

FILED

**BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA**

SEP 01 2026

**INSURANCE COMMISSIONER
OKLAHOMA**

IN RE: HEARING PURSUANT TO 36 O.S. § 984)
AS TO WHETHER THE OKLAHOMA)
HOMEOWNERS INSURANCE)
MARKET IS NONCOMPETITIVE)

Case No. 26-0820-TRN

**THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES INC. AND
AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, INC.'S
RESPONSE TO OMNIBUS PRE-HEARING
MOTION OF THE OKLAHOMA ATTORNEY GENERAL**

The National Association of Mutual Insurance Companies, Inc. ("NAMIC") and The American Property Casualty Insurance Association, Inc. ("APCIA") make the following Response to Omnibus Pre-Hearing Motion of the Oklahoma Attorney General:

ARGUMENT AND AUTHORITIES

I. GENERAL OBJECTION TO ALL MOTIONS:

A. Application of the Oklahoma Administrative Procedures Act.

To be clear, there is no dispute that Oklahoma Insurance Department ("OID") is a state administrative agency subject to the requirements of the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250-327 (the "Act"). As observed the Attorney General, *Omnibus Motion* at § II, ¶ 7, p. 3, the OID is statutorily required to "comply with the procedures of the ... Act." 36 O.S. Supp. 2024, § 313(B). However, "[a]ny conflict between the provisions of ... [the Act] and of this title [the Oklahoma Insurance Code] shall be resolved in favor the provisions of this title." *Id.* (underline added).

The Attorney General assumes, without analysis, that Art. II of the Act, 75 O.S. §§ 308a-327, governs a proceeding under 36 O.S. § 984. *See Omnibus Motion* at § II, p. 3-5. Article II of the Act describes the procedures to follow when adjudicating rights in an "individual proceeding."

See e.g. 75 O.S. 2021, §§ 308, 309(A), (E), (F), (G). Given the infrequency in which the process under 36 O.S. § 984 is invoked, neither the OID nor an Oklahoma court has determined whether the OID is acting in an adjudicative capacity in a Section 984 proceeding.

As demonstrated by the plain and unambiguous terms of Section 984, the OID is acting in a rulemaking capacity under Section 984, not a judicial capacity. Therefore, the procedures set forth in Article I of the Act, 75 O.S. §§ 250-308.3, apply to this proceeding. This issue is material to Attorney General's Omnibus Motion. The relief sought by the Attorney General relies exclusively upon application of Article II of the Act for the following propositions:

- Motion 3 (regarding disclosure of evidence), *Omnibus Motion* at § III, Mtn. 3, p. 10-13.
- Motion 4 (regarding use of court reporter), *id.* at § III, Mtn. 4, p. 13-15.
- Motion 7 (regarding “prefiling” exhibits and exchange), *id.* at § III, Mtn. 7, p. 20-22.
- Motion 8 (regarding offers of proof), *id.* at § III, Mtn. 8, p. 22-23.
- Motion 10 (regarding “written pre-hearing orders”), *id.* at § III, Mtn. 10, p. 26-27.
- Motion 11 (regarding a “fair and impartial hearing”), *id.* at § III, Mtn. 10, p. 27-30.

All of these motions should be denied, because Article I of the Act applies to and governs this proceeding.

I. Article I of the Act applies to OID proceedings under 36 O.S. § 984.

At issue is whether the proceeding under Section 984 meets the definition of an “individual proceeding” or “rulemaking” under the Act. It cannot be both. Article II of the Act does not apply to Section 984 hearings by default. As recognized by the Legislature, “agencies take actions and make decisions, other than by individual proceedings for which the right to judicial review is intended to be exercised pursuant to other laws.” 75 O.S. 2021 § 308a. This is one of those situations.

The Act defines an “individual proceeding” as “the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature[.]” 75 O.S. Supp. 2026 § 250.3(9) (underline added). A Section 984 proceeding involves neither “parties” nor the “exercise of discretion of a judicial nature.”

a. Section 984 proceedings involve no “parties.”

