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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,

Respondents' Reply
to OIC Response to Motion to Dismiss
Charles S. Pipia, Arthur Krantz, and
Andrew J. Schenker.

Respondents.

Respondents, Charles Pipia, Arthur Krantz, and Andrew Schenker submit this Reply to the Response of the Insurance Commissioner and the Office of the Insurance Commissioner to Respondent's Motion to Dismiss the OIC's action against these individual Respondents.

Based on the principles of due process established and protected under the Constitution of the United States and the holdings of the United States Supreme Court and the Supreme Court of the State of Washington, the OIC does not have jurisdiction over these individuals in this matter. "Due process requires that a defendant be haled into court in a forum state based on his own affiliation with the State and not based on the "random, fortuitous, or attenuated" contacts he makes with other persons affiliated with the State." *Walden v. Fiore*, 571 U.S. ___, 134 S. Ct. 1115, 1121, 188 L. Ed. 4097 (2014). (Quotes in original; emphasis added).

RESPONDENTS' REPLY - 1

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1 The focus must be on the contacts of each of these individual Respondents with
2 the State of Washington – based on their own affiliation with the State – to determine if
3 the State can exercise personal jurisdiction over them. “And it is the defendant, not the
4 plaintiff or third parties, who must create the contacts with the forum State.” *Walden*,
5 at 1126.

6 The OIC attempts to claim personal jurisdiction over these individual
7 Respondents solely on the basis that they occupied positions as officers of two closely-
8 held corporations. This does not satisfy the constitutionally-protected minimum
9 contacts test for personal jurisdiction over these individuals. As Messrs. Pipia, Krantz,
10 and Schenker testified in their declarations, they have never personally conducted
11 business in the State of Washington and have had no direct or personal contact with the
12 State. Respondents do not challenge, at this time and in the current Motion before the
13 Presiding Judge in this Matter, whether or not the OIC has or can claim jurisdiction
14 over the corporate entities that are named in this pending action. This Motion
15 addresses only the individual Respondents’ due process challenge to the OIC
16 attempting to exercise jurisdiction over them. The activities of the corporate
17 Respondents and the conduct of the individual Respondents are separate and distinct as
18 to each.

19 The Wireless Protection Program Association (“WPPA”) was an association
20 legally established under Iowa law. WPPA offered memberships in the association
21 across the nation through various media, including the internet, and also through cell
22 phone merchants in the states where WPPA membership was offered. Individuals who
23 chose to become members of the association paid a monthly membership fee for the
24 benefits of membership which included access to a cell phone replacement program

1 whereby members who had damaged or lost their personal cell phone were entitled to
2 receive a replacement phone while theirs was being repaired or replaced. This
3 replacement program was insured under a contractual liability insurance policy issued
4 by commercial liability insurers, including Starr Indemnity & Liability Company and
5 Lyndon Southern Insurance Company.

6 Global Warranty Group, Inc. ("GWG") was a limited liability company legally
7 established under Florida law, engaged in the business of administering association
8 membership plans and services. Under a managerial services contract between WPPA
9 and GWG, GWG employees performed administrative services for WPPA, such as,
10 maintaining records, processing memberships, dues, and fees, and addressing member
11 inquiries and complaints. This service was provided by GWG to WPPA for all states
12 in which WPPA had members.

13 Charles Pipia, Arthur Krantz, and Andrew Schenker were the principal
14 executive officers of the corporation and, as such, were responsible for its overall
15 general business – in the same way any corporate executive officer is responsible for
16 the overall general business of the corporation in which he or she holds an executive
17 position. However, Messrs. Pipia, Krantz, and Schenker were not directly involved in
18 the membership business of the WPPA or in the administrative services provided by
19 GWG – just as an executive officer of a corporation engaged in manufacturing a
20 product typically is not directly involved in the manufacture, sale, or service of the
21 product his or her corporation manufactures. The fact that a corporation makes and
22 sells a product or offers a service to the public in a particular state does not make the
23 officers and directors of that corporation subject to the personal jurisdiction of that
24 state. That is the Due Process protection afforded all individuals who happen to be

1 corporate officers and that Due Process protection should be recognized in this matter
2 with respect to Mr. Pipia, Mr. Krantz, and Mr. Schenker.

3 The OIC relies on the United Supreme Court's ruling in *Burger King Corp. v.*
4 *Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 528 (1985) to support its claim of
5 personal jurisdiction over the individual Respondents in this matter. That case does not

6 provide the endorsement the OIC seems to claim in this regard. A close look at that
7 case is worthwhile to see what the Court really said about personal jurisdiction.

