OFFICE OF INSURANCE REGULATION

KEVIN M. MCCARTY
COMMISSIONER

IN THE MATTER OF:

CASE NO.: 108778-10

DALLAS NATIONAL
INSURANCE COMPANY
_____/

FINAL ORDER

THIS CAUSE came on before the undersigned, for consideration and final agency action.

In 2008, Dallas National Insurance Company (hereinafter "Dallas National") filed with the Florida Office of Insurance Regulation (hereinafter "Office") an application for licensure as a property and casualty insurer in the State of Florida. On September 17, 2008, the Office denied the application for licensure, setting forth five separate and distinct grounds in its letter of denial.

The letter provided:

> After a careful review of the application for the licensure of Dallas National Insurance Company ("Dallas National") as a property and casualty insurer in this state, the Office of Insurance Regulation ("Office") regrets to advise that the application is denied. Our denial is based upon the following reasons.
>
> 1. Section 624.404(3)(a), Florida Statutes reads, *"The office shall not grant or continue authority to transact insurance in this state as to any insurer, the management, officers, or directors of which are found by it to be incompetent or untrustworthy;...or which it has good reason to believe are affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance business relations, with any person or person whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by manipulation of assets, accounts, or reinsurance or by bad faith."*

The Office has not found sufficient evidence in any documentation provided by your client with this application, in its past submission, or at the evidentiary hearing held at the Office on September 20, 2006 that Dallas National's sole owner and Chairman of the Board, Charles David Wood, Jr., is consistently *competent* and *trustworthy*. Further, not only does Charles David Wood, Jr. have a pattern of behavior which the Office finds *untrustworthy,* but there is "good reason to believe" he has acted in *bad faith.*

By virtue of his sole ownership and position as Chairman of the Board, Charles David Wood, Jr. is the ultimate controlling person of Dallas National and maintains control over the affairs of Dallas National and its affiliates. His history and pattern of behavior contradicts regulatory compliance and trustworthiness, and the basis of our finding includes, but is not limited to the following:

a. The application represents that Aspen Administrators, Inc., an affiliated entity under the control of Charles David Wood, Jr., will enter into a Claims Service Agreement with Dallas National to service the claims of Florida policyholders. Further, AMS Staff Leasing, Inc., AMS Staff Leasing II, Inc., and Equity Group Leasing, all professional employer organizations ("PEOs") under the control of Charles David Wood, Jr., will be the only workers' compensation insureds in Florida and will have their respective claims serviced by Aspen Administrators, Inc.

   Pursuant to audits performed by the Florida Division of Workers Compensation, Aspen Administrators, Inc. *continues* to not meet the statutory requirements for the timely payment of claims, causing the carrier to be in violation of Section 440.20(8)(b), Florida Statutes. This pattern of unsatisfactory performance in the day-to-day operational matters is a hazardous practice that is harmful to injured workers in this state.

   Pursuant to a recent audit performed by the Florida Division of Workers Compensation, AMS Staff Leasing admitted that it failed to report claims to its insurer and that the claims were handled by AMS Staff Leasing, not Aspen Administrators, Inc., the contracted claims adjuster. The failure of the employer (AMS Staff Leasing) to report to the insurer is a direct violation of Section 440.185(2), Florida Statutes, and the claims adjusting activity of AMS Staff Leasing without holding a license is a violation of Section 626.8696, Florida Statutes. Further, such activity by these entities that are controlled by Charles David Wood, Jr. results in skewed data for the purpose of rate making and may result in inadequate rates and inappropriate filings, pursuant to Section 627.091, Florida Statutes.

b. The management of Dallas National, and in particular, Charles David Wood, Jr., continues to operate in circumvention of state regulatory laws wherever contradictory with or inconvenient to its own business practices and objectives.

   AMS Staff Leasing is presently insured in Florida by Companion Property and Casualty Insurance Company ("Companion"), which is domiciled in South Carolina and licensed in Florida. One hundred percent (100%) of the AMS Staff Leasing workers' compensation business written by Companion is ceded back to

Dallas National as reinsurer. This is a "fronting" transaction, in violation of Section 624.404(4), Florida Statutes, and is intended to circumvent Florida law requiring Dallas National to hold a valid Certificate of Authority to transact business in this state. This activity is a violation of Florida Statutes and is a representative example of how the Office perceives that Charles David Wood, Jr. and Dallas National continue to conduct business affairs. Several other such examples were cited in the Office's letter dated December 1, 2006, which are further incorporated by reference herein.

c. Documentation has been given to the Office by other regulatory agencies of the examinations of claims and underwriting practices by Dallas National and/or its affiliated third-party administrator, Aspen Administrators, Inc., which have continually produced unsatisfactory performance results. Again, unsatisfactory performance in day-to-day operational matters is a hazardous practice that is potentially harmful to injured workers in this state and should be of primary importance to the insurer to correct, yet Dallas National's performance is consistently sub-standard. If documented evidence exists that Dallas National is performing sub-standard in other states, the Office can have no expectation that it will come to Florida and conduct business otherwise.

d. While the Office acknowledges that Dallas National has shown that it appears to be in good financial standing at this time, it is rather the management decision-making practices that are of utmost concern to the Office. As Florida would not have domiciliary state regulatory authority, the Office lacks sufficient control over the practices and procedures which may be implemented by Dallas National, as a foreign insurer, to be able to counter its concerns in this matter, including but not limited to trustworthiness and questionable insurance business practices. The burden of proof has been on and remains with your client, and it has failed to provide substantial evidence to the contrary. Circumstantial evidence of financial solvency, existing licensures, and/or lack of findings by other regulatory entities are not sufficient evidence to prove that the Office can reasonably expect Charles David Wood, Jr. and/or Dallas National to act scrupulously in accordance with Florida law, especially should that law contradict your client's agenda.

2. The Office finds it necessary to restate from item number 1 of the Office's letter dated December 1, 2006, and do so for purpose of the conclusion reached in the paragraph that follows:

"Dallas National is a member of an insurance holding company system that is focused on a business model centered on personnel staffing related services, particularly staff leasing and professional employer organizations ("PEO"). The business relationships between Dallas National and the affiliated PEOs it insures are deemed by the Office to not be at "arms length," to the detriment of Dallas National. There is an insufficient "firewall" between Dallas National, as insurer, and the affiliated PEO it insures. For example, Dallas National relies upon the PEO to perform certain underwriting, coding, loss control, auditing and other functions that should be performed and/or verified by the insurer. This lack of control is a material weakness in Dallas National's business plan and is a

> hazardous business practice that could leave injured workers without full compensation for their injuries. Because the workers compensation line of business is "long-tailed" by nature, the full effects of this lack of control may not be realized for decades and could very well leave the insurer with insufficient assets to satisfy all of its obligations to injured workers. In a truly arms-length transaction, it would be expected that the PEO would perform most of these functions on its own, but that the insurer would also maintain these controls in a redundant manner."
>
> The Office simply has no confidence that Dallas National will consistently monitor and require compliance with its underwriting guidelines and maintain such internal control mechanisms as are necessary to provide redundancy in the transactions initiated or processed by AMS Staff Leasing, Aspen Administrators, Inc., and/or any other affiliated party. Your client has failed to prove that it has in place a failsafe set of internal controls that protect it, and thus, injured workers employed by its affiliated PEOs, from actions taken by other entities whose primary concerns are not the same as that of Dallas National, or of the Office.

