

**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

HOME WARRANTY
ADMINISTRATOR OF NEVADA,
INC. dba CHOICE HOME
WARRANTY, a Nevada corporation,

Appellant,

vs.

STATE OF NEVADA, DEPARTMENT
OF BUSINESS AND INDUSTRY-
DIVISION OF INSURANCE, a Nevada
administrative agency,

Respondent.

Supreme Court No. 80218

Electronically Filed
Jan 13 2020 04:09 p.m.
First Judicial District Court
Elizabeth A. Brown
Case No. 17 OC 00269 JB
Clerk of Supreme Court

Appeal from First Judicial District Court, State of Nevada, County of Clark
The Honorable James. T. Russell, District Judge

**REPLY IN SUPPORT OF EMERGENCY MOTION TO STAY
UNDER NRAP 27(e)**

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*Attorneys for
Home Warranty Administrator of Nevada, Inc.
dba Choice Home Warranty, a Nevada corporation*

I. Introduction¹

To the extent the district court made findings as to the NRAP 8 factors in its recently entered order denying the stay, the findings are improper, unsupported by the record, and not binding on this Court. Moreover, even if the Division were correct (it is not) that only money judgments are entitled to a stay, HWAN appeals a money judgment—a monetary fine premised upon an erroneous interpretation of the statutory scheme. In any event, the NRAP 8 factors warrant a stay.

II. The District Court Incorrectly Applied and Analyzed the NRAP 8 Factors and Improperly Denied the Stay Under NRCP 62.

As an initial matter, the Division incorrectly claims that “HWAN failed to comply with NRAP 27(e)(4), as none of the grounds asserted before this Court under NRAP 8(c), have been included in the district court’s motion.” Opp’n at 4. The NRAP 8(c) factors were not included in the motion to the district court because NRAP 8(c) applies only to the motion pending before this Court, not to the motion filed before the district court; NRCP 62 governs the motion before the district court.²

¹ HWAN does not address the Division’s arguments regarding its offer to forbear enforcement of the Order since those arguments are moot given the temporary stay.

² NRAP 1(a) (NRAP “govern[s] procedure in the Supreme court of Nevada and the Nevada Court of Appeals,” not the procedure in district courts of this state); *see also Clark County Office of Coroner/Med. Exam’r v. Las Vegas Review-Journal*, 134 Nev. 174, 178, 415 P.3d 16, 20 (2018) (wherein Justice Cherry distinguishes between the district court’s discretion under NRCP 62 and “the authority now applicable, NRAP 8,” before the Nevada Supreme Court). Indeed, it is nonsensical for the NRAP 8 factors to be considered by the district court. If the district court believed its own order to be improper, it would not have entered it in the first place. Naturally, here the district court found no likelihood of success on appeal.

Now, the district court has entered its Order Denying Petitioner’s Motion for Stay Pending Appeal (“Order Denying Stay”), attached hereto as **Exhibit 1**, but the district court improperly analyzed and applied the NRAP 8 factors and improperly denied the stay under NRCP 62. First, NRAP 8 does not apply to the district court, and nothing in *Fritz Hansen A/S v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 6 P.3d 982 (2000) states that the *district court* must apply the NRAP 8 factors when considering a motion for stay under NRCP 62. Second, the district court incorrectly concluded that NRCP 62(d) applies only to orders and judgments that are monetary in nature. In *Clark County Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, this Court acknowledged that *State ex rel. Pub. Serv. Comm'n v. First Judicial Dist. Court, in & for Carson City*, 94 Nev. 42, 574 P.2d 272 (1978), involved an appeal from a non-monetary judgment. 134 Nev. 174, 176, 415 P.3d 16, 18 (2018) (“Notably, *Nelson v. Heer* involved an appeal from a money judgement, to which the automatic stay provisions of NRCP 62 apply, while *Public Service Commission* did not...”). While the Court did not ultimately grant a stay under NRCP 62(d) in *Public Service Commission* because the agency did not file a separate motion for stay, the implication is that non-monetary judgments and monetary judgments alike may be entitled to a stay under NRCP 62(d).³

³ The district court relied on federal caselaw in denying the stay under NRCP 62(d), but federal law is not clear on this issue. The First Circuit acknowledges that “a supersedeas bond is not confined to money judgments from which a writ of

Even if NRCP 62(d) only applied to monetary judgments (which it does not), HWAN appeals a money judgment and should have been granted a stay as of right upon the posting of adequate security. Specifically, the Order fined HWAN \$10,000 for using an unlicensed entity to sell service contracts in Nevada. HWAN appeals the finding and the fine. Accordingly, the District Court erred in denying the stay.

