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| TEXAS LAND TITLE ASSOCIATION, <i>Plaintiff,</i> | § § § § | IN THE DISTRICT COURT OF |
| v. | § § | TRAVIS COUNTY, TEXAS |
| TEXAS DEPARTMENT OF INSURANCE and CASSIE BROWN, IN HER CAPACITY AS COMMISSIONER OF THE TEXAS DEPARTMENT OF INSURANCE, <i>Defendants.</i> | § § § § § § | 345 TH JUDICIAL DISTRICT |

**TEXAS DEPARTMENT OF INSURANCE AND CASSIE BROWN'S
RESPONSE TO PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF**

Defendants, the Texas Department of Insurance and Cassie Brown, in her capacity as Commissioner of the Texas Department of Insurance (collectively "TDI"), request that the Court deny Plaintiff Texas Land Title Association's (TLTA)'s request for injunctive relief because: (1) Texas Insurance Code Sections 36.204 and 37.053 expressly provide the rate shall stay in effect pending the appeal; (2) TLTA has an adequate remedy at law; (3) TLTA's request will not harm TLTA's members but will pose an irreparable harm to the public; and (4) TLTA cannot show a likelihood for success on the merits or otherwise support its claims for a Temporary Injunction. TDI would show as follows:

I. BACKGROUND

A. Title Insurance and Premium Rates

In Texas, land title insurance coverage, sold by almost 800 title insurance agents ("Agents") employing almost 20,000 insurance professionals and working with 35 title insurance underwriters ("Underwriters"), is essentially a requirement to buy

a home or property. To buy a home or other realty, most lenders require buyers to purchase title insurance to close their loans. Because title rates are set by TDI, buyers do not have the ability to shop for prices among competitors. In recent years, the title business has been a very lucrative business, especially so during the boom in sales experienced during Covid, when the Federal Reserve significantly lowered interest rates. The increase in profits for title agents attracted many new entrants to the business, resulting in a significant increase in the number of licensed title agents in Texas.

The Texas Title Insurance Act, codified in Texas Insurance Code Section 2501.001 et seq., and other parts of the Insurance Code, especially Chapter 2703,¹ vests the Texas Department of Insurance with the duty to monitor, review, and fix title insurance rates and to prevent excessive rates and overcharging Texas customers.

The Act's ratemaking regime saw significant changes in 2011 and, since then, the Department has applied that regime and fixed rates three times, once in 2013, once in 2019, and most recently on February 6, 2025, when the Commissioner issued her Official Order in this proceeding reducing rates by 10.0%.

B. Procedural History at TDI

On September 17, 2024, the Department posted its relevant reports, including its September 2024 Title Rate Report and its external consultants' Texas Title

¹ Texas Title Insurance Act, Tex. Ins. Code Sec. 2501, et seq. Chapter 2703 with a focus on Sections 2703.152 and 2703.202.

Insurance Industry Cost of Capital Assessment dated August 2024.² AR at TDI CC 242 and 264. These reports summarize statistical information submitted by title insurance companies and agents under Texas Insurance Code Section 2703.153. The Commissioner considered these reports, along with data submitted by TLTA and the Office of Public Insurance Counsel (OPIC), in her February 6, 2025, rulings reducing rates in the Official Order. AR at TDI CC 290, Order, FOF 14. The Title Rate Report provided “rate indications” of the need for a rate decrease from 4% to 15.4% based on the industry’s title experience data for periods ending in calendar year 2022. AR at TDI CC 290, Order at 1, FOF 1.

On October 22, 2024, the Commissioner held a public meeting. TDI gave notice of this meeting on its website and by issuance on its GovDelivery notification service. The purpose of the meeting was to engage in a “collaborative process,” as contemplated by the Legislature, to allow the industry to submit rate information to the Commissioner, and, more generally, to give the public an opportunity to comment on title insurance rates outside the Chapter 2703 process. TLTA, OPIC, and members of the public participated. After the October 22nd public meeting, TDI received requests for rate changes under Section 2703.202 from TLTA and OPIC.

On November 1, 2024, TDI received TLTA's Petition to Hold the Periodic Title Insurance Rate Rulemaking Hearing and for the Adoption of a Rule. In its Petition, TLTA requested that the Commissioner consider title insurance basic premium rates. Based on this submission TDI initiated Docket No. 2851 and assigned the submission

² TDI had set a previous rate hearing under Insurance Code §2703.206 in Docket No. 2847, scheduled to be held on September 19, 2024. That hearing was later cancelled.

two petition numbers: P-1124-01 to address the petition for rulemaking under Government Code Section 2001.021 and P-1124-02 to address the request to change a title premium rate under Insurance Code 2703.202. AR at TDI CC 1.

In its request, TLTA proposed that there be no change in the rates. AR at TDI CC 1. Alternatively, TLTA proposed that if rates were to be decreased, the adjustment should not be more than a 1.0% decrease, to be made effective on July 1, 2025. AR at TDI CC 2. In a supplemental submission provided by TLTA to TDI on January 16, 2025, TLTA provided an actuarial analysis it claimed showed that a rate decrease in the range of 0.0% to 4.7% was reasonable. But, in light of data it collected by sampling 37 title agents on their cost experience in 2023, TLTA suggested that a 0.0% change would be most appropriate.

On November 8, 2024, TDI issued a notice of hearing in response to TLTA's Petition on its website. TDI published this notice through TDI's GovDelivery service³ and by publication in the *Texas Register*.⁴ This notice included postings for both a proposed January 21, 2025, hearing (posted under Texas Insurance Code Sec. 2703.202(c)) and a proposed February 6, 2025, hearing (posted under Texas Insurance Code Sec. 2703.202(j)).

