MIKE KREIDLER
STATE INSURANCE COMMISSIONER

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 of a true copy of this document to parties listed below
DATED this 13th day of Feb, 2006.
at Tumwater, Washington.
Signed: Wendy Galloway

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER

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FILED

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In the Matter of: **TERRENCE L. MOSELY,** Petitioner, v. MIKE KREIDLER, INSURANCE COMMISSIONER, OFFICE OF THE INSURANCE COMMISSIONER, Respondent.	No. G05-80 **FINAL ORDER ON ISSUE OF RIGHT TO HEARING**

TO: Mr. Terrence Mosely
1110 W. Bellwood Drive
Spokane, Washington 99218

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John Hamje, Deputy Commissioner, Consumer Protection
Carol Sureau, Deputy Commissioner, Legal Affairs
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

NATURE OF PROCEEDING

On June 1, 2001, Mr. Terrence Mosely (Mosely) was involved in an automobile accident involving himself and Supanchick. Farmers Insurance Group (Farmers) provided auto coverage to Supanchick either at or near the time of the accident. Mosely claimed bodily injury and also damage to his 1992 Ford Taurus. Under the policy issued by Farmers to

Supanchick, Farmers initially did pay claims to Mosely for the damage to Mosely's automobile in the amount of approximately $1,270.35 and loss of use of approximately $110.33. Farmers refuses to pay any more of Mosely's claims, which are apparently for bodily injury, however, because it alleges that after payment for damages to Mosely's automobile it discovered that the subject policy was actually not in force at the time of the accident. Because Farmers had determined to pay no further of his claims, on or about September 2001 Mosely sought assistance from the Insurance Commissioner (OIC) by filing a consumer complaint. In furtherance of this consumer complaint, on October 16, 2001 the OIC communicated with Farmers about the situation, received information from Farmers in return, and, by letter dated November 9, 2001, the OIC advised Mosely that the OIC lacked jurisdiction to assist Mosely in requiring Farmers to pay any further claims for this accident. Mosely has requested a hearing to contest the OIC's decision not to take action to require Farmers to pay his remaining outstanding claims.

In response to Mosely's request for hearing, the undersigned held prehearing conferences, which included all parties, on October 24, 2005, November 9, 2005, December 7, 2005 and December 19, 2005 for the purposes of hearing the parties' positions, assisting Mosely with discovery as necessary, allowing Mosely to submit further documentation to support his position and generally to advise Mosely about procedure and assist him in presenting his position. The OIC was represented by Carol Sureau, Deputy Commissioner for Legal Affairs, and Mosely appeared pro se. During the fourth prehearing conference, the parties agreed that oral argument should be presented by telephone on December 19, 2005 and the undersigned would enter her final decision shortly thereafter.

Accordingly, on January 20, 2006, the undersigned heard oral argument from Mosely in support of his position that he has a right to hearing and from the Commissioner as to why Mosely does not have a right to hearing. Again the OIC appeared through Carol Sureau, Deputy Commissioner, and Mosely appeared pro se. Although the agreement had been that the undersigned would enter her final decision regarding whether Mosely has a right to hearing following this oral argument, at the end of the oral argument, Mosely requested the opportunity to argue his position, again, in person. Against the strong objections of the Commissioner, the undersigned granted Mosely's request; Mosely advised that his argument would be based on the same two documents he relied upon during his oral argument by telephone, specifically his Plaintiff's Statement of Ultimate Fact filed January 19, 2006 and Concluding Statement in Support of Plaintiff's Hearing Request filed January 6, 2006. The OIC's attorney advised that she would not be filing any written documents, but instead would again rely upon oral argument to present the OIC's position.

Pursuant to the request of Mosely to reargue his position in person, on February 1, 2006, the undersigned heard oral argument on the issue of right to hearing in person from the parties. Mosely again appeared pro se and the Commissioner appeared through his attorney, Deputy Commissioner Carol Sureau.

ANALYSIS

RCW 48.04.010 provides:

> (1) The commissioner may hold a hearing for any purpose within the scope of this code as he or she may deem necessary. The commissioner shall hold a hearing:
> (a) If required by any provision of this code; or
> (b) Upon written demand for a hearing made by any person aggrieved by any act, threatened act, *or failure of the commissioner to act, if such failure is deemed an act under any provision of this code*, ... [Emphasis added.]