III. The NRAP 8 Factors Weigh in Favor of a Stay.

The Division completely ignores the blatant deprivation of HWAN's due process rights that conclusively establishes HWAN's likelihood of success on this appeal. That dispositive issue aside, if HWAN is required to reorganize its operations

execution can issue but is also employed to stay a nonmoney judgment on appeal.” See *J. Perez & Cia., Inc. v. United States*, 578 F. Supp. 1318 (D.P.R.), aff'd, 747 F.2d 813 (1st Cir. 1984). The Ninth and Seventh Circuit cases upon which the Order Denying Stay relies do not deal with final judgments as would be included within the meaning of “judgment” under NRCP 54(a) (orders from which an appeal lies). Rather, *N.L.R.B. v. Westphal*, 859 F.2d 818 (9th Cir. 1988), dealt with a motion for stay of an order enforcing subpoenas, while *Donovan v. Fall River Foundry Co., Inc.*, 696 F.2d 524,525 (7th. Cir. 1982), dealt with a motion for stay of an order requiring a company to permit an inspection under an OSHA warrant.

Moreover, while FRCP 62(b) has only one provision applicable to stays, NRCP 62(d) allows a party to obtain a stay by either (1) a supersedeas bond or (2) providing bond or other security. Further, the term “judgment” as used in NRCP 62 includes not only monetary judgments, but “any order from which an appeal lies.” NRCP 54(a). Read in conjunction with *Clark County Coroner* (noting the non-monetary nature of the judgment in *Public Service Commission*), it is clear Nevada allows stays of both monetary and non-monetary judgments. Here, the stay is requested for an appealable final order that is both monetary and non-monetary in nature. While a supersedeas bond for the full amount of the money judgment imposed by the Order is no longer available (due to the Division already receiving the full amount of that monetary judgment), a bond or other security may be posted to secure a stay regardless of whether the order is monetary or non-monetary.

such that it alone sells its service contracts, even though other Nevada providers are allowed to use third-party sales agents to sell their service contracts, then the object of HWAN's appeal will be rendered meaningless. HWAN will have already suffered harm in the form of lost profits and destruction of its usual custom, which, again, is the custom of many other providers in Nevada who are not likewise forced to sell their own service contracts. *See* Ex. 16 to Motion. As detailed in the Motion, NRS Chapter 690C does not mandate that only providers may sell service contracts on their own behalf; the Chapter even contemplates that there may be "persons who sell" separate and apart from registered providers. *See* NRS 690C.120(2). Indeed, the Division's contention that "[n]othing can happen during the process of appeal that would render the interpretation of [NRS 690C] moot" misses the point. *Opp.* at 6. The erroneous interpretation and application of the statute is the central issue on appeal, and without a stay the object of the appeal will be defeated.

And the Division continues to "concur" that it will not require sales agents of service contract providers to be registered, all while requiring HWAN's sales agent to register. E-mail correspondence of Division and SCIC, attached hereto as **Exhibit 2** at 3.⁴ Even the Division's own COR renewal application, attached hereto as

⁴ These documents are not in the record because they were not created until after the district court entered its order and were not received by HWAN until after filing of the Notice of Appeal. HWAN intends to file a motion for leave to submit a supplemental appendix with these documents given that the case continues to evolve.

Exhibit 3, last modified in February 2018, does not have a single question about sales agents—because sales agents are not required to be registered.

Additionally, the Division will not suffer irreparable injury if the stay is granted. The Division points to nothing other than foreign regulatory actions against CHWG, regulatory actions which the hearing officer determined were *not a basis for a finding of unsuitable conduct* on behalf of HWAN. Ex. 2 to Motion at 18-19, 21. And the Division cannot now reference consumer complaints it alleges it has received against HWAN since the first hearing, as these complaints are not in the record, were not the basis of the 17.0050 Order against HWAN, have never formed the basis of any administrative action against HWAN, and lack any specificity whatsoever. Even the complaints introduced to the hearing officer were deemed “insufficient to show that [HWAN] engaged in unfair practices in settling claims.” *Id.* at 21-22. Neither the regulatory actions against CHWG (which were already disregarded by the hearing officer) nor the new alleged complaints against HWAN can be used as a basis for denying the stay here, especially when HWAN has, and continues to, maintain the statutory financial security required by statute to protect Nevada consumers. The only entity liable to the consumer is the obligor on the service contract (HWAN), not the sales agent who sells the contract to the consumer.

IV. Conclusion

For the foregoing reasons, the Motion should be granted.

DATED this 13th day of January, 2020.

/s/ Sydney R. Gambee

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Nevada Bar No. 3353

Sydney R. Gambee, Esq.

Nevada Bar No. 14201

Brittany L. Walker, Esq.