“Party” under the Act “means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding” 75 O.S. Supp. 2026, § 250.3(15). The caption of this matter makes it clear that there is no party named in this proceeding, unlike when (for example) an administrative agency takes disciplinary action against a licensee. Moreover, the July 14, 2026, Notice of Hearing “invites all interested parties with a direct, immediate, and substantial interest” in the issues of this case “to participate in the public hearing and offer evidence and argument on the issues involved.” The reason for this is obvious – Section 984 hearings affect an entire sector of the insurance market, not specific market participants. That is why the caption names no parties and instead market participants (not specific individual parties) are merely provided notice of the proceeding.

b. Section 984 proceedings do not require the exercise discretion of a judicial nature.

Administrative authority to exercise judicial discretion is often referred to as “judicial” or “quasi-judicial authority.” *See e.g.* 59 O.S. Supp. 2025, § 513 (describing the “quasi judicial powers” of the Oklahoma Board of Medical Licensure and Supervision to take action upon a licensee’s medical license).

Quasi–Judicial power is a term applied to the action of public administrative officers or boards which investigate facts or ascertain the existence of facts; draw conclusions from them as a basis for official action; and exercise discretion of a

judicial nature in connection with and incidental to the administration of matters entrusted to or assigned to the officers or board.

Indep. Sch. Dist. No. 1 of Oklahoma Cnty. v. Scott, 2000 OK CIV APP 121, ¶ 27, 15 P.3d 1244, 1251 (underline added) (quoting *Jackson v. Independent Sch. Dist. No. 16*, 1982 OK 74, ¶ 12 n. 20, 648 P.2d 26, 31 n. 20). “A proceeding is ‘judicial’ (quasi-judicial) if it ‘investigates, declares, and enforces liabilities as they stand on present and past facts and under laws already existing.’” *City of Okla. City v. Okla. Corp. Commn.*, 2024 OK 77, 558 P.3d 1231, 1242, *as corrected* (underline added) (quoting *In re Application of Okla. Gas & Elec. Co.*, 2018 OK 31, n.24, 417 P.3d 1196, 1201).

The outcome of a Section 984 proceeding is a “yes or no” determination that an entire market is non-competitive – there is no discretion involved. It requires the OID to only determine whether “a reasonable degree a competition does not exist in the market” -- nothing more. 36 O.S. § 2021, 984(A). It does not require the OID to investigate the specific conduct of any particular insurance company. It does not require the OID to decide an insurance company’s “liabilities” under existing law in light of prior conduct. It does not require OID to exercise any discretion to determine if the rights of anyone subject to its authority should be restricted or if a fine should be issued.¹ This is remarkably unlike proceedings that obviously fall under Art. II of the Act, where agencies are called upon to determine if (for example) a licensee has violated the rules of

¹ The Attorney General’s motion also recognizes that a hearing under Section 984 is not an individual proceeding:

Contrary to other hearings, § 984 market competition hearings are not administrative enforcement proceedings in which the Department investigates an alleged violation, prosecute the alleged violator, and then asks its adjudicator to determine whether the violation occurred.

Omnibus Motion at § III, Mtn. 11, ¶ 78, p. 28.

professional conduct and what punishment is appropriate for doing so. *See e.g.* 59 O.S. Supp. 2025, § 513. A Section 984 proceeding is not a “individual proceeding” under the plain and unambiguous definition in the Act.

c. A Section 984 Proceeding is emergency rulemaking.

On the other hand, the Act defines “rule-making” as “the process employed by an agency for the formulation of a rule” 75 O.S. Supp. 2026, § 250.3(21). A “rule” is defined in pertinent part as “any agency statement or group of related statements of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency.” 75 O.S. Supp. 2026, § 250.3(20) (underline added). “A proceeding is ‘legislative’ if it ‘looks to the future and changes existing conditions by making a new rule to be applied thereafter.’ ” *City of Okla. City*, 2024 OK 77 at ¶ 28, 558 P.3d at 1242 (underline added) (quoting *In re Application of Okla. Gas & Elec. Co.*, 2018 OK 31 at ¶14, n.25, 417 P.3d at 1201). For example, a “ratemaking hearing” conducted by the Oklahoma Corporation Commission “is legislative because it establishes a future rule.” *Id.*

A Section 984 proceeding has all the hallmarks of “rulemaking.” The result of the proceeding is a forward-looking “agency statement” that affects not a single insurance company, but an entire class of companies involved in a market sector (specifically here the *entire* homeowners insurance market). It applies prospectively only. It “changes existing conditions” and “implements ... or prescribes law or policy” by allowing the OID to place limitations on a market it could not do under the *status quo* and impose restrictions on future premiums rate increases. It is rulemaking.