8 *Burger King Corp. v. Rudzewicz, supra*, involved a franchise contract between
9 two Michigan residents and Burger King Corp., a Florida corporation headquartered in
10 Miami. John Rudzewicz and Brian MacShara¹ applied for a franchise to Burger King
11 to operate a restaurant in Michigan. After a period of negotiations, a final agreement
12 was signed granting Rudzewicz and MacShara a standard twenty-year franchise
13 contract to run the restaurant. Eventually, the restaurant business failed and franchisees
14 were unable to meet the financial obligations under the contract. Negotiations failed to
15 resolve the matter; Burger King terminated the franchise and ordered the franchisees to
16 vacate the restaurant. When they refused, Burger King commenced a breach of
17 contract action against the franchisees in federal court in Florida. Rudzewicz argued
18 that, because the franchisees were Michigan residents and the action did not arise in
19 Florida, the U.S. District Court in Florida did not have personal jurisdiction over them.
20 That Court determined that it did have jurisdiction and, following a trial on the merits,
21 ruled that the franchisees had breached their contract with Burger King and entered a
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24 ¹ Although both Rudzewicz and MacShara were defendants in the breach of contract
litigation brought by Burger King Corp., the Supreme Court refers only to Rudzewicz
as the appellant in its opinion. For convenience, I follow the Court's reference in this
Reply brief.

1 judgment for Burger King. Rudzewicz appealed to the 11th Circuit Court of Appeals
2 and a divided panel of the Court concluded that the District Court could not properly
3 exercise personal jurisdiction over Rudzewicz. Burger King appealed to the United
4 States Supreme Court who accepted the appeal upon a writ of certiorari.

5 Justice Brennan delivered the majority opinion of the Court. The issue before
6 the Supreme Court was whether the Florida trial court could exercise personal
7 jurisdiction over the two Michigan residents. Following an overview of the
8 negotiations, discussions, and interactions of the parties that resulted in the award of
9 the franchise contract, Justice Brennan gave a lengthy and detailed review of the law
10 relating to a state's ability to exercise personal jurisdiction over nonresident defendants.
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12 "The Due Process Clause protects an individual's liberty interest in not being
13 subject to the binding judgments of a forum with which he has established no
14 meaningful "contacts, ties, or relations." *International Shoe Co. v. Washington*,
15 326 U.S. at 391. By requiring that individuals have "fair warning that a
16 particular activity may subject [them] to the jurisdiction of foreign sovereign,"
17 *Shaffer v. Heitner*, 433 U.S. 186, 218, (1977) (STEVENS, J., concurring
18 in judgment), the Due Process Clause gives a degree of predictability to the
19 legal system that allows potential defendants to structure their primary
20 conduct with some minimum assurance as to where that conduct will and will
21 not render them liable to suit. *World-Wide Volkswagen Corp. v. Woodson*,
22 444 U.S. 286, 297 (1980).

19 Where a forum seeks to assert specific jurisdiction over an out-of-state
20 defendant who has not consented to suit there, this "fair warning" requirement
21 is satisfied if the defendant has "purposely directed" his activities at residents of
22 the forum. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984), and the
litigation results from injuries that "arise out of or relate to" those activities,
Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984).

23 *Burger King Corp. v. Rudzewicz*, at 471-472.

1 In the above-quoted commentary, Justice Brennan referenced a number of cases
2 involving nonresident corporate defendants and then went on to further explain the
3 implications of what is meant by “purposefully directed” activities of that would result
4 in jurisdiction over individuals, particularly as applied to the appeal of Mr. Rudzewicz.
5 Justice Brennan noted:

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7 “Notwithstanding these considerations, the constitutional touchstone remains
8 whether the defendant purposefully established “minimum contacts” in the
9 forum State. *International Shoe Co. v. Washington, supra*, at 316. Although it
10 has been argued that foreseeability of causing injury in another State should be
11 sufficient to establish such contacts there when policy considerations to require,
12 the Court has consistently held that this kind of foreseeability is not a
13 “sufficient benchmark” for exercising personal jurisdiction. *World-Wide
14 Volkswagen Corp. v. Woodson*, 444 U.S. at 295. Instead, the foreseeability that
15 is critical to the due process analysis . . . is that the defendant’s conduct and
16 connection with the forum state are such that he should reasonably anticipate
17 being haled into court there. *Id.* at 297. In defining when it is that a potential
18 defendant should “reasonably anticipate” out-of-state litigation, the Court
19 frequently has drawn from the reasoning of *Hanson v. Denckla*, 357 U.S. 235,
20 253 (1958):

21 The unilateral activity of those who claim some relationship with a nonresident
22 defendant cannot satisfy the requirement of contact with the forum State. The
23 application of that rule will vary with the quality and nature of the defendant’s
24 activity, but it is essential in each case that there be some act by which the
defendant purposefully avails itself of the privilege of conducting activities
within the forum State, thus invoking the benefits and protections of its laws.