Nevada Bar No. 14641

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9555 Hillwood Drive, 2nd Floor

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*Attorneys for Home Warranty Administrator of
Nevada, Inc. dba Choice Home Warranty, a
Nevada corporation*

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing **REPLY IN SUPPORT OF EMERGENCY MOTION TO STAY** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada’s E-filing system on the 13th day of January, 2020.

I further certify that all participants in this case are registered with the Supreme Court of Nevada’s E-filing system, and that service has been accomplished to the following individuals through the Court’s E-filing System or by first class United States mail, postage prepaid, at Las Vegas, Nevada as follows:

Via Electronic Filing System:

Richard P. Yien
Joanna N. Grigoriev

/s/ Joyce Heilich
An Employee of Holland & Hart LLP

EXHIBIT 1

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9 Nevada Division of Insurance

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AUBREY ROWLATT
CLERK

BY P. O'KEEFE
DEPUTY

10 IN THE FIRST JUDICIAL DISTRICT COURT OF
11 THE STATE OF NEVADA IN AND FOR CARSON CITY

12 HOME WARRANTY ADMINISTRATOR OF
13 NEVADA, INC., DBA CHOICE HOME
WARRANTY, a Nevada Corporation

Case No. 17-OC-00269-1B

Dept. No. I

14 Petitioner,

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
17 BUSINESS AND INDUSTRY-DIVISION OF
INSURANCE, a Nevada administrative agency,

18 Respondent.

19 NOTICE OF ENTRY OF ORDER

20 Please take notice that the ORDER DENYING PETITIONER'S MOTION FOR
21 STAY PENDING APPEAL PURSUANT TO NRCP 62 (d) was signed by Judge James T.
22 Russell on December 31, 2019, a conformed copy of which is attached hereto as Exhibit 1.

23 DATED January 7, 2020

24 AARON D. FORD
Attorney General

25 By:



26 RICHARD PAILI YIEN

Deputy Attorney General

27 Attorney for the Division of Insurance
28

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

Dated: January 7, 2020.

AARON FORD
Attorney General

By: 

RICHARD P. YIEN (Bar No. 13035)
Deputy Attorney General

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on January 7, 2020, I deposited for mailing in the United States Mail, first-class postage prepaid, at Carson City, Nevada a true and correct copy of the **NOTICE OF ENTRY OF ORDER**, addressed to the following:

Constance L. Akridge, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

Sydney R. Gambée, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

DATED January 7, 2020



Susan Messina, An Employee of the
Office of the Attorney General

EXHIBIT INDEX

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EXHIBIT 1

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**Order Denying Petitioner's Motion
For Stay Pending Appeal Pursuant to
NRC P 62(d)**

EXHIBIT 1

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9 *Attorneys for the Division of Insurance*

REC'D & FILED
2019 DEC 31 AM 11:17
AUGREY ROWLATT
CLERK
BY *D. Cheek*
DEPUTY

10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR CARSON CITY**

12 HOME WARRANTY ADMINISTRATOR
OF NEVADA, INC. dba CHOICE HOME
13 WARRANTY, a Nevada corporation,

Case No.: 17 OC 00269 1B
Dept. No.: 1

14 **Petitioner,**

15 vs.

16 STATE OF NEVADA, DEPARTMENT OF
17 BUSINESS AND INDUSTRY, DIVISION
18 OF INSURANCE, a Nevada administrative
agency,

19 **Respondents.**

20
21 **ORDER DENYING PETITIONER'S MOTION FOR STAY PENDING APPEAL**

22 This matter is before the Court on Home Warranty Administrator of Nevada, Inc. dba
23 Choice Home Warranty's ("HWAN") Motion for Stay Pending Appeal Pursuant to NRCP 62(d)
24 ("Motion for Stay"), filed with this Court on December 6, 2019, seeking a stay pending appeal
25 to the Nevada Supreme Court, of this Court's order ("PJR Order"), affirming in part and
26 modifying in part the Administrative Order ("Administrative Order") in the Division of
27 Insurance Cause 17.0050. Respondent, State of Nevada Division of Insurance ("Division")
28

1 filed an Opposition on December 19, 2019. HWAN filed its Reply and Request for Submission
2 on December 26, 2019.

3 The Court finds that the remaining declaratory relief in the PJR Order, which is the
4 subject of HWAN's Motion for Stay¹, is non-monetary in nature and a supersedeas bond or
5 other security under NRCP 62(d)² would not adequately compensate the Division for the loss
6 incurred as a result of a stay. The Nevada Supreme Court and the Ninth Circuit, have applied
7 Rule 62(d) to orders and judgments that are monetary in nature. "The purpose of security for
8 a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it
9 is affirmed by preserving the status quo and preventing prejudice to the creditor arising from
10 the stay." *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005) (as modified 2006).
11 See also *N.L.R.B v. Westphal*, 859 F.2d 818, 819 (9th Cir. 1988)³ ("[t]he posting of a bond
12 protects the prevailing plaintiff from the risk of a later uncollectible judgment and
13 compensates him for delay in the entry of the final judgment. When applied to a subpoena
14 compliance order, this protection is largely meaningless." *Id.*); *Donovan v. Fall River Foundry*

15
16 ¹ The monetary relief portion of the PJR Order, namely a \$40,500 fine, was released with
17 the rest of the interpleaded funds, on or about December 2, 2019, by the Clerk of the
18 FJDC.