The Act clarifies two types of rulemaking: “final” rulemaking and “emergency” rulemaking. *See* 75 O.S. Supp. 2026, § 250.3 (4) (defining “emergency rule”), (5) (defining “final rule”). Under the latter process:

[i]f an agency finds that a rule is necessary as an emergency measure, the rule may be promulgated pursuant to the provisions of this section, if the rule is first approved by the Governor. The Governor shall not approve the adoption, amendment, revision, or revocation of a rule as an emergency measure unless the agency submits substantial evidence that the rule is necessary as an emergency measure to ... avoid serious prejudice to the public interest.

75 O.S. Supp. 2025, § 253(A)(1)(a)-(e) (underline added). “Substantial evidence” means “credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.” *Id.* at § 253(A)(1).

Section 984 proceedings fit neatly within this framework. First, it is designed to regulate matters concerning “serious prejudice to the public interest.” “A competitive market is presumed to exist for a line of insurance unless the Commissioner, after a hearing, issues an order stating that a reasonable degree of competition does not exist in the market.” 36 O.S. 2021 § 984(A). Only after it is determined that a market is not competitive may the OID regulate future premium rates, which affects substantial economic interests of a wide swath of Oklahomans. 36 O.S. 2021 § 985.1.

Section 984 states that “[t]he burden of proof in any hearing shall be placed on the party or parties advocating the position that competition does not exist.” 36 O.S. 2021 § 984(A). This aligns with the Act’s requirement that emergency rules are only permissible when “the agency submits substantial evidence that the rule is necessary as an emergency measure to avoid serious injury” 75 O.S. Supp. 2025, § 253(A)(1). The burden of proof requirement in Section 984 is

a necessary and natural consequence of the Act's requirement that an emergency rule be supported by the "substantial evidence."

Rules made under Section 984 are only effective for one year. 36 O.S. 2021 § 984(A). This aligns with the Act's requirement that emergency rules only have limited temporal application. *See* 75 O.S. Supp. 2025, § 253(F)(2) (describing time limitations on effectiveness of emergency rules).

Finally, Section 984 contemplates a "hearing" as part of its rule-making process. This is also consistent with the emergency rulemaking process. Section 253 observes that nothing in it "shall ... be construed to prevent an abbreviated notice and hearing process determined to be necessary by an agency." 75 O.S. Supp. 2025, § 253(J)(1). As such, an agency is permitted to hold a hearing as part of its emergency rulemaking process.

d. Errant word usage in Section 984 does not change its essential rulemaking character

Some language usage in Section 984 appears to align with Article II of the Act, but this is not a basis for finding Section 984 proceedings invoke the OID's judicial authority. For example, it states that "All determinations by the Commissioner shall be made on the basis of findings of fact and conclusions of law." 36 O.S. 2021 § 984(B)(2). "Findings of fact and conclusions of law" is a term often used to characterize an agency's final order when acting in a judicial capacity. Notably, however, it is not a defined term under the Act, and the phrase "findings of fact and conclusions of law" is not used anywhere in Art. II of the Act.

Section 984 requires the "Commissioner" to "issue[] an order" regarding non-competition. *Id.* at (A). "Order" is defined term under Act and means "all or part of a formal or official decision made by an agency including, but not limited to, final agency orders" 75 O.S. Supp. 2026, § 250.3(14). "Final agency orders" are appealable under Article II of the Act. *See generally* 75 O.S.

Supp. 2025, § 318. Section 984 also permits a “ruling,” 36 O.S. 2021 § 984(B)(3), to be “challenged in district court,” which is also consistent with the appeal procedure of Article II of the Act. *See* 75 O.S. Supp. 2025, § 318.