The management of Dallas National has made material misrepresentations in its presentation and response to critical items that lie at the heart of the issues raised by the Office, leading the Office right back to Section 624.404(3)(a), Florida Statutes, wherein the Office is given the charge that it "*shall not grant...authority to transact insurance in this state*" to Dallas National.

Based upon the foregoing, the application for Certificate of Authority is hereby denied on the basis that Dallas National does not meet the requirements of Section 624.404, Florida Statutes.

Dallas timely filed a petition for Formal Administrative Hearing pursuant to Section 120.57(1), Florida Statutes. The matter was heard before the Honorable Ella Jane P. Davis, Administrative Law Judge (ALJ), on August 10 through 14, August 31 and September 1, 2009, in Tallahassee, Florida.

After consideration of the evidence, argument, and testimony presented at the hearing, the ALJ issued her Recommended Order on February 3, 2010. (Attached hereto as Exhibit "A".) The ALJ recommended that a Final Order be entered issuing the license for which the Petitioner has applied.

Both Dallas and the Office filed exceptions to the Recommended Order. Based upon a complete review of the record, the Recommended Order, the exceptions and relevant statutes, rules and case law, I find as follows:

RULINGS ON DALLAS'S EXCEPTIONS

Section 120.57(1)(l), Florida Statutes, sets forth the standard an agency must use when reviewing the Recommended Order of the administrative law judge. As it relates to exceptions to findings of fact, it provides in pertinent part:

> The agency may adopt the recommended order as the final order of the agency. ... The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

RULINGS ON EXCEPTIONS TO FINDINGS OF FACT

1. Dallas purports to except to Finding of Fact #6. Dallas states that it agrees with the finding, but apparently wants the Final Order to elaborate on the conclusion drawn by the ALJ in this finding. Pursuant to Section 120.57(1)(l), cited above, the agency "may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence ..." Dallas does not contend this finding is not so based, and consequently, this exception is denied.

RULINGS ON THE OFFICE'S EXCEPTIONS

2. The Office excepts to the Preliminary Statement in the Recommended Order, complaining that it does not fully set out all the grounds for which the license was denied by the Office. The Preliminary Statement is neither a finding of fact nor a conclusion of law. It is

instead a prefatory statement setting the tone for the Recommended Order. It is not accepted, rejected or modified by the agency. Instead, this Final Order has its own prefatory statement, which statement clearly sets out all the grounds for which the license of Dallas was denied.

3. The Office excepts to Finding of Fact #11, in three particulars, relating to the regulatory activities taken by the State of California. First is the claim that the ALJ misstates the evidence in stating that California Indemnity had a number of actions pending against it. The record shows the company to have been Dallas Fire Insurance, (1031) and this finding shall be corrected in this regard. The Office also excepts to the last sentence of the finding relating to the characterization that Dallas National "continues to invite" California to examine it. There is competent substantial evidence that at the time of the hearing Dallas National has invited California to exam it yet again, so in this regard the exception is denied. The third particular relates to the sentence stating that Dallas National "has yet to formally petition for licensure in California." There is no competent substantial evidence of this, in fact, to the contrary, the evidence is that Dallas National is licensed in the State of California, although its writing is presently restricted. (1034:4-19) This finding shall be corrected in this regard.

4. The Office excepts to Endnote 1 of Finding of Fact 11, for the same reasons. Once again, there is no competent substantial evidence in the record that Dallas National has requested California to license it. The evidence is to the contrary; Dallas National is already licensed by the State of California, although its writing is presently restricted. (1034:4-19) Nor is there any competent substantial evidence in the record that a "prudent" insurer will not apply for a license in California and several other states until virtually assured. This exception is granted and the endnote is stricken.

5. The Office excepts to statement in Finding of Fact 13, that the State of California continues to be willing to work with Dallas National toward California licensure. There is no competent substantial evidence in the record to support this. The evidence is to the contrary, that Dallas National is already licensed by the State of California, although its writing is presently restricted. (1034:4-19)

6. The Office excepts to Finding of Fact 20, which, it asserts, erroneously states that Dallas National is owned "through another entity" by DNIC Holdings Inc. There is no competent substantial evidence of such other entity's existence. Rather, Mr. Wood owns DNIC Insurance Holdings, Inc., which in turns owns Dallas National. (Joint Exhibit 1, page 982) This holding will be modified in this regard.

7. The Office excepts to Finding of Fact 21, in so far as it states that Aspen Administrators, Inc., is a Florida licensed third party administrator. This first sentence is not supported by competent substantial evidence and is rejected. Aspen Administrators, Inc., is not a Florida licensed third party administrator. Florida law only contemplates the licensing of administrators which administer life or health insurance, or who administer for commercial self-insured funds. (See, section 626.88(1), Fla. Stat.) The finding otherwise is accepted.

8. The Office excepts to Finding of Fact 22 arguing that the information in the first sentence was not provided to the Office during the application process. The Office does not assert the finding is not supported by competent substantial evidence; consequently, this exception is rejected.

9. The Office excepts to the first sentence in Finding of Fact 23, in which the ALJ asserts that PEOs provide a valuable service for small business owners. Though perhaps not

directly supported by the evidence adduced at hearing, it is a reasonable factual deduction from the evidence that was submitted by Dallas National. Consequently, this exception is rejected.

10. The Office excepts to a statement in Finding of Fact 25, that, it argues, "leaves the erroneous impression that the OIR was not likewise concerned about the same issues when reviewing other applications with affiliated PEO's." The Office does not assert the finding as written is not supported by competent substantial evidence. Consequently, the exception is denied.

11. The Office also excepts to Finding of Fact 25 objecting that in several instances it relates to evidence that the ALJ did not admit into evidence, the objection being there is no competent substantial evidence in the record regarding Lion Insurance. The ALJ admitted Dallas National's Exhibit 7, regarding Frank W. Crum and Exhibit 8, regarding Southern Eagle, however excluded Exhibit 6 regarding Lion Insurance. Consequently, there is no competent substantial evidence to support the findings relating to Lion Insurance. All references to Lion Insurance in this finding will be stricken.

