MGA qualifies as an "insurer" for purposes of disciplinary action to be taken against a licensee under Code § 4005.101(b)(4). Similarly, the definitions of "insurer" and "agent" in Code § 4001.003 are not coextensive. An agent may perform certain tasks on behalf of an insurer but does not become an insurer by such acts. There also is no evidence that any of the five insurers for whom Towerstone brokered the Fierro Inc. policies had monies due that H&H withheld.

It is instructive to compare the relationship between Berkshire and Hild & Hild to that between Towerstone and H&H. A key distinction is that Hild & Hild directly brokered the auto liability policy with Berkshire, and Berkshire was the insurer issuing the policy. Berkshire was directly at risk of loss if the unearned commission—which was money belonging to Berkshire—was not returned by Hild & Hild. With respect to the $18,068.20 unearned commission on the five policies Towerstone brokered, Towerstone was collecting from H&H an amount that H&H ultimately owed back to IPFS, not to Towerstone. Also, the matter was resolved from Towerstone's perspective—to the extent that Towerstone "stopped dealing with" the Fierro Inc. account—as soon as IPFS agreed to collect directly from Hild & Hild. It appears that due to its contractual role, Towerstone kept the liability on its books until IPFS advised it was closed, but Towerstone took no action to collect once IPFS stepped in.

[222] Staff's Closing at 23.

Given these differences, the ALJs do not find Staff proved misappropriation, conversion, or illegal withholding of unearned commissions due to Towerstone *as an insurer* under Code § 4005.101(b)(4). The ALJs do not consider whether the conduct could constitute fraudulent or dishonest acts or practices for purposes of Code § 4005.101(b)(5) because Staff did not pursue that allegation.

VI. CLAIMS RELATING TO US RISK JUDGMENT[223]

A. EVIDENCE

Beginning in 2014, Hild & Hild had a producer agreement with US Risk Insurance Group, Inc. (US Risk), a wholesale surplus alliance agency. Sarah Jessup, an Accounts Payable and Accounts Receivable Manager for US Risk, explained that US Risk is an MGA, serving as a middleman between an insurance agent and large insurance carriers.[224] Because Hild & Hild was not licensed to place surplus products, Mr. Hill testified, he had to work with a wholesaler like US Risk to "produce[] business mutually together."[225] As an MGA, US Risk would procure a policy for a Hild & Hild customer, and Hild & Hild would guarantee the premium payments.[226] US Risk would be the agent of record and receive all commissions, then share those commissions with Hild & Hild.[227]

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[223] These claims were asserted against Mr. Hild and Hild & Hild.

[224] Tr. Vol. 3 at 286.

[225] Tr. Vol. 2 at 223. Mr. Hild emphasized that US Risk was not an insurance carrier.

[226] Tr. Vol. 2 at 229.

[227] Tr. Vol. 2 at 228; Tr. Vol. 3 at 286. The US Risk agreement was with Hild & Hild only; Mr. Hild was not a party.

A dispute arose when Hild & Hild's customer BCA Energy, a pipeline and oilfield construction company, failed to pay the premiums on several policies placed through US Risk.[228] When the policies were cancelled, US Risk tried to collect the MEP from Hild & Hild. According to Ms. Jessup, US Risk sent Hild & Hild statements twice a month, then eventually turned the matter over to an attorney.[229]

On November 25, 2015, US Risk filed a lawsuit against Hild & Hild and Mr. Hild in Dallas County District Court. The petition alleged that they owed US Risk $15,988.13 (plus attorneys' fees) for premiums Hild & Hild guaranteed pursuant to the terms of the producer agreement.[230] When Hild & Hild and Mr. Hild failed to respond to the lawsuit, a Final Default Judgment was entered against them on May 4, 2016, awarding US Risk $15,988.13, plus post-judgment interests, costs, and $3,000 in attorney's fees.[231] In July 2016, an Abstract of Judgment was filed in Bexar County, where Mr. Hild resides, placing a lien on his homestead.[232]

For several years, Hild & Hild and Mr. Hild did not pay the judgment, nor did US Risk apparently make any effort to collect on it. Their respective attorneys

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[228] Tr. Vol. 2 at 230, 235.

[229] Tr. Vol. 3 at 286-87.

[230] Staff Ex. 30. At the hearing, Mr. Hild asserted that US Risk had refused to work with Hild & Hild "on trying to get a pro rata cancellation versus a minimum cancellation" for the BCA Energy policies and "would not return anything else that was due Hild & Hild for other accounts." Tr. Vol. 2 at 237.

[231] Staff Ex. 31.

[232] Staff Ex. 32; Tr. Vol. 2 at 240.

exchanged emails in February 2018, vaguely discussing whether there might be a path to settle and have the lien released, but if details were discussed they are not in evidence.[233] Their correspondence resumed in mid-May 2019, when Mr. Hild's attorney reached out to US Risk's attorney to ask about releasing the lien on his homestead.[234] US Risk's attorney replied:

> Last year my client accepted your client's prior settlement offer to pay $8,500 in two installments less a return of $1,399. I've attached a copy of our correspondence reflecting this. Your client never made any payment. Before I go back to my client asking it to accept a lesser amount, I would encourage you to simply get your client to honor the agreement he entered into last year. Please let me know.[235]

In response, Mr. Hild's attorney wrote, "my apologies for not getting the funds wired by now. … I will try and get funds wired on Monday morning."[236]

At the hearing, Mr. Hild denied there had ever been any agreement to settle with US Risk for $8,500 (less $1,399), though he offered different reasons for disputing it. First, he testified that his attorney had full authority to resolve the matter and pay US Risk, so if the settlement amount had not been paid then he assumed his attorney had never given the agreement "final approval."[237] However, Mr. Hild also said his lawyer had never informed him of an $8,500 settlement

[233] Resp. Ex. 62 at Hild 01474-76.

[234] Staff Ex. 33 at HILD 01621.

[235] Staff Ex. 33 at HILD 01621. The referenced attachment is not in evidence.

[236] Staff Ex. 33 at HILD 01620.

[237] Tr. Vol. 2 at 54.

agreement ("this was never brought to me as a settlement"), suggesting that the agreement was not binding because Mr. Hild had not personally agreed to settle for that amount.[238] Additionally, in contrast to his testimony that there was no agreement reached in 2019, Mr. Hild also testified that he thought the US Risk judgment had been "taken care of" in 2019 because US Risk had not contacted him to claim otherwise.[239]

Whether a binding agreement had been reached or not, the matter was dropped for several more years until April 11, 2022, when Mr. Hild's attorney again approached US Risk's attorney about a settlement.[240] He wrote:

> I have attached the old Judgment entered and a copy of the Homestead Affidavit to get the lien removed from [my] client Brandon Hild's homestead. We came across this old lien a while back when he was considering moving. He wanted me to reach out and see if we can finally clear up this matter without going to the trouble of getting the lien on his homestead removed. Considering the age of the debt he has authorized me to settle in full for $5,000 that can be wired anytime.[241]

On July 6, 2022, US Risk's attorney responded: "I'm presuming you haven't spoken with Mr. Hild about whether he'd be able to honor the prior settlement

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[238] Tr. Vol. 2 at 242.

[239] Tr. Vol. 2 at 54-55.

[240] Staff noted that this email was sent only after Mr. Hild had been contacted by TDI investigators asking about the debt. Respondents' response to that inquiry was dated April 12, 2022. Tr. Vol. 2 at 55; Staff Ex. 29 at TDI 010425.

[241] Staff Ex. 34 at Hild 01619.

agreement?"[242] Mr. Hild's attorney countered that "given the additional lapse in time he believes the current numbers are more appropriate and more doable."[243] At the same time, Mr. Hild started emailing US Risk's attorney directly. US Risk offered to settle the judgment for $6,100, then agreed to Mr. Hild's counteroffer of "6K even and we are done." US Risk's attorney promised to file a satisfaction of judgment upon receipt of the settlement payment.[244]

Mr. Hild wired the $6,000 to US Risk on July 11, 2022; US Risk provided a notarized Release of Judgment Lien dated August 12, 2022; and a Satisfaction of Judgment was filed with the Dallas County court on September 23, 2022.[245] This finally resolved the dispute with US Risk, more than six years after the judgment had been entered against Mr. Hild and Hild & Hild.[246]

B. ANALYSIS

Staff contends Mr. Hild and Hild & Hild have misappropriated, converted, and/or illegally withheld premium funds from US Risk, in violation of Code

[242] Staff Ex. 35 at Hild 01615.

[243] Staff Ex. 35 at Hild 01614. At the hearing, Mr. Hild denied that "more doable" suggested he was unable to afford the $7,101 settlement amount (or $8,500 less $1,399 in credits owed). Instead, he said, "I don't think it was about afford. The attorney was negotiating on my behalf, which I appreciate." Tr. Vol. 2 at 61-62.

[244] Resp. Ex. 62 at Hild 01465-66. Apparently because their email correspondence did not specifically address the $1,399 credit that US Risk had offered in earlier negotiations, Mr. Hild testified that he believes US Risk still owes that amount to Hild & Hild. Tr. Vol. 2 at 246.

[245] Resp. Exs. 64-66.

[246] Tr. Vol. 2 at 251.

§ 4005.101(b)(4).[247] Specifically, Staff contends that they wrongfully withheld payment of $15,988.13 in premiums that Hild & Hild had guaranteed in their producer agreement, forcing US Risk to sue to recover what it was owed. Further, Staff contends that Mr. Hild and Hild & Hild continued to wrongfully withhold the premiums owed when they failed to pay the Final Default Judgment, and when they failed to honor the $8,500 settlement (less $1,399) they had agreed to pay to satisfy that judgment. Staff also argues that after finally paying the $6,000 settlement reached with US Risk in 2022, Mr. Hild and Hild & Hild are still withholding $8,589.13 in premiums that were awarded in the judgment and not covered by the settlement.

In response, Mr. Hild and Hild & Hild characterize the US Risk dispute as a "business disagreement" having nothing to do with insurance practice because US Risk was a surplus lines broker, not an insurer. They argue there was never a binding agreement to settle the US Risk judgment for $8,500 (less the $1,399 credit) so they were not required to honor that agreement and it was fair to renegotiate.

Staff focused its claims regarding US Risk, as it did with Towerstone, on Code § 4005.101(b)(4). Like Towerstone—and unlike Berkshire—US Risk is an MGA, which Code § 4053.001(3) defines independently of "insurer." And as with Towerstone, Staff did not show that US Risk qualifies as an "insurer" for purposes of Code § 4005.101(b)(4). Thus, to the extent funds were improperly withheld by Hild & Hild, they were not withheld from an insurer. US Risk also does not qualify

[247] Staff's Closing at 13-14; Staff's Reply at 13.

as an "insurer" under the definition in Code § 4001.003; it served as an agent, which is a distinct and defined role.

Even setting aside that threshold issue, the ALJs cannot determine whether a binding agreement was reached and subsequently reneged upon by Mr. Hild at any time prior to the $6,000 payment agreed to by Mr. Hild and US Risk's attorney. Though Mr. Hild gave different and seemingly incompatible explanations,[248] there also were significant gaps of time when no action was taken by US Risk, including a two-year period after the lien was filed in July 2016. US Risk did not appear to have the same urgency as, for example, Berkshire's collection efforts. Further, some of the underlying documentation and communication referenced in the attorneys' emails are not in the record. And finally, the evidence establishes that no claims remain outstanding, so Staff's contention that Respondents continue to withhold amounts due is unfounded. US Risk provided a notarized Release of Judgment Lien, and filed a Satisfaction of Judgment in Dallas County court. Thought the satisfaction came six years after the initial claim, US Risk no longer has a live claim at issue.

The ALJs do not consider whether Respondents' dealings with US Risk constituted fraudulent or dishonest acts or practices under Code § 4005.101(b)(5), because Staff did not make that assertion.[249]

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[248] Mr. Hild variously said that: his attorney had full settlement authority but must not have approved a settlement; that he personally had final settlement authority and his attorney had not informed him of an $8,500 settlement offer; and that the matter may have been resolved in 2019 because US Risk did not follow up with him.