On November 12, 2024, TDI received OPIC's request for the Commissioner to consider title insurance basic premium rates. OPIC requested that TDI hold a

³ In addition to the GovDelivery, TDI staff emailed the notice directly to TLTA and OPIC, under Insurance Code Section 2703.207(1).

⁴ https://texas-sos.appianportalsgov.com/rules-and-meetings?interface=VIEW_TEXAS_REGISTER_SUMMARY&recordId=443953. The notice was submitted for publication on November 8, 2024, and published in the November 22, 2024, issue of the *Texas Register* (Tex. Dep't of Ins., Notice of Public Hearing, 49 Tex. Reg. 9608 (2024)).

hearing, as requested by TLTA, but OPIC disagreed with TLTA's assertion that the rate should be changed no more than 1.0%. In a supplemental submission provided by OPIC to TDI on January 22, 2025, OPIC provided an actuarial analysis OPIC claimed concluded that a rate decrease in the range of 8.9% to 19.0% with a midpoint of a 14.0% decrease was indicated by data from historical experience. OPIC asserted this range was actuarially sound. OPIC recommended a rate decrease of at least 9.0% from that range. AR at TDI CC 236. OPIC also requested a ratemaking by rulemaking, but that TDI deny TLTA's request for rulemaking. Because OPIC's submission did not include the requirements to qualify as a petition for rulemaking, it was issued one petition number, Petition No. P-1124-03, as a Section 2703.202(c) request.

On December 20, 2024, the Commissioner issued Official Order No. 2024-9045, denying TLTA's petition for rulemaking.⁵ AR at TDI CC 25. The denial was required because TDI had not had sufficient time to review the reports submitted by the parties and hold the required public hearing. This was required because the timelines in Texas Government Code Ch. 2001 (the APA) and the Act worked against each other. The APA requires an agency to either deny a petition for rulemaking or initiate a rulemaking proceeding within 60 days of receiving the petition for the adoption of rules. Tex. Gov't Code §2001.021. But, TLTA's Petition requested that TDI adopt a new Title Insurance Basic Manual by rule, even though at the time of the Petition

⁵ <https://www.tdi.texas.gov/orders/documents/20249045.pdf>.

there was no new Basic Manual⁶ and the Basic Manual could not be changed to reflect a new title rate until after the hearing process set out in Texas Insurance Code Chapter 2703.202, which could not be accomplished within 60 days of receiving a request to fix a new title rate. Since TDI needed to complete the lengthier Chapter 2703 process before it could determine if a rule proposal to adopt a new basic manual with new rate information was appropriate, the Commissioner issued an order denying TLTA's rulemaking petition. Order 2024-9045 noted that TDI would move forward with rulemaking if the Chapter 2703 rate hearing resulted in a change to title insurance rates.

On January 16, 2025, TLTA submitted documents that analyzed title insurance market data. TDI posted TLTA's submission on its website in the same place as the notice.⁷

Because of a forecasted snowstorm for Austin and much of the State, the Commissioner postponed the hearing initially scheduled for January 21, 2025, until January 23, 2025, under Texas Government Code § 551.0411.⁸

On January 22, 2025, OPIC submitted its documents analyzing rates. Again, as it had with TLTA's submission, TDI posted OPIC's filing on its website in the same place as the notice.⁹

⁶ Additionally, TLTA was principally requesting that the Commissioner not change the title insurance basic premium rate. No change to the rate would have resulted in no change to the Title Insurance Basic Manual, and therefore, a rulemaking to adopt a new basic manual would not have been necessary.

⁷ <https://www.tdi.texas.gov/rules/2024/documents/2024tltaxa.pdf>.

⁸ <https://www.tdi.texas.gov/bulletins/2025/documents/01202025notice.pdf>.

⁹ <https://www.tdi.texas.gov/rules/2024/documents/2024tltais.pdf>.

On January 23, 2025, the Commissioner conducted the first public hearing in Docket No. 2851 under Texas Insurance Code § 2703.202(c). The public hearing was conducted as a rulemaking hearing under the Texas APA. Interested parties attended the hearing and were given an opportunity to present written and oral testimony. TLTA, OPIC, and TDI Staff presented their respective analyses and rate calculations, summarizing and referencing the reports that each had previously submitted to the Commissioner.

On February 6, 2025, TDI held the second hearing, at which the Commissioner announced her decision in Official Order 2025-9125, approving the TDI Staff's proposed 10% rate decrease and setting the newly-approved reduced rates.¹⁰

On February 26, 2025, TLTA submitted its Motion to Vacate and Motion for Rehearing and Reconsideration. On March 4, 2025, TDI issued a letter in response, denying TLTA's motion. On March 6, 2025, TLTA filed its petition in this suit and sent TDI a courtesy copy. On March 11, 2025, TDI was served with TLTA's petition.

C. TLTA's Claims.

Plaintiff TLTA, who represents close to 70 percent of the title insurance agents and underwriters in Texas, has brought this case seeking to overturn the Commissioner's February 6, 2025, Order, and its 10% basic premium rate reduction. At this juncture, TLTA attacks the Commissioner's Order seeking to enjoin the rates from going into effect on July 1, 2025, to keep rates at their current high levels while this appeal proceeds.

¹⁰ <https://www.tdi.texas.gov/rules/2024/documents/20259125.pdf>.

II. ARGUMENT AND AUTHORITIES

“A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits. A temporary injunction is an extraordinary remedy and does not issue as a matter of right. To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002) (internal citations omitted). At the hearing, the applicant must produce competent evidence to support a probable right to recovery and show probable injury. *Letson v. Barnes*, 979 S.W.2d 414, 417 (Tex. App.—Amarillo 1998, pet. denied).

A. The Insurance Code provides that the rate set by the Commissioner is not vacated but is lawful and valid during the appeal.

