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2016 MAY 24 P 5:03

HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

NO. 16-0043

PACIFIC STAR INSURANCE  
COMPANY,

**OBJECTION TO  
NOTICE OF RECEIPT OF OIC  
NOTICE OF REQUEST FOR  
HEARING AND TO SCHEDULING  
OF A HEARING**

Authorized Insurer,

Pacific Star Insurance Company ("Pacific Star"), by and through its undersigned counsel, hereby files its **OBJECTION** to the "Notice Of Receipt Of OIC Notice Of Request For Hearing" filed by the Hearings Unit of the Office of the Insurance Commissioner ("OIC") on May 20, 2016, and received by Pacific Star and its counsel on May 23, 2016.

BASIS FOR OBJECTION

Pacific Star's Objection is based on fundamental principles of fairness and legal procedure, including the following:

1. The Insurance Commissioner, by and through his designee, William Pardee, Presiding Officer misreads and misinterprets the OIC's "Notice of Intent to Impose a

OBJECTION TO NOTICE - 1

— KREGER BEECHLY, PLLC —  
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Seattle, WA 98104-4088  
(206)829-2757

1 Fine After Hearing” filed by the Insurance Commissioner’s designee, Drew Stillman, on  
2 May 19, 2016.

3 2. Any attempt by the Insurance Commissioner and the Insurance  
4 Commissioner’s Presiding Officer to note or schedule this matter for a hearing at this  
5 time deprives Pacific Star of its due process rights protected by the constitution and laws  
6 of the state of Washington.

7 3. Although this matter may proceed to hearing before the Presiding Officer or  
8 before an independent administrative law judge in the future, any scheduling of a hearing  
9 by the Presiding Officer at this time would be premature and would disregard the legal  
10 procedures that are clearly established in the insurance code.

11  
12 RATIONALE

13 1. The Insurance Commissioner filed his Notice of Intent to Impose Fine After  
14 Hearing in which he stated that he “has reason to believe that Pacific Star Insurance  
15 Company has violated the insurance laws of Washington.” RCW 48.02.080(3) clearly  
16 states that

17 “If the commissioner has cause to believe that any person is violating or  
18 is about to violate any provision of this code or any regulation or order of the  
commissioner, he or she may:

19 (a) issue a cease and desist order; and/or

20 (b) bring an action in any court of competent jurisdiction to enjoin the  
person from continuing the violation or doing any action in furtherance thereof.”

21 Those are the only options available to the Insurance Commissioner in situations  
22 where he “has reason to believe” that a person is violating the insurance code. Further,  
23 RCW 48.02.080(4) clearly states that the attorney general or the state’s prosecuting  
24 attorneys shall bring such actions on behalf of the Insurance Commissioner.

1           Knowing these mandates in the insurance code, the Insurance Commissioner  
2 chose not to bring an action under this clear mandate of the insurance code, but rather  
3 instructed his designee, an insurance enforcement specialist employed by the OIC, to file  
4 a Notice “that the Insurance Commissioner intends to fine Pacific Star Insurance  
5 Company after a hearing is scheduled by the Insurance Commissioner’s Hearings Unit.”  
6 (Notice of Intent, page 1; emphasis added). By means of this Notice, the Insurance  
7 Commissioner indicated only his intent to seek a fine. He did not demand, request, or  
8 seek a hearing.

9           The Insurance Commissioner did not initiate a proceeding against Pacific Star in  
10 the manner required under the insurance code and did not request a hearing. The  
11 Insurance Commissioner did nothing more than give Notice of his intentions to fine  
12 Pacific Star, but only after a hearing has been conducted in this matter.

13           The Presiding Officer erroneously reads the Insurance Commissioner’s Notice of  
14 Intent, and wrongly refers to it as “a Notice of Request for Hearing for Imposition of  
15 Fine.” That is not how the Insurance Commissioner captioned his Notice of Intent that  
16 is clearly not what the Insurance Commissioner is seeking in his Notice. While the  
17 Insurance Commissioner states his intention in his Notice of Intent, he also recognizes  
18 that he cannot carry out his intentions until after there has been a hearing. However, the  
19 Insurance Commissioner does not seek a hearing by means of the Insurance  
20 Commissioner’s Notice of Intent.