None of this errant word usage justifies application of Art II. First, errant verbiage in a statute does not determine whether it is “rule-making” or an “individual proceeding.” Instead, courts look to the overall purpose of the proceeding – whether it is in furtherance of making a rule or adjudicating legal rights. As demonstrated above, Section 984 clearly does not contemplate the exercise of judicial discretion. The OID should not ignore the basic intent and function of Section 984 and instead choose to focus on word usage in Section 984 to determine what article of the Act applies to it. An “inept or incorrect choice of words” will not be “applied or construed in a manner to defeat the real or obvious purpose of a legislative enactment.” *Zaloudek Grain Co. v. CompSource Okla.*, 2012 OK 75, ¶ 7, 298 P.3d 520, 523 (citing *Wooten v. Hall*, 1968 OK 90, ¶ 6, 442 P.2d 334, 336).

The fact that the Section 984 requires “findings of fact and conclusions of law” is not material. The phrase is not defined by the Act, and it is not used anywhere in Article II. Reference to an “order” of such nature also does not change the essential character of an administrative action. For example, the Oklahoma Supreme Court, in *City of Oklahoma City v. Okla. Corp. Commn.*, 2024 OK 77, 558 P.3d 1231, expressly found that agency action done through an “order” entitled “findings of fact and conclusions of law” was – in fact – rulemaking due to the character and nature of the agency activities at issue. *Id* at ¶ 33, 1244.

The fact that the OID is required to make findings of fact generally is also of no consequence. As the Oklahoma Supreme Court observed:

[L]egislative authority does include a type of fact-finding similar to that of a legislative committee engaged in fact-finding for the purpose of legislation. Various

classifications of “facts” are possible, such as “adjudicative facts,” facts in controversy decided by a judge or jury, “legislative facts,” facts used by the legislative body as a basis for creating legislation, and “premise facts” for “an entire field of fact disputes.”

City of Okla. City, 2024 OK 77 at ¶ 32, 558 P.3d at 1243-44 (underline added; footnotes and quotes omitted). As such, fact-finding is consistent with application of Art. I of the Act, because fact-finding is necessary to the exercise of an agency’s legislative authority (i.e. its rulemaking authority).

Finally, the fact that Section 984 can be initiated by someone other than the Department, or that an order is appealable, does not require application of Article II. Article I states that “[a]n interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule.” 75 O.S. 2021 § 305. This is exactly the type of process embodied by Section 984. It was an interested person petitioning the OID to request a Section 984 hearing that gave rise to the OID order regarding competition made in April 2026. *See Omnibus Motion* at Exhibit F (OID Order resulting from the request of Bob Sullivan to initiate a Section 984 proceeding). Article I contemplates judicial review of agency rulings made under Section 305. *See* 75 O.S. 2021 § 307; *see e.g. People’s Elec. Co-op., Inc. v. State of Okla. ex rel. Okla. Corp. Commn.*, 2002 OK CIV APP 57, 50 P.3d 579. This aligns with Section 984’s appellate review mechanism. *See* 36 O.S. § 984(B)(3). Further, once an emergency rule has been “promulgated,” *see* 75 O.S. Supp. 2026, § 250.3(19) (defining the term), it is subject to appellate review under 75, § 306(A). Again, this aligns with the appeal procedure specifically adopted by Section 984.

2. *The Effect of Application of Article I to the Proceeding.*

Article I of the Act applies to the proceeding. To the extent the Article I conflicts with the express terms of Section 984, the latter controls. 36 O.S. Supp. 2024, § 313(B). The plain and unambiguous terms of Section 984 dictate the specific issues to be addressed by the OID in a

hearing and the form of the “agency action” taken thereunder. Article I, however, provides the rest of the procedure.

