

2014 OCT 20 A 11:15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In Re the Matter of

Matter NO. 14-0117

Global Warranty Group, LLC, and Wireless
Protection Program Association, and Arthur
Krantz, Charles S. Pipia, and Andrew J.
Schenker,

Motion To Dismiss OIC's Action
Against Individual Respondents
Charles S. Pipia, Arthur Krantz, and
Andrew J. Schenker.

Respondents.

COME NOW Respondents Charles S. Pipia, Arthur Krantz, and Andrew J. Schenker, by and through their undersigned counsel, and hereby move for an order of dismissal as to Respondents Pipia, Krantz, and Schenker based on the facts and legal authority supporting such dismissal as set forth herein.

1. Background

In its Notice of Request for Hearing ("Notice"), the Office of the Insurance Commissioner ("OIC") named corporate entities, Global Warranty Group, LLC ("GWG") and Wireless Protection Program Association ("WPPA") and also individuals, Charles Pipia, Arthur Krantz, and Andrew Schenker as Respondents.

The OIC alleges that GWG and WPPA engaged in a number of distinct activities related to the offering of products or services in the State of Washington that

Motion to Dismiss Individuals -

1

1 the OIC asserts are in violation of certain provisions of the insurance code, Title 48
2 RCW.

3 With respect to Messrs. Pipia, Krantz, and Schenker, the OIC identifies these
4 individuals as officers, directors, or members of GWG and WPPA. However, the OIC
5 does not cite any specific acts conducted by these individuals, nor does the OIC allege
6 that Pipia, Krantz, or Schenker had any individual involvement in any of the allegedly
7 illegal activities of either GWG or WPPA. Rather, the OIC asserts only that all these
8 individuals, along with corporate Respondents GWG and WPPA, did not pay premium
9 taxes, or, in general, continued to transact insurance and service contract business.

10 Finally, the OIC asserts, without any offering any factual or legal rationale for
11 such claims, that both the corporate and individual Respondents should share joint and
12 several liability for the monetary penalty requested by the OIC in the Notice.

13 Because a corporation's actions cannot simply be imputed to a corporate officer
14 or employee merely upon the OIC's allegation of some general relationship to a
15 corporate entity, the OIC lacks jurisdiction over them. Accordingly, these individual
16 Respondents in this matter, Charles Pipia, Arthur Krantz, and Andrew Schenker,
17 hereby move for dismissal of this action against them and respectfully request that they
18 be dismissed and removed as named Respondents in this matter, above-captioned.

19
20 **2. Legal Authority and Discussion Supporting Dismissal**

21 Respondents Pipia, Krantz, and Schenker are not residents of the State of
22 Washington. They have never been to Washington. Messrs. Pipia, Krantz, and
23 Schenker are not licensees subject to the any regulatory authority of the OIC, and have
24 never directly engaged in any business activity in the State of Washington. At all times

Motion to Dismiss Individuals -

2

— KREGER BEEGHLY, PLLC —

999 Third Ave, Suite 3000
Seattle, WA 98104-4088
(206)829-2708

1 relevant to the activities alleged by the OIC in its Notice, all three of these individual
2 Respondents were acting only as officers, directors, or members for the corporate
3 entities GWG and WPPA. The OIC itself admits to this. (See, Notice, pages 1 and 2;
4 see also, Declarations of Charles Pipia, Arthur Krantz, and Andrew Schenker, attached
5 hereto.)

6 The United States Supreme Court recently gave a thoughtful and reasoned
7 opinion directly regarding the long-standing law on personal jurisdiction in actions
8 brought by the State against nonresident defendants (or, as in this matter, the individual
9 Respondents).

10 In *Walden v. Fiore*, 571 U.S. ___, 134 S. Ct. 1115, 188 L. Ed. 4097 (2014), the
11 United States Supreme Court said:

12 “The Due Process Clause of the Fourteenth Amendment constrains a
13 State’s authority to bind a nonresident defendant to a judgment of its courts. *World-*
14 *Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 62 L. Ed. 490
15 (1980). Although a nonresident’s physical presence within the territorial jurisdiction of
16 the court is not required, the nonresident generally must have “certain minimum
17 contacts . . . such that the maintenance of the suit does not offend ‘traditional notions of
18 fair play and substantial justice’” *International Shoe Co. v. Washington*, 326 U.S. 310,
19 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463,
20 61 S. Ct. 339, 85 L. Ed. 278 (1940)).” (*Walden*, at 1121; quotes in original).