[249] Staff's discussion of its allegations under Code § 4005.101(b)(5) begin on page 23 of Staff's Closing, and addresses issues unrelated to US Risk (and unrelated to Towerstone, for that matter). The arguments in Staff's Reply regarding US Risk are made under Code § 4005.101(b)(4). Staff's Reply at 13.

VII. CLAIMS RELATING TO AXO INSURANCE SERVICES[250]

A. EVIDENCE

1. Underlying Debt to BankDirect

In November and December 2015, an entity called Lazarus Oilfield, LLC (Lazarus) entered into several Commercial Insurance Premium Finance and Security Agreements with BankDirect Capital Finance (BankDirect) to finance premiums for its insurance policies.[251] In February 2016, Texas Fueling Service and Texas Oilfield Services, LLC (Texas Fueling) also entered into a Commercial Insurance Premium Finance and Security Agreement with BankDirect to finance premiums owed for several insurance policies. Hild & Hild was listed as the insureds' agent or broker on each of these premium finance agreements, and the agreements bound the agent to pay BankDirect all unearned commissions and premiums upon cancellation of any of the policies.[252]

Texas Fueling defaulted on the loan from BankDirect. The evidence does not address what happened with the Lazarus financing. In any event, by March or April 2016, Mr. Hild and Hild & Hild were apparently unable to pay their obligations

[250] These claims were asserted against Mr. Hild and Hild & Hild.

[251] Staff Ex. 38A at Hild 02162-72. Lazarus was not specifically addressed in any of the testimony, but Mr. Hild signed those finance agreements as both the agent and the insured, indicating he owns Lazarus; an interest in Lazarus was also part of the security interest for a promissory note discussed below.

[252] Staff Ex. 38A at Hild 02159-61.

to BankDirect under any of the security agreements, which prompted Mr. Hild to approach AXO Insurance Services (AXO) for help paying BankDirect.[253]

At the time, Mr. Hild felt he "did not have much time to cure the issue" and was concerned that his insurance broker's license could be jeopardized by a default to BankDirect.[254] AXO also understood this, as its attorney sent Mr. Hild an email stating that AXO would "try and make some headway with your company's creditors, without which you would be facing potentially serious consequences with [the Department] and otherwise."[255] When testifying at the hearing, however, Mr. Hild denied having any serious concerns. He asserted that "my license was never in jeopardy" and denied that he ever "personally believed that [his] license was on the line in respect to the Bank Direct premium."[256] He testified only that "there could be a potential that my license could be impacted" by not paying what was owed to a finance company.[257]

On August 9, 2016, Hild & Hild, Mr. Hild, Lazarus, Texas Fueling, and Texas Oilfield Services entered into a Settlement, Release and Indemnity Agreement with BankDirect, with AXO also joining in the release

[253] Mr. Hild said AXO is not an insurance carrier, a surplus lines carrier, or an MGA. Tr. Vol. 2 at 259.

[254] Staff Ex. 38G at Hild 01946; Staff Ex. 38H at Hild 02010. He was also apparently in debt to another financing company, called Premium Asset Corp. (PAC), for premium returns owed, and PAC had threatened to report him the Department, but Mr. Hild said he was eventually able to pay PAC what was owed. Staff Ex. 38K.

[255] Staff Ex. 38F at Hild 02218.

[256] Tr. Vol. 2 at 82, 84.

[257] Tr. Vol. 2 at 82.

(BankDirect Settlement).[258] In the BankDirect Settlement, in exchange for a full release from BankDirect of any claims relating to the Commercial Insurance Premium Finance and Security Agreements, Mr. Hild and Hild & Hild agreed to pay $461,475.25 to BankDirect, and AXO guaranteed that payment. According to Mr. Hild, AXO's guaranteed payment to BankDirect was supposed to be part of AXO's purchase price for an approximately one-half interest in Hild & Hild.[259] As discussed below, Mr. Hild signed a promissory note to AXO in connection with the transaction.

The BankDirect Settlement anticipated that the Department would have concerns about the transactions at issue. As part of the agreement, BankDirect and Texas Fueling represented that they had not, and would not "take any action or direct, encourage or participate in any action with regard to the filing of a complaint or otherwise further contacting [the Department] or any other agency governing insurance or the licensing of insurance agents" relating to anything Mr. Hild and Hild & Hild "did or did not do with respect to the policies listed" in the premium finance agreements at issue.[260] The agreement also acknowledged that Texas Fueling had already called the Department in mid-April 2016 to make a complaint against Mr. Hild but had not yet provided specific information or responded to the Department's request for affidavits and supporting documents. Texas Fueling promised no further information would be given to the Department "unless

[258] Staff Ex. 38A.

[259] Staff Ex. 38G at Hild 01928, Hild 01946.

[260] Staff Ex. 38A at Hild 02148-49.

compelled by a court order or other legal obligation."[261] In his testimony at the hearing, Mr. Hild denied trying to hide his issues with BankDirect from the Department via the BankDirect Settlement.[262]

2. AXO Lawsuit

On February 26, 2018, AXO sued Mr. Hild, Hild & Hild, and a related entity, Hild Consulting, Inc., (collectively, the Hild Entities) in Bexar County District Court.[263] When explaining the lawsuit at the hearing, Mr. Hild characterized it as a business dispute that arose after a purchase agreement between AXO and Hild & Hild fell through. Mr. Hild said that AXO had agreed to purchase 51% of his agency for about $1 million, paid an initial $150,000, "and then provided an agreement for the rest of the money…."[264] The funding was documented under a promissory note from Hild & Hild and Mr. Hild payable to AXO.[265]

According to Mr. Hild, AXO tried to back out of the deal several weeks later and a dispute arose over whether AXO was entitled to have its down payment returned.[266] Mr. Hild said he did not believe AXO was entitled to have the entire $150,000 returned because "they had put the money up, but they had also failed

[261] Staff Ex. 38A at Hild 02149.

[262] Tr. Vol. 2 at 83.

[263] Staff Ex. 39.

[264] Tr. Vol. 2 at 251.

[265] Tr. Vol. 2 at 253.

[266] Tr. Vol. 2 at 252.

miserably on the majority of what they said they were going to produce and strung it out for six months."[267]

AXO sued to recover on the promissory note the Hild Entities had signed.[268] The Hild Entities countersued, asserting that AXO had breached their contract and that they had been fraudulently induced into signing the note.[269] The facts recited in the Hild Entities' pleadings (specifically, their counter-petition and a summary-judgment response) did not describe a failed purchase agreement. Instead, the counter-petition alleged that Mr. Hild's insurance brokerage had been in debt by over $461,000 to BankDirect and signed an unfavorable loan agreement with AXO because otherwise the Hild Entities "would be out of business were the obligation [to BankDirect] not paid."[270]

In their response to AXO's summary judgment motion, the Hild Entities attached the promissory note Hild & Hild had signed effective August 2, 2016, promising to repay AXO the principal "not to exceed One Million and No/100 Dollars, U.S."[271] A Security Agreement executed effective August 2, 2016, by Mr. Hild, Hild & Hild, and AXO documented that the note was secured by a 51% interest in each of (1) Hild & Hild, (2) Lazarus, and (3) Mr. Hild's future

[267] Tr. Vol. 2 at 253.

[268] Staff Ex. 39.

[269] Staff Ex. 42 at TDI 001257-58.

[270] Staff Ex. 42 at TDI 001256.

[271] Staff Ex. 43 at TDI 011045-48. Although the document was signed August 9, it was effective as of August 2, 2016.

commissions.[272] Attachments to AXO's pleadings show that the note was renewed on February 14, 2017, in the principal amount of $150,000, which the Hild Entities promised to repay in three payments between March and May 2017.[273] In their summary-judgment response, the Hild Entities asserted that Mr. Hild's business and professional licenses were at stake in the BankDirect dispute. They said that Mr. Hild "found [himself] in a dispute wherein he was required to pay a refund in excess of $450,000 in a very short period of time to maintain his insurance license," and that "[f]ailure to have paid the obligation would have likely resulted in the loss of the insurance license and the closing of the business."[274]

Mr. Hild acknowledged that "we lost, and AXO won" that lawsuit.[275] In March 2019, AXO's summary-judgment motion was granted on all claims and the court awarded AXO $156,616.19, plus pre- and post-judgment interest, from the Hild Entities.[276] A Final Judgment was entered against the Hild Entities on June 18, 2019, ordering that they owed $79,644.07 to AXO.[277]

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[272] Staff Ex. 38J. Although the document was signed August 18, it was effective as of August 2, 2016.

[273] Staff Ex. 41 at TDI 011106-09.

[274] Staff Exs. 43 at TDI 011036.

[275] Tr. Vol. 2 at 254.

[276] Staff Ex. 45 at TDI 001335-36.

[277] Staff Ex. 44. The judgment was for "the reasonable and necessary attorneys' fees incurred by AXO Insurance Services, LLC" and purported to dispose of "all remaining claims and causes of action between all parties." It is not clear why the Final Judgment did not include the relief that had been awarded on the promissory note in the summary-judgment order.

AXO then sought post-judgment discovery from the Hild Entities, and the Hild Entities resisted. AXO filed a Motion to Compel on July 25, 2019, and the court granted that motion in part, ordering the Hild Entities to produce documents within about two weeks of the court's order.[278] When the Hild Entities failed to comply, AXO filed a Motion for Contempt, which the court granted in part on February 25, 2020.[279] The February contempt order found that the Hild Entities "substantially failed to comply" with two prior discovery orders and awarded AXO $16,653.50 in attorneys' fees and expenses incurred in connection with its post-judgment motions.[280] A second contempt order was issued on March 3, 2020, finding that the Hild Entities had not complied with the February contempt order. An additional $3,000 in attorneys' fees was awarded to AXO, as well as $19,000 in sanctions for the Hild Entities' "continued discovery abuse and disregard of the Court's orders."[281] At the hearing, Mr. Hild denied that he had ever "personally" abused discovery and said he does not believe he bears any responsibility for the acts or omissions that resulted in those sanctions against him and his companies.[282]

AXO and the Hild Entities eventually entered into a Compromise and Settlement Agreement on June 2, 2021 (AXO Settlement) to resolve the judgment

[278] Staff Exs. 45, 47.

[279] Staff Exs. 46, 49.

[280] Staff Ex. 49 at TDI 011070, TDI 011073.

[281] Staff Ex. 50.

[282] Tr. Vol. 2 at 69, 270.

and release all claims.[283] Though not a party to the AXO lawsuit, H&H signed a guaranty on June 2, 2021, for the Hild Entities' payment of the settlement amount (Guaranty).[284] The payments were made on schedule and the AXO judgment was fully satisfied as of May 1, 2022.[285]

3. Discovery in this Case

During discovery in this case, Staff served interrogatories that asked Respondents to identify all documents concerning any agreements any Respondent had made or entered into with AXO since August 1, 2016. In response to the interrogatory, Respondents disclosed only a "verbal agreement with AXO in which AXO would invest approximately $485,000 in Hild & Hild," the June 2, 2021 AXO Settlement, and the June 2, 2021 Guaranty by H&H that concluded the AXO lawsuit.[286] Mr. Hild's sworn response did not disclose the August 2, 2016 BankDirect Settlement that he, Hild & Hild, and AXO were all parties to. He also did not disclose the August 2, 2016 Security Agreement that secured the debt in the promissory note he and Hild & Hild had signed to AXO.

B. ANALYSIS

Staff makes three interrelated claims stemming from these BankDirect and AXO matters, all of which are asserted to be fraudulent or dishonest acts subject to

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[283] Tr. Vol. 2 at 256; Staff Ex. 28 at HILD-TDI 000108-14.

[284] Tr. Vol. 2 at 257; Staff Ex. 28 at HILD-TDI 000115-24.

[285] Tr. Vol. 2 at 258.

