

**FILED**

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

2014 NOV -3 A 9:57

In the Matter of ) **Docket No. 14-0117**  
)  
**GLOBAL WARRANTY GROUP, LLC** ) **ORDER ON MOTION TO DISMISS**  
**d/b/a/ www.globalwarrantygroup.com,** ) **INDIVIDUAL RESPONDENTS**  
**and WIRELESS PROTECTION** )  
**PROGRAM ASSOCIATION, d/b/a** )  
**www.wirelessprotectionprogram.com, and** )  
**ARTHUR KRANTZ, CHARLES S. PIPIA,** )  
**and ANDREW J. SCHENKER,** )  
)  
Respondents. )  
\_\_\_\_\_ )

**TO:** Global Warranty Group  
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**COPY TO:** Mike Kreidler, Insurance Commissioner  
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This case comes before me on the Motion of Respondents Arthur Krantz, Charles S. Pipia, and Andrew J. Schenker (collectively "Individual Respondents") to dismiss the Office of the Insurance Commissioner's ("OIC's") action against them. I have considered the Motion, filed October 20, 2014, the OIC's Response, filed October 27, 2014, and the Individual Respondents' Reply, filed October 29, 2014.

1. On June 6, 2014, the OIC filed a Notice of Request for Hearing for the Imposition of Fines, Collection of Unpaid Premium Taxes, and Other Relief, No. 14-0117 ("Notice") against Global Warranty Group, LLC d/b/a/ [www.globalwarrantygroup.com](http://www.globalwarrantygroup.com) ("GWG"), Wireless Protection Program Association d/b/a [www.wirelessprotectionprogram.com](http://www.wirelessprotectionprogram.com) ("WPPA"), Arthur Krantz, Charles S. Pipia, and Andrew J. Schenker (collectively, "Respondents").

2. Pursuant to the Notice, the OIC seeks penalties and other relief as to GWG and WPPA and also as to Individual Respondents, alleging:

In violation of various Insurance Code provisions, Respondents sold at least 66,368 service contracts for cell phones and other electronic devices in the State of Washington without being registered under Chapter 48.110 RCW as a service contract provider or being otherwise authorized as an insurer.

Respondents have failed to timely pay required 2% premium taxes.

3. The Notice further alleges:

GWG is Florida limited liability company, and WPPA is a domestic for-profit corporation incorporated in Iowa.

Charles S. Pipia and Arthur Krantz are GWG's managing members or managers.

Mr. Pipia, Mr. Krantz, and Andrew J. Schenker are, respectively, GWG's (1) President & CEO and owner, (2) Chairman and owner, and (3) Senior Vice President and CFO.

Mr. Pipia, Mr. Krantz and Mr. Schenker are, respectively, WPPA's (1) President, (2) Secretary and Treasurer, and (3) Director.

Mr. Pipia is President and Mr. Schenker is Secretary/Treasurer of WPPA's Board of Directors.

4. Individual Respondents move to dismiss OIC's action against them, arguing that under the federal due process clause Washington does not have the authority to exercise personal jurisdiction over them. They argue that 1) the ownership corporate offices they hold in GWG and WPPA are insufficient to establish Washington jurisdiction; and 2) none had sufficient personal contacts with Washington to justify jurisdiction.

5. Although territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire (as well as by email and other electronic means) across state lines, obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of the forum State, the U.S. Supreme Court has rejected the notion that an absence of physical contacts can defeat personal jurisdiction there. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985).

***Failla.***

6. *Failla v. FixtureOne Corp., et al*, No. 89671-2 (Oct. 2, 2014) is the most recent statement of the Washington State Supreme Court on long-arm jurisdiction. In *Failla*, the court addressed the issue of whether Washington's long-arm statute, RCW 4.28.185, conferred personal jurisdiction over Mr. Schulz, who was an officer of FixtureOne, a Pennsylvania

corporation that employed Ms. Failla, a Washington resident who had brought suit for willful withholding of wages.

7. The court noted, at 6-7: Washington courts (and, I believe, the present forum) are authorized to assert personal jurisdiction over nonresident defendants to the extent permitted by the federal due process clause. Jurisdiction may be exercised without violating due process if the nonresident defendant has certain minimum contacts with the state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. RCW 4.28.185 is designed to be coextensive with federal due process.

8. Three factors must coincide for the long-arm statute to apply: 1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; 2) the cause of action must arise from, or be connected with, such act or transaction; and 3) the assumption of jurisdiction must not offend traditional notions of fair play and substantial justice, considering the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protections of state laws afforded the respective parties, and the basic equities of the situation. *Id.*, at 7, citing *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 766-67 (1989).

*Act or transaction in Washington.*

9. The *Failla* court agreed that a corporation's actions cannot simply be imputed to a corporate officer or employee in determining whether the minimum contacts necessary to establish jurisdiction exist. However, an officer or employee is not automatically shielded from personal jurisdiction just because his or her contacts occurred in the context of employment; instead, each defendant's contacts with the forum State must be assessed individually. *Id.*, at 7-8 (citations omitted).