19 ² NRCP 62(d) provides:

20 (1) If an appeal is taken, the appellant may obtain a stay by
21 supersedeas bond, except in an action described in Rule 62(a)(2). The
22 bond may be given upon or after filing the notice of appeal or after
23 obtaining the order allowing the appeal. The stay is effective when the
24 supersedeas bond is filed.

(2) If an appeal is taken, a party is entitled to a stay by providing a
bond or other security. Unless the court orders otherwise, the stay
takes effect when the court approves the bond or other security and
remains in effect for the time specified in the bond or other security.

25 ³ "[F]ederal decisions involving the Federal Rules of Civil Procedure provide
26 persuasive authority when this court examines its rules." *Nelson v. Heer*, 121 Nev. 832,
27 834, 122 P.3d 1252, 1253 (2005) (citations omitted).

28 ⁴ The parties address this standard in their respective Opposition to Motion for Stay and
Reply pleadings.

1 Co., 696 F.2d 524, 526 (7th Cir. 1982) (Rule 62(d) procedure "makes little sense as applied to
2 an order to do, rather than order to pay").

3 The Court finds that no stay of the PJR Order is warranted under NRCP 62(d) and a
4 bond or other security would not adequately compensate the Division for loss incurred as
5 a result of the stay of the non-monetary judgment.

6 The Court further finds that as NRAP 8 requires a party to seek a stay in the
7 district court before seeking a stay in the Supreme Court, NRAP 8(c)⁴ is the appropriate
8 standard used by the District Courts to determine whether to issue a stay pending
9 appeal.⁵ See *Fritz Hansen A/S v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982,
10 986 (2000). The Court finds that consideration of the factors under NRAP 8(c) weigh in
11 favor of the Division.

12 (1) The object of HWAN's appeal is to obtain a reversal of the administrative
13 Hearing Officer's statutory interpretation of chapter 690C requirements upheld by this
14 Court, so as to allow HWAN to operate in Nevada using Choice Home Warranty ("CHW"),
15 an unlicensed entity, to perform the functions of a provider for which Nevada law requires
16 a certificate of registration ("COR"). This object of HWAN's appeal will not be defeated, i.e.
17 rendered meaningless, if a stay is not granted. See *Mikohn*, 120 Nev. 248, 253, 89 P.3d 36,
18 39 (2004). The availability of appeal after final judgment is considered an adequate and
19 speedy remedy. See *Renown Reg'l. Med. V. Second Jud. Dist. Ct.*, 130 Nev. 824, 828, 335
20 P.3d 199, 202 (2014).

21 (2) HWAN is also unlikely to prevail on the merits of the appeal. NRS 690C.150
22 mandates that a COR is required to "issue, sell, or offer for sale service contract." NRS
23

24 ⁴The factors in NRAP 8(c) are: (1) whether the object of the appeal will be defeated if the
25 stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or
26 serious injury if the stay or injunction is denied; (3) whether respondent/real party in
27 interest will suffer irreparable or serious injury if the stay or injunction is granted; and
28 (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ
petition

⁵The parties address stay under NRAP 8(c) standard in their respective Opposition to
Motion for Stay and Reply pleadings.

1 690C.020 in turn provides that "Administrator" means a person who is responsible for
2 administering a service contract that is issued, sold or offered for sale by a provider." Read
3 in harmony, it is clear, that the function of an administrator is to administer contracts that
4 are issued, sold or offered for sale by a licensed provider. To issue, sell or offer for sale
5 service contracts, an entity must be a registered provider. HWAN's interpretation would
6 lead to absurd results of allowing entities to perform the functions for which registration
7 and thus regulatory oversight is required by law, and avoiding registration and regulation
8 by simply affixing a label of an "administrator," "sales agent," or anything other than
9 "provider." It would render NRS 690C.150 nugatory, and the tenets of statutory
10 construction do not permit that. *Charlie Brown Constr. Co. v. Boulder City*, 106 Nev. 497,
11 502, 797 P.2d 946, 949 (1990) (overruled on other grounds).