The Office complains as well that evidence was given by Office employees distinguishing the situation in Frank W. Crum and Southern Eagle. There is no competent substantial evidence that Dallas National was treated any different from any other company in its application review, as it relates to it being affiliated with a PEO.

Ms. Barber testified that even though it is not unlawful, there is a red flag *every time* there is an affiliated carrier and employer who have the same interests because there is no built-in set of checks and balances such as you would find in an agreement between two contracting parties with different interests. (958) Checks and balances can exist in other ways. For example, checks and balances existed in the Southern Eagle application because there were contractual

obligations between the insurer and the entity doing claims administration and the entity doing policy administration. (959) There were similar distinguishing characteristics in the Frank W. Crum relationship. This finding is modified to reflect the foregoing.

12. The Office excepts to the second sentence of Finding of Fact 26 that states, "third party administrators obtain their own Florida licenses, subject to regulatory oversight," as an inaccurate statement of fact. In so far as it relates to workers' compensation administrators, the Office is correct. The Office does not license administrators for workers' compensation. Instead the entities must register with the Secretary of State and obtain an ID number from the Division of Workers' Compensation with the Department of Financial Services. The sections cited by the ALJ in support of her statement apply only administrators dealing with commercial self insured entities and to life and health administrators. (*See*, section 626.88(1), Fla. Stat.) Consequently, this exception is accepted, and the second sentence is stricken.

13. The Office excepts to the statement in Finding of Fact 28, "and they [OIR regulators] do not like the concept of PEO's, which have been a legitimate business model in Florida since the 1990's." There is no competent substantial evidence that employees of the Office do not like the *concept* of PEO's. Rather, the evidence is that there have been problems with PEO's and they are indeed seen as opportunities for abuse. *See*, for example, Finding of Fact 37, referencing the NAIC white paper on SEO's, and the ALJ's note 2. This exception will be granted in part and the finding will read: "There is no Florida statute or rule that prohibits Petitioner's business model. OIR's in house witnesses see them as opportunities for abuse, notwithstanding they have been a legitimate model in Florida since the 1990's."

14. The Office excepts to the statement in Finding of Fact 29 that the Office regulators are holding PEO's or any entities associated with Mr. Wood to a higher or different standard than that of other applicants for licensure as workers' compensation carriers. There is no competent substantial evidence that the Office regulators are holding Mr. Wood or any entities under his control to a higher standard than other applicants for such a license, or that the Office licenses PEO's. This exception is accepted and the finding is stricken.

15. The Office excepts to two portions of Finding of Fact 31. The first is the statement that there is no definition of "firewall" in law or rule. The ALJ is correct in this regard and that statement will remain. The second exception is to the ALJ's statement that "the Agency just believes it is safer, or at least easier" for the Office to deny an out of state application than to monitor an out of state carrier after licensing. This latter statement is not supported by competent substantial evidence and is stricken.

16. The Office excepts to the implication in Finding of Fact 32, that could be drawn from it. The Office asks it be clarified that the license of California Indemnity was revoked by operation of law. The finding as written, however, is supported by competent substantial evidence, so this exception is rejected.

17. The Office excepts to that portion of Finding of Fact 33, from which one could infer that the Office had promised or led Dallas National to believe that if it reconstituted its board of directors the Office would grant its next application for certificate of authority. In her endnote to this Finding, the ALJ makes it clear that she is not making that implication. Though there may be evidence to the contrary, the finding is supported by substantial evidence and the exception is rejected.

18. The Office objects to the endnote to this finding, pointing out an advantage to Dallas National for the withdrawal not stated by the ALJ, namely not having a reportable denial. The Office does not cite to the record in this case showing this to be the reason for the withdrawal. Though the Office may be correct in its position as to why the application was withdrawn, the statement in the endnote is supported by competent substantial evidence and the exception is rejected.

19. The Office excepts to the statement in Finding of Fact 34, "characterizing the Cease and Desist Order issued by the State of Arkansas as 'extremely minor'." However, the ALJ does not make this characterization in this finding. Rather she states that *Mr. Pickens* described Petitioner's prior problem in that state as extremely minor. In his testimony, Mr. Pickens refers to that matter as "insignificant" at that time (367), "an insignificant situation", "not a big issue" (391). Mr. Pickens goes on to state that in his opinion when you say a principal of a company must be fit and proper and when you say somebody is untrustworthy and incompetent, that normally applies to people "who have committed felonies, gross negligence in operation of a company and things of that nature." (389) Mr. Pickens testifies further that as a board member (which he is) he wouldn't be concerned with negligence, but only with deliberate violation of the law, gross mismanagement or recklessness on behalf of the company. (391-92). Pickens speaks highly of the Office, yet his position with respect to licensure was "I don't understand why if it is good enough for 39 states and the District of Columbia and Texas, it is not good enough for everyone else." (395). Mr. Pickens goes on to state that a cease and desist order he issued while he was commissioner of Arkansas was "a speeding ticket." (402). In light of Mr. Pickens testimony at the hearing, it should come as no surprise that he considers any bad acts of Dallas National in his state to be "extremely minor."

20. The Office excepts to the last sentence of Finding of Fact 38 saying it is pure speculation on the part of the ALJ that other 100% owners of insurance companies exercise the same control that Mr. Wood exercises over Dallas National. As the statement is unsupported by competent substantial evidence, there being no evidence whether this is unique to Dallas National, the exception is accepted and the last sentence is stricken.

21. The Office excepts to the last sentence of Finding of Fact 39, citing no competent substantial evidence to support it. The use of the word "probably" reveals it is mere supposition by the ALJ and consequently the exception is accepted. The last sentence will now read, "AMS and Aspen have offices in Florida and in other states in which they do business."

22. The Office excepts in two particulars to Finding of Fact 40. The first is the statement that the Division of Workers Compensation is now part of OIR. That statement is corrected to read "is now part of DFS, the Department of Financial Services." Section 20.121. The second exception is to the implication that because both employees were able to "eventually make" distinctions, their findings that there was comingling are somehow invalid. No such implication should be drawn by this finding of fact.

23. The Office objects to Finding of Fact 41 as complete speculation on the part of the ALJ that computers link Dallas National headquarters with its affiliates in other states, and that this is the norm in the industry. There being no evidence in the record to support the admitted supposition by the ALJ, this Exception is accepted and the entire finding is stricken.

24. The Office excepts to Finding of Fact 42, first in its characterization of the reporting problems as a "big part" of the Office's denial letter, and second, it pointing out that the Office did not present comparative evidence of other third party administrators or PEO's. Though the issue of how AMS and Aspen compares to other licensees is not relevant to the

licensing decisions made by the Office (nothing in the applicable statutes directs the Office to make such comparisons), the statements as made are correct.

