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THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Docket No. 14-0117

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  
and (sic) Andrew J. Schenker,

RESPONDENTS'  
MOTION TO DISMISS

Respondents.

**COME NOW** the above-named Entities and Individuals (hereafter, "Respondents"), by and through their undersigned counsel, and herewith submit their Motion to Dismiss this matter and terminate this proceeding for the following reasons: the Insurance Commissioner of the State of Washington has attempted to initiate an action against Respondents in a manner not authorized by law; the Insurance Commissioner has attempted to initiate an action against Respondents by and through a person other than the Attorney General of the State of Washington as required by law; this matter is barred by the applicable statute of limitations for initiating such proceedings, even if brought by appropriate means and through appropriate representation.

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**Background**

On March 15, 2012, the Legal Affairs Division of the Washington State Office of the Insurance Commissioner (“OIC”) sent a letter to Charles Pipia (President of Global Warranty Group, LLC) advising him that the OIC had received a complaint against Global Warranty (the “company”) and informing Mr. Pipia that the OIC was conducting an investigation of alleged wrongful acts. The letter contained precise details about the company, references to its history with the OIC, and facts regarding the company’s relationships with insurance companies identified by name. (A copy of the OIC’s letter is attached as Exhibit A).

Apparently, over the course of the next twenty-seven months, the OIC and the company engaged in discussions which were unsuccessful in resolving the issues arising from the OIC’s investigation of the company, and on June 6, 2014, the OIC filed its Notice of Request for Hearing for the Imposition of Fines, Collection of Unpaid Premium Taxes, and Other Relief (“Notice”).

The OIC’s Notice was filed by a representative of the Insurance Commissioner identified as “OIC Staff Attorney” in the “Legal Affairs Division.” In the Notice, the OIC named the several corporate entities, including Global Warranty Group, and individuals, now referred to collectively as “Respondents.”

Respondents filed their Response and Objection to the OIC’s Notice on June 11, 2014. In their Response and Objection, Respondents assert that the OIC’s Notice is an attempt to commence a legal proceeding contrary to the only authority given to the Insurance Commissioner to initiate proceedings against any person suspected of violating the insurance code (Title 48 RCW) or regulations (Title 284 WAC).

1 Respondents also assert not only that the Insurance Commissioner is limited in  
2 his authority to bring legal proceedings, but also is subject to clear constitutional and  
3 statutory mandates regarding who may bring an action against anyone suspected of  
4 violating the insurance code or regulations.

5 Respondents now assert in addition, that even if this proceeding were  
6 considered to have been brought in accordance with applicable legal and constitutional  
7 requirements (which Respondents do not concede or admit in any respect) then this  
8 present proceeding has been initiated long after the two-year statute of limitations has  
9 expired.

10 On the basis of any one or all of these reasons, this matter should be dismissed  
11 in its entirety with prejudice. Accordingly, Respondents move this honorable tribunal  
12 for an order of dismissal of this action with prejudice, and a complete and final  
13 termination of the OIC's attempts to seek penalties any other punitive measures against  
14 the Respondents.

15 **Discussion and Argument**

16  
17 **1. There is no legal authority for the OIC to attempt to initiate a judicial or quasi-**  
18 **judicial proceeding against any person by means of a mere request for hearing.**

19 The OIC states in its Notice, "Pursuant to RCW 48.110.120(2), OIC is  
20 authorized to initiate a hearing pursuant to RCW 48.04.050 or take actions described in  
21 RCW 48.02.080" (emphasis added). No such authority to initiate a hearing is  
22 prescribed in any of those sections of the insurance code. Rather, those cited  
23 provisions of the insurance code demarcate the scope and limits of the authority of the  
24 Insurance Commissioner to bring an action against a person.

1 RCW 48.110.120(2) is contained in the chapter of the insurance code governing  
2 service contracts. That section states, in pertinent part, that, “The commissioner may  
3 take actions under RCW 48.02.080 or 48.04.050 . . .”. That section does not authorize  
4 the OIC or the Insurance Commissioner to initiate a hearing, as the OIC asserts.