21 * * *

22 “For a State to exercise jurisdiction consistent with due process, the defendant’s
23 suit-related conduct must create a substantial connection with the forum State. Two
24 related aspects of this necessary relationship are relevant in this case.

Motion to Dismiss Individuals -

3

— KREGER BEEGHLY PLLC —

999 Third Ave, Suite 3000
Seattle, WA 98104-4088
(206)829-2708

1 "First, the relationship must arise out of the contacts that the "defendant
2 *himself*" creates within the forum State. *Burger King Corp. v. Rudzewicz*, 471 U.S.
3 462, 475, 105 S. Ct. 2174, 85 L. Ed. 528 (1985). Due process limits on the State's
4 adjudicative authority principally protect the liberty of the nonresident defendant – not
5 the convenience of plaintiffs or third parties. (Citations omitted). We have
6 consistently rejected attempts to satisfy the defendant-focused "minimum contacts"
7 inquiry by demonstrating contact between the plaintiff (or third parties) and the forum
8 State. (Citations omitted). ("[The] unilateral activity of another party or a third person
9 is not an appropriate consideration when determining whether a defendant has
10 sufficient contacts with the forum State to justify an assertion of jurisdiction")."

11 "Second, our "minimum contacts" analysis looks to the defendant's contacts
12 with the forum State itself, not the defendant's contacts with persons who reside there.
13 *See, e.g., International Shoe, supra*, at 319, 66 S. Ct. 154, 90 L. Ed. 95 (Due process
14 "does not contemplate that a state may make a binding judgment *in personam* against
15 an individual . . . with which the state has no contacts, ties, or relations"); *cit. om.*
16 (*Walden*, at 1122; quotes and italics in original; emphasis added).

17 * * *

18 "Rather, it is the defendant's conduct that must form the necessary connection
19 with the forum State that is the basis for its jurisdiction over him. *See, Burger King,*
20 *supra*, at 478, 105 S. Ct. 2174, 85 L. Ed. 528 ("If the question is whether an
21 individual's contract with an out-of-state party alone can automatically establish
22 sufficient minimum contacts in the other party's home state, we believe the answer
23 clearly is that it cannot.") (Citations omitted). (*Walden*, at 1122-1123).

24 * * *

Motion to Dismiss Individuals -

4

— KREGER BEEGHLY, PLLC —

999 Third Ave, Suite 3000
Seattle, WA 98104-4088
(206)829-2708

1 "Due process requires that a defendant be haled into court in a forum state
2 based on his own affiliation with the State, not based on the "random, fortuitous, or
3 attenuated " contacts he makes by interacting with other persons affiliated with the
4 State." (Citation omitted). (Walden, at 1123; emphasis added).

5 The United States Supreme Court concludes that, "Well-established principles of
6 personal jurisdiction are sufficient to decide this case. (Citation omitted.) . . . And it is
7 the defendant, not the plaintiff or third parties, who must create contacts with the forum
8 State. In this case, the application of those principles is clear: Petitioner's [the non-
9 resident defendant] relevant conduct occurred entirely in Georgia and the mere fact that
10 his conduct affected plaintiffs with connection to the forum State does not suffice to
11 authorize jurisdiction." (Walden, at 1126).

12 To add to that body of established due process law, the Washington Supreme
13 Court also has recently issued its well-reasoned opinion on the State's authority to
14 exercise personal jurisdiction over a non-resident executive and employee of a foreign
15 corporation.

16 *Failla v. Fixtureone Corporation and Kenneth A. Schutz*, No. 89671-2, *En*
17 *Banc*, Filed Oct. 02, 2014, involved a case in which a Washington resident, Kristine
18 Failla, was hired by Kenneth Schutz, a Pennsylvania resident and the founder and chief
19 executive officer of Fixtureone Corporation, a foreign corporation domiciled in
20 Pennsylvania, to act as Fixtureone's sales representative in the State of Washington. At
21 the time this arrangement was made, in late 2009, Fixtureone had no physical presence
22 or customers in Washington. Failla served as the corporation's representative and
23 received a salary and commissions for the work she produced. Over the course of
24 approximately one and a half years, Failla reported to Schutz, and the two

Motion to Dismiss Individuals -

5

— KREGER BEECHLY, PLLC —

999 Third Ave, Suite 3000

Seattle, WA 98104-4088

(206)829-2708

1 communicated extensively by e-mail. Failla requested more salary and a promotion,
2 both of which Schutz agreed to and granted. Schutz even provided Failla a draft
3 employment agreement with Fixtureone, which, for reasons unknown, was not
4 executed.