[286] Staff Ex. 7 at TDI 011703.

sanction under Code § 4005.101(b)(5). First, Staff contends that Hild & Hild's transactions with BankDirect were such that, if they had come to the Department's attention, license revocation or suspension was all but guaranteed, so it was a fraudulent or dishonest act to secure "hush money" from AXO to buy Texas Fueling's and BankDirect's silence.[287] Second, Staff asserts the Hild Entities' conduct in the litigation with AXO—which resulted in an adverse judgment as well as two contempt orders—was sanctionable because "[c]oncealing documentation which a court ruled was properly requested in discovery is a fraudulent and dishonest act or practice."[288] Third, Staff alleges that Respondents' actions in this proceeding, including failure to disclose relevant documents related to BankDirect and AXO and alleged false statements under oath at the hearing, are fraudulent or dishonest.

As to the first claim, Staff did not make any allegations in its First Amended Petition (filed August 25, 2022) about the BankDirect Settlement, which is logical because Staff did not learn about the underlying settlement with BankDirect until after that pleading was filed. However, Staff also did not move to further amend its Petition or seek a continuance to decide whether additional charges were warranted based on the late-acquired information. Therefore, to the extent there is record evidence of Respondents' conduct with respect to the premium financing agreement with Texas Fueling and/or "purchasing the silence" of BankDirect and Texas Fueling, it is not considered as an independent basis for discipline. It is

[287] Staff's Closing at 24.

[288] Staff's Closing at 25.

discussed in §VIII.B below as a potential factor in the Commissioner's sanction analysis.

Regarding the second claim, it is included in the First Amended Petition, so there is no issue of notice.[289] Code § 4005.101(b)(5) is broadly worded and does not limit "fraudulent or dishonest acts or practices" to the business of insurance. Yet, it is unreasonable to assume that any and all conduct on the part of a person or entity that happens to hold an insurance license can be a basis for the Department to sanction that license; some nexus to the Department's sphere of authority must be shown. It is undisputed that the Hild Entities did not cooperate with court orders in litigation with AXO, resulting in two contempt orders and associated fees and sanctions in addition to the final judgment. However, the Hild Entities' transaction with AXO was a business deal at least one step removed from the BankDirect premium financing agreements. The bad behavior that was sanctioned by the court was not related to the practice of insurance, nor did it indicate that insurance consumers or insurers were at risk of harm from the Hild Entities' practice of insurance. Thus, the relationship to the insurance industry is attenuated and Staff needed to demonstrate how these acts are subject to sanction for an insurance licensee. The ALJs find this showing was not made.

Finally, the claims Staff makes with respect to Respondents' discovery responses and Mr. Hild's hearing testimony are discussed below in § VIII.B for the same reason as the first claim discussed above. Namely, there is no allegation in the

[289] Staff's First Amended Petition at ¶¶ 19-23.

First Amended Petition that addresses the conduct as a basis for discipline, but it is potentially relevant to the sanction analysis.[290]

The ALJs note that Mr. Hild characterized the relationship between AXO and the Hild Entities differently at the hearing in this case, compared to filings in the AXO litigation.[291] The nature of the promissory note and the description of the transactions in the parties' formal pleadings make a business loan the far more plausible scenario.[292] However, Staff did not claim the discrepant characterizations constituted sanctionable conduct, either in the First Amended Petition or in closing arguments, so the ALJs do not address the matter further.

VIII. SANCTIONS ANALYSIS

This discussion is divided into two parts. First, the ALJs address Staff's request for orders directing Mr. Hild and H&H to cease and desist from (1) engaging in the business of premium financing without a license and (2) collection efforts against the Fierros. The ALJs recommend the Commissioner grant only the first request. Next, the ALJs address other discipline that may be imposed based on the

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[290] Staff alleged that discipline is appropriate based on similar discovery misconduct in the AXO litigation and in this proceeding, but the latter is more closely related to the business of insurance because it arose in the course of a disciplinary action by the Department and was part of the proceeding before SOAH. For that reason, the ALJs discuss the discovery issues in this proceeding (as well as false statements allegedly made at the hearing) in the sanction analysis in § VIII.B below, but do not do the same with the AXO contempt orders.

[291] At the hearing, Mr. Hild said the promissory note to AXO was part of AXO's planned investment in Hild & Hild. By contrast, the Hild Entities' pleadings in the AXO litigation appear to describe a business loan to meet obligations to BankDirect, not a failed purchase agreement.

[292] Accordingly, the ALJs describe the transaction in the Findings of Fact as a business loan, although the characterization has no further import.

matters that Staff alleged in the First Amended Petition and proved by a preponderance of the evidence. As part of this discussion, the ALJs also make findings that were established by the evidence and are relevant to the sanction analysis but are not independent bases for discipline.

A. CEASE AND DESIST ORDER AGAINST MR. HILD AND H&H

Staff contends Mr. Hild and H&H should be ordered to cease and desist from engaging the business of premium financing without a license, and ordered to cease and desist from making any collection efforts against Fierro Inc.

When a person or entity has violated laws pertaining to insurance premium financing, the Commission is authorized to issue a cease and desist order.[293] Here, the ALJs have determined that Mr. Hild and H&H engaged in unauthorized insurance premium financing by entering into the Fierro Letter and agreeing to accept Fierro Inc.'s down payment in installments rather than the lump sum required by IPFS. It also appears the Fierro Inc. arrangement is not the first time Mr. Hild or his entities engaged in premium financing-like activities, given that very similar conduct occurred with Texas Fueling in 2016.[294] Therefore, an order directing Mr. Hild and H&H to cease and desist from similar activity is warranted.

[293] Code §§ 82.052(2)(A), 651.209(1),

[294] As previously noted, and discussed further below, Hild & Hild represented to BankDirect that Hild & Hild had collected a down payment from Texas Fueling when, in fact, the down payment had not been collected at the time Hild & Hild signed (as agent) the premium finance agreement between Texas Fueling and BankDirect. Tr. Vol. 2 at 96-97.

Staff's effort to prohibit collection efforts against Fierro Inc. is more challenging. Mr. Hild and H&H have asserted that Fierro Inc. owes them $109,868.47 in unearned commissions and unearned premiums that they lost or had to pay on Fierro Inc.'s behalf when its policies were cancelled. Mr. Hild calculated that the seven policies had earned premiums of $179,868.47 that the carriers were able to retain upon cancellation, and since Fierro Inc. had paid only $70,000 of the down payment, this left a balance of $109,868.47 that, according to Mr. Hild, H&H had to pay to make the other parties whole.[295] He says he has referred that matter to attorneys for collection, although there is no evidence that any effort to collect from the Fierros has actually been made beyond some phone calls made in or before November 2021.[296]

Staff counters that Fierro Inc. could at most owe H&H $73,435.90 (the $143,435.90 down payment less the $70,000 in payments that Mr. Fierro actually made), and that in trying to collect $109,868.47 from the Fierros, Mr. Hild seeks to profit by approximately $36,000 over what Fierro Inc. would have owed under the IPFS agreement alone.[297] According to Staff, this shows that H&H's collection efforts are improper and would actually leave the Fierros in a worse position than they would have been if they had never signed the IPFS Premium Finance Agreement or the Fierro Letter.

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[295] Tr. Vol. 2 at 107, 205-06; Staff Ex. 29 at TDI 011710.

[296] Staff Ex. 27 at TDI 010370; Staff Ex. 28 at TDI 010407. In her deposition in May 2023, Ms. Fierro said she was unaware of any debt Fierro Inc. owed to Mr. Hild or H&H and had not been contacted about the alleged $109,000 debt. Staff Ex. 69 at 42, 48-49, 51.

[297] Staff's Closing at 10-12.

While the basis for Respondents' calculations is not fully clear, Staff's calculations also ignore many variables. The evidence suggests that the earned premiums on Fierro Inc.'s policies exceeded the $143,436.90 that they initially promised to pay as a down payment, and on this record the ALJs cannot say precisely who paid what to each carrier, or on which party's behalf. Importantly, however, Respondents were not required to prove their damages claim by a preponderance of the evidence in this proceeding. The question is whether engaging in any collection efforts at all would violate the Code or a Department rule.[298]

Staff's arguments are essentially equitable—they contend that Mr. Hild's actions harmed the Fierros, who Staff characterizes as "two elderly consumers" in dire financial straits who should not have been put in the position of committing to pay insurance premiums they clearly could not afford. In Staff's view, Mr. Hild should have told the Fierros they could not afford the coverage they needed and advised them against entering into the IPFS transaction.[299] Instead, Staff contends, Mr. Hild acted out of self-interest to protect the commissions he would earn when their policies renewed.[300] Pointing to their deposition testimony, where the Fierros claimed unfamiliarity with most of the documents at issue, Staff argues that Mr. Hild also failed to fully inform the Fierros of what was owed for their policies or how the

[298] *See* Code § 82.052(2).

[299] Staff's Closing at 8.

[300] Staff's Closing at 8.

coverage was obtained and financed.[301] In contrast, Mr. Hild paints himself as a dutiful agent who extended himself out of sympathy for his clients, assuming risk for the down payment in a valiant effort to preserve Fierro Inc.'s coverage and keep them in business.[302]

The ALJs are not persuaded that the Fierros were hapless victims of Mr. Hild. Having viewed the deposition videos, the ALJs did not find the Fierros particularly credible when they denied knowledge of the IPFS Premium Finance Agreement and the Fierro Letter, or suggested Mr. Fierro's signatures could have been forged.[303] Mr. and Ms. Fierro each denied much memory or knowledge of how the 2019 policies were paid for, and each claimed the other would know the details they professed not to remember. Further, in answering questions from attorneys for both sides in this case, Mr. and Ms. Fierro frequently seemed unable to distinguish between the 2018 and 2019 insurance transactions, and unable to distinguish between what they owed as down payments they had asked to pay in installments versus the installment premium payments. Rather than showing they had been misled by Mr. Hild, the Fierros' testimony suggested instead that neither could recall much detail about complicated transactions from five or more years ago.

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[301] Staff's Closing at 9-11.

[302] Respondents' Closing at 15-17.

[303] The ALJs also viewed nothing in the deposition videos that supported Staff's suggestion, made at several points in this proceeding, that Respondents' counsel somehow tried to improperly influence Ms. Fierro's testimony through his questions and body language during her deposition. *See* TDI's Motion in Limine, Motion to Strike, and Objections at 11; Staff's Reply at 11.

Notably, the Fierros both testified that they liked and were grateful for Mr. Hild and placed blame for Fierro Inc.'s financial collapse squarely on the shoulders of their former insurance agents, not Mr. Hild or H&H.[304] They also were not financially harmed by doing business with Mr. Hild and H&H. Fierro Inc. was able to remain in business while covered by the policies Mr. Hild placed, and they paid only $70,000 for the two months their 2019 policies were in force, a sum far below the actual cost of that coverage. The premiums Fierro Inc. owed for the package of seven policies totaled $592,985.60 for one year of coverage, which breaks out to over $49,000 per month.[305] And Ms. Marino testified that the $143,435.90 down payment was calculated to cover at least the minimum amount the insured would owe if the policies were cancelled shortly after they were bound.[306] By any measure, Fierro Inc. received more insurance coverage in 2019 than it paid for.

Respondents argue, and the ALJs agree, that Staff has shown no basis for preventing H&H from pursuing repayment from Fierro Inc. if it elects to. It is undisputed that Fierro Inc. failed to comply with the terms of the IPFS Premium Finance Agreement, which left H&H responsible for at least the full amount of the down payment Fierro Inc. had contractually promised to pay. H&H and Mr. Hild apparently had to come out of pocket to satisfy that debt, and Staff has cited no statute or rule that would be violated by allowing H&H or Mr. Hild to pursue a contract or common-law claim against a client who failed to pay what was owed.

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[304] Staff Ex. 69 at 6-8, 34-35; Staff. Ex. 70 at 20, 22, 26.

[305] Staff Ex. 29 at TDI 000072-74.

[306] Tr. Vol. 3 at 330.

Without commenting on the amount or validity of any claim Mr. Hild or H&H may pursue against Fierro Inc. (let alone the likelihood of recovering against a defunct, bankrupt company), the ALJs find no basis for extinguishing whatever contractual or common law claims they may have against their former client. The ALJs do not recommend a cease and desist order prohibiting Mr. Hild and H&H from any collection efforts against the Fierros.

