STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DALLAS NATIONAL INSURANCE COMPANY,	)	
Petitioner,	)	
vs.	)	Case No. 08-5624
OFFICE OF INSURANCE REGULATION,	)	
Respondent.	)	

RECOMMENDED ORDER

Upon due notice, a disputed-fact hearing was held in this case August 10, through 14, August 31, and September 1, 2009, in Tallahassee, Florida, before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: J. Riley Davis, Esquire
Edward L. Kutter, Esquire
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For Respondent: Elenita Gomez, Esquire
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Office of Insurance Regulation
200 East Gaines Street, Room 612
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STATEMENT OF THE ISSUE

Whether, upon proof of eligibility, pursuant to Sections 624.401 and 624.404, Florida Statutes, Petitioner may be granted a Certificate of Authority to transact business as a property and casualty insurer in the State of Florida.

PRELIMINARY STATEMENT

Petitioner was denied a certificate of authority by a letter dated September 17, 2008.

The reasons given in the September 17, 2008, letter of denial all hinge on past methods of dealing by Petitioner corporation, its predecessors and affiliates, and Charles David Wood. It reads, in pertinent part, as follows:

> 1. [After quoting Section 624.404(3)(a)] 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.
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> 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.

* * *

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. . . .

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.

* * *

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."
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> * * *
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> 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 back to Section 624.404(3)(a). (Bracketed material supplied)

Petitioner timely requested a disputed-fact hearing.

On November 10, 2008, the cause was referred to the Division of Administrative Hearings. The file of the Division reflects all pleadings and Division notices and orders.

At final hearing, Petitioner presented the oral testimony of Chris Nehls, Laura Wehrle, James Pickens, Charles David Wood, Jr., William Reid, Ray Neff, and Robert Meyer, and had 12 exhibits admitted in evidence.

Respondent presented the oral testimony of Alison Barber, Susan Bernard, Stephen Yon, Robin Westcott, Steve Szypula, Joseph Boor, and Belinda Miller, and had nine exhibits admitted in evidence. Three additional exhibits were proffered.

Five joint exhibits were also admitted in evidence.

The exhibits contain multiple pages and sub-parts.

An eleven-volume Transcript, totaling 1525 pages, was filed on September 22, 2009.

Each party timely-filed its respective Proposed Recommended Order on November 5, 2009, as provided for by the stipulated extended timeframe and appropriate Order.

FINDINGS OF FACT

1. Petitioner Dallas National Insurance Company (Dallas National) is a Stock Insurance Company, domiciled in Texas, with headquarters in Dallas, Texas. It writes predominantly small business liability insurance and workers' compensation

insurance, both of which fall in the property and casualty classification of insurance, generally.

2. Respondent Office of Insurance Regulation (OIR) is the State Agency responsible for licensing and regulating insurance in Florida. Absent a Florida license, Petitioner Dallas National cannot legally write or sell insurance in this state.

3. Dallas National is a successor in interest to Dallas Fire Insurance Company (Dallas Fire) and California Indemnity Insurance Company (California Indemnity).

4. California Indemnity was previously licensed to do business in Florida. Its license to do business in Florida was revoked by OIR in 2006, while Dallas Fire and California Indemnity were transitioning into Dallas National, as more fully described infra.

5. In 2006, Petitioner Dallas National filed an application for a certificate of authority as a foreign property and casualty insurer to write lines of workers' compensation and employer’s liability insurance in Florida. That application was denied on December 1, 2006. Petitioner reapplied for a Florida license in 2008, and was denied by a letter from Respondent, dated September 17, 2008. It is this letter and present application and denial that are at issue herein. The September 17, 2008, denial letter incorporated parts of the

earlier December 1, 2006, denial letter. (See Preliminary Statement).

6. Dallas Fire was a property and casualty insurer authorized to do business in Texas and Oklahoma, which was acquired by Charles David Wood in July 2002.

7. In December 2003, Dallas Fire, by consent of Mr. Wood and its Board of Directors, was placed under administrative supervision by the Texas Office of Insurance Regulation. By mutual agreement, the Texas regulatory agency's oversight was not made public, and Mr. Wood continued to manage the company through his own staff, while taking instruction and advice from the Texas regulator. Texas lifted its oversight after approximately 19 months. During this period of time, and for years before and after, Betty Patterson was a Texas Deputy Commissioner of Insurance.

8. At about the same time in 2002, that Mr. Wood accepted Texas' regulatory oversight, a search was conducted and Chris Nehls was ultimately selected as a replacement corporate president for the company that ultimately became Dallas National.

9. Mr. Nehls continues as president of Dallas National and has final responsibility for all operations, underwritings, claims handling, profits and losses, accounting and finance, and any of the operation and technical functions within the company.

He had oversight of Dallas National's successive license applications to OIR in 2006 and 2008.

10. In 2005-2006, Mr. Wood, with approval by the Texas and California insurance regulatory agencies, acquired California Indemnity, a property and casualty insurer licensed in the State of California and 30 other states.

11. When purchased, California Indemnity had a number of old regulatory actions pending against it by California's Department of Insurance. California's insurance regulator's agreement/acquiescense in Mr. Wood's purchase of California Indemnity was conditioned on (1) Mr. Wood's transferring California Indemnity to Texas, where it would be merged with Dallas Fire to become Dallas National; (2) Dallas National's removing the word "California" from its corporate name by December 31, 2005; and (3) the re-domesticated company's not writing any insurance in California until California's insurance regulatory agency approved. This agreement has kept Dallas National under California regulatory scrutiny since that time. Dallas National continues to invite California to inspect its offices, its books, and its business activities, but Dallas National has yet to formally petition for a license in California.[1/]

12. On January 2, 2006, effective December 31, 2005, the merger of Dallas Fire and California Indemnity into Dallas

National Insurance Company was approved by the Texas Department of Insurance. This effected the name change in a timely manner under Dallas National's agreement with California.

13. However, Dallas National did not fulfill the letter of its agreement with the California regulator, because the paperwork for finally divesting itself of the word "California" was not completed and filed with California until September 12, 2007. California has neither prosecuted nor fined Dallas National for this delay, and despite a 2003, California violation by Dallas Fire, continues to be willing to work with Dallas National towards California licensure. (Cf. Findings of Fact 66-70).

14. At the present time, Dallas National is licensed as a property and casualty insurer in 39 states and the District of Columbia.