TLTA is not entitled to an injunction because the Legislature has expressly precluded any such right in Texas Insurance Code Sections 36.204 and 37.053, which provide that the rate action may not be vacated during an appeal and imposes a Legislative directive for the approved rates to remain in effect during any appeal.

Texas Insurance Code section 36.204 provides that the action of the Commissioner may not be vacated during an appeal pursuant to a petition for judicial review. Section 36.204(a) states that “The filing of a petition for judicial review of an action under this subchapter does not vacate the action.” Tex. Ins. Code § 36.204(a). Section 36.204(b) provides that “After notice and hearing, the court may vacate the action if the court finds it would serve the interest of justice to do so.” Tex. Ins. Code

§ 36.204(b). But whether justice requires must be read in context with Texas Insurance Code Section 37.053, which states unequivocally that a rate order may not be vacated during the pendency of an appeal.

Texas Insurance Code Section 37.053(a) states that “An order of the commissioner that determines, approves, or sets a rate under this code and that is appealed remains in effect during the pendency of the appeal. An insurer shall use the rate provided in the order while the appeal is pending.” Tex. Ins. Code § 37.053(a). Texas Insurance Code Section 37.053(b) provides that “The rate is lawful and valid during the appeal, and an insurer may not be required to make any refund from that rate after a decision on the appeal is rendered.” Tex. Ins. Code §37.053(b). And Texas Insurance Code Section 37.053(c) provides that “If the order is vacated on appeal, the rate established by the commissioner before the vacated order was rendered remains in effect from the date of remand until the commissioner makes a further determination.” Tex. Ins. Code §37.053(c). It also provides that “The commissioner shall consider the court's order in setting a future rate.” *Id.*

These provisions preclude injunctive relief from the Order during the appeal. Texas Insurance Code Section 36.204(b)'s allowance for vacating the Order if justice requires does not negate this prohibition and is not called for here where the Order establishes rates pursuant to law based on data fully supporting the revised rates.

These express legislative requirements override TLTA's claim that it is entitled to injunctive relief. They also override any claim TLTA may assert of a right to injunctive relief as a matter of common law or equity for the following reasons:

First, under Texas Civil Practice and Remedies Code Section 5.001, “the rule of decision in Texas civil matters is based on the common law of England, *but only to the extent that it is not inconsistent with the Texas Constitution or the laws of Texas.*” Tex. Civ. Prac. & Rem Code Sec. 5.001 (emphasis added). Thus, Texas law adopts common law principles, but those principles are subject to and must be reconciled with the State's constitution and statutes. *See id.* Thus, Texas Insurance Code Sections 36.204 and 37.053 override any such right under common law.

Next, Texas Civil Practice and Remedies Code Section 65.001 provides that “the principles governing courts of equity govern injunction proceedings if not in conflict with this chapter or other law.” Tex. Civ. Prac. Rem. Code Sec. 65.001. Here, equitable injunctive relief is inconsistent with statutory provisions and Legislative fiat.

Finally, the principles governing courts of equity govern injunction proceedings unless superseded by a specific statutory mandate. *See Seaborg Jackson Partners v. Beverly Hills Sav.*, 753 S.W.2d 242, 245 (Tex. App. —Dallas 1988, no writ); *see* Tex. Civ. Prac. Rem. Code § 65.001 (Vernon 1986). Here, Sections 36.204 and 37.053 supersede the equitable remedies.

In sum, TLTA's requested injunction is not permitted by Texas Insurance Code Sections 36.204 and 37.053 and TLTA is prohibited from seeking to enjoin the rates approved in the Order during the appeal as those rates are not vacated but must remain in effect during the appeal. Accordingly, the Court lacks authority to grant

injunctive relief during the pendency of the appeal and, under the Legislatively imposed prohibition, lacks authority to grant TLTA's requested injunction.

B. TLTA has adequate remedies at law.

TDI objects to TLTA's request for injunctive relief because TLTA has adequate remedies at law through judicial review of the Commissioner's Order, through filing a new rate case, and through requesting a contested case hearing.

For a legal remedy to be adequate, it must give the plaintiff complete, final, and equal relief. *Henderson v. KRIS, Inc.*, 822 S.W.2d 769, 773 (Tex. App.—Houston [1st Dist.] 1992, no writ). Texas Insurance Code Chapter 36 provides an adequate remedy, reflecting that a person who is adversely affected by ratemaking decisions of the Commissioner has a right to judicial review of Commissioner's orders. The right is set out in Sections 36.201 through 36.203, which provide:

Sec. 36.201. ACTION SUBJECT TO JUDICIAL REVIEW provides that an action of the commissioner subject to judicial review under this subchapter includes a decision, order, rate, rule, form, or administrative or other ruling of the commissioner.

Sec. 36.202. PETITION FOR JUDICIAL REVIEW provides that (a) After failing to get relief from the commissioner, any insurance company or other party at interest who is dissatisfied with an action of the commissioner may file a petition for judicial review against the commissioner as defendant, (b) The petition must state the particular objection to the action and may be filed only in a district court in Travis County.

Sec. 36.203. JUDICIAL REVIEW provides that Judicial review of the action is under the substantial evidence rule and shall be conducted under Chapter 2001, Government Code.

Tex. Ins. Code §§ 36.201-.203.

These provisions show that the Legislature intended to permit affected persons to appeal and pursue relief under the provisions of Government Code Section 2001.171, which provides:

The APA authorizes reversal or remand of an agency's decision that prejudices the appellant's substantial rights because the administrative findings, inferences, conclusions, or decisions (1) violate a constitutional or statutory provision, (2) exceed the agency's statutory authority, (3) were made through unlawful procedure, (4) are affected by other error of law, or (5) are arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Sally v. Tex. State Bd. of Med. Exam'rs, 351 S.W.3d 434, 440 (Tex. App.—Austin 2011, pet. denied) (citing Tex. Gov't Code § 2001.174(2)(A)–(D), (F)).