12 (3) The analysis of irreparable injury also favors the Division. The PJR Order did
13 not preclude HWAN from operating as a provider in Nevada. It also did not prohibit
14 HWAN's use of CHW as its administrator; however, the functions performed may not be
15 the functions of a provider for which the law requires regulatory oversight, i.e. a COR,
16 unless CHW obtains such. See NRS 690C.150, 690C.020. "Irreparable harm" is harm for
17 which compensatory damages would be inadequate. See *Hansen*, 116 Nev. 650, 658, 6 P.3d
18 982, 987. In the present case, HWAN's potential inconvenience of having to forego, pending
19 appeal, the use of the unlicensed entity for certain functions, does not constitute irreparable
20 harm that would satisfy this requirement under NRAP 8(c). HWAN can also contract with
21 an entity possessing a COR, or issue, sell, or offer for sale service contracts on its own
22 without outsourcing to an unlicensed third party.

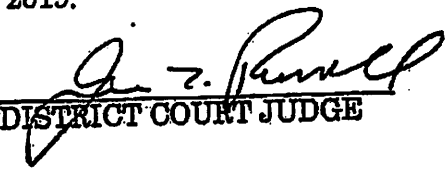
23 (4) On the other hand, a stay, allowing an unlicensed and unregulated entity (CHW),
24 subject to numerous regulatory actions in other states, to perform the functions for which
25 the Nevada law requires regulatory oversight through a valid COR, would create an
26 inherent danger of harm to the public and nullify the statutory scheme. Notably, In
27 Nevada, irreparable injury is presumed in statutory enforcement actions. See *State of*
28 *Nevada ex. Rel. Office of the Attorney General, Bureau of Consumer Protection v. NOS*

1 *Communications, Inc.*, 120 Nev. 65, 68, 84 P.3d 1052, 1054 (2004).

2 Based upon the papers and pleadings, on file herein, it is **THEREFORE ORDERED**
3 that HWAN's Motion for Stay is **DENIED** under NRCPP 62(d) and NRAP 8(c).


4 **IT IS SO ORDERED**

5
6 DATED this 31st day of December, 2019.

7
8 
9 **DISTRICT COURT JUDGE**

10 Respectfully submitted by:

11 **AARON D FORD**
12 **Attorney General**

13 By: 
14 **Richard Yien (Bar No. 19035)**
15 **Deputy Attorney General**
16 **Joanna Grigoriev (Bar No. 5649)**
17 **Senior Deputy Attorney General**

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General and that on the 30th day of December, 2019 I served the foregoing [PROPOSED] ORDER DENYING PETITIONER'S MOTION FOR STAY PENDING APPEAL by depositing for mail in the United States Mail, first-class postage prepaid, at Carson City, Nevada, addressed to the Following:

Constance Akridge, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas NV 89134-0532

Sydney R. Gambee
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas NV 89134-0532



Susan Messina, An employee of the
Office of the Nevada Attorney General

EXHIBIT 2

Patti Flasch

From: Timothy Ghan
Sent: Thursday, December 12, 2019 7:58 AM
To: 'Jim Burleson'
Subject: RE: Service Contract Meeting
Attachments: 007_PPR_Policy_1_2019.pdf

Jim:

In response to your questions I offer the following:

1. Please see the attached document concerning the Divisions Public Records Request Policy.
2. I need further information on how many service contract providers you are referring too and specifics on the number of forms in question.
3. At this point in time, the Division has not decided when or how these issues will be formally addressed as the cases you refer to remain unresolved.

Best Regards,

Tim Ghan

Tim Ghan, CPCU
Assistant Chief Insurance Examiner
Product Compliance/Property & Casualty
Department of Business & Industry
Division of Insurance
1818 College Parkway, Ste #103
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Ph: 775-687-0767
Fax: 775-687-0787
tghan@doi.nv.gov

From: Jim Burleson <Jim@meenanlawfirm.com>
Sent: Wednesday, December 4, 2019 10:06 AM
To: Timothy Ghan <tghan@doi.nv.gov>
Cc: Jesse A. Wadhams <jessewadhams@blacklobello.law>; James L. Wadhams <jlwadhams@blacklobello.law>
Subject: RE: Service Contract Meeting

Thanks, Tim! And thanks again for taking the time to meet with us. Hope you had a great Thanksgiving.

Since I've returned to the office, I've had a few additional questions come up with respect to the data call and the seller licensure issue:

- 1) I know the Division doesn't plan to publish the data as to an individual company, but will the submission be subject to public records requests if it is not properly given a "trade secret" designation prior to submission?
- 2) I've had several companies express to me that certain data request with respect to claims and reserves is generally not collected on a form number basis and instead by client, product line (often multiple forms for the same product line) and provider. As such, they could give totals, but it is likely impossible to produce this data per form number. How should companies in this situation handle these data fields if they cannot product the information?
- 3) As to the seller licensure issue we discussed, I see that the court has issued their order in the pertinent case stating that *anyone* wanting to sell service contracts must be licensed as a provider. Does the Division plan to issue a bulletin clarifying its position on this issue based on our conversation and the email below?

