

FILED

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

2014 SEP -8 P 12:30

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**

) **ORDER ON RESPONDENTS'**
) **MOTION TO DISMISS**

TO: Global Warranty Group
500 Middle County Road
St. James, NY 11780

Brian Kreger, Esq.
Kreger Beeghly, PLLC
999 Third Ave., Suite 3000
Seattle, WA 98104-4088

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Darryl Colman, Esq., Insurance Enforcement Specialist, Legal Affairs Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

This case comes before me on the Motion of Respondents Global Warranty Group, LLC d/b/a/ www.globalwarrantygroup.com (“GWG”), Wireless Protection Program Association d/b/a www.wirelessprotectionprogram.com (“WPPA”), Arthur Krantz, Charles S. Pipia, and Andrew J. Schenker (collectively “Respondents”) to dismiss this case with prejudice. I have considered Respondents’ Motion, filed August 8, 2014, the Response of the Office of the Insurance Commissioner (“OIC”), filed August 22, 2014, and Respondents’ Reply, filed August 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”). The Notice alleges that, 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 assert three grounds for dismissal:

The OIC lacks legal authority to initiate a judicial or quasi-judicial proceeding by means of a request for hearing.

2. Under RCW 48.02.060(1), the Insurance Commissioner (“Commissioner”) has the authority expressly conferred upon him by, or reasonably implied from, the provisions of the Insurance Code, Title 48, RCW. Among his other responsibilities, the Commissioner may conduct such hearings as are useful and proper for the efficient administration of any of the provisions of the Insurance Code. RCW 48.04.010(1).

3. In the present proceeding, the OIC seeks relief under express provisions of the Insurance Code. *E.g.*, the OIC seeks to impose a fine on Respondents for alleged violations of RCW 48.15.020(1), which provides that an insurer not authorized by the Commissioner may not solicit or transact insurance business in Washington State. The OIC’s requests for relief derive

from the authority expressly conferred upon the Commissioner and/or reasonably implied from the provisions of the Insurance Code.

4. Under RCW 34.05.413(1), the OIC may commence an adjudicative proceeding at any time with respect to any matter within its jurisdiction -- as are the matters at issue here, if the OIC's position is correct. (I do not in this Order determine whether Respondents' conduct was covered by, or violated, the Insurance Code.)

5. Under RCW 34.05.413(5), an adjudicative proceeding commences when the agency or presiding officer notifies a party that a prehearing conference, hearing, or other stage of the adjudicative proceeding will be conducted. The Notice of Receipt of OIC Notice of Request for Hearing, dated June 12, 2014, notified Respondents that a prehearing conference would be conducted, thereby commencing the present adjudicative proceeding.

6. The OIC properly initiated the present proceeding.

Only the Attorney General may represent the Commissioner in this proceeding.

7. RCW 43.10.030(2) provides that the Attorney General shall institute and prosecute all actions and proceedings which may be "necessary in the execution of the duties of any state officer." Representation by the Attorney General's is not necessary to the execution of the Commissioner's duties -- the Commissioner may conduct the hearing himself, or, as here, he may delegate the authority to do so to the OIC Legal Affairs Division. *See*, RCW 48.02.100.

8. RCW 48.02.080(4) provides that the Attorney General and prosecuting attorneys must prosecute all proceedings under the Insurance Code when *requested* by the Commissioner. The Commissioner is not *required* to seek and/or accept representation by the Attorney General. (*Goldmark v. McKenna*, 172 Wn.2d 568 (2011); *Sanders v. State*, 166 Wn.2d 164 (2009); and

State v. Herrmann, 89 Wn.2d 349 (1977) concern the duty of the Attorney General to defend state officials upon request.)

9. Moreover, Respondents have not demonstrated that they are aggrieved by the failure of the Attorney General to represent the Commissioner in this proceeding.

10. Finally, even assuming Respondents were aggrieved by the failure of the Attorney General to represent the Commissioner in this proceeding, the harsh remedy of dismissal would not be merited.

11. The Commissioner is not required to be represented by the Attorney General in this proceeding.

This proceeding is barred under the applicable statute of limitations.

12. Under *U.S. Oil & Ref. Co. v. Department of Ecology*, 96 Wn.2d 85 (1981), the OIC's effort to collect unpaid premium taxes from Respondents is not subject to a statute of limitations, but its effort to impose penalties for violations of the Insurance Code is subject to a two year statute of limitations. *See*, RCW 4.16.100(2); RCW 4.16.160.

13. The OIC asserts that, as late as June 2014, when it filed the Notice of Request for Hearing, Respondents' websites continued to solicit the business that is the subject of this proceeding. Depending on the developed facts, the OIC's effort to impose penalties for violations of the Insurance Code would, at minimum, not be completely time-barred.

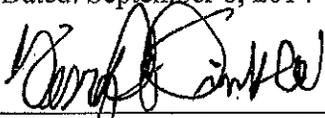
14. I do not find that this proceeding is barred as a matter of law under the applicable statute of limitations.

15. This ruling is without prejudice to Respondents re-asserting the statute of limitations bar at the conclusion of the evidentiary hearing, based on the developed facts.

Ruling.

Respondents' Motion to Dismiss is denied.

Dated: September 8, 2014



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 Gellermann, Esq.,

DATED this 8th day of September, 2014.



KELLY A. CARNNS