MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

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Hearings Unit, OIC

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of	)	**Docket No. 13-0084**
	)	
EDMUND C. SCARBOROUGH and WALTER W. WOLF,	)	**ORDER ON DISCOVERY CONFERENCE**
	)	
Respondents.	)	
	)	

TO: Walter W. Wolf
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Alan Michael Singer, Staff Attorney, Legal Affairs Division
AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division
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On March 8, 2013, the Washington State Insurance Commissioner (OIC) issued a Notice of Request for Hearing for Imposition of Fines to Edmund C. Scarborough and Walter W. Wolf (collectively, Respondents). Said Notice of Request for Hearing proposes that the OIC take

disciplinary action against the Respondents for alleged violations of the Insurance Code involving the sales and issuance of surety bonds to both federal and other entities. The hearing of this matter has been scheduled to commence on January 22, 2014.

At the request of the OIC, on November 18, 2013 a prehearing discovery conference was held, which included all parties and counsel for Well Fargo Bank, to discuss the OIC's request that the undersigned issue a subpoena duces tecum for bank records of Respondent Scarborough held by Wells Fargo Bank. Subsequently Respondent Scarborough and Wells Fargo filed briefs in opposition to the request for a subpoena. Additionally, on November 27, 2013, the OIC filed a Motion to Compel with the undersigned, seeking an order compelling Respondent Scarborough to produce complete, executed and attested answers and responses to OIC's Interrogatories and Requests for Production.

At the request of the OIC, on December 19, 2013, a prehearing discovery conference was held, which included the OIC, counsel for Wolf and counsel for Scarborough (Wells Fargo, having received notice, apparently chose not to participate) to discuss the OIC's Motion to Compel. Both the above requested subpoena and the OIC's Motion to Compel were discussed and both the OIC and Respondent Scarborough indicated that they had at times in the past indicated an interest - and/or proposed to opposing counsel - that dispositive motion(s) be filed. Counsel for Scarborough advised that he would be filing a Motion for Summary Judgment.

In an effort to avoid further delay in this matter, discussion about the issues herein was held. The OIC and Scarborough agreed (counsel for Wolf said nothing) that the issues on summary judgment should include:

1. Were Respondents required to obtain authorization as an insurance company from the Washington State Insurance Commissioner prior to conducting the activities at issue herein? What is the answer to this question when the bond is issued relative to a federal project/contract? What is the answer to this question when the bond is issued relative to a non-federal project/contract?

2. Were Respondents required to obtain licenses as insurance producers in Washington prior to conducting the activities at issue herein? What is the answer to this question when the bond is issued relative to a federal project/contract? What is the answer to this question when the bond is issued relative to a non-federal project/contract?

3. Is the OIC authorized to impose a fine on Respondents based upon the activities at issue herein? If so, can the fine be calculated as a per violation amount, e.g., if there are 22 bonds then is the fine a monetary amount times 22? Or, must the fine be calculated as a total amount considering all of the bonds essentially as one violation? What is the answer to this question when the bond is issued relative to a federal project/contract? What is the answer to this question when the bond is issued relative to a non-federal project/contract? If those bonds which were issued relative to a

> federal project/contract are outside the OIC's jurisdiction, can the fine be calculated only as to those non-federal related projects/contracts if those non-federal projects/contracts are determined to be within the OIC's jurisdiction?

The undersigned specifically encouraged the parties, as soon as possible, to consider entering into joint stipulation of facts and/or Declarations regarding facts which can be agreed upon – or should be admitted by a party (and/or indeed about which a party may have already attempted to obtain admissions/statements about through their discovery efforts) which might be relevant to a decision on summary judgment.

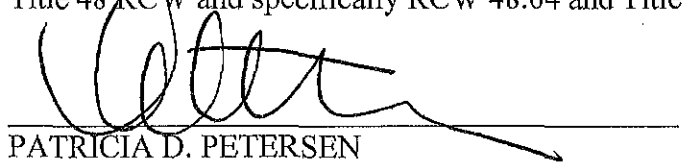
Respondent Scarborough indicated that he would be filing a Motion for Summary Judgment with the undersigned within one month from the date of this Order; that the OIC would file its Response to Scarborough's Motion within fourteen days after Scarborough's Motion has been filed; and Respondent Scarborough may file a Reply within seven days after the OIC's Response is filed. After all briefs are filed, the Hearings Unit shall contact the parties to schedule the matter for oral argument. The undersigned determined that discovery could be stayed until decision on Scarborough's Motion for Summary Judgment is entered; that the hearing herein which is currently scheduled to commence on January 22, 2014 is continued until a date to be determined depending upon the outcome of the summary judgment proceeding; and if this case is to proceed to hearing after determination of Scarborough's Motion for Summary Judgment, then discovery shall commence promptly, with time periods for response – if not already provided and ordered to respond - shortened by the fact that Scarborough and Wells Fargo have had a significant period of time in which to review, consider and respond to this discovery already.

Based upon the above activity,

IT IS HEREBY ORDERED that Respondent Scarborough may file a Motion for Summary Judgment on or before January 20, 2014. The OIC's Response to the Motion for Summary Judgment is due within fourteen days after the Motion for Summary Judgment is filed. Any Reply brief shall be filed within seven days after the OIC's Response is filed. After all briefs are filed, the Hearings Unit will contact the parties to schedule the matter for oral argument.

IT IS FURTHER ORDERED that the adjudicative proceeding in this matter scheduled for January 22, 2014 is continued until a date and time to be determined.

ENTERED AT TUMWATER, WASHINGTON, this 19th day of December, 2013, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief Presiding Officer

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Walter W. Wolf, James A. McPhee, Esq., Michael Miles, Esq., Timothy J. Parker, Esq., Mike Kreidler, James T. Odiorne, John F. Hamje, Esq., AnnaLisa Gellermann, Esq. and Alan Singer, Esq.

DATED this 19th day of December 2013.

Kelly A. Cairns

KELLY A. CAIRNS