Thanks!

Jim

Jim Burleson

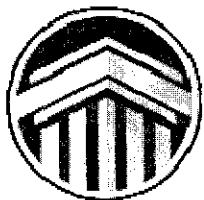
Meenan P.A.

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MEENAN

REGULATORY AND LEGISLATIVE ATTORNEYS



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From: Timothy Ghan <tghan@doi.nv.gov>

Sent: Monday, December 2, 2019 2:36 PM

To: Jim Burleson <Jim@meenanlawfirm.com>

Cc: Jesse A. Wadhams <jessewadhams@blacklobello.law>; James L. Wadhams <jlwadhams@blacklobello.law>

Subject: RE: Service Contract Meeting

Jim,

Sorry I did not read your email until today. I was out of the office shortly after our meeting ended.

I concur with what you have outlined below.

I hope you all had a very pleasant Thanksgiving Holiday and look forward to working with you in the future.

Best Regards,

Tim Ghan

Tim Ghan, CPCU
Assistant Chief Insurance Examiner
Product Compliance/Property & Casualty
Department of Business & Industry
Division of Insurance
1818 College Parkway, Ste #103
Carson City, NV 89706
Ph: 775-687-0767
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tghan@doi.nv.gov

From: Jim Burleson <Jim@meenanlawfirm.com>
Sent: Tuesday, November 26, 2019 5:51 PM
To: Timothy Ghan <tghan@doi.nv.gov>
Cc: Jesse A. Wadhams <jessewadhams@blacklobello.law>; James L. Wadhams <jlwadhams@blacklobello.law>
Subject: Service Contract Meeting

Tim,

Thank you again for taking time to meet with us today. The Service Contract Industry Council and the Motor Vehicle Protection Products Association appreciate these opportunities to communicate and work directly with the Division to ensure sensible regulation of the service contract industry in Nevada—regulation that recognizes the non-insurance characteristics of the industry and also employs important consumer protections.

Although I'm certain our members will still have concerns with the data call, they will derive comfort from our meeting today. They will be glad to know that, as you said in our meeting, the Division does not have any adversarial purposes or preconceived regulatory notions with respect to the data call and that the Division has no intention to employ rate regulation within the service contract industry or subject it to regulation akin to that of the insurance industry. It is also helpful to know that none of the information obtained by the Division in the data call will be published with identifiable information for any individual company, but that there may be aggregate data made available to the public. And our members will certainly appreciate your offer for service contract providers to request an extension to compile the data given the relatively quick turnaround and the upcoming holiday season.

Additionally, our members will be glad to know that service contract sellers that are not providers of service contracts will not be required to be licensed as service contract providers. There was some concern based on some recent action relative to one specific company that this may be the case, but I was glad to learn from you today that this is not the position of the Division. I do expect, however, that some of our members will still raise concerns with the Division's position that you expressed regarding requiring service contract administrators to be licensed as service contract providers in order to sell service contracts, even if the administrator is not obligated on any service contracts.

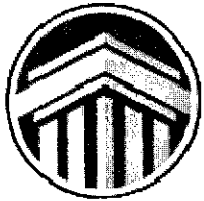
Thank you again, and if I can be of any help in disseminating information to the industry or answering the Division's questions to help better understand the industry, please do not hesitate to contact me.

Have a great Thanksgiving!

Best,
Jim

Jim Burleson
Meenan P.A.

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REGULATORY AND LEGISLATIVE ATTORNEYS



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EXHIBIT 3



Department of Business and Industry

Nevada Division of Insurance

1818 E. College Parkway, Suite 103, Carson City, Nevada 89706 Phone: (775) 687-0700 Fax: (775) 687-0787 Web: doi.nv.gov

Service Contract Provider Application - Renewal

The Certificate of Registration is non-transferable.

Fees are non-refundable.

Important Notice - As a matter of law (NRS 690C.160(3)), a Certificate of Registration expires after one (1) year. There is no grace period. A Provider who offers, sells or solicits service contracts after the expiration date and without receiving confirmation from the Division that its Certificate has renewed may be subject to administrative fines (NRS 690C.330). The Division strongly recommends that the renewal application be submitted at least 30 days prior to the expiration of the Certificate to avoid any disruption to the Provider's business.

Make any corrections to your contact information below.

Provider Name: «Company»

Current Certificate Number: NV «ORGID»

Initial Certificate Issued: «Approved»

Mailing Address: «Address»

«City» «State» «zip»

Contact: «Contact»

Phone: «Phone»

Ext. «ext»

Fax: «Fax»

*Verify email: _____

*Indicate if the email address is used for all correspondence including; notifications involving new/renewal applications, Certificate of Registration status, supporting documentation requests, CLIP verification, or other matters related thereto.