This “purposeful availment” requirement ensures that a defendant will not be
haled into a jurisdiction solely as a result of “random,” “fortuitous,” or
“attenuated” contacts. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. at 774;
World-Wide Volkswagen Corp. v. Woodson, supra, at 299, or of the “unilateral
activity of another party or a third person,” *Helicopteros Nacionales de
Colombia, S.A. v. Hall, supra*, at 417. Jurisdiction is proper, however, where
the contacts proximately result from actions by the defendant himself that create
a “substantial connection” with the forum State.

* * *

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2 Nevertheless, minimum requirements inherent in the concept of “fair play and
3 substantial justice” may defeat the reasonableness of jurisdiction even if the
4 defendant has purposefully engaged in forum activities. *World-Wide
5 Volkswagen Corp. v Woodson, supra*, at 292; *see also* Restatement (Second) of
6 Conflict of Laws §§36-37 (1971). As we previously have noted, jurisdictional
7 rules may not be employed in such a way as to make litigation “so gravely
8 difficult and inconvenient” that a party unfairly is at a “severe disadvantage” in
9 comparison to his opponent. (Citations omitted).

10 *Burger King Corp. v. Rudzewicz*, at 474-475, 477-478; quotes in original, emphasis
11 added.

12 Applying these principles to the case before the Court, Justice Brennan noted
13 that the question the Court had to answer was whether Rudzewicz’s individual
14 activities with Burger King Corp., a Florida resident, would support the Florida court’s
15 exercise of personal jurisdiction over Rudzewicz, a Michigan resident. Before citing
16 the factors that would create the requisite minimum contacts, Justice Brennan noted:

17 “If the question is whether an individual’s contract with an out-of-state party
18 alone can automatically establish sufficient minimum contacts in the other
19 party’s home forum, we believe the answer is that it cannot. The Court long
20 ago rejected the notion that personal jurisdiction might turn on “mechanical”
21 tests, *International Shoe Co. v. Washington, supra*, at 319, or on
22 “conceptualistic . . . theories of the place of contracting or performance,”
23 *Hoopeston Canning Co. v. Cullen*, 318 U.S. 316.”

24 *Burger King Corp. v. Rudzewicz*, at 478-479

Justice Brennan applied these principles to the facts of the case before the Court
and noted that Rudzewicz had deliberately reached out beyond Michigan and had
personally engaged in negotiations with Burger King and that the franchisees’ business
grew out of a contract that had a substantial connection with Florida. The contract
emphasized that Burger King’s operations are conducted and supervised from the

1 Miami headquarters, required that all notices and payments must be sent there, and that
2 the agreements negotiated in the contract were to be enforced there. Justice Brennan
3 also noted that, when the parties had disputes about such things as building design,
4 fees, rent, and defaulted payments, all communications between Rudzewicz and Burger
5 King were directed to the Miami office. All of these factors, among others, established
6 that Rudzewicz had purposely directed his activities to Florida, and, on this factual
7 basis – that quite clearly showed personal acts on the part of Rudzewicz – the Court
8 concluded that the U. S. District Court in Florida could exercise personal jurisdiction
9 over Rudzewicz.²

10 The facts and circumstances regarding the activities of Mr. Pipia, Mr. Krantz,
11 and Mr. Schenker in this matter before the Presiding Judge are nowhere near the level
12 of activities that the Supreme Court concluded entitled the Florida court to exercise
13 jurisdiction over Mr. Rudzewicz. And, The OIC has failed to demonstrate that any
14 conduct of any of these individuals establishes sufficient contacts with the State of
15 Washington that would make them subject to the jurisdiction of this tribunal, the OIC,
16 or any court of this State.

17 The United States Supreme Court has affirmed that, “For a State to exercise
18 jurisdiction consistent with due process the defendant’s suit-related conduct must create
19 a substantial connection with the forum State. Two related aspects of this necessary
20 relationship are relevant in this case. First, the relationship must arise out of the
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23 ² Interestingly, however, notwithstanding the litany of facts noted by Justice Brennan
24 regarding Rudzewicz’s personal activities that connected him to Florida, Justices
Stevens and White disagreed and submitted a dissenting opinion in which they
concluded that the nature of the facts of the case “left Rudzewicz bereft of reasonable
notice and financially unprepared for the prospect of franchise litigation in Florida.”
Burger King Corp., v. Rudzewicz, supra, at 490.