25. The Office excepts to the reference in Finding of Fact 45 to the Office's "mistrust" of Mr. Wood, as it implies that the application was denied because the Office did not trust Mr. Wood. Among the grounds set out in the denial letter is that the Office has not seen that Mr. Wood is "trustworthy" and has a pattern of behavior the Office finds to be "untrustworthy." It is not an inaccurate statement, therefore, that the Office had a "mistrust" of Mr. Wood. This exception is therefore denied.

26. The Office excepts to the statement in Finding of Fact 46, implying a nexus between the loan given by Mr. Wood to Bankers and the coverage Bankers was to have provided AMS, saying there was no such nexus. There is competent substantial evidence of such a nexus in the testimony of Mr. Reid in his response to the question by counsel for Dallas National, "And did AMS do anything to help facilitate that arrangement?" (445) Consequently, this exception is rejected.

27. The Office excepts to the endnote to Finding of Fact 46 arguing it is based on hearsay and should not form a finding of fact. Further, the use of the word "apparently" and "appears" by the ALJ show her uncertainty about the veracity of the information in this footnote. The information is hearsay and irrelevant to the issues surrounding this denial. Pursuant to Section 120.57(1)(c), Florida Statutes, hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. This exception is granted and the endnote is stricken.

28. The Office excepts to Finding of Fact 51 as not supported by competent substantial evidence. The problem with this Finding of Fact is that it is a mixed finding of fact and conclusion of law. The part that is a conclusion of law is stricken so the Finding of Fact now reads, "Mr. Wood and AMS went to great efforts to ensure uninterrupted workers' compensation coverage for AMS. Those efforts included Mr. Wood covering AMS's losses to workers' compensation claimants out of his pocket."

29. The Office excepts to Finding of Fact 53 in so far as it characterizes Aspen as a "Florida-licensed third party administrator." The relevant clause is modified to read Aspen is a "Florida registered third party administrator servicing several workers' compensation insurance carriers doing business in Florida." (*See*, section 626.88(1), Fla. Stat.)

30. The Office excepts to the last two sentences of Finding of Fact 55. This exception is accepted in two regards. No action can be taken against Aspen pursuant to sections 626.8805 and 626.891. As stated above, those statutes apply only to administrators dealing with life and health insurers and commercial self insurers. (*See*, section 626.88(1), Fla. Stat.). Further, the suggestion in the last sentence, that the actions described in the finding are "not truly significant to the Agency", is not supported by competent substantial evidence; consequently, this last sentence is stricken.

31. The Office excepts to certain portions of Finding of Fact 56. It first excepts to the use of the qualifier "only" in describing the fine. Though the evidence adduced from Mr. Yon is that fines are the only recourse his Division had against Companion, there was no evidence as to how much the fine could be. Section 440.525(4) sets the maximum fine at $2,500 for each non-willful violation, up to total of $10,000, and for each willful violation $20,000 up to a total of $100,000. The fine therefore was the maximum fine that could be

imposed for what appears to be a non-willful violation. In light of the law, the use of the modifier *only* makes little sense as it was the maximum penalty that could be imposed. The second objection the Office raises has to do with the misquoting of Mr. Yon's statement regarding the transfer of adjusters. This finding of fact is modified as there is no competent substantial evidence that Mr. Yon testified as written in the Recommended Order. It shall now read "Mr. Yon agreed it was acceptable to the Division of Workers' Compensation that the individuals that had been adjusting those medical claims for AMS Staff Leasing were transferred to Aspen so as to resolve the illegal adjusting problem." (1128)

32. The Office excepts to Finding of Fact 58 in two regards. The first is to the ALJ's characterization of the evidentiary hearing as a "formalized marathon conversation", and to the remainder of the sentence. The Office does not assert that the characterization is incorrect, or that her description of the hearing is incorrect. Rather what the Office objects to is the ALJ finding Mr. Wood's failure to correctly answer questions and elaborate on his answers to be reasonable because of the nature of the hearing. There is no competent substantial evidence in the record that Mr. Wood's failure to correctly answer questions and elaborate on his answers was caused by the nature of the hearing. Consequently, the Office's exception to the last sentence is accepted and that last sentence will be stricken.

33. The Office excepts to the last sentence in Finding of Fact 60, because the ALJ did not find that Mr. Wood's answers in the hearing, to items (2) and (6), to have been wrong. In this finding the ALJ writes that the hearing did not demonstrate that Mr. Wood's answers to questions (2) and (6) "were *clearly* wrong." (emphasis added) The undersigned does not understand the import of the word *clearly* in the finding. Perhaps it means excusably wrong, given the purportedly marathon conversation nature of the hearing alluded to in the ALJ's

Finding of Fact 58. However, the testimony was made *under oath.* A review of the record shows there is no competent substantial evidence that the answers were anything other than incorrect. Consequently, this exception is accepted and the last sentence is stricken.

34. The Office excepts to Finding of Fact 62, objecting to the characterization expressed in the word "suspect", and apparently the ALJ's failure to cite evidence that supports the Office's assertion that the business plan was inaccurate and misleading. The word "suspect" may not be the most precise word to convey the feelings the Office staff had about the business plan, however, factually the Finding is supported by competent substantial evidence and the Office's exception is rejected.

35. The Office excepts to Finding of Fact 64 with respect to the ALJ's comment that "it is unreasonable to suppose that any plot existed within Dallas National, with Mr. Woods (sic) or with Mr. Nehls to hide these companies or Mr. Wood's affiliations therewith from Florida regulators." Looking at the record as a whole, there is no competent substantial evidence to support the lack of some type of agreement ("plot") between and among the identified parties to with hold key information from state regulators. Furthermore, whether or not there was a plot is irrelevant; what is highly relevant is the fact that Mr. Wood, while under oath, made these untrue statements. The Office's exception is granted and this finding is rejected.

36. The Office excepts to Finding of Fact 65, complaining that the omission charged by the ALJ to Mr. Nehls is relevant to the charges filed against Mr. Wood, and to the management of the applicant. The Office is correct that bad acts by Mr. Nehls would reflect on Mr. Wood. Furthermore, there is no competent substantial evidence that Florida could not

license an insurer but not permit it to write insurance. The law in Florida is to the contrary. This finding is modified to reflect these changes.

37. The Office excepts to Finding of Fact 66, which states that California regulators mistrust insurers affiliated with PEO's, even though this does not offend California law. The Office does not assert that there is not competent substantial evidence to support this statement, but rather wishes for this order to set out the reason why California mistrusts such relationships, namely a paper issued by the NAIC. Consequently, this finding will not be stricken.

38. The Office excepts to Finding of Fact 67, specifically to the ALJ's comment that since the complained of act occurred, the issuance of a fictitious policy of workers' compensation coverage, no such similar act has occurred. There is no competent substantial evidence in the record to support this. The last sentence of this finding will read, "Based on the timing of the transitioning of Dallas Fire into Dallas National, it is hard to be sure what really happened in this situation, however there is no evidence in the record as to any further similar actions that may have occurred."