5 RCW 48.02.080 establishes the scope of the Insurance Commissioner’s  
6 authority to bring an action against any person for alleged or suspected violations of the  
7 insurance code. RCW 48.02.080(1) authorizes the Insurance Commissioner to  
8 “prosecute an action in any court of competent jurisdiction to enforce any order made  
9 by him or her pursuant to any provision of this code.” Subsection (3) establishes the  
10 legal mechanisms available to the Insurance Commissioner for seeking enforcement  
11 sanctions against a person, namely:

12 “If the commissioner has cause to believe that any person is violating or is  
13 about to violate any provision of this code or any regulation or order of the  
14 commissioner, he or she may:

15 (a) issue a cease and desist order; and/or

16 (b) bring an action in any court of competent jurisdiction to enjoin the person  
17 from continuing the violation or doing any action in furtherance thereof.”

18 Contrary to the bald assertions in the OIC’s Notice, the authority to bring an  
19 action under this provision of the insurance code does not include the authority to  
20 “initiate a hearing.” Rather, the Insurance Commissioner’s authority to bring an action  
21 or initiate a proceeding is limited to those legal proceedings set out in RCW 48.02.080.  
22 Furthermore, if the Insurance Commissioner decides to bring an action under RCW  
23 48.02.080, he is required to engage the Attorney General or a prosecuting attorney who  
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1 "shall prosecute or defend all proceedings brought pursuant to this code." (RCW  
2 48.02.080(4)).

3 By the same token, the Insurance Commissioner has no authority to "initiate a  
4 hearing" under RCW 48.04.050. That section of the insurance code, also cited in the  
5 OIC's Notice, merely authorizes the Insurance Commissioner to issue a notice to show  
6 cause stating that some proposed action of the Insurance Commissioner may be taken  
7 unless the person affected by such a show cause order demonstrates why it should not  
8 be taken. Clearly, that section does not authorize the OIC to "initiate a hearing" in this  
9 matter.

10 Furthermore, Chapter 48.04 RCW is the general chapter governing hearings and  
11 appeals before the OIC. While RCW 48.04.010 allows that "The Commissioner may  
12 hold a hearing," the power to hold a hearing is not the equivalent of initiating a legal  
13 proceeding against a person. To hold otherwise would suggest that a judge of a duly  
14 constituted court of the State of Washington can "initiate a proceeding" merely because  
15 he or she has the power to conduct a hearing. The authority to hold a hearing is not  
16 authority to initiate a legal or quasi-legal proceeding.

17 The Insurance Commissioner's authority to initiate legal action against a person  
18 violating or suspected of violating the insurance code or regulations is tightly drawn in  
19 Title 48 as set forth in RCW 48.02.080, 48.04.010 and 48.04.050. Even the  
20 Administrative Procedure Act does not confer the Insurance Commissioner with power  
21 to initiate a hearing or legal action such as this matter. RCW 34.05.413(1) states that  
22 "Within the scope of its authority, an agency may commence an adjudicative  
23 proceeding at any time with respect to a matter within the agency's jurisdiction."  
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1 (Emphasis added). The critical words are those underscored, namely, “within the scope  
2 of its authority,” and only within the scope of its authority, can an agency take the  
3 action therein described. The scope of the Insurance Commissioner’s authority to bring  
4 a legal or quasi-legal proceeding against any person is clearly circumscribed in the  
5 insurance code. The OIC cannot act outside that scope of authority.