10. Schutz was the founder and CEO of FixtureOne. He responded to Failla's job inquiry, interviewed her, hired her, set her salary, issued her payroll checks, promoted her, gave her a raise, calculated her commissions, and no evidence in the record suggested that any other representative of FixtureOne had contact with Failla. *Id.*, at 8. The *Failla* court held that employing a Washington resident to perform work in Washington constitutes the "transaction of any business within this state" -- submitting a person to the jurisdiction of the courts of Washington under RCW 4.28.185(1)(a) and satisfying the first *Shute* prong. The court noted that Schutz was not just *any* corporate officer -- it expressly did not hold that any corporate officer of a nonresident defendant may be subject to Washington jurisdiction -- but that Schutz was the officer directly responsible for Failla's hiring, firing, promotion, and payment of her wages. *Id.*, at 11-12.

*Cause of action arising from or connected with such act or transaction.*

11. Neither party in *Failla* contested that the claim arose from Schutz's contacts with Washington. *Id.*, at 13, n.3.

*Offense to traditional notions of fair play and substantial justice.*

12. The *Failla* court held that it did not offend fair play or substantial justice to require Schutz to defend Failla's wage claim in Washington -- it is not unreasonable to require the individual responsible for payroll to answer for failing to comply with Washington wage laws, of which he had fair notice.

13. The court held that RCW 4.28.185 conferred personal jurisdiction over Schutz for Failla's wage claims arising from her employment relationship with FixtureOne.

*Present case.*

14. I consider my ruling in light of the three *Shute* factors, which *Failla* discusses in the context of the exercise of personal jurisdiction over officers and/or directors of foreign corporations.

*Act or transaction in Washington.*

15. The OIC asserts that the Individual Respondents have sufficient minimum contacts with Washington and that the OIC may properly exercise personal jurisdiction over them in this enforcement action: GWG “purposely directed” its commercial activities toward Washington, selling at least 66,000 contracts to Washington consumers between 2010 and 2013 and that this substantial business “was directed by, or at least approved of, by Pipia, Krantz, and Schenker,” who constituted the corporate ownership and leadership of GWC and without whose approval no major corporate action is taken. Mr. Schenker “personally responded to the OIC’s inquiries in this matter,” and Mr. Pipia “actively participated in and directly received OIC’s response to Global Warranty’s unsuccessful application for service contract provider registration.” OIC Response, at 3. The OIC relies on Ex. A, Mr. Schenker’s April 5, 2013, letter answering the OIC’s questions; Ex. B, Iowa 2012 Biennial Report for WPPA, listing Individual Respondents as officers and directors; and Ex. C, the OIC’s November 16, 2010, letter to Mr. Pipia, rejecting GWC’s application for registration as a Service Contract Provider under C. 48.110 RCW.

16. The declarations of Mr. Pipia, Mr. Krantz, and Mr. Schenker attached to the Motion aver that they have not lived in Washington, had direct business contacts with Washington, or had other substantial contacts with Washington. Mr. Schenker’s letter, the Individual Respondents’ role as officer and directors of WPPA, and the OIC letter to Mr. Pipia do not rebut such assertions.

17. As discussed above, the actions of GWG and WPPA cannot simply be imputed to the Individual Respondents based solely on their service as corporate officers, directors, or employees in determining whether the minimum contacts necessary to establish jurisdiction exist. Unlike *Failla*, where Mr. Schutz reached out to Washington to -- among other contacts -- hire, promote, and pay Ms. Failla, here the Individual Respondents have not been demonstrated to have had more than attenuated contacts with Washington, which are insufficient. See, *Walden v. Fiore*, 134 S.Ct. 1115, 1123 (2014).

18. I do not find that the Individual Defendants purposefully did acts or consummated transactions in Washington.

*Cause of action arising from or connected with such act or transaction.*

19. Given my determination that the Individual Defendants did not purposefully do acts or consummate transactions in Washington, the OIC's enforcement action cannot be connected with the Individual Defendants' acts or transactions in Washington.

*Offense to traditional notions of fair play and substantial justice.*

20. Given my above determinations, it is not necessary to determine whether the assumption of Washington jurisdiction would offend traditional notions of fair play and substantial justice.

21. It is true that if a corporate officer participates in wrongful conduct, or with knowledge approves of such conduct, the officer, as well as the corporation, may be liable for the penalties. However, the jurisdiction of Washington forums over individual defendants must be tested by the due process principles discussed above.

***Ruling.***

Respondents' Motion to Dismiss is granted. The Individual Respondents are dismissed.

Dated: November 3, 2014



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JUDGE GEORGE FINKLE (Ret.)  
Presiding Officer

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Global Warranty Group, Brian F. Kreger, Esq., Mike Kreidler, James T. Odiome, J.D., CPA, John F. Hamje, Esq., Darryl Colman, Esq., and AnnaLisa Gollermann, Esq.,

DATED this 3<sup>rd</sup> day of November, 2014.

  
KELLY A. CAIRNS