39. The Office excepts to Finding of Fact 68 as not supported by competent substantial evidence. A thorough review of the record shows that Ms. Bernard testified that on her first on-site visit the underwriting for workers' compensation at Dallas National was nonexistent. (1063). In her second on-site visit she found 19 of the 25 sampled in which the underwriting guidelines were not being consistently applied and followed. (1066) During this visit the Texas Department of Insurance was on-site. (1067) In December 2007, Ms. Bernard returned to the company, as Texas was finishing its exam. (1070) She examined yet another sample of 25, this time finding 15 of the files had errors. (1071) Ms. Bernard read from her

examination memo (Joint Exhibit 6B) in which she paraphrased the following sentence from that memo, "Though the Texas Department of Insurance did not have any material findings or exam adjustments, it is my recommendation not to approve DNIC [Dallas National] to begin writing in California until such time as it is able to provide better documentation of its underwriting process for the workers' compensation line of business." There is no substantial credible evidence in the record that Ms. Bernard conceded, or otherwise stated that the Texas Department of Insurance had found Dallas National's *underwriting compliance* (as contrasted with *financial compliance*) in December 2007, to be acceptable. Consequently, the last part of the last sentence of this finding will be revised to read, "... again was only slightly better than the last time but Ms. Bernard added that her report relates that at the same time she audited Dallas National on that occasion, the Texas Department of Insurance was also present and had no material findings or exam adjustments."

40. The Office excepts to Finding of Fact 69 saying it does not adequately address Ms. Bernard's testimony on "this topic." In this finding, the ALJ is discussing Ms. Bernard's report after her December 2007, examination (Joint Exhibit 6B). The ALJ's characterization of Ms. Bernard's testimony is not supported by competent substantial evidence. What the evidence shows, as taken directly from Joint Exhibit 6B, is that Ms. Bernard's recommendation is that her agency not approve Dallas National "to begin writing in California until such time as it is able to provide better documentation of its underwriting process for the workers' compensation line of business." This finding is so modified.

41. The Office excepts to Finding of Fact 70 in whole, complaining there is no competent substantial evidence to support any of it. There is no competent substantial evidence to support this finding. The competent substantial evidence from Ms. Bernard is that Dallas

National had asked her to come yet again to see if this time their own guidelines were being followed, however, there were three reasons why, as of the time of the hearing, she hadn't yet come: 1) training in underwriting had been recently done at Dallas National, so an adequate amount of time needed to pass to see if the training had worked and so that a credible sample could be drawn, 2) approval of a supervisor was needed, and 3) Ms. Bernard had become management, which made scheduling difficult. (1085) (See also her testimony on page 1078.) This exception is accepted and the finding is changed in accord.

42. The Office excepts to Finding of Fact 71 in several places, asserting that no competent substantial evidence exists to support the finding. In the first sentence complained of, the ALJ states there is no evidence in the record as to whether the current guidelines are adequate or whether they are being followed. Given the history of Dallas National's failure to follow their own guidelines, which is clearly presented in the findings, no presumption is being drawn by this by the ALJ, and it is accurate as written. The Office's exception to this sentence is rejected. The Office objects to the final sentence in which the ALJ speculates that current underwriting is acceptable. There is no competent substantial evidence in the record that Dallas National's current underwriting is acceptable, consequently the exception as to this sentence is accepted and this sentence is deleted.

43. The Office excepts to Finding of Fact 76 as it characterizes Dallas National's fronting and participation in an illegal reinsurance agreement as "technical compliance categories." The objection is based upon testimony by an Office employee's testimony that fronting can cause serious damages to misled policyholders. Fronting is hardly a technical compliance matter; rather it is clearly stated in section 624.404(40 as a ground for *denial of a license*. Further, the phrase "technical compliance categories" is not one that is found in the

applicable licensing statutes, so this characterization is of limited value in any event. Ultimately, this finding is not a factual finding, but rather merely introduces the subject of the findings that follow it. This exception is accepted and the phrase "technical compliance" is be stricken.

44. The Office excepts to Finding of Fact 79 to the extent that Ernst and Young provided advice regarding the "fronting" issue, and, based upon that advice, Dallas National proceeded to hearing. Dallas National had the right to proceed to a hearing, with or without the advice of Ernst and Young. Regardless of what Ernst and Young may have advised them, the question of whether what Dallas National was doing is indeed "fronting" is, of course, a legal question, which will be dealt with in a Conclusion of Law. This exception is granted and this finding is modified in accordance.

45. The Office excepts to Finding of Fact 81 as being vague and ambiguous as to which employees had not reviewed the reinsurance agreement and whether their opinions would be helpful in determining whether "fronting" had occurred. As stated in my ruling to Exception 44, the question of whether what Dallas National was doing is indeed "fronting" is, of course, a legal question, which will be dealt with in a Conclusion of Law. This exception is rejected.

46. The Office excepts to Finding of Fact 82, with respect to the last sentence describing Mr. Szypula's area of practice as "not specifically workers' compensation and he has no background in reinsurance, specifically." There is competent substantial evidence that Mr. Szypula's area of practice is not specifically workers' compensation, and so the exception as to that aspect is rejected. However, these is no competent substantial evidence that he has no background in reinsurance. The evidence is to the contrary, in fact, as set out on pages 1228

and 1234 and 1251. Mr. Szypula has received training at both the NAIC and the SOFE sponsored programs on reinsurance, has analyzed many reinsurance agreements, and is, in fact, a trainer on this very topic. (1228). Further, it was Mr. Szypula who was the first recipient of the SPIR designation, rather than Mr. Boor, who was incorrectly cited by the ALJ as having received this prestigious designation. (1233) Consequently, this exception is granted and the clause "and he has no background in reinsurance, specifically" will be stricken.

47. The Office excepts to Finding of Fact 83, arguing that the statement that Mr. Szypula "found no fault with the Milliman Inc. December 31, 2008, report" is not supported by competent substantial evidence. The Office is correct. In fact Mr. Szypula testified as to several problems he has with the report. Mr. Neff and Mr. Meyer, he testified, inappropriately brought in all the claims and losses below and within the deductible that are the responsibility of AMS and for which Companion merely has a credit risk. (1243-44) He also stated that in the Milliman report the entire statute was not being applied to determining is fronting occurred. Consequently, the exception is granted and the following words in that sentence, "found no fault with the Milliman Inc. December 31, 2008, report including reserves or its calculations and," are stricken.

48. The Office excepts as well to Finding of Fact 83 to the ALJ's characterization of Steve Szypula's testimony, which characterization, for the most part, does not include facts at all. The facts of the arrangement have been correctly set forth by the ALJ in Finding of Fact 80, which is adopted in this Final Order. Whether these facts comprise "fronting" is a conclusion of law, which matter will be properly dealt with later.