15. Respondent correctly points out that because Dallas National acquired approximately 30 states' licenses at the same time it re-domesticated California Indemnity and renamed Dallas Fire, Dallas National and Mr. Wood have not proven themselves in the same way as if Dallas National had acquired 30 new licenses on its own. Even so, it appears that, since 2003, at least six states have found Dallas National, and derivatively Mr. Wood, to be honest, competent, and trustworthy enough for licensing purposes.

16. In direct contrast, OIR has pronounced Mr. Wood and Dallas National not sufficiently honest, competent, and trustworthy to be licensed to write insurance in Florida. (See Preliminary Statement).

17. After forming Dallas National in 2002-2003, its principals concentrated on a business model wherein Dallas National would provide workers' compensation insurance coverage for the "employee staff leasing companies" a/k/a "professional employer organizations" (PEOs) owned by Mr. Wood. Petitioner's business theory is that Dallas National benefits from more timely and effective underwriting and claims processing because of its access to a PEO's payroll and computer systems and otherwise benefits from close communication with staff leasing personnel.

18. Mr. Wood owns PEOs operating in many of the states in which Dallas National does business. He opened his first PEO in 1991, and his first PEO in Florida in 1998. AMS Staff Leasing, Inc., AMS Staff Leasing II, Inc., and Equity Group Leasing I, Inc., are PEOs catering to different types of small businesses and authorized and licensed to do business in Florida. They are all owned 100 per cent by Mr. Wood. AMS Staff Leasing, Inc., does most of the staff leasing business in Florida. (Hereafter, AMS Staff Leasing Inc., and AMS Staff Leasing II, Inc., will be

referred to as “AMS” and Equity Group Leasing I, Inc., will be referred to as “Equity.”)

19. Companion Property and Casualty Insurance Company (Companion) is domiciled in South Carolina and is an OIR-authorized property and casualty insurer in Florida. Companion currently provides workers’ compensation coverage to Mr. Wood’s Florida PEOs, AMS and Equity.

20. At the present time, DNIC Insurance Holdings, Inc., a holding company owned 100 per cent by Mr. Wood, owns Jefferson Life Insurance Company and, through another entity, owns Petitioner herein, Dallas National Insurance Company.

21. At the present time, Aspen Administrators, Inc. (Aspen), is a Florida-licensed “third party administrator.” Aspen is owned 100 per cent by Mr. Wood. Aspen now processes workers’ compensation claims for Companion in Florida. Previously, it processed claims for Providence Property and Casualty Insurance Company (Providence) in Florida. Aspen also handles workers’ compensation claims on behalf of Dallas National in a number of other jurisdictions.

22. Dallas National or Companion can cease to do business with Aspen and hire another third party administrator at any time. However, due to Mr. Wood’s and Dallas National’s preferred business model, that is an unlikely prospect for Dallas National.

23. Florida PEOs provide a valuable service for small business owners. A PEO can obtain affordable workers' compensation coverage for a large group of employees and lease those employees to several small businesses which otherwise could not operate. PEOs, like other employers, frequently contract for provided bundled services by third party administrators who perform all the claims handling, payroll tax, human resources services, and other personnel services for the PEO-employer.

24. In Florida, as in most states, a PEO or staff leasing company must obtain workers' compensation coverage through a master policy covering all employees the PEO employs and then leases to small businesses. California has no PEO/staff leasing law, and individual workers' compensation policies must be purchased by the PEO to cover each entity to whom the PEO leases employees. This difference has caused both California and Dallas Fire/Dallas National some problems in the past. (See Finding of Fact 67).

25. Although common ownership of an insurer and affiliated PEOs is not prohibited by Florida statute or rule, and although Lion Insurance Company, Southern Eagle Insurance Company, and Frank Crum Insurance Company are all licensed in Florida as property and casualty insurers providing workers' compensation coverage to employers located in Florida, and although each of these companies, like Petitioner Dallas National, is owned by a

single person or entity and is affiliated with a PEO which the 100 per cent individually-owned insurer insures in the State of Florida, OIR is concerned about the inter-relationships of the various entities in this case and with the fact that, as 100 per cent shareholder of all of those entities, Mr. Wood is the "controlling shareholder." OIR witnesses testified that the Agency views it as critical that a PEO and its insurer be separated so that claims are handled and reported properly. OIR also asserted that all three of the other similarly structured companies and affiliates differ from Dallas National because they use unaffiliated third party administrators, but that was demonstrated only as to one such insurer, a start-up company with no compliance history.

26. PEOs obtain their own Florida licenses, subject to regulatory oversight. (See §§ 468.524—468.535, Fla. Stat.). Third party administrators obtain their own Florida licenses, subject to regulatory oversight. (See §§ 626.8805 and 626.891, Fla. Stat.). Insurance companies obtain their own Florida licenses, subject to regulatory oversight. (See Conclusions of Law).

27. No Florida statute or rule prohibits 100 percent ownership of the stock of an insurance company by a single individual.

28. In short, there is no Florida statute or rule that prohibits Petitioner's business model, but it is clear from the testimony, and the candor and demeanor of OIR's witnesses while testifying, that although the Legislature has authorized PEOs/staff leasing companies, OIR's in-house witnesses see them as opportunities for abuse, and they simply do not like the concept of PEOs, which have been a legitimate business model in Florida since the 1990's.

29. Having eliminated those statements attributed to Agency employees in the course of litigation settlement negotiations and relying only upon their testimony at the instant hearing and statements made during the course of the two licensing processes related to this particular Petitioner, which statements reasonably constitute either Agency admissions against interest or the Agency's rationale in the licensing process, it is clear that Respondent's reviewers are holding any entity associated with Mr. Wood or with PEOs to a higher, or at least different, standard than other applicants for a Florida workers' compensation insurance carrier's license.[2/]

30. OIR's Property and Casualty Financial Oversight Division's review of the current Dallas National application raised concerns about Dallas National's relationship with its affiliated PEOs.

31. OIR wants assurance that there are sufficient checks and balances between the affiliated entities. "An adequate firewall," was the term repeatedly used. What the desired

"firewall" is supposed to accomplish was explained only to the extent that the Agency wanted to be certain that injured workers' compensation claimants (employed by AMS) would be timely and correctly paid their workers' compensation (indemnity), that their medical bills (medical) would be timely and correctly paid to their medical practitioners, and that Dallas National's underwriting practices must provide sufficient reserves to cover the "long tail" of workers' compensation injuries.[3/] However, there is no OIR or Division of Workers' Compensation rule defining an adequate "firewall." The Agency just believes it is safer, or at least easier, to deny an out-of-state application than it is to monitor a questionable non-domiciliary carrier after licensing, even though Florida can, and does, audit out-of-state insurers.