Yes ___ No ___ If answering "No", the company must provide a valid contact email address below.

The following questions **MUST** be answered before your renewal application can be processed.

1. List all aliases or names under which the company conducts business (Doing Business As) in Nevada. Provide supporting documentation filed with the County Clerk of the county in which the company is doing business.

2. Have there been any changes in the officers responsible for service contract business since your **last** application? Has an existing applicant, officer or owner had any change in any of the information previously submitted?

Yes ___ No ___

If yes, attach a list and include the following information:

1. Name
2. Title
3. Date of Birth
4. Social Security Number
5. Address of Residence

3. Have there been any changes in the percentage of ownership?

Yes ___ No ___

If yes, attach a list and include the following information:

1. Name
2. Title
3. Date of Birth
4. Social Security Number
5. Address of Residence
6. Percentage of Company Owned

4. Have there been any changes in the administrator or has a new administrator been designated since the **last** application?

Yes ___ No ___

Current administrator is listed as: «Administrator»

List any changes to the current administrator **or** list the name, address and phone number of any new administrator designated. Attach additional sheets if necessary.

_____ () _____

5. In the last 10 years has the applicant, any of the officers or owners listed in questions 1 or 2:

(a) Been convicted of a felony or any misdemeanor of which an essential element is fraud? Yes___ No___

(b) Been insolvent or adjudged bankrupt? Yes___ No___

(c) Been refused a license or registration (including a license or registration as a service contract provider) or had an existing one suspended or revoked by any state or governmental agency or authority? Yes___ No___

(d) Been fined or had any administrative actions taken by any state or governmental agency or authority in any matter regarding service contracts? Yes___ No___

(e) Other than traffic infractions, are there any past/pending criminal or civil actions, in professional capacity, against any of the applicant's, officers or directors? Yes___ No___

(f) Sold service contracts within the State of Nevada without first obtaining a Certificate of Registration? If yes, provide the number of contracts sold. Yes___ No___

Note: If any part of Question 4 or 5 is answered “Yes,” attach an explanation.

6. In the **last** application, the following information was submitted as proof of compliance with one of the three options for financial responsibility:

«Financial»

Has there been any change in financial responsibility?

Yes ___ Explain here and attach new documentation.

No ___ Attach updated documentation for financial responsibility to verify that it remains in place.

Service Contract Providers must comply with one of the following:	
Option 1	<p>Contractual Liability Insurance Policy issued by an insurer authorized to transact insurance in Nevada. <i>The policy must be active and maintained at all times for the Certificate of Registration to remain valid. Pursuant to NRS 690C.170(1)(a)(2) the contractual liability policy must contain a provision prohibiting the insurer from terminating the policy until a notice of termination has been mailed or delivered to the Division at least 60 days prior to the termination of the policy.</i></p> <p>Each Year at Renewal: <u>Submit documentation from the insurer verifying that the policy is still current and in full force.</u></p>
Option 2	<p>Maintain a reserve account in this State and deposit with the Commissioner security such as a surety bond, securities eligible for deposit pursuant to NRS 682B.030, cash, an irrevocable letter of credit issued by a financial institution approved by the Commissioner, or in any other form prescribed by the Commissioner. The reserve account must contain at all times an amount of money equal to at least 40 percent of the unearned gross consideration received by the provider for any unexpired service contracts in this state. The reserve account shall be maintained exclusively for service contracts in this state, must be kept separate from the operating accounts of the provider and must be clearly identified as the “(Provider’s Name) Nevada Service Contracts Funded Reserve Account” pursuant to NRS 690C.170(1)(b). A provider shall not use any money in a reserve account for any other purpose other than to pay an obligation of the provider under an unexpired service contract, NRS 690C.170(2).</p> <p>A provider shall maintain the financial security required until the provider ceases doing business in Nevada and the provider has performed or otherwise satisfied all liabilities and obligations under all unexpired service contracts issued by the provider, NRS 690C.170(3).</p> <p>Monthly statements of the reserve account (3 monthly statements) must be submitted to the Division at the end of each calendar quarter.</p> <p>The security deposit retained by the Commissioner must be an amount that is equal to \$25,000 or 10 percent of the unearned gross consideration received by the provider for any unexpired service contracts, whichever is greater.</p> <p>Each Year At Renewal: The provider is required to report unearned gross consideration on all unexpired service contracts sold to Nevada residents as of the last day of each calendar quarter and submit a copy of the reserve account statement.</p>
Option 3	<p>Maintain or be a subsidiary of a parent company that maintains a net worth or stockholders’ equity of at least \$100,000,000.</p>

	Each Year At Renewal: <i>Submit a copy of the most current 10K or 20F form filed with the Securities and Exchange Commission. If the company is not required to file reports with the SEC, provide a copy of the most recently audited financial statement.</i>
Note	Pursuant to NRS 690C.170(4), if the certificate of registration of a provider has not expired and the provider fails to maintain the financial security or if the financial security is cancelled or lapses, the provider shall not issue or sell a service contract on or after the effective date of such failure until the provider submits to the Commissioner proof satisfactory to the Commissioner that the provider is in compliance with NRS 690C.170.