Under Article I, there is no requirement to treat this proceeding as adversarial or as if the OID is acting in a judicial capacity. As such, there is no reason to:

1. Take “judicial notice” of facts under 75 O.S. 2021, § 310;
2. Have a court reporter present for the proceeding under 75 O.S. 2021, § 309, because the contents of the “record” are governed by 75 O.S. 2021 § 302(B), which only requires a tape recording or stenographic record of the proceeding, *id.* at (B)(2)(d);
3. File exhibits as part of a “record” under 75 O.S. 2021, § 309, because “exhibits” are not part of the record under 75 O.S. 2021 § 302(B);
4. Permit “offers of proof” under 75 O.S. 2021, § 310, because information not considered by the OID is not part of the record under 75 O.S. 2021 § 302(B); and
5. Require any initial procedural findings made by the OID prior to the hearing be recorded in an “order,” because the same is also not part of the record under 75 O.S. 2021 § 302(B).

Further, the Attorney General’s request for a “fair and impartial hearing,” *Omnibus Motion* at § III, Mtn. 10, p. 27-30, should also be denied, because the OID is not acting as a “neutral fact finder” under Article II of the Act when conducting this proceeding. Instead, it is acting as policymaker.

The theory of administrative rule-making is, of course, that in certain fields and in certain respects the public interest is better served by delegating a large part of detailed lawmaking to the expert administrator, controlled by policies, objects and standards laid down by the legislature, rather than by having all the details spelled out through the traditional legislative process. Administrative rulemaking remains in essence, however, the enactment of legislation of general application prospective in nature. The object is not legislation ad hoc or after the fact, but rather the

promulgation, through the basic statute and the implementing regulations taken as a unitary whole, of a code governing action and conduct in the particular field of regulation so those concerned may know in advance all the rules of the game, so to speak, and may act with reasonable assurance.

Adams v. Pro. Pracs. Commn., 1974 OK 88, ¶ 14, 524 P.2d 932, 934 (underline added) (quoting *Boller Beverages, Inc. v. Davis*, 38 N.J. 138, 183 A.2d 64, 71 (1962)).

Members of the Legislature may have preconceived opinions and notions about proper policy to be implemented through law, and they are expected to act upon them. *See Bond v. Floyd*, 385 U.S. 116, 136-37 (1966) (“Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them”). The OID may too have opinion about regulations, and the only requirement is that it have no “unalterably closed mind on matters critical to the disposition of the rulemaking.” *Assn. of Nat. Advertisers, Inc. v. F.T.C.*, 627 F.2d 1151, 1154 (D.C. Cir. 1979). Nothing in the Attorney General’s motion demonstrates either the OID or its Commissioner is unalterably close-minded.

As the specialized regulator in the field of insurance, it will necessarily have data, experience, and opinions informing whether the insurance market is competitive. Indeed, Section 984 commands the OID to gather facts about competition in the Oklahoma insurance market. 36 O.S. 2021 § 984(C). The OID should not deprive itself of the significant data, experience, and judgment it has regarding this matter. It should use those tools to properly effectuate policy through its rulemaking process, which is exactly what the Legislature and the people of Oklahoma require of it in a Section 984 proceeding. There is no legally cognizable reason to do otherwise.

The Attorney General's requested relief in its Omnibus Motions 3, 4, 7, 8, 10, and 11, should be denied accordingly.²

II. RESPONSE TO MOTION NO. 2: MOVANT'S REQUEST FOR A "VIRTUAL ATTENDANCE OPTION FOR THE PUBLIC" SHOULD BE REJECTED.

In addition to the arguments made in Section I above, the undersigned objects to Motion no. 2 as set forth in this Section.

The office of the Attorney General of Oklahoma describes its mission as follows:

to seek justice for the people of Oklahoma by upholding the rule of law; serving public safety through prosecutions and civil enforcement actions; providing high-quality legal representation for the state agencies; and protecting and defending the Oklahoma and U.S. constitutions.³

In this proceeding, the Attorney General has retained Whitten Burrage – a private law firm -- as its counsel. Whitten Burrage has a well-established track record of aggressively litigating against insurance companies operating in Oklahoma.⁴ Indeed, the engagement of Whitten Burrage in this hearing is part of an ongoing pattern of the Attorney General delegating the authority of his office (and all of its corresponding powers) to the firm in matters adversarial to Oklahoma insurers. *See State of Okla. ex rel. Drummond v. State Farm Fire and Casualty Co.*, CJ-2026-1066 (Cleveland Cty. Dist. Ct.). This Court should view Whitten Burrage's request to live stream this hearing for

² Further, there is no prejudice to prior actions taken by the OID in this proceeding. None of the orders issued thus far have relied upon Article II, and the OID has not taken any action in this proceeding inconsistent with the Article I.