21           Accordingly, the Insurance Commissioner’s Presiding Officer does not have  
22 jurisdiction over this matter – at this point – and would be acting outside the scope of his  
23 authority to schedule a hearing in this matter – at this time.  
24

1  
2 Therefore, proceeding with the scheduling of this matter for hearing, starting with  
3 the customary prehearing conference noted in the Presiding Officer's erroneously-  
4 captioned "Notice Of Receipt Of OIC Notice Of Request For Hearing" is wrong, is  
5 premature, and is without legal support.

6 2. In his Notice of Intent to Impose Fine After Hearing, the Insurance  
7 Commissioner acknowledges and affirms that "Pacific Star Insurance Company may  
8 make a written request for a hearing as set forth in WAC 284-02-070 and RCW  
9 48.04.010." (Notice of Intent, page 4, paragraph 2).

10 RCW 48.04.010 states that "any person aggrieved by any act, threatened act, or  
11 failure of the commissioner to act" may file a written demand for a hearing. (RCW  
12 48.04.010(1)(b)). Such a demand "shall specify in what respects such person is so  
13 aggrieved" (RCW 48.04.010(2)), and the demand for hearing shall be filed by the  
14 aggrieved person within ninety days of the commissioner's act or threatened act or the  
15 hearing is deemed to have been waived. (RCW 48.04.010(4)). These procedural  
16 safeguards are clear and cannot be taken away by the Insurance Commissioner through  
17 any governmental action that would restrict or hinder an aggrieved person's opportunity  
18 to seek an appropriate remedy at an evidentiary hearing. The Insurance Commissioner  
19 cannot, by means of his Notice of Intent to Impose Fine, interfere with Pacific Star's  
20 right to timely demand a hearing in this matter. The Insurance Commissioner knows  
21 this, which is why he makes it clear in his Notice of Intent that Pacific Star "may make  
22 a written request for a hearing" under RCW 48.04.010.

23 RCW 48.04.010(5) establishes additional procedural rights available to a person  
24 who is aggrieved by the acts or threatened acts of the Insurance Commissioner:

"A licensee under this title may request a that a hearing authorized under  
this section be presiding over by an administrative law judge assigned under chapter

1 34.12 RCW. Any such request shall not be denied." (RCW 48.04.010(5); emphasis  
2 added).

3 Pacific Star is a licensee under Title 48 RCW. Pacific Star is entitled to all the  
4 procedural due process rights and privileges afforded a licensee under Title 48 RCW.  
5 Pacific Star is aggrieved by the threatened acts of the Insurance Commissioner who has  
6 declared his intent to fine Pacific Star a significant amount of money, thereby depriving  
7 Pacific Star of its constitutionally-protected interest in its property.

8 Both the Washington State Constitution and the United States Constitution  
9 contain identical clauses prohibiting the state from depriving any person of life, liberty,  
10 or property without due process of law. Those coextensive due process protections  
11 require the government to treat citizens in a fundamentally fair manner. This  
12 fundamental fair treatment extends also to legally-licensed persons like Pacific Star  
13 Insurance Company. Washington appellate courts have upheld these long-standing  
14 constitutional principles throughout the history of this state. The Insurance  
15 Commissioner can do no less.

16 Pacific Star must be afforded all the procedural due process rights protected by  
17 the State and National Constitutions, as those procedural rights are spelled out in RCW  
18 48.040.010. Pacific Star must have an opportunity to assess the impact of the Insurance  
19 Commissioner's acts and threatened acts and, based on its own assessment, then make  
20 the decision to make a written demand for a hearing within ninety days of Pacific Star's  
21 receipt of the Insurance Commissioner's Notice of Intent in which he threatens to fine  
22 Pacific Star and deprive it of its property interests.

23 Not only would it be premature for the Insurance Commissioner's Presiding  
24 Officer to schedule a hearing in this matter (even assuming the Presiding Officer has the  
authority, which, as noted above is disputed), such an action by the Presiding Officer at

1 this time will constitute an action by the Insurance Commissioner to deprive Pacific Star  
2 of its constitutionally-protected due process rights, which include the right to determine  
3 if and when it will file a timely demand for hearing and the right to decide if such a  
4 hearing is to be presided over by an independent administrative law judge assigned from  
5 the Office of Administrative Hearings under chapter 34.12 RCW. The Insurance  
6 Commissioner cannot deprive Pacific Star of these due process rights.