Judicial review is an adequate remedy because it allows TLTA to challenge the agency decision, including challenging on the grounds alleging that it exceeded its statutory authority or violated a constitutional provision. Tex. Gov't Code § 2001.174(2)(A). Thus, because TLTA has an adequate remedy, TLTA cannot show that it meets all the elements required for entitlement to injunctive relief.

Next, TLTA has (and has had all along) an adequate remedy by filing a new rate case. There is nothing in Chapter 2703 that precludes the filing of a new rate case during or immediately after a rate case in progress nor that permits the Commissioner to refuse to proceed with required review of such a filing, once made. During the rate case at issue in this proceeding, the 2023 Agent Experience Report data collected by TDI pursuant to its data call was incomplete and not available. However, after the rate case in this appeal had concluded, the 2023 Agent Experience data became available. Rather than relying on incomplete and inconclusive data in

the instant rate case, TLTA could have filed a new rate case at the end that proceeding in which it could have used the 2023 agent experience data after that data had become complete. Moreover, TLTA could file a new rate case now that uses the 2023 Agent Experience data and could seek in such a proceeding to establish its claims that the rates it proposed in this case are required and appropriate.

Finally, TLTA has an adequate remedy at law because in any such a new rate filing, TLTA could request that its proposed rates be reviewed in a contested case hearing. In the instant case, TLTA was aware of the indications of TDI's data (released before TLTA's request for a hearing was sent) and was aware that OPIC and TDI disagreed with TLTA's recommendation of a 0 or less than 1% rate decrease. After seeing that both OPIC's and TDI's indications were very different from their own, TLTA could have made a request for a contested case rate evaluation under Section 2703.202(d) in this case. TLTA has an adequate remedy at law by filing a new rate case and requesting a contested case proceeding.

C. Denying TLTA's request for injunctive relief will not harm TLTA's members but granting injunctive relief will irreparably harm the homebuying public.

TLTA claims that it will be irreparably harmed if the Commissioner's approved rates go into effect. TLTA's claimed harm assumes, incorrectly, that the Commissioner's rates are erroneous. TLTA will not be harmed because the rates approved by the Commissioner are established correctly based on industry data submitted by the industry, including data submitted by TLTA, OPIC, and TDI, and all parties in response to TDI data calls. This data shows that the current rates of

return, profit provisions, and expense recovery are excessive and that a 10% rate reduction is required to bring rates back to reasonable rates of return.

What TLTA fails to note is that leaving the current excessive rates in place as TLTA proposes will irreparably harm the public. Texas Insurance Code Section 2501.002(a), provides that the purpose of the title is to “completely regulate the business of title insurance on real property. . .to: (1) protect consumers and purchasers of title insurance policies; and (2) provide adequate and reasonable rates of return for title insurance companies and title insurance agents.” Tex. Ins. Code § 2501.002(a). Moreover, in Subsection (b), it provides: “It is the express legislative intent that this title accomplish the purpose described by Subsection (a).” Tex. Ins. Code § 2501.002(b). Thus, protecting customers is one of the main purposes of the Legislature’s design.

The record data shows that the current rates produce excessive returns in the range of and as much as 26.6% percent, or more, in some cases over 30%. In a market where 12% and 11% rates of return are benchmarks, any rates over 20% or 30% are certainly excessive on their face. Permitting the industry to continue charging the public rates that produce excessive returns will irreparably harm the public. It is for that reason that Sections 36.204 and 37.053 prohibit vacating the Order or granting injunctive relief. Such relief would permit the industry to continue recovering excessive returns from the public during this appeal, contrary to the Legislature’s express intent. With credible data in the record indicating that current rates are demonstrably excessive, the Commissioner’s main duty to the public is to lower the

rates on the proposed July 1, 2025, effective date and maintain them at the newly approved reduced level throughout the appeal. Granting TLTA's requested injunction would irreparably harm the public, forcing the public to continue paying excessive rates while the appeal proceeds in direct contravention of the Legislative directive.

D. TLTA cannot show a likelihood of success on the merits or otherwise support its claims for a Temporary Injunction.

In Section VIII of its Petition, titled Application for Temporary Injunction, TLTA incorporates all claims (Par. 53); claims that the Order's -10% rate decrease will impose rates that are inadequate, unreasonable, and confiscatory (Par. 55); complains that TLTA and its members will suffer probable, imminent, and irreparable injury in the absence of injunctive relief for reasons spelled out in enumerated list (Par. 56 a–d); and complains that the Commissioner committed procedural errors, failed to follow mandatory procedural requirements, and failed to apply statutory standards, violating TLTA's due process rights (Par. 57).

While these claims will be tried on the merits later, at this stage, TLTA's criticisms are offered to support its claim that its members have a probable right to relief. TLTA's claims are wrong on all counts. None of its claims show that TLTA has a probable right to prevail or a likelihood of success on the merits, as discussed below.

1. TLTA cannot show it is likely to prevail on its claims that the Department's approved rates are confiscatory and outside the ranges of the data from the reports in the record.

TLTA claims that the approved rates are confiscatory and outside the ranges of the data from the reports in the record. TLTA's claims are incorrect. The approved

rates are fully within the ranges of the submitted data and, therefore, do not indicate a probable right to relief or likelihood of success.