7. Review and agree to the following:

- A. The provider agrees to not use any money in a reserve account other than to pay an obligation of the provider under an unexpired service contract. Agreement of provider
- B. The provider agrees to maintain the financial security required per NRS 690C.170. Agreement of provider
- C. The provider agrees that if the certificate of registration has not expired and the provider fails to maintain the financial security required, including, without limitation, if the financial security is cancelled or lapses, the provider shall not issue or sell a service contract, until the provider submits to the Commissioner proof satisfactory to the Commissioner that the provider is in compliance with NRS 690C.170. Agreement of provider

8. Select the type(s) of service contracts sold by the provider (check all that apply):

- Computer/Electronic Vehicle/Road Assistance Home Appliance/Home Products
 Miscellaneous/Other If Miscellaneous/Other, please explain: _____

9. Provide the following information regarding service contracts sold by the provider.

- A. List the service contract form names and form numbers sold in Nevada. Note that these forms must have been previously filed and approved in Nevada before use. Attach additional sheets if necessary. Copies of the forms do not need to be attached.

- B. List locations where service contracts are sold. Attach additional sheets if necessary.

If service contracts are not sold at specific locations, how are potential customers solicited?

C. If using Financial Security Option 2, complete the following:

Unearned gross consideration* on all unexpired service contracts sold to Nevada residents for the last 8 quarters:				
Quarter	Gross Revenue Received from Nevada Residents:	Unearned Gross Consideration:	**Security Deposit: (10% of Unearned Gross Consideration)	Reserve Account: (40% of Unearned Gross Consideration)
Ending: 03/31/16				
Ending: 06/30/16				
Ending: 09/30/16				
Ending: 12/31/16				
Ending: 03/31/17				
Ending: 06/30/17				
Ending: 09/30/17				
Ending: 12/31/17				

*Unearned gross consideration on a service contract is the total consideration for the contract multiplied by the fraction of time left on the contract (e.g., \$1,000 one-year contract with 7 months remaining = $1,000 \times 7 / 12 = 583$)

****This renewal application must include funds if there is an increase to the security deposit calculated above.**

D. Number of service contracts sold to Nevada residents:

Calendar year: 2016 _____

Calendar year: 2017 _____

E. Gross Revenue received from Nevada residents:

Calendar year: 2016 _____

Calendar year: 2017 _____

F. Number of claims paid on behalf of Nevada Residents:

Calendar year: 2016 _____

Calendar year: 2017 _____

G. Claims paid – Claims paid on behalf of Nevada residents:

Calendar year: 2016 \$ _____, _____, _____.

Calendar year: 2017 \$ _____, _____, _____.

H. Number of all customer complaints received by Nevada residents:

Calendar year: 2016 filed with Company: _____

2016 filed with Division: _____

Calendar year: 2017 filed with Company: _____

2017 filed with Division: _____

10. How are complaints handled? _____

11. To be completed by Home Service Contract Providers only:

- A. Number of emergency repair status letters sent to Nevada home warranty contract holders:
Calendar year: 2016 _____
Calendar year: 2017 _____
- B. Attach a list of each claim that qualifies as "emergency repairs" pursuant to NAC 690C.110. The list must include the following information:
- a. Name, address and contact information of the claimant.
 - b. Service Contract number.
 - c. Date claim filed.
 - d. Date emergency repairs initiated.
 - e. Date emergency repairs completed.
 - f. An explanation if the emergency repairs were not initiated as mandated by NAC 690C.110.

The applicant certifies that the service contracts issued in this state meet the requirements set forth in NRS 690C and NAC 690C and, under penalty of perjury, (I) or (we) affirm that the statements made in the foregoing renewal application are true and hereby subscribe thereto.

Dated _____, 20____ _____
Name of Service Contract Provider

Telephone No: _____

By _____
Signature of Officer in full

Signature of Officer in full

Print Name and Title

Print Name and Title

This renewal application must be verified and signed by one of the officers listed/named on file with the Division of Insurance in Question 2 for service contract business.

SUBSCRIBED and SWORN to before me
this _____ day of _____, _____.
Date Month Year

NOTARY PUBLIC