7 3. Although this matter may eventually be heard by the Presiding Officer in the  
8 OIC's Hearings Unit, there are several procedural steps that must be considered, acted  
9 on, or waived by Pacific Star before the OIC's Hearing Unit can obtain the necessary  
10 jurisdiction over such a hearing. It is simply too soon in the process for the Insurance  
11 Commissioner's Presiding Officer to attempt to exercise any authority, quasi-judicial or  
12 otherwise, in this matter or attempt to schedule a hearing or require either Pacific Star or  
13 the OIC to participate in any part of an adjudicative administrative proceeding at this  
14 time. Any such attempts, without authority, will violate the clear mandate of the law set  
15 forth in RCW 48.04.010 and will violate Pacific Star's constitutionally protected due  
16 process rights.

17 Pacific Star received the Insurance Commissioner's Notice of Intent to Impose  
18 Fine After Hearing in the form of an attachment to an electronic mail message from the  
19 Insurance Commissioner's employee and designee, insurance enforcement specialist  
20 Drew Stillman, on May 19, 2016. Pacific Star has the legal right to demand a hearing  
21 on the Insurance Commissioner's threatened acts recited in his Notice of Intent within  
22 ninety days of receipt of the Notice of Intent. If Pacific Star exercises its legal right to  
23 demand a hearing, Pacific Star can also demand that the hearing be presided over by an  
24 independent administrative law judge.

1 Pacific Star received the Insurance Commissioner's Notice of Receipt of OIC  
2 Notice of Request for Hearing, by regular mail from his designee Presiding Officer  
3 William Pardee, on May 23, 2016. The Presiding Officer's Notice is flawed and  
4 erroneously states what the Insurance Commissioner's actual intent is as stated in his  
5 Notice of Intent. The Presiding Officer's notification to Pacific Star that he intends to  
6 undertake action to initiate the scheduling of a hearing in this matter (1) is not in accord  
7 with clear declarations of the Insurance Commissioner's set forth in his Notice of Intent,  
8 (2) is without authority either from the Insurance Commissioner himself or under any  
9 construction of law governing the actions the Insurance Commissioner may take, and (3)  
10 is in clear violation of Pacific Star's constitutional due process rights.  
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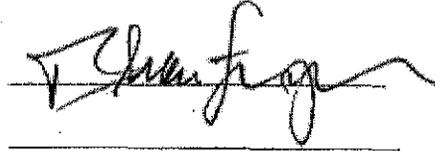
12 CONCLUSION

13 Pacific Star respectfully requests that the Insurance Commissioner and the  
14 Insurance Commissioner's designee, Presiding Officer William Pardee, rescind the  
15 Presiding Officer's "Notice of Receipt of OIC Request For Hearing" and that any further  
16 actions or proceedings to attempt to schedule a hearing in this matter be postponed at this  
17 time and until Pacific Star has exercised its rights set forth in RCW 48.04.010 or until  
18 both the OIC and Pacific Star advise the Presiding Officer that this matter may proceed  
19 to hearing.  
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DATED this \_\_\_\_ day of May, 2016

KREGER BEEGHLY, PLLC



Brian F. Kreger,  
WSBA Number 10670  
Attorney for Pacific Star  
Insurance Company

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CERTIFICATE OF SERVICE

I, Brian F. Kreger, under penalty of perjury under the laws of the State of Washington do hereby declare and certify that I served and caused to be delivered by electronic mail and regular United States Postal delivery, the foregoing Objection to Notice of Receipt of OIC Notice of Request for Hearing and to Scheduling of a Hearing on the following parties or persons at the last known addresses given below:

Hearings Unit  
Office of the Insurance Commissioner  
P.O. Box 40257  
Olympia, WA 98504-0257

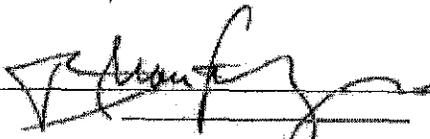
Mr. Drew Stillman  
Office of the Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255

Attention: William Pardee  
Presiding Officer

and to: DrewSt@oic.wa.gov

And to: Dorothy Seabourne-Taylor  
DorothyS@oic.wa.gov

Executed on this 24<sup>th</sup> day of May, 2016 in Seattle,  
Washington.

  
\_\_\_\_\_  
Brian F. Kreger