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STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

In the Matter of:

Pacific Star Insurance Company,

No. 16-0043

Respondent.

**OIC's RESPONSE TO RESPONDENT'S
OBJECTION**

INTRODUCTION

In ruling on Pacific Star's Objection to Notice of Receipt of OIC Notice of Request for Hearing ("Objection"), this tribunal is essentially presented with one issue – all else being peripheral:

Is the Insurance Commissioner authorized to schedule a hearing in this matter?

The following response explains that the Insurance Commissioner is authorized to schedule a hearing in this matter and that the Objection is without merit.

SUMMARY OF FACTS

On May 19, 2016, the Insurance Commissioner issued a Notice of Intent to Fine After Hearing ("Fine Notice"). The next day, the Presiding Officer issued a Notice of Receipt of OIC Notice of Request for Hearing ("Request Notice") and began the process of scheduling the stages of a hearing. Pacific Star now objects to the Request Notice and the Presiding Officer's action.

RESPONSE TO OBJECTION

Pacific Star's Objection misstates the Commissioner's authority to commence a hearing,

1 the Commissioner's authority to determine the appropriate remedy and hearing participants, and
2 Pacific Star's due process rights.

3 **1. The Commissioner has the authority to commence a hearing in this matter now.**

4 The Insurance Commissioner can hold a hearing at any time and for any purpose within
5 the scope of the Insurance Code, such as fining an insurer. RCW 34.05.413(1); RCW
6 48.04.010(1); RCW 48.02.060(3)(c); RCW 48.05.185; *Hickethier v. Dep't of Licensing*, 159
7 Wn. App. 203, 218 (2011). There is no requirement that the Commissioner request, demand, or
8 seek a hearing from himself before scheduling a matter for hearing. *See* RCW 34.05.413(1);
9 RCW 48.04.010(1); RCW 48.02.060(3)(c); *Hutmacher v. Bd. of Nursing*, 81 Wn. App. 768, 772
10 (1996) (finding that an adjudicative proceeding commences when an agency notifies a party that
11 it will be adjudicating a matter). As the Commissioner's delegate, the Presiding Officer's action
12 to schedule a hearing therefore have no timing or internal processing restrictions. There is no
13 requirement that the Commissioner file an internal request between divisions in order to have
14 jurisdiction to commence a hearing.

15 The Commissioner has properly determined to schedule the stages of the hearing process
16 in this matter, and he should proceed to do so.

17 **2. The Commissioner has discretion to choose the appropriate remedy and hearing
18 participants.**

19 Upon determining that an insurer has violated Washington's insurance laws, the
20 Commissioner has several enforcement alternatives. He may refuse, suspend, or revoke the
21 insurer's certificate of authority under RCW 48.05.140, he may fine the insurer under RCW
22 48.05.185, he may issue a cease and desist order under RCW 48.02.080(3)(a), and he may
23 commence a lawsuit under RCW 48.02.080(3)(b). Each of these options is available to the
24 Commissioner in every case, and may be exercised at his discretion.

25 When the Commissioner initiates any proceeding under the Insurance Code, he may
26 request the Attorney General or a prosecuting attorney to prosecute or defend the proceeding.
RCW 48.02.080(4). Traditionally, however, the Commissioner has chosen to delegate his
authority to conduct and hold hearings to a Presiding Officer, with representation at the hearing
through designated staff. *See* RCW 48.02.060(3)(c); RCW 48.04.010(1); RCW 48.02.100.

Here, the Commissioner appropriately exercised his discretion to initiate a hearing when

1 he determined to fine Pacific Star for its violations of Washington’s insurance laws. And, he has
2 appropriately delegated his authority to his Presiding Officer to initiate the hearing.

3 **3. Pacific Star has a right to notice and opportunity for a hearing, but does not have a**
4 **right to delay the stages of the hearing process.**

5 A party to a government action has a right to procedural due process. *Sherman v. State*,
6 128 Wn.2d 164, 184 (1995). The procedures afforded to a party are satisfactory “[s]o long as
7 the party is given adequate notice and an opportunity to be heard and any alleged procedural
8 irregularities do not undermine the fundamental fairness of the proceedings.” *Id.* (noting that
9 “The fundamental requirement of due process is notice and the opportunity to be heard”). Even
10 where certain administrative procedures are spelled out in statute, those procedures are not
11 always applicable – when an agency commences a proceeding on its own (rather than upon
12 receipt of a hearing demand), statutes that relate to commencing an adjudicative proceeding
13 upon a hearing demand do not apply. *See Hutmacher v. Bd. of Nursing*, 81 Wn. App. 768, 772
14 (1996) (finding RCW 34.05.419 inapplicable after the agency commenced the proceeding). In
15 any event, courts do not entertain and a party cannot rely on conclusory claims of constitutional
16 violations when not adequately briefed or supported with citation to legal authority. *Lund v.*
17 *Dep’t of Ecology*, 93 Wn. App. 329, 339 (1998); *State v. Johnson*, 179 Wn.2d 534, 558 (2014).

18 Here, the Commissioner is providing Pacific Star with the fundamental requirement of
19 due process via the Presiding Officer’s scheduling order, which provides for notice and an
20 opportunity to be heard. Pacific Star cannot reasonably argue that scheduling the stages of a
21 hearing – the fundamental requirement of due process – deprives the company of due process.
22 Further, the procedures Pacific Star would have the Commissioner follow governing the time
23 for appeal are no longer applicable because the Commissioner commenced the proceeding on
24 his own accord – there is no longer any need to request a hearing, nor is there any further
25 procedure that is necessary to protect Pacific Star from an order becoming final without a
26 hearing on the merits.

CONCLUSION

Pacific Star’s Objection is without merit or legal support. The Commissioner correctly
proceeded with scheduling the stages of a hearing in this matter in accordance with all relevant

1 laws. The Presiding Officer should overrule Pacific Star's objection and proceed with
2 scheduling this matter for hearing.

3
4 DATED this 2nd day of June 2016, at Tumwater, Washington.

5 

6 Drew Stillman
7 Insurance Enforcement Specialist
8 Legal Affairs Division
9 Office of Insurance Commissioner

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be filed and served the foregoing OIC's Response to Respondent's Objection on the following individuals listed below in the manner shown:

OIC Hearings Unit Attn: William Pardee, Chief Presiding Hearings Officer Office of the Insurance Commissioner 5000 Capitol Blvd Tumwater, WA 98501 hearings@oic.wa.gov <i>By Hand Delivery and Email.</i>	Pacific Star Insurance Company c/o Brian Kreger, Counsel 999 Third Avenue Suite 3000 Seattle, WA 98104-4088 bk@kregerbeeghly.com <i>By Email and by depositing in the U.S. mail via state Consolidated Mail Service with proper postage affixed.</i>
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Dated this 2nd day of June 2016, at Tumwater, Washington.

Christine M. Tribe
Christine M. Tribe
Paralegal
Legal Affairs Division