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INSURANCE COMMISSIONER
OKLAHOMA

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF 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**

JOINT RESPONSE OF THE OKLAHOMA ATTORNEY GENERAL AND BOB SULLIVAN TO THE OKLAHOMA INSURANCE DEPARTMENT'S MOTION SEEKING DETERMINATIONS ON OUTSTANDING ITEMS AND APPLICATION TO SET THE MERITS HEARING DATE

COME NOW the State of Oklahoma, *ex rel.* Gentner Drummond, Attorney General of the State of Oklahoma (the "Attorney General"), and Bob Sullivan, and respond to the Oklahoma Insurance Department's Motion Seeking Determinations on Outstanding Items and Application to Set the Merits Hearing Date on or Before December 15, 2026 (the "Department's Motion"), served October 22, 2026. The Department's Motion asks for two kinds of relief. Part of it is scheduling, which the Attorney General and Mr. Sullivan agree should go forward now. The rest asks for rulings on the contested matters, among them the dismissal of Mr. Sullivan, which should wait until the Supreme Court acts on the original action it has set for oral presentation on November 19, 2026. The Attorney General and Mr. Sullivan state:

I. WHERE THE MATTER STANDS

1. **The Supreme Court has called for responses.** On October 15, 2026, the Attorney General and Mr. Sullivan filed an Application to Assume Original Jurisdiction and Petition for Writs of Prohibition and Mandamus in the Supreme Court of Oklahoma, No. PR-124,489, seeking review of the Order Denying the Joint Affidavit entered October 2, 2026 (the "October 2 Order"). By order of October 19, 2026, the Court directed the Respondents, who are the Hearing Examiner, the Commissioner and the Department, to respond by November 9,

permitted parties of record in this proceeding to respond by the same date, and set oral presentation to a Referee for November 19, 2026.

2. **A stay request is pending in both forums.** The Joint Motion of the Oklahoma Attorney General and Bob Sullivan to Stay Proceedings Pending Original Action in the Supreme Court of Oklahoma (the "Joint Motion to Stay") was filed here on October 5, 2026. NAMIC and APCIA objected on October 7, and the Joint Reply was filed October 9. On October 8 Mr. Mathis, whose designation was limited to determining the affidavit, advised that the motion was outside the scope of his appointment and that he would not rule on it. Order Clarifying Authority of Hearing Examiner Stephan S. Mathis at 1–2 (Oct. 8, 2026). The proceeding remains before this Hearing Examiner. October 2 Order at 12. No ruling on the Joint Motion to Stay has issued. The Department's Motion states that the Department "will respond and object separately" to the Joint Motion to Stay. Department's Motion at 1. On October 26, 2026, the Attorney General and Mr. Sullivan moved the Supreme Court for a stay of further substantive proceedings here pending its disposition of the original action. Okla. Sup. Ct. R. 1.15(c), 1.191(i). Responses to that motion are due November 9 under the Court's order of October 27, 2026.

3. **No hearing is set.** The merits hearing set for September 14 was continued to October 26 at the request of the Oklahoma P&C Advocacy Association, "over the objection of the Oklahoma Attorney General, Bob Sullivan, the National Association of Mutual Insurance Companies, Inc. and the American Property and Casualty Insurance Association." Order for Continuance ¶ 4 (Sept. 10, 2026). Every setting, including October 26, was stricken on September 15, Sept. 15 Tr. 18:20–19:1, and by the Administrative Order of September 28, 2026. The Attorney General and Mr. Sullivan do not seek to delay the hearing. They ask only that it not begin before the Supreme Court rules.

II. THE SCHEDULING REQUESTS SHOULD BE DECIDED NOW

4. **No scheduling step is stayed.** The Joint Motion to Stay does "not ask that the exchange of filings or any other non-substantive step be suspended." Joint Motion to Stay ¶ 8. The Attorney General and Mr. Sullivan "do not object to the setting of a hearing date, provided the hearing does not commence before the Supreme Court has ruled." Joint Reply ¶ 4. The motion in the Supreme Court is limited in the same way. Motion to Stay Proceedings Below ¶ 8, No. PR-124,489 (Okla. filed Oct. 26, 2026). Items 6 and 7 of the Department's Motion, and the hearing date, can be decided now.

5. **Exhibits and experts (Items 6 and 7).** The Department has agreed to a reciprocal procedure for pre-filing and exchanging exhibits, with deadlines for objections and motions in limine. Department's Response to the Attorney General's Omnibus Pre-Hearing Motion ¶¶ 18–19 (Sept. 1, 2026) (the "Department's Response"). Witness lists were filed September 14, 2026 under paragraph 5 of the Order for Continuance, which left the exhibit deadline to be set at the next pre-hearing conference. Order for Continuance ¶ 6. Because much of the evidence will be expert analysis of market data, the Attorney General and Mr. Sullivan propose these deadlines, each measured back from the hearing date:

(a) twenty-eight days before the hearing, a written disclosure for each expert witness of the opinions to be offered, their bases, and the data relied upon;

(b) twenty-one days before the hearing, the pre-filing and exchange of exhibits, pre-marked with a prefix assigned to each party, together with any supplemental witness list;

(c) fourteen days before the hearing, any rebuttal expert disclosure, written objections to pre-filed exhibits, and motions in limine, including any motion directed to expert testimony; and

(d) seven days before the hearing, responses to those objections and motions.