32. In 2006, Florida cancelled California Indemnity's license to do business in Florida and required that Dallas National re-apply in its own name, which Dallas National promptly did.

33. On December 1, 2006, Respondent OIR denied Petitioner Dallas National's first application for Florida licensure. A formal proceeding under Section 120.57(1), Florida Statutes, ensued, and Petitioner Dallas National ultimately dismissed that proceeding and withdrew its 2006 application on the belief that if Dallas National reconstituted its Board of Directors with persons who were not already employees of Dallas National, OIR

would grant its next application for a certificate of authority.[4/]

34. In 2007, Dallas National reconstituted its Board of Directors. All current members are highly qualified in the field of insurance. None have any adverse criminal or regulatory history. Five-ninths of the Board (a majority) are not Dallas National employees and not previously associated with any Wood enterprise. These new members are Laura Wehrle, Mike Pickens, Mick Thompson, Marta Prado Butterworth, and Betty Patterson. Ms. Wehrle was a senior vice-president of Liberty Mutual Insurance Company, which at the time of her service there had the largest book of workers' compensation business in Florida. Ms. Wehrle's area of expertise within Liberty Mutual was PEOs. Mike Pickens is the former Arkansas Commissioner of Insurance, who described Petitioner's prior problems in that state as extremely minor. (In 2002, while Mr. Pickens was Arkansas Insurance Commissioner, Arkansas disciplined AMS for operating without a license for eight months). Mick Thompson is the current Oklahoma Commissioner of Banking. Marta Prado Butterworth is a successful, self-made business-woman in the health care industry. Betty Patterson was the Texas Deputy Commissioner of Insurance who oversaw Dallas National and who graduated Dallas National from that agency's oversight.

35. Ms. Patterson and Mr. Pickens have been accredited, active members of the National Association of Insurance Commissioners (NAIC) for many years. Ms. Patterson is a consistent award-winner in that society of state regulators.

Both Patterson and Pickens joined Dallas National's Board quite some time after the end of their terms of office in their respective states (after retirement for Ms. Patterson) and well after Dallas National had been returned to "business as usual" by their respective regulatory agencies.

36. Charles David Wood is Chairman of the Board of Dallas National, but he is currently semi-retired and has been semi-retired from all of his businesses since early 2006. Neither he, the new five Board members, nor Mr. Nehls, who also currently sits on the Board, has ever declared bankruptcy or been arrested, indicted, or convicted of any crime. There also is no evidence that either of the other two members of the Board, who have personal and business relationships with Mr. Wood, has any adverse bankruptcy, criminal, or regulatory history.

37. The Board members who testified herein vigorously defended their own integrity and that of Mr. Wood. All described Mr. Wood as the equivalent of a member emeritus or a supportive, but non-initiating, member of the Board who attends meetings on an irregular basis. All agreed that, with the exception of Mr. Wood, Dallas National now has a dynamic Board that has considerable regular "hands on" expertise and involvement in making Dallas National a better insurer, which is compliant with all regulatory agencies in each of the 39

different regulatory environments where Dallas National operates. None has found that any information has been withheld from the Board by any of Mr. Wood's enterprises. None has found it difficult to get any information sought from Dallas National employees.

38. Except for Mr. Wood's presence on the Board, the credentials and integrity of the new Board members are apparently not an issue for OIR, but OIR's regulators are concerned because Dallas National's by-laws permit removal of any director by a majority vote of the shareholders (that is, unilaterally by Mr. Wood) at any special meeting of the Board called for that purpose. There is no reason to suppose this is a situation unique to Dallas National. (See Finding of Fact 25).

39. OIR also considers it "problematic" that several of Mr. Wood's companies are housed on several floors of the same building at the same corporate address in Dallas Texas. Of particular concern were the first-hand observations of Susan Bernard, Bureau Chief of the San Francisco and Sacramento Offices of the Field Examination Division of the California Department of Insurance. She observed that administrators for Aspen were located in an open area of the same floor (or perhaps two floors below) Dallas National's offices; that AMS employees were on the same floor as Dallas National; and that all shared

the same computer systems. Added to other factors, Ms. Bernard and OIR interpret the foregoing as amounting to “comingling" and interactions not at “arm’s-length.” The portion of Aspen or AMS located in the same Dallas office building with Dallas National probably is more than just AMS’s and Aspen’s Texas operations, (see infra) but clearly, AMS and Aspen have offices in Florida and in other states in which they do business.

40. Both Ms. Bernard and Stephen Yon, Senior Management Analyst II with the Florida Division of Workers’ Compensation, now part of OIR, testified that it was hard to distinguish where Aspen or AMS left off and Dallas National began in the various computer functions in the Dallas offices, but obviously, both regulators were eventually able to make distinctions, because each prepared reports based on doing so, and Mr. Yon was able to assess Florida fines accordingly. (See Findings of Fact 53-56).

41. That said, computers undoubtedly link Dallas National with all its affiliates in every state, and there is no reason to suppose that computers do not link other insurance companies, to some degree at least, with the employers they insure, with their insured PEOs (such as AMS) if they have them, and possibly with the third party administrators (such as Aspen) for those PEOs.

42. Aspen’s past reporting problems are a big part of OIR’s denial letter for Dallas National’s current application,

as are violations of the Florida Workers' Compensation Statute by both AMS and Aspen (see Findings of Fact 52-56), but no significant comparison was made at hearing between Aspen's historical past errors and omissions and the historical accuracy of any other third party administrators. Also, no significant comparison was shown with regard to AMS' past errors and omissions and those of any other PEOs.

43. Another of OIR's reasons for denying Dallas National's current application was the alleged incompetency, untrustworthiness and/or "bad faith" performance of Mr. Wood in relation to a 16 days' gap of workers' compensation coverage of AMS in Florida which occurred in 2002.

44. Over the years, AMS has sequentially obtained workers' compensation coverage in Florida from several insurance companies, among them Reliance National Insurance Company, CNA Insurance Company (CNA), Insurance Companies of America (ICA), Providence, and Companion.

45. Relevant to OIR's mistrust of Mr. Wood and its concerns with the 2002 gap of AMS coverage, were a one-million dollar deductible workers' compensation policy for AMS issued by CNA prior to Mr. Wood's acquisition of Dallas Fire in July 2002. In the last quarter of 2001, CNA had advised AMS that CNA was preparing to stop insuring PEOs but that AMS' CNA policy would be renewed for the period of September 1, 2001, through

September 1, 2002, without cancellation during that period, but without renewal at its end. Nonetheless, in late February, or in March 2002, CNA issued a 30-day cancellation notice to AMS. AMS sued CNA, and the suit was settled with an agreement for CNA to continue workers' compensation coverage in Florida for AMS through the end of June 2002.