49. The Office objects to Finding of Fact 84, because it omits certain key information about Mr. Neff's qualifications, for example, that his actuarial expertise is in life

and health insurance, rather than property and casualty, under which workers' compensation insurance falls. However, what is written in this finding is supported by competent substantial evidence and the Office's exception is denied.

50. The Office objects to Finding of Fact 86, citing it as a conclusion of law. As stated above, *what the arrangement consisted of, the nuts and bolts of the agreement,* is a finding of fact; *whether those facts constitute a "fronting arrangement" in violation of relevant statutes*, is a conclusion of law and will be addressed below. However, this finding does not state that the arrangement was not fronting; it merely recites that Mr. Neff did not feel it was, and that the ALJ felt that Mr. Neff was a more credible witness than Mr. Szypula. The exception is, therefore, denied.

51. The Office excepts to Finding of Fact 87 in several particulars. First, in that the finding fails to state Mr. Boor is a "Fellow" of the American Academy of Actuaries. Second, it incorrectly attributes to Mr. Boor the winning of the prestigious SPIR designation, instead of to its proper recipient, Mr. Szypula. Third, it incorrectly states that Mr. Boor did not point to any errors in the Milliman Inc.'s December 2008, annual actuarial report. In the first particular, the exception is denied. The complimentary description of Mr. Boor is supported by competent substantial evidence. With respect to the second particular, there is no substantial evidence to support the finding that Mr. Boor received this prestigious award; it correctly belongs to Mr. Szypula (1233). With respect to the third particular, there is no competent substantial evidence to support the statement that Mr. Boor did not point to errors in the report. To the contrary, Mr. Boor explicitly stated he has problems with the report relating to the underlying assumptions. (1310, 1311). With respect to the latter two issues the exception is accepted. The last sentence of this finding will be shortened to read, "Mr. Boor used the Milliman Inc.'s December 31,

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2008, annual report to conclude that Dallas National is deficient in loss reserves by plus or minus 42 million dollars."

52. The Office excepts to Finding of Fact 89 in two particulars. The first is in the ALJ's characterization of one of the peer reviews undertaken by Milliman as "firm-wide." There is no competent substantial evidence that either of the peer reviews were "firm-wide" so this reference is stricken. The second is the comment that the Office's actuary, Mr. Boor, "skewed" loss development factors. There is no competent substantial evidence that Mr. Boor "skewed" loss development factors. Competent substantial evidence revealed that Mr. Boor used figures from the Milliman report and applied industry standards. Further, competent substantial evidence shows that in fact it was Dallas National which had skewed its rates and claim statistics so as to appear to have sufficient reserves. (1290-1342) This finding is modified to reflect this.

53. This paragraph relates to the exception set out above. Additionally, the Office appears to be setting out case law relating to the standard to be applied by the Agency in reviewing findings of fact. This is not an exception, so no ruling is necessary.

RULINGS ON THE OFFICE'S EXCEPTIONS TO CONCLUSIONS OF LAW

54. Section 120.57(1)(l), Florida Statutes, sets forth the standard an agency must use when reviewing the legal conclusions in a Recommended Order:

> The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its

> substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

55. Case law is also instructive as it pertains to an agency's power in its licensing decisions. In *Department of Banking and Finance v. Osborne Stern and Company*, 670 So.2d 932 (Fla. 1996), the Court held that an agency has particularly broad discretion in determining the fitness of applicants who seek to engage in an occupation the conduct of which is a privilege rather than a right. It is with this guidance that the undersigned draws the following Conclusions of Law.

56. The Office excepts to Conclusions of Law 91, 93, and 101 arguing that the ALJ has applied the incorrect burden on the Office in this matter. The burden the agency has in an action brought by a denied applicant is set out in *Department of Banking and Finance v. Osborne Stern and Company*, 670 So.2d 932. The court states initially, at page 933, "[P]arties are held to varying standards of proof at the fact-finding stage in administrative proceedings depending on the nature of the proceedings and the matter at stake." As to license *application* proceedings: (1) applicants have the burden of presenting evidence of their fitness for registration; (2) the agency has the burden of presenting evidence that the applicant has violated certain statutes or did other acts of misconduct and were thus unfit for registration; (3) the applicant for licensure bears the burden of ultimate persuasion at each and every step of the licensure proceedings to prove its entitlement to a license, regardless of which party bears the burden of *presenting* certain evidence; and (4) the agency has broad discretion in determining the fitness of applicants who seek to engage in an occupation the conduct of which is a privilege rather than a right. *Id* at 934. However, the ALJ says the

agency "may not deny a license application unless its decision is supported by competent substantial evidence, citing *Comprehensive Medical Access*, 983 So.2d 45. This is correct, but the Recommended Order suffers from some of the same confusion cited by the First District in *Comprehensive* with regard to the burden of production as opposed to the burden of persuasion. *Id.* at 46.

57. Simply put, the ALJ erred in stating that the Office has the burden to prove specific acts of misconduct by a preponderance of the evidence in Paragraph 91 of the Recommended Order. Rather, the applicant for licensure bears the burden of ultimate persuasion at each and every step of the licensure proceedings to prove its entitlement to a license. The Office does not, as indicated by the ALJ, bear the burden of persuasion by a preponderance of the evidence. Nevertheless, when the agency denies a license or registration for specific reasons, those reasons must be supported by competent substantial evidence. That is, "evidence that is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." (citing DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla.1957)). That standard will be adopted by the undersigned, to wit, understanding that the applicant bears the burden of persuasion, is there competent substantial evidence to support the reasons given in the Office's letter of denial.

The Fronting Issue

58. The Office excepts to Conclusion of Law 93, first with respect to the ALJ's assertion that the Office has not sought to discipline Companion. The statement, whether true of not, is not relevant to the question of whether the complained of action by Dallas National occurred, that is, whether Companion was fronting for Dallas National. Even if true that the

Office has taken no action against Companion, there could be myriad reasons for the lack of action by the Office, none of which made it into the Findings of Fact.

59. More importantly, the Office excepts to this Conclusion of Law as it relates to the ALJ's interpretation of *fronting*, a term defined and prohibited by section 624.404(4), Florida Statutes. This part of this exception is mirrored in Exceptions 56 and 57, so this discussion is relevant to those exceptions as well and will serve as a ruling on those two exceptions.

60. Section 624.404(4)(a), Florida Statutes, makes it unlawful to act as a fronting company for any unauthorized insurer which is not an approved insurer.

61. Section 624.404(b)(b), Florida Statutes, defines "fronting company" as "an authorized insurer which by reinsurance or otherwise generally transfers more than 50 percent to one unauthorized insurer which does not meet the requirements of s. 624.610(3)(a), (b), or (c), or more than 75 percent to two or more unauthorized insurers which do not meet the requirements of s. 624.610(3)(a), (b), or (c), of the entire risk of loss on all of the insurance written by it in this state, or on one or more lines of insurance, on all of the business produced through one or more agents or agencies, or on all of the business from a designated geographical territory, without obtaining the prior approval of the office."