B. ACTION AGAINST RESPONDENTS' LICENSES

The sanctionable acts alleged in the First Amended Petition and established by the evidence in this case are: (1) engaging in premium financing without a license in violation of Code §§ 651.051(a)(1) and 101.102; (2) false statements to IPFS regarding the collection of the full down payment from Fierro Inc. in violation of Code § 4005.101(b)(5); and (3) misappropriation, conversion, or illegal withholding of money belonging to an insurer (Berkshire) in violation of Code § 4005.101(b)(4).

The Commissioner has authority to take a number of disciplinary actions if violations are established. These include reprimands, cancellation of authorizations, suspension, a cease and desist order, administrative penalties, restitution, or any combination of those options.[307] Unlike some agencies, the Department has not issued a list of aggravating and mitigating factors or a penalty matrix that would apply in analyzing the appropriate sanction in this case. However, the ALJs find helpful some of the factors listed in Code § 84.022(b), which are considered when

[307] Code § 4005.102.

determining the amount of an administrative penalty.[308] Most pertinent here, the ALJs recommend the Commissioner consider the following additional findings:

1. Nature, Circumstances, Extent, and Gravity of the Violations

Harm caused to IPFS by fraudulent or dishonest conduct. Staff established that Mr. Hild and H&H falsely represented to IPFS that all down payment amounts had been received from Fierro Inc. "in immediately available funds." It is not a requirement for disciplinary action under Code § 4005.101(b)(5) that harm must be shown. However, harm *was* demonstrated, and may be considered by the Commissioner in determining a sanction. Specifically, when deciding if Fierro Inc. was worth the risk of financing, IPFS took into consideration what it believed to be true—that Fierro Inc. had sufficient liquidity to pay the down payment in cash. Ms. Marino testified that, had she known the truth, she would have recognized a "red flag," and she might have suggested IPFS cancel the policies at the outset. In the end, IPFS was unable to recover everything it was owed from the Fierros and wrote off some part of the $14,000 balance. That loss may not have been incurred if IPFS had been in possession of all the facts about Fierro Inc.'s financial condition at the time it agreed to finance the premiums. This harm is lessened, however, by the fact that IPFS has not ceased doing business with H&H.

[308] These are: (1) the seriousness of the violation, including: (A) the nature, circumstances, extent, and gravity of the violation; and (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public; (2) the economic harm to the public interest or public confidence caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter a future violation; (5) efforts to correct the violation; (6) whether the violation was intentional; and (7) any other matter that justice may require. Code § 84.022(b).

2. History of Previous Violations

Prior false representation in connection with premium financing (BankDirect transaction). In February 2016, BankDirect agreed to finance the premium Texas Fueling owed for its insurance policies (a total of $1,019,818), and as the broker/agent for Texas Fueling, Hild & Hild represented to BankDirect that "the down payment and any other payments due from insured which Agent has agreed to collect, have been collected from insured."[309] However, Mr. Hild acknowledged he had only collected $50,000 of Texas Fueling's $285,000 down payment, and when Texas Fueling defaulted on its loan, "BankDirect wanted all the money back … a large portion of it I had never been paid."[310] As with IPFS, Mr. Hild vouched to a premium finance company that he had fulfilled a key obligation as an insurance agent, knowing that it was not true.

Prior instance of misappropriation of client funds. In 2015, Mr. Hild was accused of "misapplying thousands of dollars in insurance premiums" while working as a member of Ward, Moore, & Hild, LLC.[311] On February 29, 2016, Mr. Hild signed a Waiver, Consent to Stipulation of Testimony and Stipulations that was approved by the 226th Judicial District Court, Bexar County, Texas, wherein he pleaded no contest to the offense of misapplication of fiduciary property in an amount greater than $500 and less than $1,500.[312] He was placed on community

[309] Staff Ex. 38A at Hild 02159 (Amount Financed), Hild 02160 (Agent Representation § 7).

[310] Staff Ex. 38G at Hild 01928.

[311] Tr. Vol. 2 at 47-48.

[312] Staff Ex. 20 at TDI 000097-000100.

supervision, which ended August 18, 2016.[313] A condition of Mr. Hild's community supervision was that he commit no further misconduct.[314] On March 15, 2017, the Department issued a Warning Letter to Mr. Hild based on the criminal conduct.[315]

3. Penalty Necessary to Deter Future Violations

The Commissioner has previously issued a Warning Letter to Mr. Hild, cautioning him that "[m]isappropriation, conversion, or illegally withholding money belonging to an insurer, insured, or beneficiary" and "fraudulent or dishonest acts or practices" constitute "grounds for disciplinary action" that may include "license revocation and administrative penalties."[316] That letter was issued in March 2017, and the misappropriation of funds from Berkshire occurred beginning with Berkshire's first demand for unearned commission in July 2019. The conduct continued until Berkshire terminated its appointments with Mr. Hild and Hild & Hild in June 2020, and was not fully resolved until July 2020 at the earliest (giving credit for the first check Hild & Hild sent, though it was not received or cashed). Because the Warning Letter did not have the desired result, a more serious sanction may be considered.

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[313] It is unclear whether the supervision ended August 18, 2016 (per TDI's Warning Letter, Staff Ex. 24), or August 22, 2016 (*see* Tr. Vol. 2 at 51).

[314] Tr. Vol. 2 at 49.

[315] Staff Ex. 24 at TDI 000159-60.

[316] Staff Ex. 24 at TDI 000159.

4. Intentional Commission of Violations

As stated above, the ALJs find Mr. Hild and H&H made a false representation to IPFS in signing the Premium Finance Agreement. There is evidence of prior similar conduct: Mr. Hild admitted collecting only $50,000 of the $285,000 down payment Texas Fueling was required to pay BankDirect, so he falsely represented to BankDirect that he had collected "the down payment and any other payments due from [the] insured." Thus, the Commissioner may consider that Mr. Hild's and H&H's conduct with the Fierros was a knowingly committed violation not only with respect to the false statement (that the down payment had been "received from the insured in immediately available funds") but also the potential for disciplinary consequences.

5. Factors that Should Not be Considered

BankDirect Settlement as "hush money." The ALJs find Staff did not establish, and therefore the Commissioner should not include in the sanction analysis, the argument that the Hild Entities structured the BankDirect Settlement as "hush money" to hide wrongdoing from TDI. BankDirect was owed money that Hild & Hild initially could not pay (in April 2016), but within a few months (by August 2, 2016) BankDirect was made whole via the loan from AXO. The record does not show what law or rule was violated by the Hild Entities seeking, and BankDirect and Texas Fueling agreeing to provide, consideration for the repayment by AXO in the form of forbearance from complaints to TDI, given that the underlying reason for a complaint (failure to make good on premium finance guarantees) was remedied. At that point it is not obvious the BankDirect Settlement

was designed to hide serious wrongdoing, let alone acts that, as alleged in Staff's closing argument, were certain to result in Mr. Hild and/or Hild & Hild losing their insurance licenses if TDI had investigated.

Timing of BankDirect Settlement and US Risk judgment. Staff contends it was significant that Mr. Hild entered into the BankDirect Settlement when he was on community supervision, asserting it shows he did not reform his behavior but rather decided to hide it from the Department by structuring the BankDirect Settlement to silence BankDirect and Texas Fueling. For the reasons stated above, the ALJs are not persuaded the BankDirect Settlement served as a cover up of misconduct; even if it was delayed by a few months, Hild & Hild made good on its promises to BankDirect and BankDirect was satisfied that the underlying debt was extinguished. Staff makes a similar contention with respect to the US Risk transaction but the ALJs do not ascribe significance to the fact the Final Default Judgment was obtained during the time Mr. Hild was on community supervision. Although the judgment was issued May 4, 2016, the underlying lawsuit was filed November 15, 2015. The timing does not show that Mr. Hild committed further bad acts while on supervision, as Staff would infer.

Discovery obligations in the SOAH proceeding and alleged false statements under oath during SOAH hearing. Staff served interrogatories asking Respondents to identify all documents concerning any agreements any Respondent had made or entered into with AXO since August 1, 2016. Respondents disclosed a "verbal agreement with AXO in which AXO would invest approximately $485,000 in Hild & Hild," the June 2, 2021 AXO Settlement, and the June 2, 2021 Guaranty that

concluded the AXO lawsuit.[317] Respondents did not disclose to Staff the August 2, 2016 BankDirect Settlement or the August 2, 2016 Security Agreement that secured the debt in the promissory note to AXO.

Discovery abuses may be sanctioned by an ALJ pursuant to SOAH's rules, after notice and an opportunity for hearing.[318] It is clear the BankDirect Settlement and the Security Agreement were responsive to Staff's interrogatory and were not produced. However, Staff did not seek discovery sanctions in this case.

Relatedly, Staff urges that Mr. Hild made two false statements while testifying in the SOAH hearing that should be redressed. Staff contends Mr. Hild falsely stated he has no history of abusing discovery, when the court in the AXO litigation explicitly described the Hild Entities' conduct as "continued discovery abuse."[319] Mr. Hild was asked, "So, you have no history of abusing discovery?" and he responded, "I personally have not refused [sic] discovery."[320] He later conceded that the court's order stated all of the Hild Entities engaged in discovery abuse.[321] His credibility was impeached during the hearing itself and the ALJs do not find it meaningful to elaborate further.

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[317] Staff Ex. 7 at TDI 011703.

[318] 1 Tex. Admin. Code § 155.157.

[319] Staff's Closing at 25; Staff Ex. 50; *see also* Tr. Vol. 2 at 68, 270.

[320] Tr. Vol. 2 at 69-70.

[321] Tr. Vol. 2 at 70-71.

The same is true of the second allegedly false statement Staff highlights. Staff asked Mr. Hild about the omission of the August 2016 documents (the BankDirect Settlement and the Security Agreement) from Respondents' discovery responses. He stated that he did not believe anything was missing, and that he had not concealed any information from Staff.[322] In fact, these documents were responsive to Staff's interrogatory and should have been produced. The opportunity to ask for a discovery sanction passed prior to the hearing. Beyond that, Mr. Hild took the same position in his testimony as in the discovery response (i.e., that the response was complete) and his credibility was impugned during the hearing.

C. SUMMARY AND RECOMMENDATION

To review, the ALJs have found Respondents are subject to sanction for (1) engaging in premium financing without a license in violation of Code §§ 651.051(a)(1) and 101.102; (2) false statements to IPFS regarding the collection of the full down payment from Fierro Inc. in violation of Code § 4005.101(b)(5); and (3) misappropriation, conversion, or illegal withholding of money belonging to an insurer (Berkshire) in violation of Code § 4005.101(b)(4). In addition to the bases for discipline established by the evidence, the ALJs have made findings the Commissioner may choose to consider, using the factors in Code § 84.022(b) as a guide. The ALJs recommend that the Commissioner grant Staff's request for an order requiring Respondents to cease and desist from premium financing unless properly licensed.

[322] Staff's Closing at Tr. Vol. 2 at 64, 66, 68.

Staff contends license revocation is also appropriate. That request was based on the allegations in the First Amended Petition, not all of which were established by the evidence.[323] Therefore, the ALJs recommend the Commissioner consider a lesser sanction, but one that is commensurate to the gravity of the wrongdoing established, such as suspension of Respondents' insurance licenses for a period of time the Commissioner believes sufficient to deter future misconduct.

IX. FINDINGS OF FACT

1. Brandon John Hild holds a general lines agent license with a property and casualty qualification issued by the Texas Department of Insurance (Department or TDI) on April 15, 2003. A life, accident, and HMO qualification was issued to Mr. Hild on July 21, 2006.

2. Ward, Moore, & Hild, LLC received a general lines agency license on February 19, 2009, with a property and casualty qualification and a life, accident, health, and HMO qualification.

3. In 2012, Mr. Hild bought out his partners and changed the name of Ward, Moore, & Hild, LLC to Hild & Hild, LLC (Hild & Hild).