46. To eliminate any potential for a gap in coverage, AMS attempted to arrange for a replacement policy to be issued by Bankers Insurance Company (Bankers), based in St. Petersburg, Florida. At all times material, Bankers was a Florida insurer licensed by OIR. As part of this 2002 transaction, Bankers essentially mortgaged or pledged a stock it owned to Mr. Wood as security or collateral for a five-million dollar loan from him, and in turn, Bankers was to provide workers' compensation coverage to AMS as of June 20, 2002, so that AMS would have no gap in coverage when CNA pulled out. However, Bankers never issued a workers' compensation policy to AMS, and OIR submits that a "handshake deal" with Bankers demonstrated Mr. Wood's bad business judgment.[5/]

47. AMS next attempted to obtain its workers' compensation coverage from Guerling Insurance Company. Guerling required a five-million dollar down payment of premium to issue a certificate of insurance to AMS for a policy to take effect at midnight on June 20, 2002. The down payment was made, but after

relying for two weeks on the certificate of coverage obtained, AMS (in the persons of Mr. Wood and his personal attorney Mr. Reid) discovered that the certificate, purportedly from Guerling, was a fake.[6/]

48. As a result of the fake certificate of insurance, AMS had operated in Florida during a 16-day gap in its workers' compensation coverage, so even though Mr. Wood personally paid all workers' compensation claims which arose during the gap, AMS, as the employer of those workers' compensation claimants, was required to cease business in Florida under a Division of Workers' Compensation "stop work order" until AMS had obtained new Florida workers' compensation coverage from yet another source and also had to pay a mandatory $189,000, fine to the Division of Workers' Compensation, based on one-and-a-half times the premium AMS would have had to pay if it had been covered. Dallas National was not a party to any of the "gap" events.

49. Settlements were reached with CNA and a lawsuit recovered Mr. Wood's money from Bankers. Dallas National was not a party to any of the lawsuits.

50. All of the foregoing events involving CNA, Bankers, Guerling Insurance, and Mr. Wood (with the exception of the ultimate recovery of Mr. Wood's money) occurred in June-July 2002. The Texas regulatory agency did not approve Mr. Wood's acquisition of Dallas Fire until later. See supra.

51. Given the timing of events and the extraordinary efforts of AMS and Mr. Wood to ensure uninterrupted workers' compensation coverage for AMS, plus Mr. Wood's covering AMS' losses to workers' compensation claimants out of his own pocket, the undersigned is not persuaded that AMS, Dallas National, Mr. Wood, or Mr. Reid evidenced any untrustworthiness, bad faith, or incompetence as alleged by OIR in relationship to these 2002, events.

52. In 2005, while Providence was AMS' workers' compensation carrier, the third party administrator, Aspen, which was not then incorporated and licensed to adjust claims in Florida, illegally adjusted claims for Providence.

53. Stephen Yon, Senior Management Analyst II, is aware that Aspen is now a Florida-licensed third party administrator servicing several workers' compensation insurance carriers doing business in Florida. However, Mr. Yon's 2005 audit of Aspen's processing of claims for Providence showed a "no license" period and also showed late filings of various workers' compensation forms with the Division and late payments to claimants. A mandatory fine was imposed. The same situation with late form filings and late payments was found by Mr. Yon's audits of Aspen, working for Providence and then Companion in 2007, and fines were again paid. Although efforts have been made in 2007-2008, by Dallas National, through Board member Ms. Wehrle, to create a diary system that would reduce these timeliness errors, there has been little improvement to date. Apparently, there were 10

filings that were only one day late out of 68 filed, but other reportage and/or payments were more delayed and the Agency views all these activities as "hazardous practices."

54. Florida law requires that the employer (PEO) be active and participating in some of the reportage, and the essence of a third party administrator system is that the errors and omissions of the third party administrator relate back to the insurance carrier. In all of the foregoing incidents, AMS was the employer and Aspen was handling claims for either Providence or Companion, not Dallas National.

55. Insurance carriers' failures to file forms timely or to pay benefits timely as previously related are common in the processing of Florida workers' compensation insurance claims. Workers' compensation claimants are supposed to receive their first indemnity checks within 14 days, and some reports must be filed within seven days, and others within 21 days, of the injury, not just within a period following a formal claim (see Section 440.185, Florida Statutes) and the Division requires 95 percent accuracy. (See § 440.20 (8)(b), Fla. Stat.). Fines on these bases are mostly mandatory, but the Division of Workers' Compensation may distinguish between willful and non-willful violations. (See § 440.525, Fla. Stat.). It is unclear which type of fine(s) were imposed on Aspen, and thus the respective insurance companies, for the foregoing failures. That said, it appears that, contrary to Mr. Yon's testimony that the only way to discipline an insurer, PEO, or third party administrator is

with a fine, other disciplinary action might be available against Aspen (see §§ 626.8805 and 626.891, Fla. Stat.), but Florida did not take any other disciplinary action, even though AMS/Aspen has never met the statutory goal of 95 per cent timely payments and has vacillated between 70 and 80 per cent for three years. The failure to pursue any regulatory remedy against AMS and/or Aspen, such as revoking their licenses, suggests that these errors are not truly significant to the Agency.

56. Companion is PEO/Employer AMS' current workers' compensation carrier. AMS, while insured by Companion, paid some first day medical claims, because Texas allows an employer to pay on-site first aid claims, and the company's operatives assumed that such payments were also permitted in Florida. They were wrong. Florida actually requires that all workers' compensation claims be paid by the insurance carrier from the first day. AMS stopped its illegal procedure when informed of the violation by the Florida Division of Workers' Compensation. Companion was assessed a fine of only $2500, based on the claims adjusted by AMS. Mr. Yon agreed it was acceptable to the Agency to move licensed AMS adjusters to Aspen, so as to resolve the illegal adjusting problem. There have been no violations of this sort for two years. Companion now pays all medical bills.

57. OIR asserts that Messrs. Wood and Nehls, personally, and Dallas National as a corporate applicant, have lied to OIR in each of the two successive application processes.