6 To hold otherwise would do violence to the appearance of fairness doctrine that  
7 Washington courts have applied to administrative proceedings. An administrative  
8 adjudication violates the appearance of fairness doctrine if a reasonably prudent  
9 disinterested observer would conclude that the parties did not obtain a fair, impartial  
10 and neutral hearing. (Washington Administrative Law Practice Manual §9.01, Rel. 14-  
11 12/04 citing *Deatheridge v. Board of Psychology*, 85 Wn. App. 434, 932 P.2d 1267,  
12 rev. on other grounds, 134 Wn.2d 131, 948 P.2d 828 (1997)). See also, the discussion  
13 of *State v. Gattavara*, 182 Wash. 325 (1935), *infra*, as it relates to the authority to  
14 institute and maintain legal proceedings on behalf of state agencies.

15 There is a reason why the Legislature limited the scope of the Insurance  
16 Commissioner’s authority to initiate legal or quasi-legal proceedings to those actions  
17 specifically prescribed in the insurance code, namely, to ensure that the parties subject  
18 to the Insurance Commissioner’s regulatory control would be assured a fair and  
19 impartial hearing of the claims brought against them.

20  
21 **2. Only the Attorney General can represent the Insurance Commissioner and the**  
22 **OIC in any legal or quasi-legal proceeding.**

23 Article III, Section 21 of the Washington State Constitution clearly and  
24 unambiguously establishes what the duty and role of the State’s attorney general shall

1 be: "The attorney general shall be the legal adviser to the state officers, and shall  
2 perform such other duties as may be prescribed by law." (Emphasis added). Those  
3 additional duties are found in several sections of the Revised Code of Washington,  
4 which pertain precisely to this matter.

5 RCW 43.10.030 General powers and duties, states, in pertinent part:

6 "The attorney general shall:

7 (1) Appear for and represent the state before the supreme court or the court of  
8 appeals in all cases in which the state is interested;

9 (2) Institute and prosecute all actions and proceedings for, or for the use of the  
10 state, which may be necessary in the execution of the duties of any state officer;

11 (3) Defend all actions and proceedings against any state officer or employee  
12 acting in his or her official capacity, in any of the courts of this state or the  
13 United States;" (Emphasis added.)

14 RCW 43.10.040 Representation of boards, commissions and agencies.

15 "The attorney general shall also represent the state and all officials,  
16 departments, boards, commissions and agencies of the state in the courts, and  
17 before all administrative tribunals or bodies of any nature, in all legal or quasi  
18 legal matters, hearings, or proceedings, and advise all officials, departments,  
19 boards, commissions, or agencies of the state in all matters involving legal or  
20 quasi legal questions, except those declared by law to be the duty of the  
21 prosecuting attorney of any county." (Emphasis added.)  
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1 RCW 48.02.080 Enforcement.

2 “(1) The commissioner may prosecute an action in any court of competent  
3 jurisdiction to enforce any order made by him or her pursuant to any provision  
4 of this code.

5 (2) If the commissioner has cause to believe that any person has violated any  
6 penal provision of this code or of other laws relating to insurance he or she shall  
7 certify the facts of the violation to the public prosecutor of the jurisdiction in  
8 which the offense was committed.

9 (3) If the commissioner has cause to believe that any person is violating or is  
10 about to violate any provision of this code or any regulation or order of the  
11 commissioner, he or she may:

12 (a) issue a cease and desist order; and/or

13 (b) bring an action in any court of competent jurisdiction to enjoin the  
14 person from continuing the violation or doing any action in furtherance thereof.

15 (4) The attorney general and the several prosecuting attorneys throughout the  
16 state shall prosecute or defend all proceedings brought pursuant to the  
17 provisions of this code when requested by the commissioner.” (Emphasis  
18 added.)

19 RCW 43.10.067 Employment of attorneys by others restricted.

20 “No officer, director, administrative agency, board, or commission of the state,  
21 other than the attorney general, shall employ, appoint or retain in employment  
22 any attorney for any administrative body, department, commission, agency, or  
23 tribunal or any other person to act as attorney in any legal or quasi legal  
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1           capacity in the exercise of any of the powers or performance of any of the  
2           duties specified by law to be performed by the attorney general, except where it  
3           is provided by law to be the duty of the judge of any court or the prosecuting  
4           attorney of any county to employ or appoint such persons: PROVIDED, That  
5           RCW 43.10.040, and 43.10.065 through 43.10.080 shall not apply to the  
6           administration of the commission on judicial conduct, the state law library, the  
7           law school of the state university, the administration of the state bar act by the  
8           Washington State Bar Association, or the representation of an estate  
9           administered by the director of the department of revenue or the director's  
10          designee pursuant to chapter 11.28 RCW.” (Emphasis added.)

