

**ALBERTA INSURANCE COUNCIL**

IN THE MATTER OF THE *INSURANCE ACT*, R.S.A. 2000, CHAPTER I-3  
(the “*Act*”)

**AND**

IN THE MATTER OF FIFTH AVENUE AUTO HAUS LTD.  
(the “Dealership”)

**AGREED STATEMENT OF FACTS AND JOINT SUBMISSION**

WHEREAS the Alberta Insurance Council (the “AIC”) undertook a review of the Dealership’s application for a Restricted Agents Certificate of Authority received on November 8, 2012, during which review information came to light indicating that the Dealership had been acting as a restricted agent while unlicensed;

AND WHEREAS the review established that the Dealership had sold equipment warranty insurance policies during the period from November 1, 2012 to November 13, 2012, without a valid and subsisting Certificate of Authority and that during that same period of time, the Dealership was compensated for acting as a restricted insurance agent;

AND WHEREAS the Dealership is aware of the opportunity to retain and instruct legal counsel with respect to the matters referred to in this Agreed Statement of Facts and Joint Submission;

NOW THEREFORE the Designated Individual of the Dealership, as described below, and the investigator agree as follows:

- 1.0 For the purposes of this Agreed Statement of Facts and Joint Submission, the Designated Individual of the Dealership, as described below, makes the following admissions and submissions:
  - 1.1.1 The Dealership is the holder of a valid and subsisting Certificate of Authority (#2-1845) to transact business as an insurance agent restricted to equipment warranty insurance under s.454 of the *Act* and has been so licensed since March 24, 1996 with the exception of the unlicensed period in question;
  - 1.1.2 Derek Niers (license # 96366) has been named as the Designated Individual (the “DI”) of the Dealership since March 24, 2000;
  - 1.1.3 On October 16, 2012, the AIC received a letter from the Dealership’s recommending insurer advising that they would no longer be the active sponsor for the Dealership effective October 31, 2012. The Dealership’s license was suspended effective October 31, 2012;
  - 1.1.4 In response to a request for information from the AIC, the AIC received a letter from the DI of the Dealership on November 14, 2012, which stated “[The

Dealership] sold six (6) Equipment Warranty Insurances since November 1, 2012”;

1.1.5 A Restricted Agents Certificate of Authority for the sale of equipment warranty insurance products was issued by the AIC to the Dealership on November 14, 2012;

1.1.6 In response to a request from the AIC, the DI sent a letter to the AIC dated December 10, 2012, confirming that the Dealership had received a letter on November 5, 2012 from a representative of their Third Party Administrator notifying the Dealership that their sponsor had dropped them but that there was another market willing to sponsor them. They immediately filled out the paperwork to apply for a new license and submitted it to the AIC. It was also noted in the letter that the Dealership was paid \$540.00 in compensation for the 6 policies that were written;

1.1.7 The Dealership was cautioned in relation to unlicensed activity during the period from February 16, 2006 to and including April 6, 2006 in a previous case.

2.0 As a result of the facts set out in this Agreed Statement of Facts and Joint Submission, the Dealership contravened s.452(1) of the *Act*, and consequently violated s.480(1)(b) of the *Act*.

3.0 The DI of the Dealership and the investigator jointly recommend to the General Insurance Council (the “Council”) that the Council approve this Agreed Statement of Facts and Joint Submission and resolve, dispose of, and finally conclude this matter involving the Dealership by signing a decision in the form attached hereto as Schedule 1, which provides for a fine of \$300.00 in accordance with the penalties prescribed in s.13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation, 125/2001*.

4.0 The DI of the Dealership recognizes that the acceptance of the decision set out in Schedule 1 hereto by the Council shall be at the unfettered discretion of the Council.

5.0 The DI of the Dealership is aware of and acknowledges that upon receiving notification of the Council’s decision, the specified fine must be paid within the time frames set out in s.480(4) of the *Act*.

6.0 The DI of the Dealership is also aware of and acknowledges that by entering into this Agreed Statement of Facts and Joint Submission, the Dealership waives its right to appeal this decision pursuant to s.482 of the *Act*.

7.0 The Dealership waives any existing right it may have under the Act or otherwise to a hearing, review, judicial review or appeal of this matter.

8.0 The DI of the Dealership acknowledges that this Agreed Statement of Facts and Joint Submission may be referred to in this or any other proceeding under the Act, and in regulatory proceedings in other jurisdictions.

9.0 The DI of the Dealership recognizes that this Agreed Statement of Facts and Joint Submission resolves all issues involving the Dealership in this matter only, as the matter is described above.

Dated at the City of Calgary, in the Province of Alberta, this 19 day of June 2013.

ALBERTA INSURANCE COUNCIL

PER:

Original signed by

**Carrie Graham, Investigator**

Dated at Calgary, in the Province of Alberta, this 6 day of June 2013.

Original signed by

**Derek Niers, Designated Individual**

**In the presence of:**

\_\_\_\_\_  
Name of Witness (please print)

Original signed by  
\_\_\_\_\_  
Signature of Witness

**SCHEDULE 1**

**ALBERTA INSURANCE COUNCIL**

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**DECISION of the GENERAL INSURANCE COUNCIL  
(the “Council”)**

WHEREAS the investigator of the Alberta Insurance Council (the “AIC”) made a request for information in relation to an investigation being conducted by the AIC, into the unlicensed activity of the Dealership from November 1, 2012 to November 13, 2012;

AND WHEREAS as a result of information received, the investigator and the DI of the Dealership have entered into an Agreed Statement of Facts and Joint Submission, a copy of which is attached hereto;

AND WHEREAS pursuant to the Agreed Statement of Facts and Joint Submission, the DI of the Dealership has agreed that he will pay a penalty in the amount of THREE HUNDRED DOLLARS (\$300.00) and has acknowledged that the Council has the discretion to accept or reject that recommendation;

AND WHEREAS the Council considers that it would be in the public interest to approve the said Agreed Statement of Facts and Joint Submission;

IT IS ORDERED that:

1. The Agreed Statement of Facts and Joint Submission be accepted and is hereby approved; and
2. The Dealership pay a fine of THREE HUNDRED DOLLARS (\$300.00) in accordance with the terms and conditions set out in the Agreed Statement of Facts and Joint Submission.

The attached Agreed Statement of Facts and Joint Submission was reviewed by the Council and a motion to approve this decision was made and carried at a properly conducted meeting of the Council on July 26, 2013. The motion was duly recorded in the minutes of that meeting.

Original signed by

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Jim Harris, Chairperson, General Insurance Council