58. With regard to the 2006 application, OIR conducted an evidentiary hearing. The transcript thereof is in evidence and

although there is a question-and-answer format in which Mr. Wood, Mr. Nehls, and others answered questions, most of the "hearing" is more in the nature of a formalized marathon conversation, which moves from topic to topic with several people chiming in to clarify what OIR's hearing officer was seeking by a question or to answer the question, or with the hearing officer trying to clarify what Dallas National's witnesses meant by their answers. Under these circumstances, someone not involved in a company's day-to-day operation might reasonably fail to answer some questions correctly or fail to correct or elaborate on his answers as the proceeding moved on.

59. Nonetheless, clearly, Mr. Wood incorrectly answered some questions put to him at that hearing by Florida regulators. He testified that with regard to any and all S&P companies with which he was affiliated (1) they had not failed to hold an annual shareholders' meeting; (2) had not charged unapproved rates; (3) had not operated in any state without a license; (4) had not continued in business after losing workers' compensation coverage; (5) had not paid claims from collateral funds; and (6) had not become a party to any service agreement including re-insurance, which was not reported to the state of domicile on the appropriate state licensure.

60. At the instant hearing herein, it was shown that at some point before, or while, Dallas National was under Texas oversight in 2002-2003, Mr. Wood, indeed, did not, as required

by law, meet with himself for regular shareholders' meetings, so his answer to question (1) should have been "yes." It was shown that with regard to the situation with CNA, Bankers, and Guerling, in 2002 (see Findings of Fact 45-51) his answers to questions (3), (4) and (5) should have been "yes." (See also Findings of Fact 34, 52, and 67, as to reasons that question (3) should have been answered "yes.") However, the instant hearing did not demonstrate that his answers to questions (2) and (6) were clearly wrong.

61. OIR attributed all six negative answers to lack of trustworthiness. Although Mr. Wood unilaterally and voluntarily submitted an affidavit attempting to correct some of his hearing testimony a couple of weeks after the evidentiary hearing, his affidavit does not really clarify or alter his wrong answers to these questions, and it was a serious omission for Mr. Wood to have not acknowledged the problems that Dallas Fire, AMS, and Aspen have had, if he was aware of them, even though they were remote in time.

62. OIR also construes the business plan submitted with Dallas National's 2006 application to be suspect. The application required that Mr. Wood list all the companies he owns, but he failed to list Aspen, third party administrator for AMS and Equity, on a chart and may have failed to list either Aspen or Equity, one of his Florida PEOs, in the space provided

on another page. Mr. Wood testified herein that the omission was an oversight.

63. Mr. Nehls, Petitioner's president, who prepared both applications, testified that the oversight was probably his, and the evidence as a whole supports a finding that Mr. Wood had no current "hands on" administration of either Aspen or Equity in relation to the time of either of Dallas National's applications to OIR and did not prepare either voluminous application, both of which went back and forth with supplements to OIR for a period of time till each was pronounced "complete."

64. Because he signed both applications, OIR views the omission(s) of the companies as a material misrepresentation, reflective of Mr. Wood's lack of trustworthiness, but given the fact that all the companies were listed somewhere in the application papers; the parties' past history, which meant that OIR knew of these companies' probable affiliation with Dallas National and indeed asked questions about them; the due diligence known to be Florida regulators' hallmark; and the testimony of OIR's witnesses that failure to list a company is not an absolute bar to licensing, it is unreasonable to suppose that any plot existed within Dallas National, with Mr. Woods, or with Mr. Nehls to hide these companies or Mr. Wood's affiliations therewith from Florida regulators.

65. OIR also faults Mr. Wood personally for a portion of the current 2008 application, which discusses Dallas National's plans to expand into the California insurance market, claiming that this was also a material misrepresentation since California has not yet approved Dallas National to write insurance in that state. Recognizing that Dallas National remains licensed in California, but is not yet authorized to write insurance there, a situation impossible under Florida's law, and that Mr. Nehls placed discussion of what Dallas National planned to do in California under a heading of the 2008 application which equates with "future business plans," this information was not a material misrepresentation.

66. OIR has doubts about Dallas National's underwriting parameters. For this aspect of the case, OIR relied heavily on the testimony of Susan Bernard. Ms. Bernard was accepted as an expert in California financial and regulatory examinations. Unlike Florida, California does not license PEOs, but like Florida's OIR, California's regulatory agency mistrusts insurers affiliated with PEOs, even though Ms. Bernard was not able to represent that such an affiliation offended California's insurance code.

67. California requires that a PEO obtain a separate workers' compensation policy for each employer to whom it leases employees. (See Finding of Fact 24). In July 2003, Dallas

National was not permitted to sell insurance in California, but Mr. Wood's company, AMS, secured, through another entity, what a California corporation that leased employees from AMS was led to believe was a valid Dallas Fire workers' compensation policy. The policy was disavowed by Dallas Fire, and therefore, the small employer who leased employees from California AMS suffered a gap in coverage in violation of California's Labor Code and its leased employees also were without workers' compensation coverage for that same period. Someone at AMS or at Dallas Fire apparently described the invalid policy or binder as a "test certificate," and California's Insurance Department issued a scathing letter of admonishment to Dallas Fire with the promise of a cease and desist order if Dallas Fire ever again issued such a disingenuous document or wrote insurance in California without Agency approval to do so. 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, but so far as this record is concerned, neither Dallas Fire nor Dallas National has done anything similar since.

68. Ms. Bernard, a Certified Financial Examiner, has performed three onsite visits to Dallas National's Texas headquarters to consider recommending licensure of Dallas National by California. These visits were in August 2006, August 2007, and December 2007. She testified that, based on a

reasonable sample in August 2006, Dallas National's compliance with its own underwriting guidelines was non-existent. Her sampling in August 2007, produced only minimally better adherence to Dallas National's own guidelines, and on that occasion, Dallas National's own accountants, Ernst & Young, also found significant underwriting flaws, while the Texas Department of Insurance approved the underwriting at that time. Her sampling in December 2007, using Dallas National's new underwriting guidelines, again was only slightly better than the last time, but Ms. Bernard conceded that at the same time she audited Dallas National on that occasion, the Texas Department of Insurance was also present and again found Dallas National's underwriting compliance in December 2007, to be acceptable.

69. Ms. Bernard's report at the close of her examination in December 2007, was partially affected by her concern over the proximity of AMS and Dallas National's offices being in a single building and using the same computers (see Findings of Fact 39-41), and her speculation that a 2007 sports event disaster involving a different Wood company could deplete the reserves of Dallas National and all Wood corporations. However, on the basis of Dallas National's failure, at that time, to consistently apply its own underwriting guidelines, Ms. Bernard recommended that California not license Dallas National until Dallas National met all its own underwriting guidelines.