11          The exact legal issue presented here in this matter (namely, that the attorney  
12          general is the *only* attorney who is authorized to represent a state officer and state  
13          agency, here in this matter, the Insurance Commissioner, and initiate a proceeding on  
14          his behalf), was presented to the Washington Supreme Court in *Goldmark v. McKenna*,  
15          172 Wn. 2d 568, 259 P. 3d 1095 (2011). In that case, the attorney general had refused  
16          to prosecute an appeal at the request of the commissioner of public lands. The  
17          commissioner sought a writ of mandamus to compel the attorney general to represent  
18          that agency in pursuing an appeal of an adverse lower court decision. The Supreme  
19          Court relied on the very same provisions of Const. art. III, § 21, RCW 43.10.040, RCW  
20          43.10.067 and a statute similar to RCW 48.02.080 which requires the attorney general  
21          to represent the insurance commissioner (that similar provision in *Goldmark* is RCW  
22          43.12.075 requiring the attorney general to represent the commissioner of public lands).  
23          The Court held that the attorney general’s duty to represent the agency is mandatory  
24          and that the attorney general has no discretion to deny the commissioner legal

1 representation. The Court noted, “The plain language of the statutes, however, leaves  
2 little to question” that “the attorney general has a statutory duty to represent the  
3 commissioner.” (*Goldmark* at 573.) The Court continued, “Moreover, only the  
4 attorney general, or an SAAG [special assistant attorney general] may represent the  
5 commissioner since RCW 43.10.067 prohibits the commissioner from hiring outside  
6 counsel.” (*Id.*, *emphasis added.*) The Court further noted that, “. . . pursuant to RCW  
7 43.10.067, the commissioner may not “employ, appoint, or retain . . . any attorney . . .  
8 to act in any legal or quasi legal capacity in the performance of any of the duties  
9 specified by law to be performed by the attorney general.” RCW 43.10.067. If the  
10 attorney general could refuse to represent the commissioner, then the commissioner  
11 could be left without any legal representation whatsoever.” \* \* \* “Instead, it appears  
12 the commissioner has the choice of one attorney to represent him, and that is the  
13 attorney general. The attorney general, however, has no choice but has a statutory duty  
14 to represent his client, the commissioner.” (*Goldmark* at 573-4; quotes in original;  
15 *emphasis added.*)

16 The attorney general offered various arguments to the Court that the Office of  
17 the Attorney General has broad discretion in deciding which cases the office will  
18 undertake to represent on behalf of a particular state agency. The Supreme Court  
19 rejected all those arguments, stating: “No contrary legislative intent [to the above cited  
20 statutes] has been offered by the attorney general, so we conclude that the attorney  
21 general has a statutory duty to provide the commissioner with legal representation.”  
22 (*Id.* at 575.) In concluding that a writ of mandamus was appropriate, the Court  
23 concluded: “Given the mandatory language of the statute and the prohibition of hiring  
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1 outside counsel, no discretion in involved, and representation is required.” (*Id.* at 582;  
2 emphasis added.)

3 In *Goldmark*, the attorney general also challenged the Supreme Court to  
4 concede that its holding in *State v. Gattavara*, 182 Wash. 325, 47 P.2d 18 (1935)  
5 somehow supported the attorney general’s view that he had discretionary ability  
6 regarding whether he would or would not provide legal representation to the  
7 commissioner. The Court refuted this argument and explained that *Gattavara* was not  
8 concerned with the attorney general representing the state agency, but rather who has  
9 authority to initiate legal proceedings.