4. H&H Risk Partners, LLC (H&H) holds a general lines agency license with a property and casualty qualification and a life, accident, health, and HMO qualification, issued by the Department on April 23, 2018.

5. Mr. Hild is the designated responsible license person and the sole managing member of both Hild & Hild and H&H.

[323] For example, the evidence did not support a cease and desist order preventing collection efforts against the Fierros, and did not demonstrate that Respondents misapplied or misappropriated the amounts the Fierros did pay. The specific claims pursued related to Towerstone and US Risk under Code § 4005.101(b)(4) were also not established, nor was the allegation regarding "silencing" BankDirect and Texas Fueling.

6. Mr. Hild and his agencies have primarily served small business owners in blue-collar fields like trucking companies or oil and gas companies.

Procedural Background

7. Together, Mr. Hild, Hild & Hild, and H&H may be referred to herein as Respondents.

8. On August 25, 2022, Staff of the Department mailed its First Amended Notice of Hearing and First Amended Petition to Respondents. The notice and petition 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 incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

9. The hearing on the merits was held via Zoom videoconference on December 5-7, 2023, before Administrative Law Judges Sarah Starnes and Pratibha J. Shenoy with the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorney Anna Kalapach represented Staff. Attorneys Eric J.R. Nichols and Jason Ray represented Respondents.

10. The hearing concluded on December 7, 2023, and the record closed on March 8, 2024, upon the filing of the parties' written closing arguments.

Fierro Inc. Premium Financing

11. In 2018, Mr. Hild and H&H worked with Frank Fierro and his wife, Sydney Fierro, to obtain multiple commercial policies for Fierro & Fierro Systems, Inc. (Fierro Inc.).

12. Fierro Inc. was a trucking company in the oil and gas industry that engaged in activities including hazardous materials transport via tankers. The business could not operate without insurance coverage at all times.

13. In early 2019, the policies came up for renewal. On Friday, February 8, 2019, Mr. Hild sent Mr. Fierro a proposal for coverage. The existing policies were set to expire at midnight on Sunday, February 10, 2019.

14. The 2019 package involved seven policies:

    a. an auto liability policy with Berkshire Hathaway Homestate Insurance Company (Berkshire), brokered by Hild & Hild, with a $269,887 premium;

    b. an excess liability policy with Hallmark Specialty Insurance Company (Hallmark), brokered by RTC2, LLC d/b/a Risk Transfer Partners (RTP), with a $91,000 premium;

    c. a physical damage policy with Evanston Insurance Co., brokered by Towerstone, Inc. (Towerstone), with a $78,553 premium;

    d. a general liability policy with Navigators Specialty Insurance, brokered by Towerstone, with a $16,758 premium;

    e. a motor truck cargo policy with Markel Insurance Company, brokered by Towerstone, with a $13,230 premium;

    f. an excess liability policy with RSUI Indemnity Company, brokered by Towerstone, with a $75,000 premium; and

    g. a pollution policy with Axis Surplus Insurance Company, brokered by Towerstone, with a $32,071 premium.

15. The premiums (including taxes and fees) owed by Fierro Inc. for the package of seven policies totaled $592,985.60 for one year of coverage.

16. Fierro Inc. and H&H (as agent) entered into a Premium Finance Agreement with Imperial Premium Finance Services (IPFS), dated February 18, 2019.

17. The Premium Finance Agreement required Fierro Inc. to pay a cash down payment of $143,435.90, or approximately 25% of the total premium. The $449,549.70 premium balance was financed through IPFS.

18. IPFS paid the financed portion of the premiums to the carriers, and Fierro Inc. was required to pay IPFS back in nine monthly payments of $51,543.76, beginning on February 24, 2019 (one month after the effective date of the earliest policy).

19. On Friday, February 8, 2019, before binding coverage on the seven policies, Mr. Hild was aware that the Fierros could not pay the full $143,435.90 down payment required for the Premium Finance Agreement.

20. Mr. Hild told Mr. Fierro that if he could pay $80,000, H&H would bind coverage on the policies, so Fierro Inc. did not go out of business immediately. Mr. Fierro agreed, and Mr. Hild bound the policies.

21. Upon binding the policies, H&H was committed to pay the down payment if Fierro Inc. did not.

22. On February 12, 2019, Mr. Fierro wired only $40,000 to H&H.

23. On February 15, 2019, Mr. Hild had Mr. Fierro sign a letter (the Fierro Letter) that stated:

> I, Frank Fierro, of Fierro & Fierro Systems, Inc. promise to pay the amount of $103,435.90 by April 31st, 2019. H&H Risk Partners, LLC will accept payments daily, weekly or monthly in any amount so long as $51,717.19 is paid each month (March & April) and the full amount of $103,435.90 is paid off by April 31st, 2019. Failing to make payments will result in cancellation of all current policies for Fierro & Fierro Systems, Inc.

24. On February 18, 2019, Mr. Hild signed the Premium Finance Agreement with an agent/broker representation by H&H to IPFS that "all applicable down payment(s) have been received from the insured in immediately available funds."

25. At the time IPFS evaluated Fierro Inc. as a candidate for a premium financing agreement, IPFS believed that Fierro Inc. had sufficient liquidity to pay the full $143,435.90 down payment in cash.

26. In addition to the $40,000 wired on February 12, 2019, Fierro Inc. paid H&H $10,000 on March 4, 2019, and $20,000 on April 2, 2019, for a total of $70,000 paid toward the down payment. This was $10,000 less than the $80,000 agreed to with Mr. Hild, and less than half of the $143,435.90 down payment Mr. Hild was supposed to have collected from Fierro Inc. for the Premium Finance Agreement.

27. Fierro Inc. did not make any of the nine monthly payments of $51,543.76 due to IPFS.

28. H&H was responsible for forwarding the down payment on the premium to each insurer after withholding its commission, and IPFS paid the balance of the premiums to each insurer pursuant to the Premium Finance Agreement.

29. The auto liability policy issued by Berkshire had a premium of $269,887, the highest premium by far of the seven policies brokered for Fierro Inc.

30. Because Hild & Hild held an appointment with Berkshire, but H&H did not, Hild & Hild had brokered the auto liability policy through Berkshire for Fierro Inc.

31. Berkshire threatened to cancel the Fierro Inc. policy if the down payment could not be collected from Hild & Hild.

32. Mr. Hild applied $67,753 of the $70,000 received from Mr. Fierro to the auto liability policy with Berkshire, without which Fierro Inc. could not operate. The remainder of the premium due to Berkshire was paid by IPFS.

33. RTP, which brokered the Hallmark excess liability policy for Fierro Inc. with a $91,000 premium, threatened to cancel the policy if the down payment was not received from H&H.

34. After paying Berkshire, Mr. Hild applied the remaining funds from Mr. Fierro, along with H&H's own funds, to pay $15,800 as down payment to RTP for the Hallmark policy. RTP forwarded the down payment, together with the premium balance paid by IPFS, to Hallmark.

35. H&H paid more out of pocket to insurers than it received from Mr. Fierro or Fierro Inc.

36. About two months after coverage began, IPFS advised H&H, Fierro Inc., the insurers, and the brokers involved that it would request cancellation of all coverage by the insurers, effective April 11, 2019, due to nonpayment by Fierro Inc.

37. When policies are cancelled, insurers withhold their minimum earned premium (MEP) or a pro rata amount for the number of days the policy was in effect, before returning the balance of any premium overpayment.

38. After the MEPs were deducted, IPFS received significantly less in returned premiums than it had paid out on Fierro Inc.'s behalf.

39. By email on August 8, 2019, IPFS demanded that Mr. Hild and H&H pay $62,859.34 still due on the Fierro Inc. account. This amount represented what H&H owed as agent for the down payment and unearned commissions.

40. IPFS and Mr. Hild agreed that Mr. Hild would make three payments of $20,953.11, each three weeks apart, beginning August 9, 2019.

41. On August 14, 2019, IPFS reminded Mr. Hild the first payment had not been received. Mr. Hild requested that he be allowed to start making payments on August 16, 2019, but had not paid as of August 19, 2019, when IPFS made another request for prompt payment.

42. On August 20, 2019, Mr. Hild paid $20,953.11 to IPFS, and made a second payment in the same amount on September 6, 2019.

43. IPFS staff made requests to Mr. Hild for the third payment on October 18, 21, 22, 25, 28, and 30, 2019. On October 30, 2019, H&H wired the third and final payment of $20,953.11 to IPFS.

44. IPFS separately pursued a premium balance of over $14,000 from Fierro Inc., which was not fully recovered and eventually was written off and turned over to an attorney for collections.

45. The Fierro Letter was an agreement whereby the insured (Fierro Inc.) promised to pay to H&H an amount advanced by H&H in payment of the premiums on an insurance contract.

46. H&H did not mishandle or fail to remit to insurers any of the funds (a total of $70,000) received from Fierro Inc.

47. None of the Respondents held or have held, a license to engage in premium financing.

48. When Mr. Hild signed the Premium Finance Agreement on behalf of H&H and represented to IPFS that "all applicable down payment(s) have been received from the insured in immediately available funds," the representation was false.

49. IPFS continues to do business with H&H.

Unearned Commission Due to Berkshire from Cancelled Fierro Inc. Policy

50. In July 2019, Berkshire sent Hild & Hild a commission statement for June 2019 showing that the agency had earned a $122.19 commission for one client that month, but that it owed Berkshire $18,585.72 in unearned commission for the recently cancelled Fierro Inc. policy, leaving a total balance due of $18,463.53. The statement said the amount was due by July 20, 2019, and directed where to remit payment.

51. On August 9, 2019, Berkshire Senior Marketing Representative Molly Holcombe sent Mr. Hild and Hild & Hild an email with the July 2019 commission statement. She advised the balance due was $18,282.64 as of the date of the email, and, because payment could not be made online, a check was required to be mailed.

52. In August 2019, Berkshire sent a commission statement with "Past Due Notice" in large, bold type across the top. The commission statement showed Hild & Hild had earned a $122.20 commission on another account that month, reducing the balance due to $18,160.44, which Hild & Hild was directed to remit via check by September 20, 2019.

53. Berkshire sent commission statements with Past Due Notices to Hild & Hild each month for the next nine months. The statements reflected the commissions earned each month, deducted that amount from the commission balance carried forward from the prior month, and instructed Hild & Hild to pay Berkshire via check the amount due by the 20th of the month.

54. On October 25, 2019, Ms. Holcombe sent an email advising that Berkshire still required a payment of $17,991.11, to be remitted promptly by check.

55. On November 21, 2019, Ms. Holcombe sent an email advising that Berkshire still required a payment of $17,390.22, for which a check needed to be mailed, and asking to be notified when the check was put in the mail.

56. On April 21, 2020, Ms. Holcombe sent an email advising Mr. Hild that Berkshire was still due an unearned commission balance that had been pending since July 2019 and now totaled $5,589.37 and requested prompt remittance of that amount. Ms. Holcombe sent an identical email on May 21, 2020, for a balance of $5,476.48.

57. Berkshire sent a final Past Due Notice for May 2020 reflecting a balance of $5,353.89 in unearned commission.

58. On June 18, 2020, Berkshire notified Mr. Hild and Hild & Hild that it was terminating all contracts and appointments, effective immediately.

59. The same day, Berkshire advised TDI and the Illinois Department of Insurance of the terminations. Notification to TDI was required by statute.

60. Berkshire advised TDI that the termination was due to Hild & Hild's failure to pay, despite receipt of written demand, a large return commission amount owed as a result of refund premium issued to an insured.

61. On July 17, 2020, Hild & Hild asked Berkshire to specify the total balance remaining. A check dated July 21, 2020, for the amount due of $5,707.60 was sent to Berkshire but was not received or cashed for unknown reasons.

62. On September 29, 2020, Hild & Hild sent a second check for $5,707.60 to Berkshire, which was received and cashed.

63. Berkshire's communications to Mr. Hild and Hild & Hild between July 2019 and May 2020 were unambiguous demands for repayment of unearned commission, to be remitted by check by the due date specified.