70. Due to California's time and budget constraints, Ms. Bernard has not returned to audit Dallas National since December 2007, despite urgings by Dallas National's Board to do so.

71. In 2008, a Board-authorized underwriting committee spear-headed by Ms. Patterson and Ms. Wehrle completely overhauled Dallas National's underwriting guidelines. Ms. Bernard has not reviewed Dallas National's new underwriting guidelines, and Ms. Wehrle did not elaborate on them in detail. However, there is no current information that these guidelines are not adequate nor that they are not being followed. Since effective underwriting plays into the overall financial picture of an insurance company, the current reports of actuaries and accountants for Dallas National (see infra) would seem to suggest that Dallas National's underwriting is currently adequate.

72. Since Petitioner Dallas National was created out of the merger of California Indemnity and Dallas Fire, Dallas National has employed Milliman, Inc., a prominent, independent actuarial firm with 60 years of experience and a credible reputation. Milliman, Inc., has advised Dallas Fire from the time Mr. Wood purchased Dallas Fire in 2002, and has given Dallas National a "responsible" rating (essentially a "clear" financial rating) each year since 2003.

73. Dallas National uses A-rated reinsurance partners and independent accountants and auditors. One of its independent accountants is Ernst & Young.

74. Dallas National uses independent investment advisors to maintain a conservative and profitable investment portfolio.

75. Dallas National relies heavily on opinions of all these advisers with regard to loss reserves and collateral.

76. OIR faults Dallas National in two technical compliance categories. First, OIR claims that Companion is "fronting" for Dallas National in violation of Subsections 624.404(4)(a) and (b), Florida Statutes. Second, by citing what OIR asserts is an illegal re-insurance agreement with Companion, OIR charges that Dallas National has set up insufficient loss reserves.

77. Section 624.404, Florida Statutes, provides, in pertinent part, as follows:

> 624.404 General eligibility of insurers for certificate of authority.--To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its charter powers and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer, of the same general type as may be formed as a domestic insurer under this code; except that:
>
> (4)(a) No authorized insurer shall act as a fronting company for any unauthorized insurer which is not an approved reinsurer.
>
> (b) A "fronting company" is 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.(Emphasis supplied)

78. No case law has developed around Florida's "fronting" statute.

79. When OIR advised Dallas National's new Board of Directors that the Agency viewed Dallas National's relationship with Companion as a "fronting" situation, the Board, including the former state regulators, closely reviewed the statute. The Board members collectively could not discern how Florida's "fronting" statute could be applied to Dallas National's situation with Companion, and sought advice from Companion, Ernst & Young, and Milliman, Inc. Relying on consistent advice from all these entities that Florida's "fronting" statute did not apply, Dallas National's Board proceeded to administrative hearing.

80. Mr. Wood's PEOs have been issued high deductible workers' compensation policies by Companion. Companion and Dallas National have a re-insurance agreement which starts with a million-dollar deductible, whereby Companion agrees to pay the

first million dollars per claim by each employee of the PEO. Thereafter, Companion must seek reimbursement from the policyholder, the PEO. Dallas National re-insures claims between one and five million dollars. Other reinsurance coverage for Companion is provided by other companies for claims between five and 30 million dollars, and Companion is the direct writer above 30 million dollars.

81. OIR witnesses who had never reviewed the actual reinsurance agreement in this case were not helpful by their opinions that a "fronting" situation exists, and those opinions are discounted.

82. Steve Szypula currently is the Chief Analyst in OIR's Property and Casualty Oversight Unit. He was accepted as an expert in financial regulation, accounting, and regulation examination, and testified that the providing of reinsurance coverage by Dallas National to Companion for workers' compensation coverage written by Companion for AMS constituted an unlawful "fronting" arrangement in violation of Subsections 624.404(4)(a) and (b). However, Mr. Szypula's area of practice is not specifically workers' compensation, and he has no background in reinsurance, specifically.

83. Mr. Szypula found no fault with the Milliman Inc. December 31, 2008, report, including reserves or its calculations and agreed that, with or without a high deductible,

Companion is always required to pay workers' compensation claims from the first dollar. However, his "fronting" theory requires that the statutory phrase, "entire risk of loss" be read as the single word, "premium," and that the million-dollar deductible in the subject insurance policy be equated with a "credit risk." By his interpretation, Mr. Szypula opined that more than 50 percent of Companion's risk was being ceded to Dallas National because the premium was a simple "pass through."

84. Ray Neff is a Member of the American Academy of Actuaries; the former Director of the Florida Division of Workers' Compensation, when the Division was housed in the Department of Labor; and a former Bureau Chief of the Florida Department of Insurance Bureau of Rates. Mr. Neff is an actuary and certified Reinsurance Arbitrator, and was accepted as an expert with special knowledge regarding re-insurance arrangements and interpretation of re-insurance agreements and insurance in general.

85. Mr. Neff agreed with Mr. Szypula that, under the re-insurance agreement between Dallas National and Companion, Companion takes the risk of loss on the entire claim and is liable from the first dollar, due to the nature of workers' compensation insurance, as compared with other types of insurance/re-insurance. He further testified that the insurer must pay the deductible first and may only seek reimbursement

from its re-insurers later. Therefore, Companion is liable for, and must first pay, all claims, regardless of whether there is, or is not, eventual reimbursement by re-insurers.

86. Concentrating on the phrase "entire risk of loss" as used in Section 624.404(4)(b), Florida Statutes, Mr. Neff opined that an unlawful "fronting" arrangement did not exist between Companion and Dallas National by the terms of their re-insurance agreement in this case. By that agreement, Dallas National agrees to insure between one million and five million dollars in liability. The one million dollar deductible policy issued to AMS by Companion does not mean that Companion does not assume the risk of the first million dollar loss, because via Florida Administrative Code Rule 69O-189.006,[7/] the insurer is always responsible for first paying the injured claimant directly, regardless of any deductible, and only thereafter may seek reimbursement. Mr. Neff maintains that, unlike those other types of casualty insurance which are Mr. Szypula's forte, reinsurance of workers' compensation policies is only a reimbursement mechanism and not a true deductible. Because of his education, training, and experience, his clarity of explanation, and particularly his use of the actual language of the "fronting" statute analyzed, Mr. Neff is the more credible witness over Mr. Szypula.

