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

8 In the Matter of:

9 Edward J. Chadwick & KELT, LLC,
10 Appellant/Licensees.

OAH Docket No. 03-2019-INS-00048
OIC Case No. 1596770

**REQUEST FOR DISCRETIONARY
STAY OF ORDERS SUSPENDING AND
REVOKING LICENSES**

11 Agency: Office of the Insurance Commissioner
12 Program: Insurance Brokers and Producers
13 Agency Nos. 19-0059 & 19-0060

14 **Relief Requested:**

15 COMES NOW Edward Chadwick, the Appellant in this matter, by and through his
16 counsel of record and requests the Commissioner exercise his discretion under RCW
17 48.04.020(2) because Appellant was constructively denied his opportunity to request a hearing
18 before the February 1, 2019 Office of the Insurance Commissioner’s [“OIC”] Order
19 Suspending Licenses Pending Revocation No. 19-0059 and Order Revoking Licenses No. 19-
20 0060 [collectively the “Orders”] went into effect, which would have automatically stayed the
21 suspensions and revocations at issue under RCW 48.04.020(1). These Orders are included
22 with Appellant’s Declaration as Exhibits A and B.
23

1 **Facts:**

2 Indeed, Appellant was not sure whether the Orders were going to go into effect because
3 OIC’s investigation was still open and continued at least up and until March 12, 2019, the day
4 Appellant requested a hearing with the Office of Administrative Hearings [“OAH”], confusing
5 the procedural status in the discipline matter.¹ Regardless, the language in the Orders
6 identifying how an automatic stay may be obtained was unclear and the webpage directing
7 Appellant for further instruction made no mention of the process.² But most importantly,
8 Appellant had less than three (3) business days before the first of the Orders, the Order
9 Suspending Licenses Pending Revocation No. 19-0059, would go into effect, which was
10 tantamount to the order being put into effect immediately.³

11 The Declaration of Edward Chadwick with Exhibits A through E are included with
12 these materials in support of this Request.

13 **Argument:**

14 RCW 48.04.020(2) states in pertinent part that “[i]n any case where an automatic stay is
15 not provided for, and if the commissioner after written request therefor fails to grant a stay, the
16 person aggrieved thereby may apply to the superior court for Thurston County for a stay of the
17 commissioner’s action.” In the past, the OIC Chief Hearing Officer has held that when an
18 Order is made effective “immediately” such that it prevents an appellant from obtaining an
19 automatic stay, then the appellant “may seek a discretionary stay and may also seek a stay from
20 superior court.”⁴

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22 _____
¹ Declaration of Edward Chadwick, ¶¶2-10, Exs. C-E.

23 ² *Id.*

³ *Id.*, ¶5. Three (3) days is the bare minimum window of time that the Department must provide notice of temporary suspension before an order of the same can go into effect under RCW 48.17.540(3).

⁴ *See* Appendix A.

1 Here Appellant could not ascertain whether the Orders would go into effect because the
2 investigation was still substantially underway, and even then, there was not enough time
3 provided for him to obtain an automatic stay, notwithstanding the language in the Orders.

4 Thus, Appellant may seek a discretionary stay of the suspensions and revocations
5 pursuant to the Orders, which he may also seek in superior court if the Commissioner fails to
6 grant it.

7 **Conclusion:**

8 In the interests of justice, Appellant respectfully requests a stay of the Orders while the
9 merits are heard in the OAH matter just as though he had filed his request for hearing on the
10 Orders before the Order Suspending Licenses Pending Revocation No. 19-0059 went into
11 effect on February 6, 2019.

12 DATED this 24th of April 2019.

13
14 **SEATTLE LITIGATION GROUP, PLLC**

15 */s/Jessica Creager* _____

16 Jessica Creager, WSBA No. 42183

17 500 Union Street, Suite 510

18 Seattle, WA 98101

19 Tele: (206) 407-3300 / Fax: (206) 407-3097

20 Email: jessica@seattlelitigation.net

CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the State of Washington that on the date stated below, I caused the foregoing *REQUEST FOR DISCRETIONARY STAY with APPENDIX A, and DECLARATION OF EDWARD CHADWICK with EXHIBITS A-E* on the following parties:

Office of the Insurance Commissioner Hearing Unit Attn: Chief Hearing Officer P.O. Box 40255 Olympia, WA 98504-0255 Fax: 360-664-2782	<input type="checkbox"/> Via Legal Messenger <input checked="" type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via U.S. Mail/Commercial Post <input type="checkbox"/> Via Electronic Filing/Eservice <input type="checkbox"/> Via Hand-Delivery
Sofia Pasarow Office of the Insurance Commissioner MS: 40255 Olympia, WA 98504 E-mail: sofiap@oic.wa.gov <i>Agency of Representative</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via U.S. Mail/Commercial Post <input type="checkbox"/> Via Electronic Filing/Eservice <input type="checkbox"/> Via Hand-Delivery
Rebekah Carter Office of the Insurance Commissioner MS: 40255 Olympia, WA 98504 E: mail: rebekahc@oic.wa.gov <i>Agency Contact</i>	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/> Via U.S. Mail/Commercial Post <input type="checkbox"/> Via Electronic Filing/Eservice <input type="checkbox"/> Via Hand-Delivery

The foregoing statement is made under the penalty of perjury under the laws of the United States of America and the State of Washington and is true and correct.

DATED this 24th of April 2019.

/s/Tiffany Lastimos
Tiffany Lastimos
Paralegal

Appendix A

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 below
DATED this 23 day of January, 2006 at Tumwater, Washington.