Mosely asserts, generally, that, based upon the myriad of facts he has presented, he has the right to have his claims for this accident paid by Farmers under the terms of the insurance policy which existed between Farmers and Supanchick. Mosely further asserts that the OIC has an obligation to require Farmers to pay Mosely's claims. Because the OIC has previously determined that he has no jurisdiction to require Farmers to pay Mosely's claims, Mosely argues here before the undersigned that he is entitled to an administrative hearing herein and a determination from the undersigned that the OIC must require Farmers to pay his claims. Although the undersigned has attempted to assist him during prehearing conferences, Mosely has continued to argue what he believes the facts of his case to be rather than focusing on the issue of his right to hearing as set forth in the abovereferenced statute. Most significantly, he asserts repeatedly that Farmers issued Supanchicks their policy on June 1, 2001, and that it should have been effective on 12:01 a.m. on June 1, but that in August 2001 Farmers changed the effective time to later in the day on June 1, 2001 which caused the policy to not be in effect at 10:00 a.m. on June 1, 2001 which was the time of his accident. Essentially, Mosely asserts many facts which he concludes indicate that Farmers is required to pay his claims and, in addition, asserts that because Farmers did pay two of his claims (even recognizing that Farmers indicates that it made a mistake in paying those claims) it has somehow "vested me in interest in this policy" such that Farmers must pay the rest of his claims. Somehow in support of his claim, Mosely advises that on November 4, 2004 he filed a Declaration of Injury in federal court; further, Mosely asks that a physician be hired by the state to verify his physical condition of hypertension apparently arguing that it was caused by the accident.

The OIC argues that, while Title 34 RCW, the Administrative Procedure Act, governs right to hearing, RCW 48.04.010 imposes additional criteria on the right to hearing. Specifically, the OIC argues that an aggrieved party clearly has a right to hearing under the abovereferenced statute if, as it states, the OIC has failed to act where such failure is deemed an act under any provision of the insurance code. The OIC argues further, however, that the OIC's failure to act in this case – i.e. refusal to require Farmers to pay Mosely's claims – may be a failure to act but it is not "deemed an act by any provision of this code[.]" as required by the subject statute. Where, the OIC argues, is the statute which requires the OIC to intervene in a dispute

between Mosely and Farmers, determine what the actual facts are, and require Farmers to pay?

After careful review of the entire file herein, and most specifically on 1) Mosely's Concluding Statement in Support of Plaintiff's Hearing Request filed January 6, 2006 and Plaintiff's Statement of Ultimate Fact filed January 19, 2006 and Plaintiff's Closing Argument Favoring an Administrative Hearing Request filed February 1, 2006, and the oral arguments of the parties presented by telephone on January 20, 2006 and presented in person on February 1, 2006; and on 2) oral arguments of the Commissioner presented by telephone on January 20, 2006 and in person on February 1, 2006, the undersigned has determined that Mosely has shown no right under RCW 48.04.010 or any other provision of Title 34 RCW or Title 48 RCW, to an administrative proceeding concerning the responsibility of Farmers to pay his claims.

It should be noted that this ruling must not be interpreted in any way to include an opinion one way or another on the issue of whether Farmers did or did not act properly and in accordance with law in denying Mosely's claims. The order herein reflects only that the undersigned has reviewed the Commissioner's refusal to require Farmers to pay Mosely's claims in this specific case and has determined that such refusal is not a "failure to act, if such failure is deemed an act under any provision of this code" as required by the abovereferenced statute to allow Mosely the right to an administrative proceeding in this forum. In short, while Farmers may or may not be wrong in its actions, this is not the proper forum to decide the facts necessary to make that determination or to require Farmers to pay the claims. This ruling should have no bearing on Mosely's rights against Farmers in another forum.

ORDER

BASED ON THE ABOVE ACTIVITY,

IT IS HEREBY ORDERED that Mosely has no right to an administrative hearing herein, and therefore, this proceeding is terminated with prejudice in this forum.

ENTERED this 13th day of February, 2006 at Tumwater, Washington, pursuant to Title 34 RCW, Title 48 RCW and specifically RCW 48.04.010, and regulations applicable thereto.

Patricia D. Petersen
Chief Hearing Officer