³ *See* OKLAHOMA ATTORNEY GENERAL, <https://oklahoma.gov/oag.html> (last visited August 27, 2026).

⁴ *See e.g.* J.C. Hallman, *Inside the secret documents found by attorneys in cases against State Farm, Allstate*, *The Oklahoman* (Aug. 17, 2026, 11:09 AM CDT) (<https://www.oklahoman.com/story/news/state/2026/08/17/lawyers-in-oklahoma-state-farm-lawsuits-speak-on-hundreds-of-cases/91337076007/>) ("In the past year, for the sheer volume of cases they handle, Reggie and Hannah Whitten of Whitten Burrage [] have become synonymous with the ongoing roof-claim saga.") (last visited Aug. 27, 2026).

what it truly is: a part of a marketing campaign designed to serve their own pecuniary interest in developing and promoting business, rather than to “seek justice for the people of Oklahoma.”

In support of this Motion, Movant cites *Okla. State. Bd. of Med. Licensure & Supervision v. Rivero*, 2021 OK 31, 490 P.3d 36. The facts of that case are not present here, and the cited opinion offers no support. That case involved a protective order entered by Board of Medical Licensure and Supervision making all documents in the administrative proceeding subject to the order and prohibiting their use in any other legal proceeding. The Court found the protective order contrary to the public policy expressed by the Oklahoma Open Records Act and the Oklahoma Discovery Code. Here, this Court is holding a hearing open to the public, and it is certainly not affirmatively excluding anything from the public record. *Rivero* is wholly unpersuasive on this issue.

Movant refers to “aggrieved members of the public” who may have an interest in “whether rates may be found excessive” to justify its request to livestream. This argument is a nonstarter. At this stage of the proceeding, the sole question is whether the homeowners’ insurance market is non-competitive. If the OID finds that the market is non-competitive, only then can the issue of “whether rates may be found excessive” come into play. *See* 36 O.S. 2021 § 985.1(A) (“If the Commissioner determines that competition does not exist in a market and issues a ruling to that effect ... the rates applicable to insurance sold in that market shall be regulated[.]”). Since the predicate determination of non-competition does not address rates under the plain terms of Section 984, any information provided at the hearing regarding “excessive rates” is irrelevant.

Movant identifies no rule or statute authorizing its request. On information and belief, no prior hearings under Section 984 were live streamed. Movant presents no compelling justification to deviate from past practice, or to craft a special exception in this case. There is no dispute that the hearing is open to the public – as is required under the Administrative Procedure Act – but

Movant's request to live stream the hearing is without legal or practical justification. *See* 75 O.S. Supp. 2026, § 303(C); 75 O.S. Supp. 2025, § 253(J)(1). Motion number 2 should be overruled.

III. RESPONSE TO MOTION NO. 9: MOVANT'S PROPOSED DIVISION OF HEARING TIME SHOULD BE REJECTED.

In addition to the arguments made in Section I above, the undersigned objects to Motion no. 9 as set forth in this Section.

The July 14, 2026, Notice of Hearing "invites all interested parties with a direct, immediate, and substantial interest" in the issues of this case "to participate in the public hearing and offer evidence and argument on the issues involved." Each party appearing in this case is unique, with distinct interests, motivations, and arguments as to the subject matter of this hearing. Movant's contention that "this proceeding presents a single binary question with two sides" is overly simplistic and unhelpful in assessing the logistics of this hearing.

The OID is well-equipped to allocate hearing time as it deems appropriate, as it would in any other public comment period under Article I of the Act. Given the number and nature of the parties appearing in this case, each party should be allotted an amount of time that is sufficient for each to provide facts and opinions to adequately inform the OID. Contrary to Movant's contention, the rigid 50/50 allocation of time it proposes does not serve interests of due process. Rather, it is nothing more than an effort by Whitten Burrage to appropriate hearing time from other parties in this case to attempt to meet their burden of proof. Motion number 9 should be overruled.