5 Failla continued working for Fixtureone from her home until May, 2011, when
6 Schutz informed Failla "that Fixtureone was "clos[ing] its doors" and ending her
7 employment the following day. CP at 44" (*Failla*, slip op. p. 3). Schutz assured Failla
8 that she would receive all commissions and expenses she was owed, but the company
9 and Schutz failed to pay Failla as promised. Failla sued both Fixtureone Corporation
10 and Kenneth Schutz for unpaid commissions.

11 Schutz moved for summary judgment to dismiss him as a defendant on the basis
12 that the Washington court lacked personal jurisdiction over him because he did not
13 have the requisite minimum contacts with the State. Justice Yu, author of the majority
14 opinion, noted: "The disputed issue is whether Schutz, as president and CEO of
15 Fixtureone, is subject to Washington's jurisdiction and, if so, whether the trial court
16 erred in finding he is liable under Washington's wage statute for nonpayment of wages
17 under RCW 49.52.050 and .070." The Supreme Court held that Schutz was subject to
18 Washington's jurisdiction based on his level of contacts and transactions in
19 Washington.

20 The Court noted that Schutz's contacts with the State included the following:
21 "He was the individual who responded to Failla's job inquiry, interviewed her, and
22 hired her because of the potential benefits to Fixtureone of having a sales representative
23 in Washington. During the two-year course of her employment, Schutz set her salary,
24 issued her payroll checks, promoted her, gave her a raise, and calculated her

Motion to Dismiss Individuals -

6

— KREGER BEEGHLY, PLLC —
999 Third Ave, Suite 3000
Seattle, WA 98104-4088
(206)829-2708

1 commissions. He appeared to be the primary contact for Failla, and in fact, there is no
2 evidence in the record that Failla had contact with anyone other than Schutz.” (*Failla*,
3 slip op. p. 8).

4 In holding that Schutz was subject to the jurisdiction of the Washington courts
5 in this case, the Supreme Court noted that three factors must coincide for the long-arm
6 statute to apply:

7 “(1) The nonresident defendant or foreign corporation must purposefully
8 do some act or consummate some transaction in the forum state; (2) the cause of action
9 must arise from, or be connected with such act or transaction; and (3) the assumption of
10 jurisdiction must not offend traditional notions of fair play and substantial justice,
11 considering the quality, nature, and extent of the activity in the forum state, the relative
12 convenience of the parties, the benefits and protections of state laws afforded the
13 respective parties, and the basic equities of the situation.” (*Failla*, slip op. p. 7).

14 The Washington Supreme Court in the *Failla* case echoed the same concerns
15 regarding due process as did the United States Supreme Court in *Walden*.
16 “Washington courts are authorized to assert personal jurisdiction over nonresident
17 defendants to the extent permitted by the federal due process clause. *Shute v. Carnival*
18 *Cruise Lines*, 113 Wn. 2d 763, 766-67, 783 P.2d 78 (1989). States can exercise
19 jurisdiction without violating due process if the nonresident defendant has certain
20 minimum contacts with the state such that the maintenance of the suit does not offend
21 traditional notions of fair play and substantial justice. *Daimler AG v. Bauman*, ___
22 U.S. ___, 134 S. Ct. 746, 754, 187 L. Ed. 624 (2014) (citing the Court’s canonical
23 opinion *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed.
24 95 (1945)). The central concern of the federal constitutional inquiry is the relationship

Motion to Dismiss Individuals -

7

— KREGER BEEGHLY, PLLC —
999 Third Ave, Suite 3000
Seattle, WA 98104-4088
(206)829-2708

1 between the defendant, the forum, and the litigation. *Shaffer v. Heitner*, 433 U.S. 186,
2 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977).” (*Failla*, slip op. p. 6).

3 The Court found that, because of the numerous direct contacts Schutz had with
4 *Failla*, and especially because he was personally and exclusively responsible for the
5 work she performed for his company in the state of Washington, all necessary elements
6 of the three-prong test, above, were satisfied. However, the Washington Supreme
7 Court was very precise in its decision regarding the State’s exercise of personal
8 jurisdiction over Schutz, and was very careful in explaining how far the exercise of the
9 State’s jurisdiction over nonresident defendants could extend.