Exhibits not timely pre-filed should be received only on a showing of good cause, foundation and authenticity, with an opportunity for the other parties to review them, as the Department has proposed. Department's Response ¶ 19. If the hearing is reset, exchanges already made should stand and the remaining deadlines should run from the new date. A deadline for motions directed to expert testimony decides nothing about the standard that governs them. Admissibility in this proceeding is governed by 75 O.S. § 310(1), under which an agency "may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs," and any party may brief the standard with its motion.

6. **An exchange date does not resolve Motion 3.** The Department describes its requested exchange date as "consistent with the parties' stipulation to OAG Omnibus Motion 3." Department's Motion at 2. The Department stipulated to disclose its own witnesses and exhibits on the exchange deadline. Department's Response ¶ 10. The balance of Motion 3, advance disclosure of material the Commissioner or the Hearing Examiner intends to officially notice or consider, remains in dispute and is part of the pending Omnibus Motion. Setting an exchange date does not decide it.

7. **The hearing date.** When the October 26 setting was stricken, counsel for the Attorney General explained that his witnesses are out of state, that their travel and preparation cannot be arranged on short notice, and that "[w]e would need at least six weeks, eight weeks notice before that hearing could take place." The Hearing Examiner responded that "the date will be picked that takes those factors into consideration." Sept. 15 Tr. 19:2–21. The Attorney General and Mr. Sullivan ask that the hearing be set on a date not less than six weeks after the

order setting it, provided that it does not commence before the Supreme Court has ruled on the Application in No. PR-124,489.

III. THE COMMISSIONER'S TENURE IS NOT A REASON FOR A HEARING DATE

8. **The reason given.** The Department asks for a hearing by December 15 because "[t]he current Insurance Commissioner is the person most familiar with the issues to be addressed at the hearing," and proceeding now "will preserve that familiarity and serve the interests of the parties and the public in a timely and well-informed resolution before a new Insurance Commissioner is seated." Department's Motion at 3.

9. **On the Department's own account, that familiarity does not bear on the decision.** The Department has told this tribunal that "[t]he Commissioner has appointed an independent hearing examiner to ensure that an objective determination is made based on the law and evidence presented." Department's Response ¶ 22. It urged, and the October 2 Order found, that the Commissioner has delegated his adjudicative authority to the Hearing Examiner and, in the Order's words, "does not preside, and cannot review, the Hearing Examiner's final order." October 2 Order at 4, 11. The Attorney General and Mr. Sullivan contest that Order, but on its own terms the Commissioner's familiarity with the issues has no part in the result. "Findings of fact shall be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record." 75 O.S. § 309(H). The Department relied on that subsection to argue that the Commissioner's prior statements should not be considered. Department's Response ¶ 31. If the point is that the Commissioner is the Department's anticipated witness, October 2 Order at 6, his knowledge does not depend on his holding office, and he can testify whenever the hearing is held. If the point is that his own view of the issues should carry into the decision, that is the concern Motion 11

raises. That Motion asks for an order affirming a fair and impartial hearing and consideration "free from influence, bias or pre-decision by the Commissioner." Omnibus Motion at 30. It seeks no one's recusal. Either way, a change in officeholder is not a reason to choose a hearing date.

IV. THE CONTESTED MATTERS SHOULD AWAIT THE SUPREME COURT

10. **The Joint Motion to Stay should be decided by written order.** The Joint Motion to Stay has been pending since October 5. The Department's Motion asks for rulings on Omnibus Motions 2, 9 and 11, on the Department's requests concerning the order of presentation and the scope of evidence, on the Article I and Article II question, and on the Motion to Dismiss. Department's Motion at 2–3. Deferring those rulings is an ordinary exercise of the Hearing Examiner's authority to manage the proceeding. The October 2 Order describes the decision "to defer the remaining motions" in just those terms: "an ordinary exercise of case-management authority." October 2 Order at 9. The provisions governing stays of decisions under review point the same way. Section 319(1) of the Administrative Procedures Act leaves an agency free to stay its own decision while review is pending, and § 319(2) states when a reviewing court must do so. 75 O.S. § 319. Under the Supreme Court's rules, the tribunal below "may in its sound discretion stay enforcement of the decision which is the subject of proceedings in this Court on terms which will protect the rights of the parties." Okla. Sup. Ct. R. 1.15(b). The October 2 Order denied the affidavit's request that substantive rulings await the determination of the affidavit and directed that the proceeding resume "without further delay." October 2 Order at 12. It did not address a stay pending the Supreme Court's review of that Order, which had not then been sought. The grounds for that stay are set out in the Joint Motion to Stay ¶¶ 3–7 and the Joint Reply ¶¶ 3–8 and are not repeated here. The Attorney General and Mr. Sullivan ask that the Joint Motion to Stay be granted by written order: rulings on the contested matters listed in this paragraph, and the

commencement of the merits hearing, should await the Supreme Court's ruling on the Application in No. PR-124,489, while scheduling and exchanges proceed.

