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Hearing Unit, DIC
Patrick B. Pringle
Chief Hearing Officer

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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON

In the Matter of

CHARLES D. OLIVER, AMERICAN EQUITY
ADVISORY GROUP, LLC, AND "THE CHUCK
OLIVER TEAM,"

Respondents.

NO. 13-0108

**OPPOSITION TO THE OFFICE OF
THE INSURANCE
COMMISSIONER'S MOTION TO
CONSOLIDATE**

Charles Oliver's livelihood and business reputation are on the line in this matter and fundamental fairness should dictate whether the actions against Mr. Oliver and Steven Minnich are consolidated. The Office of the Insurance Commissioner's request for consolidation should be denied because of the substantial risks of prejudice that a consolidated hearing present for Mr. Oliver.

Courts have historically balanced the efficiency that consolidation provides against the heightened risk of prejudice and delay that consolidation presents to defendants.¹ The efficiencies that joint hearings provide does not trump the interests of justice and the rights of fairness that are inherent in our justice system. The risks of prejudice to Mr. Oliver if this matter is consolidated are substantial.

First, there is a significant difference in the interactions between Mr. Oliver and FLR (the insured) and Steven Minnich and FLR. FLR was a customer of Mr. Minnich's that Mr. Minnich worked closely with to determine what was best for her. The evidence will show that Mr. Minnich had numerous meetings, telephone calls, and email exchanges directly with

¹ See CR 20(b)

1 FLR that totaled, in the aggregate, tens of hours. Oliver will testify that he does not recall
2 having any direct contact with FLR. The OIC is attempting to blur the lines between Mr.
3 Minnich and Mr. Oliver in an effort to have them both be found liable for violating RCW 48.
4 The OIC is attempting to present a conspiracy where Oliver and Minnich both purportedly
5 worked together to take advantage of FLR, but nothing could be farther from the truth. The
6 OIC has presented this conspiracy by taking statements and actions that the contemporaneous
7 documentary evidence establishes were solely done by Mr. Minnich and attempting to have
8 them associated with Mr. Oliver. This approach by the OIC is the exact guilt by association
9 that tribunals are required to avoid when considering the fairness of consolidation.²

10 Second, the proposed consolidation presents a high likelihood that Mr. Oliver and Mr.
11 Minnich present antagonistic positions to each other, which is another significant risk that is
12 to be considered and avoided in determining whether consolidation is appropriate.³
13 Antagonistic defenses are those that acceptance of one will make it harder to accept the other.
14 It is quite possible (we have not yet seen Mr. Minnich's defenses) that Mr. Minnich chooses
15 to point the finger at Mr. Oliver, while Mr. Oliver's position has consistently been and will
16 continue to be that he did not have direct contact with FLR and did nothing in violation of
17 RCW 48. These two positions cannot both be accepted. The potential for co-defendants to
18 take antagonistic positions is just another reason why fairness dictates denying the OIC's
19 motion for consolidation. It is certainly easier for the trier of fact to determine a singular case,
20 than it is for the trier to separate out facts to determine which are applicable to which claims
21 and defenses. Mr. Oliver is entitled to present his defenses and have those defenses stand
22 alone without potential confusion and contradiction caused by Mr. Minnich's defenses. Mr.
23 Minnich is entitled to the same.

24 Third, Mr. Oliver will face at least a two-month delay. Mr. Minnich's counsel is not
25 available until the first week of March. This is an understandable time period for Mr.
26 Minnich to defend the case when considering the claims were just filed, but provides

² See, e.g., *U.S. v. De Rosa*, 670 F.2d 889, 898 (9th Cir. 1982), *Bertman v. U.S.*, 459 U.S. 993 (1982); *Desantis v. U.S.*, 459 U.S. 1014 (1982); *U.S. v. Donway*, 447 F.2d 940, 943 (9th Cir. 1971); *U.S. v. Mardian*, 546 F.2d 973, 977-78 (D.C. Cir. 1976).

³ *United States v. Tootick*, 952 F.2d 1078 (9th Cir. 1991).



1 unnecessary delay to Mr. Oliver who is ready to ready and prepared to defend himself against
2 the OIC's allegations.

3 In addition to prejudice and delay that consolidation will present to Mr. Oliver, Mr.
4 Oliver disputes that there will be efficiencies that will be obtained by consolidating this
5 matter. Mr. Oliver did not have a relationship with FLR. Mr. Oliver's office provided back-
6 end support for Mr. Minnich. Mr. Minnich's communications with FLR with likely form the
7 basis for Mr. Minnich defenses, but they will be mostly irrelevant to the OIC's allegations
8 against Oliver. By consolidating the matters, there will be significant time and cost added to
9 Mr. Oliver's defense of this action. Mr. Oliver will be forced to sit through and pay for hours
10 of testimony from FLR and Mr. Minnich that are unrelated to the prosecution or defense of
11 the allegations against him. The OIC's statement in its motion to consolidate that "the facts,
12 evidence, and witnesses in this matter are the same" is only supported by the same guilt by
13 association approach that makes consolidation of these matters so dangerous.

14 Mr. Oliver requests that the OIC deny consolidation because a joint hearing would be
15 prejudicial and cause delay to Mr. Oliver while not bearing the efficiencies that are required
16 for consolidation.

17 DATED this 10th day of June, 2013.

18 Respectfully submitted,

19 RYAN, SWANSON & CLEVELAND, PLLC

20 By 
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