10 The Court clearly stated the law in the State of Washington:

11 “We agree that a corporation’s actions cannot be simply imputed to a
12 corporate officer or employee for purposes of determining whether there are minimum
13 contacts necessary to establish jurisdiction.” (*Failla*, slip op. p.7).

14 “Instead, “[e]ach defendant’s contacts with the forum state must be
15 assessed individually.”” (Citation omitted). (*Failla*, slip op. p. 8).

16 “In this case, as outlined above, Schutz is not just *any* corporate officer,
17 and we do not hold today that any corporate officer of a nonresident corporation may
18 be subject to the state’s jurisdiction. Rather, Schutz was the officer directly responsible
19 for the hiring, firing, promotion, and payment of *Failla*’s wages. Schutz’s contacts with
20 the State of Washington were sufficient to confer jurisdiction over him for wage
21 disputes arising from those contacts.” (*Failla*, slip op. p. 12; italics in original;
22 emphasis added).

23
24
Motion to Dismiss Individuals -

8

— KREGER BEEGHLY, PLLC —

999 Third Ave, Suite 3000
Seattle, WA 98104-4088
(206)829-2708

1 In this present matter before the Hearing Officer, there exist no contacts by
2 Messrs. Pipia, Krantz, and Schenker that are even remotely close to those the Supreme
3 Court would consider sufficient to support the OIC's claimed jurisdiction over these
4 nonresident individuals. Any attempt by the State of Washington, by and through the
5 Office of the Insurance Commissioner, to exercise jurisdiction over Charles Pipia,
6 Arthur Krantz, and Andrew Schenker does violence to all notions of due process and
7 fair play protected by the United States Constitution, and undermines the long tradition
8 of holdings on these most important constitutional protections by both the United
9 States Supreme Court and the Washington State Supreme Court.

10 Charles Pipia, Arthur Krantz, and Andrew Schenker did not have any contacts
11 with the State of Washington sufficient for the OIC to maintain this present action
12 against them individually. None of these individuals lives or has lived in this State,
13 none had any direct business contacts in this State, and none even personally touched
14 the State in any way. Their only connection to the corporate entities that are the targets
15 of the OIC's action is that they happen to be officers, directors or members of a limited
16 liability company that allegedly engaged in activities that the OIC considers being in
17 violation of the insurance code. Nothing that Messrs. Pipia, Krantz, or Schenker have
18 done or have failed to do can be considered sufficient actions that, under any stretch of
19 the "minimum contacts" test, would subject these nonresident individuals to the
20 personal jurisdiction of the State of Washington or the Office of the Insurance
21 Commissioner.

22
23
24
Motion to Dismiss Individuals -

9

— KREGER BEECHLY, PLLC —

999 Third Ave, Suite 3000
Seattle, WA 98104-4088
(206)829-2708

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

3. Relief Requested

Charles Pipia, Arthur Krantz, and Andrew Schenker respectfully request that an Order be entered directing that they be dismissed as named Respondents (defendants) in this Matter.

DATED this 20th day of October, 2014

KREGER BEEGHLY, PLLC



Brian F. Kreger, WSBA Number 10670

Attorney for Respondents

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Global Warranty Group, LLC
d/b/a www.global_warranty_group.com, and
Wireless Protection Program Association,
d/b/a www.wirelessprotectionprogram.com,
and Arthur Krantz, Charles S. Pipia, and
Andrew J. Schenker,

Respondents.

Docket No. 14-0117

DECLARATION OF
CHARLES S. PIPIA

I, Charles S. Pipia, am over the age of eighteen years, am competent and authorized to testify to the matters set forth herein on the basis of first-hand knowledge, and do hereby declare as follows:

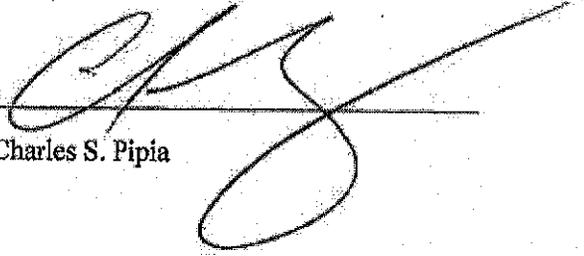
1. I am a resident of the State of New York. I am not now, nor have I ever been, a resident of the State of Washington.
2. I do not own any personal or real property situated in the State of Washington.
3. I have not ever been in the State of Washington except perhaps during brief stops while travelling to other destinations.
4. I am familiar with the business entities named in this matter, but my only relationship with them is as a member or officer of the limited liability corporation or the association.
5. I do not own any business interests in the State of Washington and have not personally conducted any personal business in the State of Washington.