The ranges of data, provided in the reports submitted by the TDI, TLTA, and OPIC, are set out in Order No. 2025-9125 in Findings of Fact 12 and 13. The ranges extend from 0.0% to -4.7% for TLTA, -8.9% to -19.0% for OPIC, and -4.9% to -15.4% for TDI, as shown in the following table:

| Loss Ratio Method | TLTA | OPIC | TDI |
|--------------------------|----------------------|------------------------|------------------------|
| 5-year ending 2022 | | -19.0% | -15.4% |
| 10-year ending 2022 | | -15.6% | -11.8% |
| 15-year ending 2022 | | -12.5% | -8.6% |
| 20-year ending 2022 | -3.8% | -8.9% | -4.9% |
| 5-year ending 2019 | -4.6% | | |
| 3-year ending 2019 | -4.7% | | |
| Linear regression | -4.0% | | |
| 2023 estimate | 0.0% | | |
| <i>Overall range</i> | <i>0.0% to -4.7%</i> | <i>-8.9% to -19.0%</i> | <i>-4.9% to -15.4%</i> |

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The Commissioner is authorized to determine the correct rates by selecting a rate change within the range of rate changes indicated in the parties' reports and was not required to pick any particular figure expressly stated in the record. Her approved 10% decrease is fully within the ranges provided by the parties and the Commission. Her decision was a lawfully executed exercising of her discretionary authority based on the data analyzed applying her expertise and experience.

¹¹ AR at TDI CC 294, Order No. 2025-9125 at FOF 13.

The rates she approved are not confiscatory because, though reducing premium rates, they are still set at levels that allow the industry to recover its costs plus a reasonable return on investment. The reduced rates are set at levels that leave intact the “profit provisions” submitted by the parties, to wit, TLTA’s 12.0% provision, TDI’s 11.0% provision, and OPIC’s 7.0% provision. AR at TDI CC 295, Order No. 2025-9125, FOF 16. And the reduced rates are non-confiscatory because they bring industry profit ratios down to these reasonable levels from levels as high as 26.6, or higher, as indicated by 2022 data, but levels that still allow the industry to recover a compensatory return.

There is no incontrovertible evidence in the record that reducing rates more than TLTA’s range of 0 to 4.7% will be confiscatory. As the Commissioner found, the reports submitted by all parties, including TLTA, do not show that the Commissioner’s proposed 10% rate reduction will result in confiscatory rates. The Commissioner is the trier of the facts and the sole judge of the credibility and the weight of the evidence, having been given the discretion to judge credibility and weight by the Legislature. Her determination may only be reversed if there is a clear abuse of discretion, of which there is none here.

The Court is not permitted to dig under the surface of the Commissioner’s exercise of that delegated duty. As confirmed in *Railroad Commission of Texas v. Houston Natural Gas Corporation*, where an attack claims that rates are confiscatory but the decision produces rates with a reasonable rate of return, the courts are not at liberty to investigate the methods adopted by the agency in fixing its rates nor the

motives or purposes which prompted such action. *R.R. Comm'n v. Hous. Nat. Gas Corp.*, 155 502, 289 S.W.2d 559 (1956).

Simply stated, the Commissioner fixed a rate that was within the indicated ranges provided by the parties at the hearing and that applied the rate indications at levels of profit provision that yield rates that are reasonable and not confiscatory. The Court should decline TLTA's request to invade the Commissioner's discretion and substitute its judgement for the Commissioner's on the Commissioner's determined result. The Court should reject any claim that TLTA is likely to prevail on the merits on this issue.

2. TLTA cannot show it is likely to prevail on its claims that the Department's rates are not based on consideration of all the evidence of profit provisions and the sufficiency of the rates.

TLTA claims that the Department's rates were not based on consideration of all the evidence of profit provisions and the sufficiency of the rates and were therefore inadequate, unreasonable, and confiscatory. TLTA is incorrect. As declared and established in the Order, the Commissioner considered all the evidence, including all evidence submitted by TLTA, OPIC, and TDI, as well as all data in the Commission's possession received pursuant to industry data calls. As that evidence shows, the Commissioner's approved rates are adequate, reasonable, and non-confiscatory for the industry, and, at the same time, sufficient, equitable, and reasonable for the public. TLTA has not established a probable right to relief on the basis of this claim.

The Commissioner's 10% rate reduction was not arbitrary in any respect. (Pet. Par. 19, 31–36, 51, 52 & 55). The Commissioner considered the sufficiency and

reasonableness of the proposed rates in Findings of Fact 15 through 24 and Conclusions of Law 3, 5, and 6 in Order No. 2025-9125. She also reviewed the following Average Profit Ratio table under existing rates in the Table in Finding of Fact No. 15, copied here:

| Years of Data Included | Average Profit Ratio |
|-----------------------------------|-----------------------------|
| 2003-2022 (20 years) | 17.5% |
| 2008-2022 (15 years) | 19.8% |
| 2013-2022 (10 years) | 24.6% |
| 2018-2022 (5 years) | 26.2% |
| 2015-2019 (5 years) | 22.2% |
| 2022 (1 year) | 26.6% |

As this table, summarizing data submitted to TDI data calls by title agents in annual statistical reports required by Texas Insurance Code Section 2703.153 shows, the existing rates are far above a reasonable profit ratio and therefore, well above the return levels required to recover expenses and a reasonable cost of capital as required by the Act. This table shows that the Commissioner’s 10% decrease approved in the Order, is required to lower those profit ratios and ensure that the industry is performing at profitable, but reasonable, margins and that ratepayers and customers are not being charged unreasonable, excessive rates for the title insurance they must purchase to close a real estate transaction.

In Finding of Fact No. 16, the Commissioner noted that the average rate of return for 2022 under the existing rates was 26.6% and that, compared to the parties' profit provisions of 12.0% for TLTA, 11.0% for TDI, and 7.0% for OPIC, "even with market decline the margins the industry is earning under the rates before the Order are excessive." The Commissioner also found that in these high profit margins "there is room to set acceptable profit margins" and that "there was no clear and convincing evidence that a reduction in rates would result in insolvency or failure to earn a reasonable return."