11. **A ruling now risks being done twice.** The original action asks whether this proceeding may go forward before the tribunal as presently constituted, given the circumstances set out in the affidavit. If the Supreme Court grants relief, rulings made in the interval are exposed to being set aside. The Supreme Court has affirmed the "nullification and reversal" of administrative proceedings where "the totality of the circumstances gives an appearance of impropriety and conflict of interest." *Bowen v. State ex rel. Okla. Real Estate Appraiser Bd.*, 2011 OK 86, ¶ 23, 270 P.3d 133, 139. The Supreme Court has moved promptly, calling for responses within three weeks and setting oral presentation for November 19. NAMIC and APCIA have predicted that it will likely rule before any hearing in this proceeding. Objection to the Joint Motion to Stay at 3--4 (Oct. 7, 2026). The contested matters are briefed and will be ready for decision when the Supreme Court acts.

12. **The Motion to Dismiss should wait in particular.** The Department asks that Mr. Sullivan be dismissed from this proceeding while he is a Petitioner in the original action, and without argument. The Order for Continuance set oral argument on that motion, Order for Continuance ¶ 3, and the setting was later stricken with the others, not withdrawn on the merits. Deciding the motion on the papers would set aside that decision to hear argument. When the motion is reached, Mr. Sullivan asks that oral argument be set.

13. **If the contested matters are reached, the briefing stands.** The positions are of record in the Omnibus Motion, the Attorney General's replies of September 3, 2026, Mr. Sullivan's response to the Omnibus Motion, and the responses of September 10, 2026 to the Motion to Dismiss. They are not restated here. Three points narrow what remains. The Attorney

General does not oppose the Department's request that the party bearing the burden of proof present first. Reply of the Oklahoma Attorney General to the Insurance Department's Response ¶ 37 (Sept. 3, 2026). On the six factors, the Attorney General agrees that the factors in 36 O.S. § 984(B)(1) must be considered and that evidence must be relevant to them, but the statute does not make them exclusive, and he opposes the exclusion, before the hearing, of whole categories of evidence. *Id.* ¶¶39, 41, 44. And on Article I and Article II, the Department has stated that "[i]f necessary to ensure the fairness and integrity of the hearing, the Department does not object to application of Article II of the APA." Department's Response ¶ 2(a).

V. THE JOINT REQUEST FOR PRODUCTION

14. **One item remains.** The October 2 Order directs "that the transcript and any video or audio recording of the hearing be preserved by the Department and made available to the parties." October 2 Order at 12. The Department has made recordings of the September 4, 2026 pre-hearing conference available. It has not provided the statement requested in paragraph 3(b) of the Joint Request for Production, whether any recording continued during the recess and, if not, when it stopped and resumed. That statement tells the parties what the recordings cover. The recess is one of the grounds of the affidavit now before the Supreme Court. The Attorney General and Mr. Sullivan ask that the Department be directed to provide it within seven days. That relief is not a substantive ruling and is not within the stay requested. The remaining items of the Request are reserved.

WHEREFORE, PREMISES CONSIDERED, the Attorney General and Mr. Sullivan respectfully request that the Hearing Examiner (1) grant the Joint Motion to Stay by written order, so that rulings on the contested matters listed in paragraph 10, and the commencement of the merits hearing, await the Supreme Court's ruling on the Application in No. PR-124,489,

while scheduling and exchanges proceed; (2) set the pre-hearing deadlines stated in paragraph 5, measured from the hearing date; (3) set the merits hearing as stated in paragraph 7; (4) direct the Department to provide, within seven days, the statement described in paragraph 14; (5) when the Motion to Dismiss is reached, set it for oral argument; and (6) grant the Attorney General and Mr. Sullivan such other and further relief as is fair and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael J. Hunter, hereby certify that on this 3rd day of November, 2026, a true and correct copy of the above and foregoing **JOINT RESPONSE OF THE OKLAHOMA ATTORNEY GENERAL AND BOB SULLIVAN TO THE OKLAHOMA INSURANCE DEPARTMENT'S MOTION SEEKING DETERMINATIONS ON OUTSTANDING ITEMS AND APPLICATION TO SET THE MERITS HEARING DATE** was filed with the Oklahoma Insurance Department by electronic mail to OIDlegal@oid.ok.gov, and was served by electronic mail upon:

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