87. OIR presented the testimony of Joseph Boor, who reviews general lines, commercial, intangible and surety rate filings for OIR. Mr. Boor has special experience in hurricane losses. He is an esteemed actuary, a member of the Casualty Actuarial Society, and the first person in the United States to have achieved the "Senior Professional of Insurance Regulation" designation by NAIC. However, Mr. Boor does not review workers' compensation rate filings. He was accepted as an expert in actuarial science, loss reserving, and large deductible business practices. Even though he did not point to any errors in Milliman Inc.'s December 31, 2008, annual actuarial report, Mr. Boor used that report to conclude that Dallas National is deficient in loss reserves by plus or minus 42 million dollars.

88. Mr. Boor was brought on relatively late in Respondent's preparation of the case and purely for purposes of litigation testimony. Accordingly, he had to revise his figures several times. To his credit, in the highest standards of his profession, Mr. Boor pro-actively disclosed his mathematical errors to all concerned.

89. Milliman, Inc., conducted an independent loss reserve analysis of Dallas National as of December 31, 2008,[8/] on both a gross and net basis with respect to reinsurance and rendered its year-end statement of actuarial opinion on the held reserves of Dallas National. Two fully credentialed actuaries (both Fellows

of the Casualty Actuarial Society) performed the work, including a review of the company's entire claim liability, which went through two peer reviews, one of which was "firm-wide," before Milliman, Inc., issued its final opinion. Robert Meyer, a principal and consulting actuary of that firm, is a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries. He was accepted as an expert actuary in the field of property and casualty insurance. He explained Dallas National's loss reserving process and critiqued Mr. Boor's methodology and conclusions, to the effect that Mr. Boor used reserves in place of collateral so as to overstate collateral; had suggested reserves be posted before a loss occurred; and made unreasonable assessments on claims now and in the future. Vastly simplified, Mr. Meyer's defense of Milliman Inc.'s report, approving Dallas National's loss reserves as reasonable, is more credible than Mr. Boor's opinion for the foregoing reasons, and most particularly because Mr. Boor skewed loss development factors on the basis of his choice of an industry database, and his adjustment thereof, which overestimated the claim liability of Dallas National and Companion.

CONCLUSIONS OF LAW

90. The Division of Administrative Hearings has jurisdiction of the parties and subject matter of this cause,

pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2009).

91. The duty to go forward and the burden of proof by a preponderance of the evidence is upon Petitioner. Department of Banking & Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). In Osborne Stern & Co., supra, the Florida Supreme Court found that in a license application proceeding, the agency has the burden to prove specific acts of misconduct by a preponderance of the evidence if it seeks to deny a license application on that ground. In contested license application proceedings, the party asserting the affirmative of an issue has the burden to present evidence as to that issue, and an administrative decision denying a license will not be sustained unless the decision is supported by competent substantial evidence in the record. While the applicant continuously has the burden of persuasion to prove entitlement, if the agency proposing to deny the requested license bases its decision on specific acts of misconduct that the agency claims demonstrate the applicant's lack of fitness to be licensed, the agency assumes the burden of proving the specific acts of misconduct that it claims demonstrate the applicant's unfitness to be licensed. See also M.H. v. Department of Children and Family Services, 977 So. 2d 755 (Fla.

2d DCA 2008). Accordingly, even though a license applicant continuously has the burden of persuasion to prove entitlement, the agency denying the license has the burden to produce evidence to support its denial. Similar to a discrimination case, the agency is not required to prove its allegations by clear and convincing evidence, but it may not deny a license application unless its decision is supported by competent substantial evidence. Comprehensive Medical Access, Inc. v. Office of Insurance Regulation, 983 So. 2d 45 (Fla. 1st DCA 2008). Competent substantial evidence is such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusions reached." Comprehensive Medical Access, Inc., 983 So. 2d at 46.

92. The seminal licensing statutes to be applied are:

> 624.401 Certificate of authority required.--
>
> (1) No person shall act as an insurer, and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance, in this state except as authorized by a subsisting certificate of authority issued to the insurer by the office, except as to such transactions as are expressly otherwise provided for in this code.
>
> and
>
> 624.404 General eligibility of insurers for certificate of authority.--To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its

charter powers and must be an incorporated stock insurer, an incorporated mutual insurer, or a reciprocal insurer, of the same general type as may be formed as a domestic insurer under this code; except that:

* * *

(3)(a) 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 so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public; or so lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of successful operation; or which it has good reason to believe are affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons 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.

* * *

(4)(a) No authorized insurer shall act as a fronting company for any unauthorized insurer which is not an approved reinsurer.

(b) A "fronting company" is 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), <u>of the entire risk of loss on all of the insurance written by it in this state</u>, 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. (Emphasis supplied)

93. OIR affirmatively pled that Companion was "fronting" for Dallas National. Oddly, OIR apparently has never sought to discipline Companion for this alleged "fronting," but only seeks to deny Petitioner's license application on that theory. OIR's "fronting" theory requires that one read the single word "premium" in place of the entire phrase, "risk of loss."

94. Even understanding that the Agency's expert achieved his interpretation of the statute by modifying the language "entire risk of loss," by the phrase, "on the insurance written in this state," that expert's interpretation is torturous.

95. Where, as here, the Legislature has not defined the words used in a phrase, the language should usually be given its plain and ordinary meaning. Southern Fisheries Association, Inc. v. Dept. of Natural Resources, 453 So. 2d 1351 (Fla. 1984).

96. Although obligated to give deference to OIR's statutory interpretations [Fortune Ins. Co. v. Dep't. of Ins., 644 So.2d 312 (Fla. 1st DCA 1995); Public Employee Relations Comm'n v. Dade County Public Benevolent Ass'n, 467 So.2d 987 (Fla. 1985); O'Conner v. Dept. of Professional Regulation, Constr. Indus. Licensing Bd.], as pithily observed by the Second District Court of Appeal in Cepcot Corp. v. Dept. of Business

and Professional Regulation, 658 So.2d 1092 (Fla. 2d DCA 1995), the undersigned is "not obligated to dive off the deep end."

97. The undersigned has found no source listing "premium" as a synonym for "risk," as urged by OIR.

98. The Florida Statutes do not reveal a definition of "risk," associated with Florida's insurance code, but Black's Law Dictionary, Fifth Edition, copyright 1979, gives the following definition of "risk":

> In insurance law the danger or hazard of a loss of the property insured; the casualty contemplated in a contract of insurance; the degree of hazard; a specified contingency or peril . . .

