

FILED

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

2014 JUL 15 A 10:00

In the Matter of)

PAUL D. GENEST)

Docket No. 14-0102

**ORDER ON OIC'S MOTION IN
LIMINE**

TO: Paul D. Genest
23665 Old Day Creek Road
Sedro Woolley, WA 98284

Brian F. Kreger, Esq.
Kreger Beeghly, PLLC
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Jeff Baughman, Licensing Manager, Consumer Protection Division
Marcia Stickler, Staff Attorney, Legal Affairs Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

The Office of Insurance Commissioner ("OIC") moves for an order in limine. I have considered OIC's Motion in Limine, filed June 26, 2014, and Applicant's Genest's Response to OIC's Motion in Limine, filed July 3, 2014. The OIC did not file a Reply.

1. On November 19, 2013, the OIC issued an Order Revoking License, No. 13-0313 ("Order Revoking"), which revoked Mr. Genest's Washington State insurance producer license effective December 7, 2013, pursuant to RCW 48.17.530 and RCW 48.17.540(2). The Order

Revoking included, at page 3, a Notice permitting Mr. Genest to file, within 90 days, a written demand for hearing seeking changes in the order.

2. By email dated March 3, 2014, Mr. Genest requested a hearing. By letter Order dated March 4, 2014, Chief Presiding Officer Patricia Petersen denied such request, finding that Mr. Genest's request was untimely, having been submitted 103 days after the Order Revoking rather than within 90 days, as required.

3. On March 24, 2014, Mr. Genest requested the OIC Licensing Division to reinstate his producer license. By March 25, 2014, email to Mr. Genest, OIC Licensing Compliance Supervisor Cheryl Penn emailed Mr. Genest informing him that his application for a Washington resident insurance license was denied pursuant to RCW 48.17.530(1)(b), which gives the Commissioner the authority to deny an application if the applicant has violated any insurance laws or rules. Ms. Penn stated that such violations – of RCW 48.17.480 and RCW 48.17.600 – were the basis of the Order Revoking.

4. Ms. Penn's March 25 email informed Mr. Genest that he had the right to demand a hearing to contest the OIC's denial of his application and that during such hearing "you can present your argument that the decision should not have been entered for legal and/or factual reasons and/or to explain the circumstances surrounding the activities which are the subject of this decision." On May 12, 2014, Mr. Genest, through counsel, timely submitted a Demand for Hearing.

5. In the present Motion, the OIC asserts that Mr. Genest could have litigated the propriety of revocation after it issued the Order Revoking, but declined to do so. The OIC moves, based on the doctrine of res judicata, for an Order "limiting testimony and evidence at a

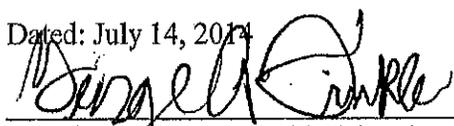
hearing on denial of Mr. Genest's new application for a license or reinstatement of his previous license to evidence arising at least 90 days after November 19, 2013."

6. The Order Revoking was final, subject to Mr. Genest's right to a hearing, which Judge Petersen found he had waived. The Order Revoking is a bar to the litigation in the present proceeding of matters that were or should have been previously litigated. *See, Hyatt v. Dept. of Labor and Industries*, 132 Wn.App. 387, 394 (2006) (rev. denied); *Rains v. State*, 100 Wn.2d 660, 663 (1983). The correctness of the Order Revoking may not be litigated in the present proceeding.

7. However, evidence bearing on the propriety of OIC's denial of Mr. Genest's application may relate to events that occurred earlier than 90 days after November 19, 2013. Indeed, Ms. Penn's March 25 email informed Mr. Genest that he could demand, as he has, a hearing to contest the OIC's denial of his application and that during such hearing "you can present your argument that the decision should not have been entered for legal and/or factual reasons and/or to explain the circumstances surrounding the activities which are the subject of this decision." I will rule on evidentiary issues in the context of the hearing on the merits.

8. The OIC's Motion is granted in part and denied in part.

Dated: July 14, 2014



JUDGE GEORGE FINKLE (Ret.)
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: Paul D. Genest, Brian F. Kreger, Esq., Mike Kreidler, James T. Odiorne, J.D., CPA, John F. Hamje, Esq., Jeff Baughman, Marcia Stickler, Esq., and AnnaLisa Gellermann, Esq.,

DATED this 15th day of July, 2014.



KELLY A. CAIRNS