62. The issue before the undersigned is whether there was competent substantial evidence to show that the relationship between Companion and Dallas National involved fronting, that is, did Companion generally transfer more than 50 per cent of the entire risk of loss on all of its insurance written in this state to an unauthorized insurer, namely Dallas National.

63. Steve Szypula testified as the agency representative. Everyone agreed that Companion is liable for and must pay all valid claims; this is required by applicable workers' compensation law. FOF 85 This is not dispositive of whether fronting occurred.

64. What is dispositive is what Companion does with the *risk* it takes in these workers' compensation policies. The facts of the arrangement are set out in the ALJ's Finding of Fact 80, which is adopted. There is a one million dollar deductible. This means that all claims less than a million dollars are reimbursed to Companion by AMS, the employer. Eighty percent of the claims are one million or less, which means Companion takes on no risk of loss for eighty percent of the claims. This is especially true as Companion will take collateral to protect itself from AMS not paying for the claims. [p1238: 14-17] Companion only has risk for claims in excess of one million dollars. However, Companion transfers all its risks for claims between one million and five million dollars to Dallas National via the reinsurance agreement. Other reinsurance is provided for claims between five and thirty million dollars. There is no reinsurance for claims over thirty million dollars; this is the risk that Companion retains. The Office is not saying there is any prohibition to such an agreement with this high deductible policy, *so long as* the transfer of risk via the reinsurance agreement, if it is in excess of 50 percent of the risk, is made to an authorized or approved insurer. In this instance if the transfer involves in excess of 50 percent of the risk, it violates s. 624.404(4), Florida Statutes, as Dallas National was neither authorized nor approved.

65. The question therefore is, "When the statute uses the phrase "risk of loss" does it include the credit risk, that is the risk that AMS won't pay its deductible notwithstanding there is collateral, or does it include only the true risk of loss (insurance risk) and not the credit risk. The Office's position was stated clearly by its representative, Steve Szypula, who

testified, "The risk of loss is something that Companion would charge premium to cover so that they could pay claims that occurred for that risk of loss." The risk of loss for Dallas National, therefore, is for the claims in between one and five million dollars. For 80% of the claims, those under one million dollars, the risk of loss remains with AMS, the employer. (1239:1-8; 1244:19-23) It never is a risk of Companion. Risk of loss means true risk, insurance risk, and not credit risk.

66. The next question is whether claims between one and five million dollars (the risk transferred to Dallas National) are *more than 50 percent* of the claims of one million dollars or more (the risk taken by Companion). This tells us whether Companion is transferring more than 50 percent of its risk to Dallas National. What is needed is a number that can be used to show what the "risk" is, that is, to some way quantify the risk so we can do the math. There is a way. The risk is quantified by looking at the premium. Steve Szypula testified that the financial reports of Companion show that of the 39 million dollars Companion received in premium from AMS, the employer, for the risk they took on the policy, that is, for claims in excess of one million dollars, they paid 27 million to Dallas National to transfer to Dallas National the risk for claims between one and five million dollars. (1242:22 to1243:1)

67. The Recommended Order completely misapprehends the Office's position regarding "premium" and "risk." The Office's position is not that premium is a synonym for risk or has the same meaning, nor did its representative testify it was. Rather, premium is a good *indicator* of the risk that is being transferred. When Companion earns 39 million premium dollars for taking on risk for those claims in excess of one million dollars, and then transfers 27 million of those premium dollars, almost 70 percent, to Dallas National so that Dallas National will take the risk for claims between one and five million dollars, the only

reasonable conclusion is that Companion has transferred at least 70 percent, certainly in excess of 50 percent of its risk, to Dallas National. Consequently, the arrangement between Companion and Dallas National involved fronting, as asserted by the Office in its denial letter.

68. The Office is entitled to great deference in its interpretation of the statutes it administers and to define such terms as are found within the statute. *BellSouth Telecommunications, Inc. v. Johnson*, 708 So.2d 594, 596 (Fla. 1998). In *Pershing Industries, Inc. v. Department of Banking and Finance*, 591 So 2d. 991, 993 (Fla. 1st DCA 1991) the First DCA wrote, "It is axiomatic that an agency's construction of its governing statutes and rules will be upheld unless clearly erroneous... If an agency's interpretation is one of several permissible interpretations, it must be upheld despite the existence of reasonable alternatives." See, also, *Fortune Ins. Co. v. Department of Insurance*, 644 So.2d 312 (Fla. 1st DCA 1995).

69. The Office's exceptions to Conclusions of Law 93 through 100 addressing the issue of fronting are accepted and those eight Conclusions of Law are rejected and are replaced by 58 to 68, above.

70. The Office has substantive jurisdiction over section 624.404, Florida Statutes. The ALJ's Conclusions of Law regarding this statute misstate the Office's interpretation. The interpretation of the Office as set forth above and at hearing is as reasonable or more reasonable than the interpretation given this statute by the ALJ.

71. The Office excepts to Conclusion of Law 101 in which the AJL incorrectly places the burden of proof on the Office to prove that Dallas National had skewed its rates and claims statistics. Joseph Boor, an actuary witness for the Office, testified at length as to this. (1290-1342) The Office presented competent substantial evidence that this had occurred. (*See*,

Finding of Fact 52). Once that happened, the burden shifted to Dallas National to prove that it had not occurred. Dallas National did not meet this burden.

72. The Office excepts to Conclusion of Law 102 in which the ALJ incorrectly states the Office fined certain insurers for actions taken by their third party administrators. There is no competent substantial evidence of this having occurred, because it is the Division of Workers' Compensation of the Department of Financial Services that would fine these insurers. This exception is granted.

73. The Office excepts to Conclusion of Law 103 as it attributes power to the Office not possessed by the Office. Adjusters are licensed by the Department of Financial Services (DFS). Further, the Office cannot discipline third party administrators for workers' compensation. This Conclusion of Law is modified to correct this legal misstatement.

74. The exception of the Office to the final sentence in Conclusion of Law 103 is accepted. If the use by an applicant of certain PEO's and third party administrators results in a finding by the Office that would trigger a denial pursuant to statute, then the denial would be not only reasonable, but also compulsory. (s. 624.404(3)(a), Florida Statutes, reads, in pertinent part, "The Office *shall not grant* ... authority ...) emphasis added. This is especially true when there were other instances, as there are in this denial, showing the principals of Dallas National to be incompetent or untrustworthy. Section 624.404, Florida Statutes, is within the substantive jurisdiction of the Office, and this interpretation of the statute is as or more reasonable than that of the ALJ.