64. By withholding earned commissions due to Hild & Hild from unrelated accounts, Berkshire did not consent to let Hild & Hild slowly repay the unearned commission or to let the balances wash out over time.

65. Between July 2019 and May 2020, Hild & Hild and Mr. Hild failed to remit amounts belonging to an insurer, Berkshire.

66. Berkshire has not entered into new contracts with Respondents.

Unearned Commission Due to Towerstone from Cancelled Fierro Inc. Policy

67. Towerstone was the broker for five of the policies H&H obtained for Fierro Inc. in February 2019.

68. When the Fierro Inc. policies were cancelled, IPFS requested that Towerstone repay return premium and unearned commission, including H&H's unearned commission.

69. Between May 7 and May 20, 2019, Towerstone emailed Mr. Hild a copy of the cancellation endorsements for each of the five Fierro Inc. policies, accompanied by a Towerstone invoice for the return premium and unearned commissions that had to be repaid to IPFS.

70. On June 18 and 20, 2019, Towerstone emailed Mr. Hild conveying that Towerstone urgently required a response to answer demands from IPFS.

71. IPFS agreed to assume responsibility to collect $18,068.20 (H&H's unearned commission) directly from Mr. Hild and H&H, and Towerstone ceased taking action on the account after forwarding return premium and its own unearned commission to IPFS.

72. Towerstone carried the H&H unearned commission on its books until approximately June 2022, when IPFS advised that all amounts due from H&H had been received.

73. In brokering the Fierro Inc. policies, Towerstone functioned as a managing general agent (MGA), not an insurer.

74. There is no evidence any of the five insurers for whom Towerstone brokered the Fierro Inc. policies had monies due that H&H or Mr. Hild withheld.

75. Towerstone continues to do business with Mr. Hild and H&H.

Allegations Related to Past Conduct with US Risk Insurance Group

76. Beginning in 2014, Hild & Hild had a producer agreement with US Risk Insurance Group, Inc. (US Risk), a wholesale surplus alliance agency.

77. US Risk is an MGA, serving as a middleman between an insurance agent and large insurance carriers. As an MGA, US Risk procured policies for Hild & Hild customers, and Hild & Hild guaranteed the premium payments. US Risk received all commissions as agent of record and shared them with Hild & Hild.

78. BCA Energy, a Hild & Hild client, failed to pay the premiums on several policies placed through US Risk, and US Risk tried to collect the MEP from Hild & Hild.

79. Hild & Hild did not pay the amounts requested and US Risk turned the matter over to an attorney for collection.

80. On November 25, 2015, US Risk filed a lawsuit against Hild & Hild and Mr. Hild in Dallas County District Court, seeking $15,988.13 plus attorneys' fees for premiums Hild & Hild guaranteed pursuant to the terms of the producer agreement.

81. When Hild & Hild and Mr. Hild failed to respond to the lawsuit, a Final Default Judgment was entered against them on May 4, 2016, awarding US Risk $15,988.13, plus post-judgment interests, costs, and $3,000 in attorney's fees.

82. In July 2016, an Abstract of Judgment was filed in Bexar County, where Mr. Hild resides, placing a lien on his homestead.

83. For nearly two years after the lien was placed, US Risk did not engage in collection efforts.

84. In February 2018, attorneys for US Risk and for Respondents communicated about resolving the outstanding judgment, but no binding agreement was reached.

85. After a gap of over a year, the parties' respective attorneys corresponded in May 2019 about a potential net settlement amount of $7,101, but no binding agreement can be confirmed.

86. After another gap of nearly three years, communications resumed between the parties. US Risk and Mr. Hild reached an agreement whereby Mr. Hild wired $6,000 to US Risk on July 11, 2022; US Risk provided a notarized Release of Judgment Lien dated August 12, 2022; and a Satisfaction of Judgment was filed with the Dallas County court on September 23, 2022.

87. In its transactions with Hild & Hild and Mr. Hild, US Risk functioned as an MGA, not as an insurer.

88. US Risk no longer has any unresolved claims against Respondents.

Allegations Related to Past Conduct with AXO Insurance Group

89. In late 2015, Lazarus Oilfield, LLC (Lazarus), owned by Mr. Hild, entered into premium finance and security agreements with BankDirect Capital Finance (BankDirect) to finance premiums for its insurance policies. In February 2016, Texas Fueling Service and Texas Oilfield Services, LLC (Texas Fueling) also entered into premium finance and security agreements with BankDirect.

90. Hild & Hild was the broker on the policies for both Lazarus and Texas Fueling, and, as the agent, was bound to pay BankDirect all unearned commissions and premiums upon cancellation of any of the policies.

91. Texas Fueling defaulted on the loan from BankDirect. It is unclear what happened with the Lazarus premium finance and security agreements, but by April 2016, Hild & Hild was unable to meet its obligations to BankDirect under any of the agreements.

92. Mr. Hild approached AXO Insurance Services (AXO) for help paying BankDirect.

93. On August 9, 2016, Hild & Hild, Mr. Hild, Lazarus, Texas Fueling, and Texas Oilfield Services entered into a Settlement, Release and Indemnity Agreement with BankDirect, with AXO also joining in the release (BankDirect Settlement). In exchange for a full release from BankDirect of any claims relating to the premium finance and security agreements, Mr. Hild and Hild & Hild agreed to pay $461,475.25 to BankDirect and AXO guaranteed that payment.

94. As part of the BankDirect Settlement, BankDirect and Texas Fueling represented that they had not and would not take or participate in any action to file a complaint or otherwise contact TDI relating to anything Mr. Hild and Hild & Hild did or did not do with respect to the premium finance and security agreements for Lazarus and Texas Fueling.

95. Texas Fueling had called the Department in mid-April 2016 to make a complaint against Mr. Hild but had not yet provided specific information or responded to the Department's request for affidavits and supporting documents. The BankDirect Settlement provided that Texas Fueling would give no further information to the Department unless compelled by a court order or other legal obligation.

96. Effective August 2, 2016, Mr. Hild, Hild & Hild, and Hild Consulting, Inc. (together, the Hild Entities) signed a promissory note to AXO for a principal amount not to exceed $1,000,000. The note was guaranteed by Hild Consulting, Inc. and secured by a 51% interest in each of (1) Hild & Hild, (2) Lazarus, and (3) Mr. Hild's future commissions.

97. Hild & Hild's debt to BankDirect was satisfied via the loan from AXO.

98. On February 14, 2017, the Hild Entities renewed the promissory note to AXO in the principal amount of $150,000, which the Hild Entities promised to repay in three payments between March and May 2017.

99. On February 26, 2018, AXO sued the Hild Entities in Bexar County District Court to recover on the promissory note.

100. In their pleadings, the Hild Entities acknowledged that they borrowed funds from AXO in order to pay BankDirect, and alleged that failure to pay BankDirect could have prompted the Department to revoke their licenses, forcing the closure of their insurance business.

101. In March 2019, summary judgment was granted in favor of AXO on all claims and AXO was awarded $156,616.19, plus pre- and post-judgment interest, from the Hild Entities.

102. A Final Judgment was entered against the Hild Entities on June 18, 2019, ordering that they owed $79,644.07 to AXO.

103. AXO sought post-judgment discovery that the Hild Entities resisted. On August 1, 2019, the court granted AXO's motion to compel, ordering the Hild Entities to produce documents on or before September 30, 2019.

104. The Hild Entities did not comply with the order. On February 25, 2020, the court issued an order granting AXO's motion for contempt, finding that the Hild Entities substantially failed to comply with two prior discovery orders and awarding AXO $16,653.50 in attorneys' fees and expenses incurred in connection with its post-judgment motions.

105. The court issued a second contempt order on March 3, 2020, finding that the Hild Entities had not complied with the February contempt order. An additional $3,000 in attorneys' fees was awarded to AXO, as well as $19,000 in sanctions for the Hild Entities' "continued discovery abuse and disregard of the Court's orders."

106. AXO and the Hild Entities entered into a Compromise and Settlement Agreement on June 2, 2021 (AXO Settlement) to resolve the judgment and release all claims. On the same date, H&H signed a guaranty for the Hild Entities' payment of the settlement amount (Guaranty). The payments were made on schedule and the AXO judgment was fully satisfied as of May 1, 2022.

107. The Hild Entities' transaction with AXO was a business deal separate from the underlying premium finance and security agreements with BankDirect.

108. The Hild Entities' bad behavior sanctioned by the Bexar County District Court was not related to the practice of insurance and did not put insurance consumers or insurers at risk of harm from the Hild Entities' practice of insurance.

Findings Regarding Cease and Desist Orders

109. Mr. Hild and Hild & Hild should be ordered to cease and desist from the unlicensed practice of premium financing.

110. Fierro Inc. received more insurance coverage in 2019 than it paid for. The Fierros were not harmed by the transaction with Mr. Hild, Hild & Hild, H&H, and IPFS.

111. Respondents should not be ordered to cease and desist from collection efforts against Fierro Inc. if Respondents elect to pursue such recovery.

Other Findings Relevant to Sanctions

112. Had IPFS been aware of Fierro Inc.'s inability to pay the full down payment for the Premium Finance Agreement, it would have been a red flag and IPFS may have cancelled the policies at the outset or declined to offer financing.

113. IPFS was harmed by Mr. Hild's and H&H's false representation that all down payment amounts had been received from Fierro Inc. in immediately available funds, because IPFS ultimately had to write off some part of the $14,000 in premium amounts it sought from Fierro Inc. after the policies cancelled.

114. In February 2016, when BankDirect agreed to finance the premium Texas Fueling owed for its insurance policies (a total of $1,019,818) Hild & Hild represented to BankDirect that it had collected the full $285,000 down payment due from Texas Fueling. However, Mr. Hild had only collected $50,000 from Texas Fueling.

115. Mr. Hild vouched to a premium finance company, BankDirect, that he had fulfilled a key obligation as an insurance agent, knowing that it was not true.

116. On February 29, 2016, Mr. Hild signed a Waiver, Consent to Stipulation of Testimony and Stipulations that was approved by the 226th Judicial District

Court, Bexar County, Texas, wherein he pleaded no contest to the offense of misapplication of fiduciary property in an amount greater than $500 and less than $1,500. He was placed on community supervision, which ended August 18, 2016.

117. On March 15, 2017, the Department issued a Warning Letter to Mr. Hild based on the criminal conduct. The letter cautioned Mr. Hild that conduct such as misappropriation of funds belonging to an insurer, insured, or beneficiary, and fraudulent or dishonest acts or practices constituted grounds for disciplinary action that could include license revocation and administrative penalties.

118. Mr. Hild's misappropriation of funds from Berkshire began with Berkshire's first demand for return of unearned commission in July 2019, after the Warning Letter, and continued for nearly a year.

119. The Warning Letter did not have the desired result, and a more serious sanction may be considered.

120. Given the conduct with BankDirect, Mr. Hild's subsequent false representation to IPFS that the full down payment had been collected from Fierro Inc. was a knowingly committed violation. It was also committed with knowledge of the potential for discipline by the Department.

Factors That Should Not Be Considered

121. Staff did not show that the BankDirect Settlement was designed to conceal wrongdoing from TDI.

122. Staff did not show the relevance of the BankDirect Settlement being signed during the time Mr. Hild was on community supervision.

123. Staff did not show the relevance of US Risk obtaining a Final Default Judgment during the time Mr. Hild was on community supervision.

124. In the course of this proceeding at SOAH, Staff served interrogatories asking Respondents to identify all documents concerning any agreements any Respondent had made or entered into with AXO since August 1, 2016.

Respondents disclosed the June 2, 2021 AXO Settlement and the June 2, 2021 Guaranty signed by H&H. Respondents did not disclose to Staff the August 2016 BankDirect Settlement or the Security Agreement that secured the debt in the promissory note to AXO. The undisclosed items were clearly responsive to the interrogatory. However, Staff did not request a discovery sanction, which the ALJs could have imposed after notice and an opportunity for hearing.

125. Staff did not show that Mr. Hild made false statements under oath at the hearing that must be redressed separately from the matters discussed in the above Findings of Fact.

X. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.052, 101.103, 651.051, 4001.002, 4005.101-.102.

2. The Commissioner of Insurance is the chief executive and administrative officer of the Department. Tex. Ins. Code § 31.021.

3. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.

4. Respondents received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).

5. Staff had the burden of proof to establish grounds for disciplinary action against Respondents. 1 Tex. Admin. Code § 155.427.

6. The standard of proof is by a preponderance of the evidence. *Granek v. Texas St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Sw. Pub. Serv. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213–14 (Tex. App.—Austin 1998, pet. denied).

7. Respondents are subject to sanction for engaging in premium financing without a license. Tex. Ins. Code §§ 101.102, 651.051(a)(1).

8. Respondents are subject to sanction for falsely representing to IPFS that the full down payment due from Fierro Inc. had been collected. Tex. Ins. Code § 4005.101(b)(5).

9. Respondents are subject to sanction for misappropriation, conversion, or illegal withholding of money belonging to an insurer (Berkshire). Tex. Ins. Code § 4005.101(b)(4).

10. The Commissioner has authority to take a number of disciplinary actions if violations are established, including reprimand, cancellation of authorizations, suspension, a cease and desist order, administrative penalties, restitution, or any combination of those options. Tex. Ins. Code §§ 82.052, 4005.102.

XI. RECOMMENDATION

The Commissioner should issue an order requiring Respondents to cease and desist from premium financing unless properly licensed. Additionally, the Commissioner should consider a sanction commensurate to the gravity of the wrongdoing established, such as suspension of Respondents' insurance licenses for a period of time the Commissioner believes sufficient to deter future misconduct.

Signed May 1, 2024

Pratibha J. Shenoy
Administrative Law Judge

Sarah Starnes
Administrative Law Judge

Exhibit B

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

July 12, 2024

Anna Kalapach, Texas Department of Insurance **VIA EFILE TEXAS**

Eric J.R. Nichols, Butler Snow, LLP **VIA EFILE TEXAS**

Jason Ray, Riggs & Ray, PC **VIA EFILE TEXAS**

RE: ***Docket Number 454-22-01093.C; Texas Department of Insurance v. Brandon John Hild; Hild & Hild, LLC; and H&H Risk Partners, LLC***

Dear Parties:

A Proposal for Decision (PFD) was issued in this case on May 1, 2024. At the parties' request, the deadline for the parties to file exceptions to the PFD was extended to June 6, 2024. The staff (Staff) of the Texas Department of Insurance (Department or TDI) filed exceptions on June 6, 2024. On the same day, Hild & Hild, LLC, (Hild & Hild) and H&H Risk Partners, LLC (H&H) and their owner, Brandon John Hild (collectively, Respondents) each also filed exceptions. Staff filed a response to Respondents' exceptions on June 21, 2024. Respondents did not respond to Staff's exceptions.

Respondents' exceptions argue that responsibility—if any—for misconduct the Administrative Law Judges (ALJs) determined was established by the record should be more clearly apportioned as between Hild & Hild and H&H, and none should be attributed to Mr. Hild. Respondents also contend additional matters should have been discussed in the PFD's sanction analysis and the ALJs should have proposed a more specific and less severe sanction.

Staff's exceptions take issue with the PFD's findings and conclusions with respect to claims that the ALJs determined Staff abandoned. Staff also asserts errors in the legal analysis with respect to the treatment of a Managing General Agent (MGA) versus an insurer; the nexus required between business litigation and injury to an insurer; and the lack of severity and specificity of the recommended sanction.

For the following reasons, the ALJs make the changes stated at the end of this letter and decline to further revise the PFD.

I. Respondents' Exceptions (excluding sanction recommendation)

Mr. Hild. In his exceptions, Mr. Hild asserts that TDI neither pleaded nor provided evidence that he "legally and factually could or should be sanctioned for conduct by H&H or Hild & Hild."[1] He contends he acted in his representative capacity for H&H and/or Hild & Hild and was not personally a party to any contracts. Mr. Hild requests amendments to Findings of Fact (FOF) and Conclusions of Law (COL) that specify actions were taken by H&H and/or Hild & Hild, and any responsibility for wrongful conduct be attributed only to those entities.[2]

The ALJs note that Mr. Hild was personally named in Staff's live pleading (the First Amended Petition) and the factual allegations include actions he took as the controlling person of H&H and Hild & Hild. The record demonstrated that Mr. Hild is the sole managing member of H&H and the sole member of Hild & Hild, and the designated responsible licensed person for both entities. Each Respondent holds Department-issued licenses, and Mr. Hild made no distinction between the use of his licenses and those of his controlled entities in any of the transactions at issue in this case.

H&H. H&H argues that Hild & Hild—not H&H—was the entity involved with Berkshire Hathaway Homestate Company (Berkshire) in the Fierro & Fierro

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[1] Hild Exceptions at 4.

[2] Each Respondent's exceptions request changes to the sanction recommendation in the PFD; that matter is discussed toward the end of this letter, in conjunction with Staff's similar exceptions.

Systems, Inc. (Fierro Inc.) transaction discussed in the PFD. However, as noted in the PFD, the Berkshire policy was brokered through Hild & Hild because it held an appointment with Berkshire while H&H did not, but H&H was Fierro Inc.'s agent for the entire package of policies at issue. Next, H&H contends it did not engage in the business of insurance premium financing and that Imperial Premium Finance Solutions (IPFS) did not suffer financial losses as a result of the Fierro Inc. transaction. H&H's exceptions reiterate arguments that were considered in detail and rejected in the PFD at pages 24-31; that discussion is not repeated here.

Hild & Hild. Hild & Hild states that its involvement in the Fierro Inc. transaction was limited to the Berkshire policy, and the fact that it brokered the policy due to holding an appointment with the insurer was "not a material fact" with respect to the ALJs' determination that Respondents engaged in premium financing or made misrepresentations to IPFS. Hild & Hild submits that the FOF and COL should be revised to clarify that H&H is the entity responsible for any premium financing arrangement or misrepresentation. These matters are addressed below in § IV, where accepted changes are addressed.

II. Staff's Exceptions (excluding sanction recommendation)

Waiver of claim regarding misappropriation of $40,000.[3] Staff rejects the PFD's finding that, in its closing brief, Staff apparently abandoned its claim regarding $40,000 of a total $70,000 paid to H&H by Fierro Inc. The ALJs quoted that language directly from Staff's closing brief. More importantly, evidence in the record documented payments of $67,460.74 and $15,800 from Respondents to insurers or MGAs in the Fierro Inc. transaction, consistent with Mr. Hild's uncontroverted testimony that the *entire* $70,000 received from Fierro Inc. (plus out-of-pocket funds) was remitted to insurers. The FOF and COL address the entire $70,000 amount, as well.[4] Even if Staff did not drop its allegation regarding a portion

[3] Staff's Exceptions at 3-8.

[4] *See* FOF 32, 34, 35; *see also* FOF 46 ("H&H did not mishandle or fail to remit to insurers any of the funds (a total of $70,000) received from Fierro Inc.").

of the $70,000 payment, Staff did not meet its burden of proof. That burden, contrary to Staff's exceptions, remained with Staff.[5]

Failure to assert claims re fraudulent and dishonest acts with respect to Towerstone, Inc. (Towerstone) and US Risk Insurance Group, Inc. (US Risk).[6] The PFD notes that the First Amended Petition listed claims related to Towerstone under the heading of "Multiple Instances of Misappropriation, Conversion, or Illegally Withholding Money Belonging to Insurer and Dishonest or Fraudulent Acts," which appears to encompass both subsection (4) (misappropriation) and (5) (fraudulent or dishonest practices) of Texas Insurance Code (Code) § 4005.101.[7] However, Staff's closing brief specified that the claims related to Towerstone were made under Code § 4005.101(b)(4) and the ALJs analyzed them accordingly, without considering Code § 4005.101(b)(5). Similarly, the PFD notes that Staff's closing brief discussed its allegations against US Risk under Code § 4005.101(b)(4), not subsection (b)(5).[8]

In its exceptions, Staff highlights a State Office of Administrative Hearings (SOAH) rule, 1 Texas Administrative Code § 155.425(c), which provides that an allegation "contained in the notice of hearing, complaint, or other pleading that is not addressed *during the proceeding* may be deemed waived."[9] Staff cites the exhibits admitted into evidence and argues that "[s]imply because [a] particular allegation

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[5] Staff notes that during discovery Respondents were asked and failed to produce bank statements showing payments to insurers, and thus Staff "does not need to prove a negative to show by a preponderance of the evidence that $70,000 was never remitted to IPFS, an insurer, or an MGA." Staff's Exceptions at 6. However, the actual evidence in the record, including Mr. Hild's testimony, outweighed the inferences Staff would have the ALJs draw from discovery responses or the lack thereof.

[6] Staff's Exceptions at 11-13, 16-17.

[7] PFD at 53, n. 215.

[8] PFD at 62, n. 249.

[9] Staff's Exceptions at 4 (emphasis in exceptions). The ALJs note that this discussion in Staff's exceptions was made in response to the $40,000 payment from Fierro Inc. that the ALJs found (and Staff disputed) was abandoned by Staff. However, it appears Staff would make the same argument regarding the application of Code § 4005.101(b)(5) to Towerstone and US Risk.

wasn't fully discussed in writing in [Staff's] 34-page closing brief does not constitute a waiver of the allegation from the live pleading."[10]

In this proceeding, as in any contested case, the party with the burden of proof must cite the relevant law, show the required facts, and demonstrate that the law as applied to the facts establishes a basis for the relief requested. Staff's First Amended Petition put Respondents on notice of the allegations it would seek to prove and the law it claimed to apply. The record, consisting of three days of testimony from eight witnesses and hundreds of pages of documentary evidence, provided the raw factual material from which both parties fashioned their closing briefs. Staff's arguments discussed only some alleged provisions of law cited in the First Amended Petition, and it is not the ALJs' role to make connections that Staff—for whatever reason—omitted at the final stage of the proceeding.[11]

Distinction between MGA and insurer. The ALJs found that Mr. Hild and Hild & Hild misappropriated funds belonging to Berkshire, an insurer, but that the same was not true with respect to Towerstone, as explained in the PFD at pages 53-56. Staff states that the "PFD's unusual interpretation of the definitions of an MGA and insurer in Chapter 4053, and the narrow interpretation of [Code §] 4005.101(b)(4) would have profound insurance industry implications."[12] The ALJs find Staff's concerns misplaced. The PFD specifically states,

> However, Code § 4053.001 does not indicate that, because an MGA may be authorized to do various acts on behalf of an insurer, the MGA qualifies as an "insurer" *for purposes of disciplinary action to be taken against a licensee* under Code § 4005.101(b)(4).[13]

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[10] Staff's Exceptions at 4.

[11] Staff appears to limit "proceeding" to the hearing on the merits without including the closing briefs. However, the record did not close in the proceeding until the filing of the final written closing argument. *See* 1 Tex. Admin. Code § 155.425(e)(2).

[12] Staff's Exceptions at 10.

[13] PFD at 55 (emphasis added).

As stated in the PFD, there was no evidence that any of the five insurers for whom Towerstone brokered the Fierro Inc. policies had monies due that H&H withheld. Further, Towerstone ceased playing an intermediary role in the transaction because IPFS and Respondents agreed to handle the return of premium and unearned commissions directly.[14] Towerstone kept a note on its books until IPFS confirmed that the matter had been resolved but had no other involvement.[15] Staff did not demonstrate that Mr. Hild's and H&H's dealings with Towerstone were within the scope of Code § 4005.101(b)(4).

With respect to US Risk, the ALJs noted the same definitional issue of distinguishing between an MGA and an insurer in the transaction, plus a lack of clarity regarding a six-year course of stop-and-start discussions between the parties regarding resolution of a default judgment. Staff did not meet its burden with respect to either the legal or factual aspects of the misappropriation claim, as discussed in the PFD at pages 60-62.