The data and the resulting profit provisions addressed in the Order were the product of the Commissioner's review of all the evidence in the record. AR at TDI CC 294, Order No. 2025-9125, FOF 14. Again, that review included her review of TLTA's, OPIC's, and TDI's analyses for periods ending in 2022, TLTA's 2023 partial data, as well as TLTA's supplemental 2023 and 2024 data. The Commissioner, as the trier of fact, did not find TLTA's analysis of the 2023 partial data sufficiently compelling or reliable to justify ignoring the data for 2022 that indicated the need for a rate change.

After reviewing all the data, the Commissioner found that, even with the downturn in the market starting in 2022, the data still showed profit margins of 26.6%, margins that were patently unreasonable and excessive and they further inflate the rising cost of buying property in Texas. AR at TDI CC 295, Order No. 2025-9125, FOF 17. After reviewing the profit data, the Commissioner found that "a reduction would likely help to bring actual profit ratios closer to targets." She is entirely correct.

The Commissioner also considered the data regarding the changes in market demand. The Covid period and the period between 2020 and 2022 saw unprecedented growth, with the number of agents increasing by 29% from 614 agents to 795 agents in 2024. AR at TDI CC 296, Order No. 2025-9125, FOF 21. Moreover, industry-wide profits increased from \$2.27 billion in 2019 to \$2.69 billion in 2020 and \$3.69 billion in 2021, with a slight decline to \$3.38 billion in 2022, and a return to pre-pandemic premium levels at \$2.38 billion in 2023. AR at TDI CC 296, Order No. 2025-9125, FOF 22. The Commissioner's findings recognize that, due to the significant contraction of market demand, profits in the industry are excessive even at 2023 levels and that the Commissioner's 10% reduction is necessary to return rates to levels that are reasonable for the public. AR at TDI CC 296, Order No. 2025-9125, FOF 24.

TLTA's claim that the Commissioner erred by failing to review all the data are without merit.

3. TLTA cannot show it is likely to prevail on its claims that the Commissioner did not properly consider all available ratemaking data.

TLTA claims that the Commissioner did not properly consider all available ratemaking data, violating Texas Insurance Code section 2703.152. Again, in fixing premium rates, the commissioner shall consider all relevant income and expenses of title insurance companies and title insurance agents attributable to engaging in the business of title insurance in this state. Tex. Ins. Code § 2703.152(a). Moreover, the premium rates fixed by the Commissioner must be reasonable to the public and non-confiscatory to title insurance companies and title insurance agents. Tex. Ins. Code §

2703.152(b). As required by Texas Insurance Code section 2703.202(j), the Commissioner considered all matters presented in the hearing. Tex. Ins. Code § 2703.202(j).

As shown in the Order, the Commissioner considered all available ratemaking data, including:

- reports submitted by TLTA, including TLTA's November 1, 2024, request for a change and its January 14, 2025, analysis documents, which TDI posted on its website;
- reports submitted by OPIC, including OPIC's November 12, 2024, request for a change as well as OPIC's January 22, 2025, analysis documents;
- reports submitted by TDI itself, including the Commission's own September 17, 2024, reports, its September 2024 Title Rate Report, and its Texas Title Insurance Industry Cost of Capital Assessment, August 2024; and
- all argument, discussion, and submissions provided at the January 23, 2025, rate hearing.

The Commissioner reviewed all this data. From that review, she determined that even with the downturn in 2022, the data still shows profit margins of 26.6%, margins that are patently unreasonable and excessive and that are difficult for affected Texans to afford. AR at TDI CC 295, Order No. 2025-9125, FOF 17. She found that "a reduction would likely help to bring actual profit ratios closer to targets." She found that the Covid period and the period between 2020 and 2022 saw unprecedented growth, with the number of agents increasing by 29% from 614 agents to 795 agents in 2024. AR at TDI CC 296, Order No. 2025-9125, FOF 21. She noted that industry-wide profits had increased from \$2.27 billion in 2019 to \$2.69 billion in

2020 and \$3.69 billion in 2021, with a slight decline to \$3.38 billion in 2022, and a return to pre-pandemic premium levels at \$2.38 billion in 2023. AR at TDI CC 296, Order No. 2025-9125, FOF 22. She found that this showed that the profits in the industry are excessive even at 2023 levels and that the Commissioner's -10% reduction was necessary to return rates to levels that are reasonable for the public. AR at TDI CC 296, Order No. 2025-9125, FOF 24.

TLTA criticizes the Commissioner for ostensibly not considering "2023 data it had in its possession." TLTA also claims the Commissioner did not consider current and future economic conditions. TLTA is incorrect. The Commissioner considered all data TDI had in its possession, including 2023 partial data submitted by TLTA. The problem was, however, that the data was not complete or reliable. Before the January 23, 2025, hearing, the Commissioner issued a data call to the industry for 2023 data. At the time of the TLTA's request on November 1, 2024, and at the time of the hearing on January 23, 2025, TDI's 2023, collection of the data was unfinished due to delayed and deficient industry responses to the Commissioner's data call. At the time of the January hearing, the TDI was still working with licensees to collect, correct, and compile 2023 data submissions. The Commissioner considered all complete data that was presented to her at the hearing on January 23, 2025. But, throughout the process, TLTA knew TDI's analysis of the 2023 data was not complete, yet TLTA did not request to postpone or delay the hearing to allow the collection of the data to be completed.