75. The Office excepts to Conclusion of Law 104, in which the ALJ finds it incorrect for the Office to find Mr. Wood, a 100 percent owner of AMS and Aspen, untrustworthy because of the "minimal failures" of these two entities in other states. This

exception is accepted. First, the undersigned does not find these failures to be minimal: AMS operated in Florida without workers' compensation insurance, AMS was required to cease doing business under a "stop work" order, Aspen illegally adjusted claims for Providence, the 2005 audit by the Division of Workers' Compensation showed a "no license" period and late payments to claimants, the same problem of late payments existed in 2007 and the problem as of the last audit still has not been resolved, Ernst and Young found significant underwriting flaws, and Mr. Wood had failed to acknowledge the past problems of his companies while testifying under oath. Second, the undersigned attributes these failures to Mr. Wood, the 100 percent owner of AMS and Aspen, and not coincidentally the 100% owner of Dallas National, the applicant in this matter. The Office has substantive jurisdiction over s. 624.404(3)(a), Florida Statutes, and finds that the interpretation set forth herein is as or more reasonable than that of the ALJ.

76. The Office excepts to Conclusion of Law 105. The ALJ concluded that the gap in coverage relating to Bankers "was fully explained" and does not support a conclusion of incompetency. The undersigned concludes that the Office should take into account in its determination as to licensure that the gap in coverage and the attending violations that occurred are evidence supporting a finding of incompetency on the part of Mr. Wood. It is the undersigned's position that a violation of statute occurred while Mr. Wood was in control, and it is one part of the analysis the Office has to make in its determination of whether Mr. Wood and his management team are competent and trustworthy and should be allowed to run an insurance company in the State of Florida. The Office's exception to this conclusion is accepted and it is modified in accord. The Office has substantive jurisdiction over section

624.404(3)(a), Florida Statutes, and finds that the interpretation set forth is as or more reasonable than that of the ALJ.

77. The Office excepts to Conclusion of Law 106 in which the ALJ concludes the numerous regulatory issues that have involved companies run by Mr. Wood are "remote in time" and because of that and that "they arose prior to Dallas Fire being taken over by Mr. Wood or before it was fully transitioned into Dallas National" speculates they are unlikely to happen again. The Office's exception is accepted. The past regulatory actions taken against Dallas Fire, Dallas National, AMS, and Aspen by five different states, Texas, California, Florida, Tennessee and Arkansas occurred in the years 2002 to 2006. Competent substantial evidence shows Mr. Wood owned and actively managed these companies when the regulatory actions occurred. The problems testified to by Ms. Bernard, regarding regulatory actions taken by the State of California, have *still* not been resolved. The incidences complained of by the Office in its denial letter are neither remote in time, nor is there any competent substantial evidence that they will not recur if Mr. Wood and Dallas National are given authority to operate in Florida. This information is relevant and was correctly used by the Office pursuant to s. 624.404 in denying the application of Dallas National. The Office has substantive jurisdiction over s. 624.404(3)(a) and finds that the interpretation set forth is as or more reasonable than that of the ALJ.

78. The Office excepts to Conclusion of Law 107 in several particulars, but they all come down to one issue, does the evidence support the denial. The ALJ basically attempts to explain away the findings that point to denial being the correct action by the Office, and to create reasons why a license should be granted. First, although the ALJ agrees the underwriting problems in California's exams "deserve attention" she feels that more important than

continued findings by the State of California of problems is that there were *less* problems at each exam. The undersigned does not feel that the minimal improvement shown is enough to show entitlement to licensure. Second, the ALJ feels licensure should be granted as Texas has "repeatedly approved the underwriting" notwithstanding they observed the same problems noted by Ms. Bernard of California. As stated above, there is no competent substantial evidence that Texas has approved the *underwriting* of Dallas National. The one examination by Texas in the record was a financial exam; there is no competent substantial evidence Texas has examined the underwriting of Dallas National. Furthermore, the undersigned does not interpret s. 624.304 as directing the Office to review whether other states have licensed an applicant or how other states feel about the issues the Office has determined are problematic in an applicant. The other factors enumerated by the ALJ in this conclusion supporting her recommendation of licensure are similarly not relevant under the Office's interpretation of s. 624.304, and this conclusion is rejected. The Office has substantive jurisdiction over s. 624.404 and finds that the interpretation set forth is as or more reasonable than that of the ALJ.

79. The undersigned concludes the following grounds exist for denying the license of Dallas National as a property and casualty insurer in the State of Florida:

a. The facts set out in 1.a. of the denial letter relating to activities of Mr. Wood relative to Aspen Administrators and the other PEO's occurred and show a hazardous practice that is harmful to the workers in the State of Florida. It also shows a lack of trustworthiness and competence on the part of Mr. Wood. It further evidences bad faith on the part of Mr. Wood.

b. The facts set out in 1.b. of the denial letter relating to the business arrangement between Companion and Dallas National occurred and involve unlawful fronting, in violation of section 624.404(4), Florida Statutes.

c. The facts set out in 1.c. of the denial letter relating to the regulatory examinations in other states occurred and show activities by Dallas National and other entities under the control of Mr. Wood that evidence a lack of trustworthiness and competence on the part of Mr. Wood and the management of Dallas National, and the affiliated entities.

d. Dallas National failed to prove to the Office that it can reasonably expect Mr. Wood or Dallas National to act scrupulously in accordance with Florida law.

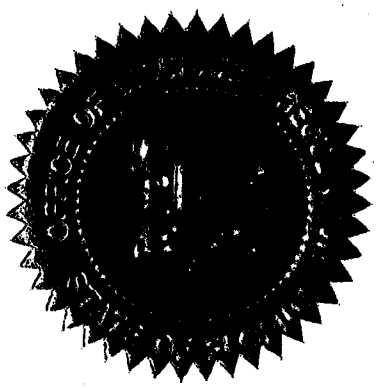
e. Because of the lack of a "firewall" or other indicia of arms length dealings between Dallas National and its insureds, there exists a hazardous business practice that could leave injured Florida employees without full compensation for their injuries.

80. The Findings of Fact and Conclusions of Law in the Recommended Order are adopted as modified herein.

81. The undersigned concludes those grounds support the denial issued by the Office to the application of Dallas National for licensure, pursuant to section 6224.404.

Based upon the foregoing Findings of Fact and Conclusions of Law, the application for licensure of Dallas National Insurance Company as a property and casualty insurer in the State of Florida is DENIED.

DONE and ORDERED this 19th day of March, 2010.



KEVIN M. McCARTY, Commissioner
Office of Insurance Regulation

Elenita Gomez
Legal Services Office
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, FL 32399-4206

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a Notice of Appeal with the General Counsel, acting as Agency Clerk, 200 East Gaines Street, 612 Larson Building, Tallahassee, FL 32399-0333 and a copy of the same and filing fee, with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.