1 contacts that the defendant himself creates within the forum State. Second, our
2 “minimum contacts” analysis looks to the defendant’s contacts with the forum State
3 itself, not the defendant’s contacts with persons who reside there. Due process does not
4 contemplate that a state may make a binding judgment *in personam* against an
5 individual with which the state has not contacts, ties, or relations.” (*See, Walden v.*
6 *Fiore, supra*, at 1122; emphasis added).

7 Following United States Supreme Court’s articulation of the protections
8 afforded under the Due Process Clause and the careful factual and legal analysis that
9 must be made before a state can exercise personal jurisdiction over nonresident
10 individuals, the Washington State Supreme Court has held that a corporation’s actions
11 cannot be simply imputed to a corporate officer or employee for purposes of
12 determining whether there are minimum contacts necessary to establish jurisdiction.
13 Instead, the Supreme Court has said that each defendant’s contacts with the state must
14 be assessed individually. (*See, Failla v. Fixtureone Corporation and Kenneth A.*
15 *Schutz*, Washington Supreme Court No. 89671-2, En Banc, Oct. 02, 2014.) Our State’s
16 highest court has made a clear and concise statement regarding the State’s ability to
17 exercise personal jurisdiction over individual officers of a nonresident corporation,
18 stating: “[w]e do not hold today that any corporate office of a nonresident corporation
19 may be subject to the state’s jurisdiction.” (*See, Failla v. Fixtureone*, slip op. at 12).
20 Rather, for the State to exercise personal jurisdiction over the nonresident officer of a
21 nonresident corporation, the State must show that the individual has engaged in
22 conduct and direct personal involvement of the quality and nature demonstrated by Mr.
23 Schutz in the *Failla* case before the necessary connection with Washington is created to
24 justify such jurisdiction. The OIC has not shown this connection.

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2 Furthermore, as noted above in the outline of the various activities of the
3 association, WPPA, and the limited liability company, GWG, the activities of those
4 corporate entities are unique to each and do not create a “minimum contact” on the part
5 of their corporate officers and employees with the State of Washington. Mr. Pipia, Mr.
6 Krantz, and Mr. Schenker were not involved in the general business of either WPPA or
7 GWG that the OIC asserts was directed toward Washington. (See, OIC Response at
8 page 3: “Here, Global Warranty “purposefully directed” its commercial activities
9 toward Washington, doing considerable business in this state.”) That business, even if
10 proved, was the business of Global Warranty, and not the activity of Mr. Pipia, Mr.
11 Krantz, or Mr. Schenker. And, as the Supreme Court has said, “We agree that a
12 corporation’s actions cannot simply be imputed to a corporate officer or employee for
13 purposes of determining whether there are minimum contacts necessary to establish
14 jurisdiction” (See, *Failla, supra*, at p. 7).

15 This further reinforces the Washington Supreme Court’s holding that officers of
16 limited liability companies are not personally liable for the liabilities of the company.

17 “In general, members and managers of a limited liability company are not
18 personally liable for the company’s debts, obligations, and liabilities.

19 * * *

20 By analogy, then, the plaintiff would have to show that the limited liability
21 company form was used to violate or evade a duty and that the limited liability
22 company form must be disregarded to prevent loss to an innocent party.”

23 *Chadwick Farms Owners Ass’n. v. FHC LLC*, 166 Wn. 2d 178, 200, 207 P. 3d 1251
24 (2009).

The OIC has neither alleged nor offered any evidence that would purport to
demonstrate this. And no such evidence exists.

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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 personally served and caused to be delivered by Electronic (e-mail) Delivery and regular United States Postal Service Delivery, the foregoing Respondents' Reply to OIC Response to 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:

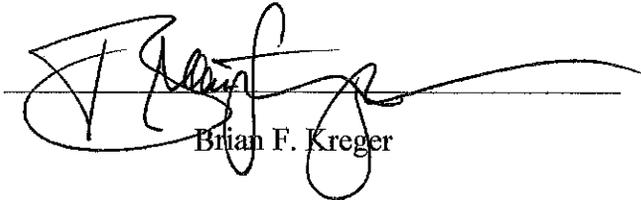
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Executed on this 29th day of October, 2014 in Seattle, Washington.


Brian F. Kreger