IV. USE OF EXPERTS: EVIDENCE WITH NO RATIONAL NEXUS TO THE FACTORS ENUMERATED IN 36 O.S. § 984 SHOULD BE RULED INADMISSIBLE.

Movant's Omnibus Motion makes it clear they intend to call many "expert witnesses to appear and testify." *Omnibus Motion* at § III, Mtn. 1, ¶ 12, p. 5. In fact, Movant's anticipate so many "experts" that they request permission for them to participate in this proceeding remotely.

Id. While any person may participate in a public comment period, as permitted by the OID, it is worth noting the material relevancy limitation imposed upon Section 984 proceedings. Persons asking to provide any information not relevant to a Section 984 proceeding should be excluded, regardless if they call themselves “experts.”

Only the following factors are relevant in this proceeding:

In determining whether a reasonable degree of competition exists within a line of insurance, the Commissioner shall consider the following factors:

- a. the number of insurers actively engaged in writing coverage,
- b. market shares of the leading writers and the changes in market shares over a reasonable period of time,
- c. existence of financial or economic barriers that could prevent new firms from entering the market,
- d. measures of market concentration and changes of market concentration over time,
- e. whether long-term profitability for insurers in the market is reasonable in relation to industries of comparable business risk, and
- f. the relationship of insurers’ costs to revenue over a reasonable period of time.

36 O.S. 2021 § 984(B)(1)(a)-(f) (underline added).

These mandatory factors should exclusively serve as the evidentiary paradigm of this proceeding. There is no applicable authority supporting the expansion of this inquiry to include factors unenumerated in Section 984(B)(1)(a) – (f). As such, evidence, offered by “experts” or otherwise related to the following topics are irrelevant:

1. Pending litigation against insurers operating in Oklahoma, unrelated to issues of competition;
2. Claims handling by insurers operating in Oklahoma; and
3. Amounts of, or increases in, premiums related to homeowners’ insurance in Oklahoma.

4. Evidence with no reasonable nexus to the Oklahoma homeowners' insurance market.

Local news is replete with accounts of Whitten Burrage challenging one insurance company or another. The firm has become synonymous with insurance claims handling lawsuits in this State. The Attorney General has delegated power and authority of his office Whitten Burrage in lawsuits against Allstate and State regarding their claims handling processes. *See State of Okla. ex rel. Drummond v. State Farm Fire and Casualty Co.*, CJ-2026-1066 (Cleveland Cty. Dist. Ct.). Here, Whitten Burrage has again been granted the powers of the State of Oklahoma and will likely try to turn a hearing about the competitiveness of the insurance market into a referendum on claims handling practices in Oklahoma. But claims handling practices are wholly irrelevant to the factors enumerated in 36 O.S. § 984(B) and have no bearing on whether or not the insurance market is competitive. As such, Whitten Burrage should be precluded from advancing arguments related to claims handling in the hearing of this matter.

Confining the evidentiary landscape as described will promote efficiency in the hearing, permit more people to participate in the proceeding in the limited timeframe available, and provide more information that actually informs on the precise issue at hand.

CONCLUSION

The National Association of Mutual Insurance Companies, Inc. and The American Property Casualty Insurance Association, Inc. request the Attorney General's *Omnibus Motion* be denied as set forth herein.

Submitted by:



J. Blake Patton, OBA No. 30673
Caleb E. Evans, OBA No. 36108
GABLEGOTWALS
BOK Park Plaza
499 W. Sheridan Ave, Suite 2200
Oklahoma City, OK 73102
Telephone: (405) 235-5500
Email: bpatton@gablelaw.com
evans@gablelaw.com

Trent Shores, OBA No. 19705
Jason Seay, OBA No. 22007
GABLEGOTWALS
110 N. Elgin Ave., Suite 200
Tulsa, OK 74120
Telephone: (918) 595-4800
Email: tshores@gablelaw.com
jseay@gablelaw.com