Signed: Wendy Galloway



OFFICE OF
INSURANCE COMMISSIONER

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HEARINGS UNIT
Fax: (360) 664-2782

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Wendy Galloway
Administrative Assistant
WendyG@OIC.wa.gov.
(360) 725-7002

In the Matter of:)
)
EVOLUTION SERVICES, INC.,)
)
Unauthorized entities,)
)
and)
)
WILLIAM J. MILLER, STANTON L. CALL,)
WILLIAM R. OWENS, BARBARA MILLER,)
JOHN C. RIVERA, JESSE C. RIVERA,)
LISA A. COLEMAN, DAVID EMERSON LEE,)
M.D., KENNETH KAISER, SR., and)
CHRIS KOMARZEC,)
)
Individual Respondents.)

NO. D05-364

**ORDER ON EVOLUTION SERVICES,
INC.'S AND SPECIFIED INDIVIDUALS'
MOTION FOR AUTOMATIC STAY**

TO: Thao Tredt, Esq.
Gulliver Swenson, Esq.
Ryan, Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034

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
Charles Brown, Sr. Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255



ORDER ON EVOLUTION SERVICES

No. D05-364

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On September 23, 2005, the undersigned held a prehearing conference in this matter, which included all parties. During that prehearing conference, Brian Kreger, Esq., who was then attorney for Evolution Services, Inc. and specified individuals named herein (together referred to as ESI), argued that at least one portion of the subject Order to Cease and Desist should be automatically stayed. The undersigned requested that the parties brief the issue presented, which briefs were filed timely as requested.

RCW 48.04.020 provides as follows:

- (1) Such demand for a hearing received by the commissioner prior to the effective date of action taken or proposed to be taken by him shall stay such action pending the hearing,*
- (2) In any case where an automatic stay is not provided for, and if the commissioner after written request therefore fails to grant a stay, the person aggrieved thereby may apply to the superior court for Thurston county for a stay of the commissioner's action.*

ESI acknowledges that the subject Order to Cease and Desist bears the advisement that *THIS ORDER IS EFFECTIVE IMMEDIATELY and is entered at Tumwater, Washington, this 26th day of July, 2005* and was served on that date. ESI also acknowledges that it filed its Demand for Hearing on September 9, 2005, 45 days after the effective date of the Order. However, ESI points out that the one provision of said Order at issue in this Motion, which is included on page 3 of the Order, states *IT IS FURTHER ORDERED that Respondents, within forty-five (45) days of receipt of this Order, furnish the OIC with a complete listing, to include contact information, of all Washington residents and businesses who have purchased any insurance or insurance-related product from Respondents, and that Respondents report to the OIC all premiums received by Respondents for insurance covering Washington risks.* ESI argues that this portion of the Order, which requires specified action of ESI within 45 days i.e. by September 9, 2005, has been automatically stayed by virtue of RCW 48.04.020(1) and the fact that ESI filed its Demand for Hearing on the 45th day referred to in the Order.

The Commissioner argues that RCW 48.04.020 provides, in (1), that *[S]uch demand for a hearing received by the commissioner prior to the effective date of action taken or proposed to be taken ... shall stay such action pending the hearing* refers to the effective date of the entire Order and not to any individual portions which may be included in the Order.

The undersigned agrees with the argument of the Commissioner: RCW 48.04.020(1) refers solely to the effective date of the entire Order to Cease and Desist, which is, as stated therein, July 26, 2005. The subject portion of the Order which is included on page 3 provides a 45 day courtesy period in which ESI is given to be able to comply with the Order e.g. *to furnish the OIC with a complete listing, to include contact information, of all Washington residents and businesses who have purchased any insurance or insurance-related product from Respondents, and that Respondents report to the OIC all premiums received by Respondents*

ORDER ON EVOLUTION SERVICES

No. D05-364

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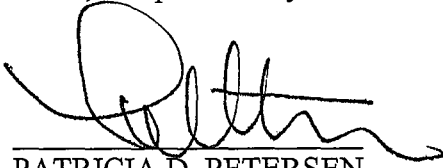
for insurance covering Washington risks. However, even this portion of the Order is effective July 26, 2005 and that is the date upon which the 45 day period begins to run; it does not create a separate window which would be available to ESI to obtain an automatic stay under RCW 48.04.020 for only this portion of the Order.

Finally, ESI argues that because the subject Order was made effective immediately, this prevents any appellant from obtaining an automatic stay. First, it is noted that various provisions throughout the insurance code require that the Commissioner provide a mandatory window of time between entry of an order and its effective date – presumably, in part, for the purpose of allowing the opportunity of obtaining an automatic stay under RCW 48.04.020(1); the insurance code simply does not require any window in this particular type of action. Second, as the Commissioner argues, RCW 48.04.020(2) provides the method whereby appellants who are not entitled to an automatic stay (such as when an order is made effective immediately) may seek a discretionary stay and may also seek a stay from superior court. ESI did not seek a stay through either means which were available to it.

For the above reasons, and after careful review of the Commissioner's OIC's Memorandum RE: Automatic Stay filed September 29, 2005 and ESI's Brief Re Mandatory Stay of Action filed September 30, 2005 and the entire hearing file,

IT IS HEREBY ORDERED that ESI's motion for grant of an automatic stay is denied and the subject Order to Cease and Desist herein, including the subject 45 day portion which is included on page 3 therein, has been effective since its stated effective date of July 26, 2005.

ENTERED at Tumwater, Washington this 23rd day of January, 2006, pursuant to Title 48 RCW, and particularly RCW 48.04.020, Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN

Presiding Officer