TLTA criticizes the Commissioner for not acting on TLTA's estimates based on TLTA's partial 2023 data and conclusory estimates based on that partial data and for not considering other evidence of revenues in future periods. TLTA's criticisms are without merit. TLTA collected 2023 data from 37 agents it claimed represented 50% of the revenue collected in the period. TLTA then created a rate indication using only their incomplete 2023 data, as opposed to analyzing a range of years like all of the other indications submitted by TLTA, OPIC, and TDI. But this data was woefully incomplete, representing the experience of only 37 agents out of approximately 800 agents, using 37 of the lowest earning agents as the sample, and failing to use any of the 31 underwriters in the market as sample respondents who, had they been used, would have made profit margins of the sample group significantly higher.

The Commissioner reviewed TLTA's analysis of its 2023 data and the claims TLTA submitted about trends in future periods. The Commissioner did not find that data sufficiently persuasive or reliable to cause her to fix the 0.0% change TLTA claimed the data necessitated.

The Commissioner was not wrong to reject TLTA's 2023 claims. The Court should not substitute its judgment for the judgment of the Commissioner. The Commissioner is the judge of the weight and credibility of the evidence. The Commissioner correctly determined based on her experience and expertise and by comparison with the other data, that TLTA's partial 2023 data and its estimates of future trends did not have sufficient weight and credibility. The Commissioner's

decision gave greater weight to the complete data from 2022 and prior periods. That decision was fully within the Commissioner's discretion.

TLTA's criticisms are without merit and do not provide a basis to determine that TLTA has a likelihood of success on the merits.

4. TLTA cannot show it is likely to prevail on its claims of alleged Commissioner procedural defects.

TLTA submits lists of alleged procedural defects (Pet. Par. 9 a–f, 25 a–e, 47 a–d & 57) and peppers claims of procedural errors throughout the rest of its Petition (see Par. 9, 13, 17, 21-27, 34, 36, 47a-d, 56a-d & 57). TLTA claims that the alleged procedural defects it cites have the effect of denying TLTA and its members of due process. TLTA claims these alleged errors in the Order establish that TLTA has a probable right to relief and a likelihood of success on the merits. TLTA's claims are misplaced:

The most prominent of TLTA's claims are:

- that the Commissioner did not provide proper rulemaking notice in the *Texas Register* of TLTA's or TDI's proposed rules setting rates;
- that the Commissioner failed to provide a compliant reasoned justification, accepting and responding to comments, stating basis of rejecting commenter's proposals;
- that the Commissioner failed to conduct a proper rulemaking hearing.

These claims are without merit. By alleging them, TLTA has not shown that it has a probable right to relief or that there is a likelihood of success on the merits.

First, TLTA is arguing from an erroneous premise. TLTA claims that "Rate-setting can only be done one of two ways—either through rulemaking under the

any party and granted by the TDI Commissioner, a contested case hearing” (Pet. Par. 13) TLTA is incorrect. While TLTA is correct that there are only two paths for title insurance ratemaking, one of them is not, strictly speaking, a pure *rulemaking* path under Texas Government Code chapter 2001, subchapter B, as TLTA asserts. Rather, of the two procedural paths for title rate actions, one is, as TLTA notes, the contested case path, rarely used and only when invoked by a specific request. The other is a hybrid, Legislatively hand-crafted, specialized, and collaborative procedural path established for title insurance ratemaking by the Legislature in Texas Insurance Code section 2703.202 and other parts of the Title Act referenced above.

The ratemaking path followed by the Commissioner is the hybrid, hand-crafted, specialized, and collaborative procedural path established for title insurance ratemaking by the Legislature in Texas Insurance Code section 2703.202 and other parts of the Title Act. It does not require application of the rulemaking provisions of Texas Government Code chapter 2001, subchapter B to the entire ratemaking path, as TLTA suggests. It is in fact a hybrid, affording the parties the opportunity to choose between a contested or non-contested hearing. But the timelines and procedures in Texas Insurance Code chapter 2703 are specific and limited. They do not match the timelines and procedures of subchapter B of the APA. Tex. Gov’t Code chapter 2001, subchapter B.

The procedures followed by the Commissioner in this rate setting tracked the requirements of this hybrid, specialized, and collaborative procedural path. The Commissioner correctly applied this Legislatively-required hybrid, collaborative

path. TLTA, on the other hand, has misunderstood and misapplies the procedures, attempting to over-apply the processes of chapter 2001 of the APA to every part of the ratemaking procedural path.

The Commissioner properly followed that special, hybrid, collaborative procedural path approved by the Legislature in Texas Insurance Code section 2703.202(c) and related provisions. In each instance complained of by TLTA, the Commissioner properly applied the hybrid, specialized, collaborative procedures. In each instance, TLTA has attempted erroneously to apply a pure APA rulemaking path, ignoring the requirements of the Texas Insurance Code section 2703.202(c) and other related provisions that, by their specific applicability, replace the APA requirements.

The difference can be seen most clearly in two key aspects of the procedural paths: (1) the Commissioner's notice of its public hearing under Texas Insurance Code chapter 2703 compared to TLTA's claimed required notice under the APA under Texas Government Code section 2001.024; and (2) the Commissioner's reasoned justification requirement required in Texas Insurance Code chapter 2703 compared to TLTA's claimed reasoned justification requirement of APA under Texas Government Code sections 2001.029, 2001.030, and 2001.033.

What is immediately apparent is that most of the notice requirements of 2001.024 do not apply or relate to the ratemaking task at hand. Texas Insurance Code section 2703.202(c)'s requirement for rates to be set in a "rulemaking hearing" does not contemplate requiring the Commissioner to give that full notice requirement

in such proceedings. It contemplates a much more efficient notice requirement that only includes and requires “reasonable notice.” Code §§ 2703.201, 2703.202(a) & (c), 2703.206 & 2703.207.