10 The Court’s holding in *Gattavara* is very instructive in the present matter  
11 before the OIC’s Presiding Officer. The *Gattavara* case was brought on a motion to  
12 quash the summons and dismiss the state’s case against the appellants because the  
13 matter had not been brought by the attorney general or by anyone authorized by law to  
14 bring the action for the state. The Court recited the same provision of the Constitution  
15 as above, Article III, Section 21, and those sections of the law that are the precursors to  
16 RCW 43.10.030(2) and RCW 43.10.040, set forth above. Rem. Rev. Stat. § 112 (P.C.  
17 6574-3), as set out in the Court’s opinion, reads: “Sec. 3. The attorney general shall  
18 have the power and it shall be his duty: (2) To institute and prosecute all actions and  
19 proceedings for, or for the use of the state which may be necessary in the execution of  
20 the duties of any state officer.” Referring to both the constitutional and statutory  
21 mandates, the Court held: “Although the constitutional provision above quoted is not  
22 self-executing, when the duties of the *Attorney General* are prescribed by statute and  
23 the statute has for its purpose the authorization of proper state officers to bring actions,  
24 that authority is exclusive.” (*Gattavara* at 329; italics in original; emphasis added.)

1 Even more to the point in this regard, this is what the Supreme Court had to say  
2 about a purported attempt by someone in the attorney general's office to authorize or  
3 legitimize the initiating of the legal proceeding at issue in *Gattavara*: "There is  
4 interpolated into this record, though no part of it, a letter from the *Attorney General* to  
5 *one* of the attorneys, of a date after the initiation of this action in the lower court,  
6 attempting to authorize its maintenance. As was said by the United States supreme  
7 court in the *Throckmorton* case, supra, it is not in that way that the Attorney General of  
8 this state should make himself officially responsible for the institution and maintenance  
9 of such action against any party. There is no signature by or on behalf of the *Attorney*  
10 *General* to the summons and complaint in this action, and the attorneys who instituted  
11 and maintained the action were then without such power and authority." (*Gattavara*, at  
12 332; italics in original; emphasis added.) Whereupon the Court stated: "We conclude,  
13 therefore, that the action should have been dismissed on the motion to quash, and that  
14 the writs of garnishment should be dissolved." (*Gattavara*, at 333.)

15 As further legal evidence that the attorney general, and only the attorney general  
16 may represent the Insurance Commissioner in this proceeding, one needs to look no  
17 farther than RCW 43.10.040, cited in full above at page 7: "The attorney general shall  
18 also represent the state and all officials, departments, boards, commissions and  
19 agencies of the state in the courts, and before all administrative tribunals or bodies of  
20 any nature, in all legal or quasi legal matters." This is a statutory mandate following  
21 the constitutional mandate establishing the office and the duties of the attorney general.  
22 The statute could not be clearer and there is no room for varying interpretations of what  
23 that law directs the attorney general to do. *Sanders v. State*, 166 Wn.2d 164, 207 P.3d  
24 1245 (2009), speaks directly to this point. *Sanders* involved a matter where the

1 attorney general did not represent a state official in a legal action brought against the  
2 official because the official's acts complained of were unauthorized and unethical. In  
3 upholding the attorney general's refusal of legal representation under those  
4 circumstances, the Supreme Court took the opportunity to provide the Court's opinion  
5 on interpreting the intent of RCW 43.10.040, to wit: "The court's primary duty in  
6 interpreting any statute is "to discern and implement the intent of the legislature." *State*  
7 *v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). In this case, the statute under which  
8 Justice Sanders seeks his fees is RCW 43.10.040. As the Court of Appeals notes, RCW  
9 43.10.040 was enacted in 1941 "to end the proliferation of attorneys hired by various  
10 state agencies and place the authority for representation of state agencies in the  
11 Attorney General." *State v. Herrmann*, 89 Wn.2d 349, 354, 572 P.2d 713 (1977)."  
12 (*Sanders* at 171; quotes in original; emphasis added.)

