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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

**SUPPLEMENTAL MOTION for REQUEST  
FOR DISCRETIONARY  
STAY OF ORDERS**

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

14 COMES NOW Edward Chadwick, the Appellant in this matter, by and through his  
15 counsel of record and supplements his briefing of his request for discretionary stay of orders,  
16 pursuant to the Presiding Officer’s April 29, 2019 request and briefing schedule.

17 Appellant requested that the Commissioner exercise his discretion under RCW  
18 48.04.020(2) because Appellant was constructively denied his opportunity to request a hearing  
19 before the February 1, 2019 Office of the Insurance Commissioner’s [“OIC”] Order  
20 Suspending Licenses Pending Revocation No. 19-0059 and Order Revoking Licenses No. 19-  
21 0060 [collectively the “Orders”] went into effect, which would have automatically stayed the  
22 suspensions and revocations at issue under RCW 48.04.020(1).

23 The Presiding Officer subsequently requested “briefing on the issue of mootness with

1 regard to the discretionary stay of the temporary suspension, since the demand for hearing was  
2 filed after the revocation became effective, which is typically not discretionary\*\*\*to address  
3 the interplay between the two orders, and discretion to stay a revocation after it has become  
4 effective.”

5 Appellant incorporates his prior Request for Discretionary Stay and his Declaration and  
6 Supplemental Declaration in support, by this reference.

7 **Opportunity for Discretionary Stay Must be Available:**

8 Here the Appellant is arguing on one hand that the Orders were so nearly  
9 “immediately” effective as an emergency action as to cut him off from requesting a hearing  
10 within the time to have the benefit of the automatic stay under RCW 48.04.020(2). The Order  
11 Suspending Licenses Pending Revocation expressly found that the violations alleged “pose a  
12 continuing threat to public health and safety, imperatively requiring emergency action pursuant  
13 to RCW 48.17.540(3).” Thus, the emergency action was both intended to be and effectively  
14 was a summary action intended to foreclose Appellants’ opportunity to invoke any automatic  
15 stay.

16 The OIC case offered as Appendix A to Appellant’s Request specifically followed the  
17 logic that a summary action necessitates the opportunity for a discretionary stay, and did not  
18 need to consider mootness. The exception for a stay, automatic or discretionary, is provided  
19 only when the Commissioner has taken action under RCW 48.13.475, to safeguard securities,  
20 which has not occurred here.

21 Nevertheless, the Commissioner retains the authority to impose any penalty OR  
22 remedy, including rescission of penalties, even if a license or registration has been surrendered  
23 or lapsed by operation of law. *See* RCW 48.17.530(3), (5), and (6). Thus, mootness is

1 irrelevant.

2 **Due Process:**

3 On the other hand, Appellant argues that his right to notice under due process was  
4 frustrated, preventing him from timely requesting the automatic stay, because: (i) the  
5 suspensions and revocations were summarily effectively, constructively, and; (ii) the  
6 investigation was ongoing and he was not clear on the roles of the respective OIC agents whom  
7 he was in contact with (i.e., investigator versus legal representative), which was procedurally  
8 confusing as to whether the Orders were in effect, and was not clarified for him by OIC's legal  
9 representative until the time had passed for him to invoke the automatic stay.

10 Due process confers both procedural and substantive due process rights. *Fields v. State*  
11 *, Dep't of Early Learning*, 200 Wn. App. 1027 (2017), *review granted sub nom. Fields v. State*  
12 *Dep't of Early Learning*, 189 Wn.2d 1031, 407 P.3d 1149 (2018), *and rev'd and remanded sub*  
13 *nom. Fields v. Dep't of Early Learning*, 434 P.3d 999 (Wash. 2019). A procedural challenge  
14 questions whether the government gave an individual enough notice, in part, essentially  
15 whether the process or rule is procedurally fair. *Id.*

16 In considering whether a review process is constitutional, the factors considered are: (1)  
17 the private interest affected; (2) the risk that the procedures will erroneously deprive a party of  
18 that interest, and; (3) the government's interest.

19 Appellant Chadwick's Supplemental Declaration describes how his primary ability to  
20 generate income will be affected, not only in Washington, but now in Oregon too, since he was  
21 unable to invoke the automatic stays. Though RCW 48.04.020(2) technically provides the  
22 opportunity for an automatic stay, because of the summary action and confusion surrounding  
23 the effective time of the Orders, the risk was high in Appellant Chadwick's circumstances that

1 he would wrongfully be deprived of the opportunity to invoke it. OIC will still have the  
2 opportunity to impose discipline following resolution of a hearing, just as it would had the  
3 automatic stay been invoked.

4 **Conclusion:**

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

9 DATED this 3<sup>rd</sup> of May 2019.

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11 **SEATTLE LITIGATION GROUP, PLLC**

12 */s/ Jessica Creager*

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**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 *Supplemental Brief re: Request for Discretionary Stay* on the following parties:

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

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 3<sup>rd</sup> of May, 2019.

/s/ Sean Stevens  
Sean Stevens  
Legal Assistant

SUPPLEMENTAL BRIEF re:  
REQUEST FOR DISCRETIONARY STAY

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