What is also immediately apparent is that most of the reasoned justification requirements of Texas Government Code sections 2001.029, 2001.030, and 2001.033 of the APA do not apply or relate in any way to the ratemaking task at hand. Texas Insurance Code section 2703.202(c)’s requirement for a rulemaking hearing, while contemplating the “collaborative” format in the open hearing itself, does not contemplate application of every detailed element of the reasoned justification in Texas Government Code chapter 2001, subchapter B. It contemplates a much more efficient reasoned justification requirement that only includes and requires “reasonable notice” of the Commission’s rulings in the rate Order and the rule ultimately approved. Code §§ 2703.201, 2703.202(a) & (c), 2703.206 & 2703.207.

The comparison of the APA process and the Texas Insurance Code chapter 2703 process applies the canon of construction that a specific provision prevails over a general provision. While the APA establishes a commonly used process, it cannot be applied over Texas Insurance Code chapter 2703, which specifically dictates the process for setting title rates. Texas Insurance Code chapter 2703 establishes a distinctive request process (including special considerations for “interested parties”),¹² its own notice requirements,¹³ an alternative contested hearing process,¹⁴

¹² See Tex. Ins. Code § 2703.202(b)–(b-2) & (d)–(d-2).

¹³ See Tex. Ins. Code § 2703.207.

¹⁴ See Tex. Ins. Code § 2703.202(d)–(d-2) & (h).

its own timelines,¹⁵ its own evidentiary requirements,¹⁶ a unique secondary decision making hearing requirement,¹⁷ its own final decision process (an order at the end of the hearing that can result in amendments to a manual that is adopted by rule);¹⁸ and its own appeal structure.¹⁹ In light of these, to assert that the entire APA process applies to a title rate hearing when Texas Insurance Code section 2703.202(c) merely says that the *public hearing* “shall be conducted by the commissioner as a rule making hearing under Subchapter B, Chapter 2001, Government Code” is an overreach that ignores and conflicts with the Legislature’s creation of a unique ratemaking process in Texas Insurance Code chapter 2703.

In short, TLTA has gone overboard in claiming that all and every rulemaking requirement of the Texas Administrative Procedure Act in Government Code chapter 2001, Ssubchapter B applies in the Texas Insurance Code chapter 2703 ratemaking proceedings. In sum, the “rulemaking” path to ratemaking at the TDI is not a true, pure rulemaking proceeding, requiring adherence to every aspect of the rulemaking paradigm in Texas Government Code chapter 2001, subchapter B. The requirements of Texas Government Code chapter 2001, subchapter B apply only for the conduct of the hearing to produce the “collaborative” hearing structure the Legislature intended. The detailed APA provisions do not apply to the notice and reasoned justification

¹⁵ See Tex. Ins. Code §§ 2703.202(b-2), (d-1), (d-2), (g), (h) & 2703.207.

¹⁶ See Tex. Ins. Code §§ 2703.202(e), (i) & 27003.204.

¹⁷ See Tex. Ins. Code § 2703.202(j).

¹⁸ See Tex. Ins. Code §§ 2703.202 & 2703.208.

¹⁹ See Tex. Ins. Code § 2703.202(k)–(o).

portions of the process, where they are a poor fit and have been overridden by express terms and requirements in Texas Insurance Code chapter 2703.

Because TLTA's claims regarding alleged procedural errors lack merit, TLTA has failed to show a likelihood of success and a probable right to relief.

5. TLTA cannot show it is likely to prevail on its various remaining claims and criticisms.

Finally, as noted, TLTA has peppered a volley of other claims at all parts of the Order seeking to show a likelihood of success and a probable right to relief. These remaining claims include TLTA's allegations regarding the burden of proof and the proper evidentiary standard (Pet. Par. 47); TLTA's claim that a rate table allegedly does not align (Pet. Par. 9 f); TLTA's questions regarding the Commissioner's use of the term "insolvency;" TLTA's claims regarding the Commissioner's application of the confiscatory analysis to the "average title agent;" TLTA's claims regarding the Commissioner following the requirements of 28 Texas Administrative Code Section 1.202, and other claims.

While these claims are important, they are better left for detailed discussion at the hearing than included here in detail in briefing. TDI will leave the issues for such discussion at the hearing.

III. PRAYER

TDI and Commissioner Brown respectfully asks the Court, upon notice and hearing, to deny TLTA's request for injunctive relief and to grant TDI and Commissioner Brown such other and further relief to which it may be justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

AUSTIN KINGHORN
Deputy Attorney General for Civil Litigation

ERNEST C. GARCIA
Chief, Administrative Law Division

/s/ James Z. Brazell

JAMES Z. BRAZELL

State Bar No. 02930100

ROSALIND HUNT

State Bar No. 24067108

Assistant Attorney Generals

Administrative Law Division

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

Telephone: (512) 475-3204

Facsimile: (512) 320-0167

James.Brazell@oag.texas.gov

Rosalind.Hunt@oag.texas.gov

ATTORNEYS FOR DEFENDANTS TEXAS
DEPARTMENT OF INSURANCE AND CASSIE
BROWN, IN HER CAPACITY AS COMMISSIONER
OF THE TEXAS DEPARTMENT OF INSURANCE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Plaintiff's Request for Injunctive Relief has been served on May 20, 2025, on the following attorneys-in-charge, by e-service and/or e-mail:

RAY C. CHESTER
State Bar No. 04189065
ANDREW M. EDGE
State Bar No. 24071446
MCGINNIS LOCHRIDGE LLP
1111 W. 6th Street, Bldg. B, Suite 400
Austin, Texas 78703
Telephone: (512) 495-6000
Facsimile: (512) 495-6093
rchester@mcginnislaw.com
aedge@mcginnislaw.com

ATTORNEYS FOR PLAINTIFF
TEXAS LAND TITLE ASSOCIATION

/s/ James Z. Brazell
JAMES Z. BRAZELL
Assistant Attorney General