Fraudulent or dishonest acts in transactions with BankDirect Capital Finance (BankDirect) and AXO Insurance Services (AXO). The BankDirect and AXO contracts and litigation are discussed in the PFD at pages 63-70. The ALJs declined to find that the actions of Mr. Hild and Hild & Hild in the BankDirect and AXO transactions were bases for discipline by the Department. As noted in the PFD, the BankDirect settlement was not included in the First Amended Petition—a logical omission at the time the petition was filed (August 2022) because Staff was unaware of it at the time. However, Staff did not move to further amend the First Amended Petition based on the late-acquired information. Without specific pleadings related to that matter, the ALJs did not consider it as an independent basis for discipline but included it as a potential consideration for the Commissioner with respect to prior violations.[16]

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[14] *See* PFD at 55-56.

[15] Staff also reiterates in its exceptions a claim about the amount at issue in the Towerstone/IPFS matter ($53,576.90 versus $18,068.20). That matter was addressed in the PFD at pages 52-53 and is not repeated here. The ALJs do not change their evaluation of the evidence.

[16] *See* PFD at 71, 81, 83. Related issues concerning the sanction analysis are discussed further below.

The AXO litigation resulted in an adverse judgment as well as two contempt orders, properly pleaded by Staff in the First Amended Petition as potential fraudulent or dishonest acts or practices. The ALJs declined to find a basis for discipline, however, because the nexus to the insurance industry was at least one step removed and Staff did not show how Respondents' conduct in business litigation justified discipline against their licenses.[17] Staff excepts, arguing, "Had the Legislature intended to limit discipline for a [sic] fraudulent or dishonest acts to acts occurring while the license holder was specifically engaged in the business of insurance, it would have said so."[18]

As stated in the PFD, the ALJs acknowledged that Code § 4005.101(b)(5) is broadly worded and does not limit "fraudulent or dishonest acts or practices" to those committed while a licensee is operating within the scope of a license. Yet, administrative agencies have only the power explicitly granted to them by the Legislature, and an agency cannot be presumed to have authority to take disciplinary action based on any and all conduct of a licensee, no matter how far removed from the regulated profession. The other subsections of Code § 4005.101(b) all reference acts related to insurance or an insurance license,[19] and there is no basis to believe that subsection (b)(5) would give TDI an unlimited scope of authority. That is *not* to say that the AXO litigation *cannot* be a basis for discipline—but Staff did not demonstrate that the conduct at issue is both (1) fraudulent or dishonest and (2) a proper basis for discipline of an insurance license.

Cease and desist order regarding collection efforts against Fierro Inc. Staff argued that, because Mr. Hild and H&H improperly engaged in premium financing with Fierro Inc., their premium financing agreement with Fiero Inc. was illegal and unenforceable, so the Commissioner should issue a cease and desist order

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[17] Notably, the court had already addressed the misconduct by issuing contempt orders.

[18] Staff's Exceptions at 18.

[19] The only exception is Code § 4005.101(b)(8), which addresses felony convictions, without specifying that they must be related to insurance. However, a fraudulent or dishonest "act" is a much more nebulous basis for discipline than a felony conviction.

prohibiting them from engaging in any collection efforts against Fierro Inc.[20] Staff's plea for a cease and desist order is not confined to the premium financing agreement with Fiero Inc.; Staff would prohibit any and all efforts by Mr. Hild and H&H to collect on the losses they claim their former client caused. As discussed in the PFD at pages 74-79, those parties had several agreements and transactions apart from the illegal premium financing agreement, and they may have contract or common law claims against each other. The merits or value of any such claims are beyond the scope of this proceeding, but as explained in the PFD, the ALJs find no basis for extinguishing them altogether as a disciplinary sanction.

III. Respondents' and Staff's Exceptions Regarding Recommended Sanction

The ALJs observed that, unlike some agencies, the Department "has not issued a list of aggravating and mitigating factors or a penalty matrix that would apply in analyzing the appropriate sanction in this case."[21] Accordingly, the ALJs consulted the factors listed in Code § 84.022(b), which apply in determining administrative penalty amounts.[22] The ALJs specifically noted that the Code § 84.022(b) factors were not applied as binding law.[23] But given the breadth of the sanctions open to the Commissioner, the ALJs referenced these factors as a useful tool to structure a discussion of how severe a sanction is appropriate. Respondents and Staff both took issue with the ALJs' approach, but for different reasons.

Generally speaking, Respondents' exceptions urge more specific and favorable analysis of the Code § 84.022(b) factors and more detailed and lenient recommended sanctions. Mr. Hild requested the ALJs "provide additional findings

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[20] Staff's Exceptions at 22-23.

[21] PFD at 79.

[22] These are: (1) the seriousness of the violation, including: (A) the nature, circumstances, extent, and gravity of the violation; and (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public; (2) the economic harm to the public interest or public confidence caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter a future violation; (5) efforts to correct the violation; (6) whether the violation was intentional; and (7) any other matter that justice may require. Code § 84.022(b).

[23] *See* PFD at 79 (noting the absence of a penalty matrix and stating that under the circumstances, the ALJs "find helpful some of the factors listed in Code § 84.022(b)….").

regarding each of the factors in [Code §] 84.022(b), with additional commentary to the Commissioner" regarding the appropriateness of a fine and whether continuing education, a reprimand, or a period of probation would suffice as a sanction.[24] H&H argued that "the facts and circumstances of [its involvement in] the Fiero insurance matter [should be] evaluated separately from conduct attributed to the other Respondents."[25] Hild & Hild contends that it "committed … a relatively small violation concerning a relatively small amount of money" that should result in "a small sanction, but not a license suspension," and asks that the PFD "make that [recommendation] explicit."[26]

Staff states that it is an error of law to use Code § 84.022(b) "as a guide to recommend the appropriate sanction in a proceeding in which TDI seeks revocation" and has not requested a monetary penalty.[27] Staff also criticizes the PFD for "fail[ing] to recommend an exact sanction"[28] and proposing that the Commissioner impose a sanction "commensurate to the gravity of the wrongdoing established," such as suspension of Respondents' licenses for some period of time. In Staff's view, once wrongdoing was established in this case, "the burden pass[ed] to Respondents to establish that their acts should not result in revocation of their licenses."[29] At bottom, Staff believes the PFD should recommend license revocation, without addressing any nuances in the selection of a sanction.

The ALJs disagree with both Respondents and Staff. While they consulted the Code § 84.022(b) factors to provide a framework for discussion, the ALJs do not agree that the factors should be the subject of detailed exposition to the extent suggested by Respondents. That approach would give the factors more weight than appropriate for law that is not directly applicable. Yet, Staff's construction would

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[24] Hild Exceptions at 16-17.

[25] H&H Exceptions at 4.

[26] Hild & Hild Exceptions at 13.

[27] Staff's Exceptions at 29.

[28] Staff's Exceptions at 30.

[29] For this proposition, Staff cites a single 14-year-old PFD. *See* Staff's Exceptions at 31, n. 139.

have the ALJs recommend revocation[30] without considering any of the other varied disciplinary options and which option is best suited given the conduct established by the evidence. Staff would have the burden of avoiding revocation fall on Respondent, without a cited basis in law or rule.

Staff bore the burden of proof in this proceeding, both to establish the alleged violations and show the appropriate sanction.[31] Staff advocated only for revocation of Respondents' licenses, and as discussed at length in the PFD, did not meet its burden of proving that is the appropriate sanction. The Commissioner has a wide range of other disciplinary options available—from reprimand to suspension—and the Department's rules offer no guidance on how to select among them. Nor did Staff point to any instructive precedent showing what sanctions have been imposed in comparable cases. On this record, then, the ALJs cannot offer a more specific recommendation than stated in the PFD: a sanction less than revocation, but commensurate to the gravity of the wrongdoing established. The ALJs recognize that ultimately, the sanction they recommended is just that—a recommendation—and does not restrict the Commissioner in choosing a disciplinary action.

IV. Accepted Changes

Staff notes that FOF 76 has a typographical error. The ALJs agree, and FOF 76 is modified as follows:

> 76. Beginning in 2014, Hild & Hild had a producer agreement with US Risk Insurance Group, Inc. (US Risk), a wholesale surplus ~~alliance~~ **lines** agency.

Staff also requests that FOF 109—which found that Mr. Hild and Hild & Hild should be ordered to cease and desist from the unlicensed practice of premium

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[30] Staff states that unauthorized premium financing could result in a criminal penalty of a third-degree felony, and the gravity of this penalty means the disciplinary action ought to be revocation. Staff's Exceptions at 30-31.

[31] 1 Tex. Admin. Code § 155.427.

financing—be revised to include H&H.[32] Relatedly, Hild & Hild requests that COLs 7 and 8 be revised to specify that only H&H was involved in premium financing with Fiero Inc. The ALJs agree that the wrong entity was named in FOF 109—it was H&H, not Hild & Hild, that entered into a premium financing agreement with Fierro Inc. and made the misrepresentation to IPFS.[33] As discussed above, Mr. Hild is the designated responsible person for both entities and can be sanctioned for wrongdoing that he engaged in on their behalf. Accordingly, FOF 109 is revised as follows:

> 109. Mr. Hild and ~~Hild & Hild~~ **H&H** should be ordered to cease and desist from the unlicensed practice of premium financing.[34]

And to further clarify the specific Respondents who are subject to sanction for each violation, the ALJs revise COLs 7-9 as follows:

> 7. ~~Respondents~~ **Mr. Hild and H&H** are subject to sanction for engaging in premium financing without a license. Tex. Ins. Code §§ 101.102, 651.051(a)(1).
>
> 8. ~~Respondents~~ **Mr. Hild and H&H** are subject to sanction for falsely representing to IPFS that the full down payment due from Fierro Inc. had been collected. Tex. Ins. Code § 4005.101(b)(5).

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[32] Staff's exceptions also suggest that the PFD "misapplied" Code § 651.209, arguing that this section addresses sanctions against an *authorized* person while H&H and Mr. Hild were never authorized to engage in premium financing. Staff's Exceptions at 26-27. The ALJs do not entirely understand Staff's exception on this issue but note that none of the COLs cite Code § 651.209; COL 10 cited Code § 82.052—which authorizes a cease and desist order again any person who has violated insurance laws—as the basis for that disciplinary action.

[33] *See* PFD at 29 ("[T]he ALJs find that H&H and Mr. Hild were engaging in the business of insurance premium financing….").

[34] The ALJs are not including Hild & Hild in the revised FOF, as requested by Staff, both because Hild & Hild was not involved in the transaction and because Staff's pleading did not seek this relief against Hild & Hild. *See* First Amended Petition at 14 (asking that "Respondents Mr. Hild and H & H [be ordered] to cease and desist from engaging in the business of premium financing without holding a premium finance company license").

9. ~~Respondents~~ **Mr. Hild and Hild & Hild** are subject to sanction for misappropriation, conversion, or illegal withholding of money belonging to an insurer (Berkshire). Tex. Ins. Code § 4005.101(b)(4).

Finally, Staff states that jurisdictional cites were omitted from COL 1 and 10. Without commenting on the necessity of the citations, the ALJs agree to modify the COL as follows (including COL 2 to accommodate rewording):[35]

1. **The Commissioner of Insurance is the chief executive and administrative officer of the Department. Tex. Ins. Code § 31.021.**

2. The ~~Department~~ **Commissioner** has jurisdiction over this matter. Tex. Ins. Code §§ 82.051-.052, 101.**102-.**103, 651.051, 4001.002, 4005.101-.102**, 4051.051, 4054.051**.

10. The Commissioner has authority to take a number of disciplinary actions if violations are established, including reprimand, cancellation of authorizations, suspension, **revocation,** a cease and desist order, administrative penalties, restitution, or any combination of those options. Tex. Ins. Code §§ 82.**051-.**052, **101.103,** 4005.**101-.**102.

With these changes, the Proposal for Decision is ready for the Commissioner's final decision.

Pratibha J. Shenoy
Administrative Law Judge

Sarah Starnes
Administrative Law Judge

CC: Service List

[35] Revised COL 1 below was formerly COL 2.