13 The Washington State Constitution directs that the attorney general "shall be  
14 the legal adviser of the state officers, and shall perform such other duties as may be  
15 prescribed by law." (Const. art. III, § 21). Those additional legal duties are statutorily  
16 prescribed in RCW 43.10.040, RCW 48.02.080, and RCW 43.10.067. The plain  
17 language of the constitution and the laws leaves little to question regarding the attorney  
18 general's mandate to represent the OIC and the Insurance Commissioner, and to initiate  
19 any and all legal and quasi-legal proceedings on behalf of the OIC and the Insurance  
20 Commissioner. (See also, *Goldmark v. McKenna*, *supra*).

21 There is no other provision in either the Constitution or the Revised Code of  
22 Washington that in the least bit modifies the mandatory duties assigned to the attorney  
23 general. Nor is there any statute that grants the attorney general discretion in  
24 representing the state and its agencies. (See, *Goldmark*, *supra*, "the attorney general

1 has a statutory duty to represent the commissioner.”) And, most importantly, there is  
2 no statutory authority given to the attorney general to delegate these statutory duties to  
3 another office.<sup>1</sup>

4 It is abundantly clear that only the attorney general is authorized to represent  
5 the Insurance Commissioner in this matter. In point of fact and law, the attorney  
6 general is under a constitutional and statutory mandate to act as the only attorney for  
7 the OIC and the Insurance Commissioner. ~~Furthermore, it bears repeating that, as the~~  
8 Supreme Court observed and held, RCW 43.10.067 specifically prohibits the head of  
9 any state agency – including the Office of the Insurance Commissioner – other than the  
10 attorney general from employing, appointing, or retaining any attorney to act as the  
11 attorney for the agency in any legal or quasi-legal capacity. While the attorney general  
12 may employ such attorneys, the Insurance Commissioner cannot. In this matter  
13 brought by the OIC under documents signed by the OIC’s “staff attorney,” it is  
14 conclusive under all applicable law, that the OIC’s “staff attorney” does not have  
15 authority “to act as attorney in any legal or quasi legal capacity” for the OIC. And,  
16 until and unless such a “staff attorney” is actually employed by the attorney general to  
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18 <sup>1</sup> It is such an obvious rule of law that one state agency cannot direct another, different  
19 state agency to undertake certain responsibilities and actions ascribed to the first state  
20 agency, that there is no need for a law to formalize it. Certainly, if such authority were  
21 to be given any state agency, it would have to be clearly stated in specific legislation to  
22 that effect. There is no legislation and no statute giving the attorney general authority  
23 to defer and direct to another agency, the attorney general’s statutory duties to represent  
24 the state and its agencies. “Powers conferred upon a public officer can be exercised  
only in the manner and under the circumstances prescribed by law, and any attempted  
exercise thereof in any other manner or under different circumstances is a nullity.” *In*  
*Re Jullin*, 23 Wn.2d 1, 158 P.2d 319, 160 P.2d 1023 (1945); *In re Elvigen’s Estate*, 191  
Wash. 614, 71 P.2d 672 (1937). “Agencies do not have implied authority to determine  
issues outside of that agency’s delegated functions or purpose. Nor can agency rules or  
regulations amend legislative enactments.” *Turek v. State*, 123 Wn.2d 120, 864 P.2d  
1382 (1994).

1 act on the attorney general's behalf in carrying out the attorney general's mandatory  
2 duties, the OIC's staff attorney is legally disqualified from any further attempts to  
3 represent the insurance commissioner or his agency.