I declare under penalty of perjury under the laws of the State of Washington and of the State of New York that the foregoing is true and correct.

1.

Declaration of Charles S. Pipia

Signed and dated this 16 day of October, 2014.



Charles S. Pipia

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Global Warranty Group, LLC
d/b/a www.globalwarrantygroup.com, and
Wireless Protection Program Association,
d/b/a www.wirelessprotectionprogram.com,
and Arthur Krantz, Charles S. Pipia, and
Andrew J. Schenker,

Respondents.

Docket No. 14-0117

DECLARATION OF
ARTHUR KRANTZ

I, Arthur Krantz, am over the age of eighteen years, am competent and authorized to testify to the matters set forth herein on the basis of first-hand knowledge, and do hereby declare as follows:

1. I am a resident of the State of New York. I am not now, nor have I ever been, a resident of the State of Washington.
2. I do not own any personal or real property situated in the State of Washington.
3. I have not ever been in the State of Washington except perhaps during brief stops while travelling to other destinations.
4. I am familiar with the business entities named in this matter, but my only relationship with them is as a member or officer of the limited liability corporation or the association.
5. I do not own any business interests in the State of Washington and have not personally conducted any personal business in the State of Washington.

I declare under penalty of perjury under the laws of the State of Washington and of the State of New York that the foregoing is true and correct.

Signed and dated this 20 day of October, 2014.



Arthur Krantz

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Global Warranty Group, LLC
d/b/a www.globalwarrantygroup.com, and
Wireless Protection Program Association,
d/b/a www.wirelessprotectionprogram.com,
and Arthur Krantz, Charles S. Pipla, and
Andrew J. Schenker,

Respondents.

Docket No. 14-0117

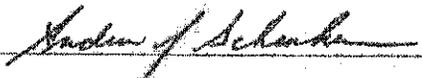
DECLARATION OF
ANDREW J. SCHENKER

I, Andrew J. Schenker, am over the age of eighteen years, am competent and authorized to testify to the matters set forth herein on the basis of first-hand knowledge, and do hereby declare as follows:

1. I am a resident of the State of New York. I am not now, nor have I ever been, a resident of the State of Washington.
2. I do not own any personal or real property situated in the State of Washington.
3. I have not ever been in the State of Washington except perhaps during brief stops while travelling to other destinations.
4. I do not own any business interests in the State of Washington and have ~~NOT~~ ^{AB} personally conducted any personal business in the State of Washington.

I declare under penalty of perjury under the laws of the State of Washington and of the State of New York that the foregoing is true and correct.

Signed and dated this 13 day of October, 2014.



Andrew J. Schenker

Declaration of Andrew Schenker

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATE OF SERVICE

I, Brian F. Kreger, under penalty of perjury under the laws of the State of Washington do hereby declare and certify that I personally served and caused to be delivered by Electronic (e-mail) Delivery and regular United States Postal Service Delivery, the foregoing Motion To Dismiss OIC's Action Against Individual Respondents Charles S. Pipia, Arthur Krantz, and Andrew J. Schenker on the following parties or persons at the last known addresses given below:

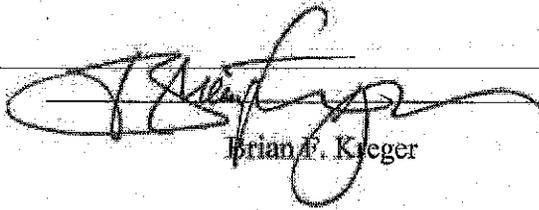
Hearings Unit
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

Mr. Darryl E. Colman
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

Mailed and e-Mailed To:
Hearings Unit
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255
Attention: George Finkle, Hearing Officer
gfinkle@jdrllc.com
Attention: Kelly Cairns
KellyC@oic.wa.gov

Mailed and e-Mailed To:
Mr. Darryl E. Colman
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255
DarrylC@oic.wa.gov

Executed on this 20th day of October, 2014 in Seattle, Washington.


Brian F. Kreger