

**FILED**

2016 OCT 14 A 8:01

HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

**STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of:

Michael R. Marinelli and Insurance  
Appraisal Services,

Appellants.

Agency No. 16-0155

OIC'S PARTIAL MOTION TO DISMISS

**RELIEF REQUESTED**

The Office of the Insurance Commissioner (OIC) moves this tribunal for an order dismissing Appellants' alleged issues relating to the award of monetary damages for loss of business opportunity, interference with business relationships, and harm to personal and professional reputation, because this tribunal lacks jurisdiction over the subject matter, because Appellants have brought these claims in an improper venue, and because Appellants have failed to state claims upon which this tribunal may grant relief. This tribunal has the power to hear and decide matters within the scope of the Insurance Code, Title 48 RCW. The award of monetary damages for loss of business opportunity, interference with business relationships, and harm to personal and professional reputation are not matters within the scope of the Insurance Code.

**ISSUE**

In deciding this motion, this tribunal is presented with this issue: Is it proper to dismiss Appellants' claims relating to the award of monetary damages for loss of business opportunity, interference with business relationships, and harm to personal and professional reputation for lack of subject matter jurisdiction, improper venue, or failure to state claims upon which this tribunal may grant relief?

1 **FACTS**

2 The OIC issued an Order to Cease and Desist and Notice of Intent to Impose a Fine  
3 against Michael Marinelli and Insurance Appraisal Services on June 17, 2016. On September  
4 12, 2016, Michael Marinelli and Insurance Appraisal Services demanded a hearing in this  
5 matter. The hearing demand stated in relevant part:

6 Marinelli and IAS seek relief from the Order issued against them by Insurance  
7 Commissioner Mike Kreidler, such relief to include, but not be limited to, the  
8 following:

9 ...  
10 Monetary damages for loss of business, for loss of business opportunity, for  
11 interference with business relationships, for harm to personal and professional  
12 reputation . . . .

13 The OIC now seeks to dismiss these alleged issues.

14 **EVIDENCE RELIED UPON**

15 This motion is based on the pleadings in this action, including the OIC's Order to Cease  
16 and Desist and Notice of Intent to Impose a Fine and Appellants' Objection to Order to Cease  
17 and Desist Notice of Intent to Impose Fine And Demand for Hearing.

18 **LEGAL AUTHORITY**

19 **Dismissal is mandatory because the Insurance Code governs this matter and does not  
20 confer this tribunal with the authority to hear or decide issues relating to the award of  
21 monetary damages for loss of business opportunity, interference with business  
22 relationships, or harm to personal and professional reputation.**

23 This motion is made under RCW 34.05.437(1), which gives parties the full opportunity  
24 to submit motions at appropriate stages of adjudicative proceedings. A motion to dismiss,  
25 especially one for lack of subject matter jurisdiction, is appropriate at this stage of the  
26 proceeding. *See* WAC 10-08-130 (listing proper considerations during the prehearing stages);  
*Inland Foundry v. Air Pollution Auth.*, 98 Wn. App. 121, 123, 989 P.2d 102 (1999).

This tribunal acts under the authority of the Insurance Commissioner and has  
jurisdiction only over matters within the scope of the Insurance Code. *See* RCW 48.02.060(1)  
(identifying the Insurance Commissioner's authority as stemming from the provisions of the  
Insurance Code); RCW 48.02.060(3)(c) (authorizing the Insurance Commissioner to conduct

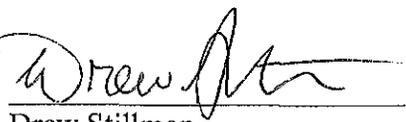
1 hearings that are useful and proper for the efficient administration of the Insurance Code); RCW  
2 48.04.010(1) (stating that “[t]he commissioner may hold a hearing for any purpose within the  
3 scope of [the insurance] code”); *McGuire v. State*, 58 Wn. App. 195, 198, 791 P.2d 929 (1990)  
4 (finding that “[t]he power and authority of an administrative agency is limited to that which is  
5 expressly granted by statute or necessarily implied therein”). “Without subject matter  
6 jurisdiction, a court or administrative tribunal may do nothing other than enter an order of  
7 dismissal.” *Inland Foundry*, 98 Wn. App. at 123-24.

8 Here, the Insurance Code governs the scope of this tribunal’s subject matter jurisdiction.  
9 The Insurance Code does not confer this tribunal with the authority to hear or decide matters  
10 relating to the award of monetary damages for loss of business opportunity, interference with  
11 business relationships, or harm to personal and professional reputation. Consequently, this  
12 tribunal lacks subject matter jurisdiction over those issues and must dismiss them. And, because  
13 this tribunal cannot award monetary damages for loss of business opportunity, interference with  
14 business relationships, or harm to personal and professional reputation, Appellants have brought  
15 their claims to an improper venue and have failed to state claims upon which this tribunal may  
16 grant relief.

### 17 CONCLUSION

18 For the reasons set out above, the OIC respectfully requests that the presiding officer  
19 issue an order dismissing Appellants’ alleged issues relating to the award of monetary damages  
20 for loss of business opportunity, interference with business relationships, and harm to personal  
21 and professional reputation.

22 DATED this 13<sup>th</sup> day of October 2016, at Tumwater, Washington.

23   
24 Drew Stillman  
25 Insurance Enforcement Specialist  
26 Legal Affairs Division  
Office of the Insurance Commissioner

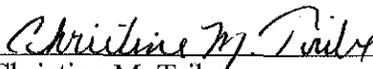
CERTIFICATE OF MAILING

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 Partial Motion to Dismiss on the following individuals listed below in the manner shown:

<p>OIC Hearings Unit William Pardee, Presiding Officer 5000 Capitol Blvd. SE Tumwater, WA 98501</p> <p><i>By hand delivery.</i></p>	<p>Michael Marinelli and Insurance Appraisal Services c/o Brian Kreger, Attorney for Appellants 999 Third Ave., Suite 3000 Seattle, WA 98104-4088</p> <p>bk@kregerbeeghly.com</p> <p><i>By email and by depositing in the U.S. mail via state Consolidated Mail Service with proper postage affixed.</i></p>
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Dated this 14<sup>th</sup> day of October, 2016, at Tumwater, Washington.

  
Christine M. Tribe  
Paralegal  
Legal Affairs Division