4 Because of the clearly-prescribed parameters in the insurance code limiting the  
5 scope of the Insurance Commissioner's authority to bring a legal or quasi-legal action  
6 against a person suspected of violating the insurance laws and regulations, and because  
7 of the clear mandates set forth in the Washington Constitution, Washington statutes,  
8 and Washington Supreme Court holdings that only the Attorney General can represent  
9 the Insurance Commissioner, this matter must be dismissed as having been improperly  
10 brought by the OIC. If, after this matter has been dismissed, the Insurance  
11 Commissioner wishes to bring an action against the Respondents, he must retain the  
12 Attorney General as his only attorney authorized to represent him, and through that  
13 office bring whatever action may be considered appropriate and allowed by law.  
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15 **3. Notwithstanding that the OIC's attempt to initiate this action is contrary to**  
16 **Washington constitution and law, this proceeding is barred under the applicable**  
17 **statute of limitations.**

18 The OIC seeks penalties against the Respondents. Under RCW 4.16.100(2),  
19 "An action upon a statute for a forfeiture or penalty to the state" must be commenced  
20 within two years. "The limitations period starts when a cause of action accrues. A  
21 cause of action accrues when a party has the right to seek relief in the courts."  
22 *Crownover v. Dep't of Transportation*, 165 Wn. App. 131, 265 P.3d 971 (2011)  
23 (internal citations omitted). "A cause of " 'action accrues when the plaintiff knows or  
24 should know the relevant facts, whether or not the plaintiff also knows that these facts

1 are enough to establish a legal cause of action.’ ” *Gilbert v. Sacred Heart Med .Ctr.*,  
2 127 Wn.2d 370, 381, 900 P.2d 552 (1995) (Durham, C.J., dissenting)(quoting *Allen v.*  
3 *State*, 118 Wn.2d 753, 758, 826 P.2d 200 (1992)).” *Crownover, supra*, at 141; quotes  
4 in original.

5 As noted above, the OIC sent its letter to Respondents on March 15, 2012, in  
6 which the OIC gave notice of an alleged complaint against the Respondents and in  
7 which the OIC described in detail and further inquired regarding certain of  
8 Respondents’ activities and business relationships. This letter clearly indicates that the  
9 OIC had been investigating the Respondents and their activities for a considerable  
10 period of time even before that letter was sent. It is also quite evident that the OIC had  
11 possession of a significant amount of information regarding the Respondents and their  
12 activities long before that letter was even drafted. In other words, by the time the OIC  
13 sent its letter to Mr. Pipia, the OIC had sufficient information regarding the  
14 Respondents to have enabled the OIC to take whatever action the OIC deemed  
15 appropriate to seek the very sanctions, including the imposition of fines, collection of  
16 unpaid premium taxes, and other relief that the OIC seeks in its June 6, 2014 Notice.  
17 The OIC waited too long to commence its action, even assuming (and without  
18 conceding) that such action is legal.

19 The Washington Supreme Court detailed the application of the two-year statute  
20 of limitations to actions brought by the state seeking the imposition of penalties. In  
21 *U.S. Oil & Refining Company v. Department of Ecology*, 96 Wn.2d 85, 633 P. 2d 1329  
22 (1981), the Court stated: “The limitation period commences when a cause of action  
23 accrues and tolls when a complaint is filed or a summons is served. A cause of action  
24 accrues when the party has a “right to apply to a court for relief.” (Citations omitted).

RESPONDENTS’ MOTION TO DISMISS

- 16

— KREGER BEEGHLY, PLLC —

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1 "According to those results and rationale, the cause of action accrued in the present  
2 case when U.S. Oil violated the terms of its discharge permit." *U.S. Oil*, at 91; quotes  
3 in original.

4 The OIC cannot rely on the application of the discovery rule to save this action  
5 from dismissal for the OIC's failure to bring this action, and an action in an appropriate  
6 forum, before the expiration of the two-year statute of limitations. Under the discovery  
7 rule, the limitation period begins to run when the state, exercising reasonable diligence,  
8 should have discovered the alleged violations for which it seeks imposition of fines or  
9 penalties. See, *U.S. Oil*, at 93-94.