99. Section 427.403, Florida Statutes, defines "premium" as:

> "Premium" is the consideration for insurance, by whatever name called. Any "assessment," or any "membership", "policy", "survey," "inspection," "service" or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

100. Therefore, since, in plain and ordinary usage, an insurance premium is a marketing term for the actual amount of money charged by an insurance company for active coverage, the Agency's interpretation of its "fronting" statute is not reasonable. Ceding a premium amount to another insurer is not identical to ceding the entire risk of loss on the peril for which the insurance is issued. Therefore, based on the facts as

found, and the maxim to apply the plain meaning of the words in a statute, it is concluded that OIR has not linked Companion and Dallas National in a “fronting” relationship.

101. OIR also affirmatively pled that Dallas National had skewed its rates and claims statistics so as to have insufficient reserves. OIR did not prove that premise, either.

102. On all other issues, OIR’s denial of an insurance carrier license to Dallas National hinges upon past problems the Division of Workers’ Compensation has had with either AMS (a PEO) or Aspen (AMS’s third party administrator) or some other insurance company, such as Providence or Companion. Florida’s Workers’ Compensation Law attributes a third party administrator’s errors and omissions to the carrier utilizing it at the time of the error or omission, and OIR did that via fines.

103. The licensing standards for PEOs and third party administrators are minimal, but the power to grant a license encompasses the power to discipline that license. How those licenses might be disciplined beyond the fines already imposed is conjectural in the absence of case law, but it is a reasonable option for OIR to discipline the adjusters and administrators over whom it has authority and to initiate a complaint to the appropriate arm of the Department of Business and Professional Regulation concerning any PEO. Rejecting the

application of an insurer that wants to use those PEOs and third party administrators is not a reasonable option.

104. Likewise, just because Mr. Wood owns 100 per cent of AMS' and Aspen's respective stock issues, does not mean he is rendered personally untrustworthy due to those corporations' day-to-day minimal failures throughout 39 states and the District of Columbia.

105. The gap in coverage in 2002, due to Mr. Wood's dealings with Bankers and Guerling has been fully explained. OIR apparently now considers this episode only a bad business decision, not untrustworthiness, but it evidences neither, and the episode that resulted in a gap in coverage for AMS, never involved Dallas National and has never affected Mr. Wood's or Dallas National's solvency or reserves. Mr. Wood's subsequent success and that of Dallas National do not support a conclusion of incompetency.

106. Most of OIR's concerns with other states' regulatory issues are remote in time and unlikely to be repeated because they arose prior to Dallas Fire being either taken over by Mr. Wood or before it was fully transitioned into Dallas National.

107. Dallas National's underwriting problems in 2006-2007, which were revealed by Ms. Bernard, and the continuing reporting and payment problems of Aspen deserve attention. However,

because Ms. Bernard's observations with regard to underwriting showed improvement on each of her visits; because Texas has repeatedly approved Dallas National while observing the same underwriting problems noted by Ms. Bernard; because other states have also approved Dallas National; because Ms. Wehrle is clear that tighter underwriting guidelines are constantly evolving at Dallas National; because Mr. Yon had no significant problems auditing any Florida entities in Dallas; and because of the fiscal responsibility demonstrated by Dallas National's accounting and actuary witnesses, it is concluded that Dallas National has presented adequate evidence for Florida licensure.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Office of Insurance Regulation enter a Final Order issuing the license for which Petitioner Dallas National Insurance Company has applied.

DONE AND ENTERED this 3rd day of February, 2010, in Tallahassee, Leon County, Florida.

ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of February, 2010.

ENDNOTES

1/ It seems that in California and several other states, a prudent insurance carrier will not apply for a license until virtually assured, through informal procedures, that the license will be granted. However, Dallas National has repeatedly requested that California examine and license it. See also Findings of Fact 66-70.

2/ OIR witnesses related valid concerns based on problems occurring with the startup of PEOs in the early 1990's when some heavy duty construction workers were intentionally miscoded as secretaries in order to offer reduced premiums, which miscoding skewed data and reserves with regard to catastrophic injuries, but their testimony never linked such incidents to Dallas National or to any Wood enterprise.

3/ Workers' compensation insurance generally is a riskier type of insurance to write than other types of insurance because workers' compensation claims may have to pay out over long periods of time, up to 30 years. The potential spread of years causes workers' compensation to be dubbed "long tail" insurance, requiring higher reserves than some other types. Because some Florida benefits must be paid for an injured employee's

lifetime, as opposed to a finite number of years (as is the case in Texas) the claim reserves must be that much more secure in Florida.

4/ Those OIR employees who testified herein denied that OIR had made such an offer, but there is sufficient credible evidence to show that Dallas National's attorneys and principals, for whatever reason, believed that there was an advantage to withdrawal of the 2006, application as opposed to possible rejection of it.

5/ Apparently, despite still being fully licensed in Florida, Bankers and its principals had been under OIR suspicion or investigation for criminal activity for a period of time, and it appears Mr. Wood was also victimized.

6/ One individual Mr. Wood dealt with may have been connected with both Bankers and Guerling, and it is not clear whether Guerling, based in New York, had an appropriate license to write insurance in Florida, but the undersigned is satisfied that Mr. Wood and Mr. Reid were of the reasonable belief that Guerling could legally issue coverage for AMS in Florida.

7/ Florida Administrative Code Rule 69O-189.006, reads:

> Guidelines for Large Deductible Workers' Compensation Filings.
> If a workers' compensation insurer wishes to file for a large deductible, such filing shall be governed by the following guidelines:
>
> (1) Eligibility: Minimum standard premium of $500,000; Minimum deductible of $100,000.
>
> (2) Insurer must be clearly obligated to pay first dollar of loss just like any other workers' compensation policy without a deductible.
>
> (3) Reimbursement of deductible by insured does not affect insurer obligation to pay losses.
>
> (4) Insurer must continue all filing requirements with Department of Financial Services in compliance with Chapter 440,

F.S., for all losses including those below the deductible limits.

(5) Insurer must file unit statistical reports with the NCCI which show all losses including those below the deductible limit.

(6) Unit statistical reports are to be completed and filed with the NCCI so that an experience modification factor can be calculated for the insured.

(7) Data must be maintained to allow for reporting on financial calls of Standard Premium at NCCI Level together with all losses including those below the deductible limit.

(8) Insurers must comply with NCCI Aggregate Financial Calls, Detail Claim Information Calls, Unit Statistical Reporting, and other required calls.

(9) Insurer must have an established program to evaluate financial ability of insured to pay losses within the deductible. Insurers are required to use various financial mechanisms to insure that funds are available from the insured to pay deductible portion of losses.

8/ At the time of hearing, a new report was due December 31, 2009.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.