10 The OIC attempted to bring its action against the Respondents for the recovery  
11 of fines and other penalties when it filed its Notice, in which the OIC claimed that it  
12 had authority to "initiate a hearing" on its action. This attempted action, regardless of  
13 the fact that it was without legal authority, was brought by the OIC more than two  
14 years after the OIC possessed all the relevant facts necessary to establish a cause of  
15 action and to seek relief in the appropriate judicial forum.

16 This present matter is barred by the two-year statute of limitations for bringing  
17 such actions under RCW 4.16.100, and must be dismissed.

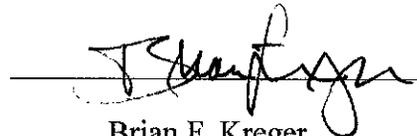
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**Relief Requested**

Based on the foregoing legal authority and the argument presented herein, Respondents respectfully request that the matter be dismissed with prejudice as against all entities and individuals named and identified in this matter.

DATED this 6<sup>th</sup> day of August, 2014

KREGER BEEGHLY, PLLC



Brian F. Kreger,  
WSBA Number 10670

Attorney for Respondents

STATE OF WASHINGTON

Phone: (360) 725-7000  
www.insurance.wa.gov

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER



OFFICE OF  
INSURANCE COMMISSIONER

March 15, 2012

Charles Pipia  
Global Warranty Group  
500 Middle Country Rd.  
St. James, NY 11780

**EXHIBIT A**

Re: OIC Case # 1058462

Dear Sir:

This letter is to advise you that the Office of the Insurance Commissioner has received a complaint against Global Warranty Group (GWG) alleging that you may be offering service contracts for cell phones in Washington State without proper licensure. This allegation is a possible violation of RCW 48.10.030(1).

As part of the investigative process, I am requesting that you provide this office with a written response to the allegation. Specifically, please address the following issues:

1. Our records show that the OIC denied GWG a license to conduct the business of insurance as a service contract provider in Washington State in November 2010. Please explain why GWG continued to sell service contracts after November 2010.

Please provide the following documents:

1. A list of the names and addresses of all distributors in Washington State that sell your product?
2. A copy of the agreement between GWG and insurer, Lyndon Southern Insurance Co. - *FRANCO CLIP*
3. An Excel spreadsheet listing the name, address, date contract sold, type of contract, sale price, and status of contract for all contracts sold in Washington State between January 1, 2010 and January 1, 2012. *CLIP/Prover*

Please provide your written response and copies of the above listed documents by April 2, 2012.

I may be reached directly at (360-725-7049) or [allisonh@oic.wa.gov](mailto:allisonh@oic.wa.gov) for further information.

Sincerely,

Allison Hanson  
Senior Investigator  
Legal Affairs Division

File

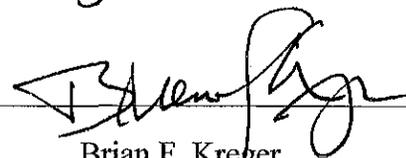
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CERTIFICATE OF SERVICE

I, Brian F. Kreger, under penalty of perjury under the laws of the State of Washington do hereby declare and certify that I served, and caused to be delivered by United States Postal Delivery, the foregoing Respondents' Motion to Dismiss on the following parties or persons at the last known addresses given below:

Hearings Unit <del>Office of the Insurance Commissioner</del> 5000 Capitol Boulevard Tumwater, WA 98501	Mr. Darryl E. Colman <del>Office of the Insurance Commissioner</del> 5000 Capitol Boulevard Tumwater, WA 98501
Mailed To: Hearings Unit Office of the Insurance Commissioner P.O. Box 40255 Olympia, WA 98504-0255 Attention: George Finkle, Hearing Officer	Mailed To: Mr. Darryl E. Colman Office of the Insurance Commissioner P.O. Box 40255 Olympia, WA 98504-0255

Executed on this 7th day of August, 2014 in Seattle, Washington.

  
\_\_\_\_\_  
Brian F. Kreger