

**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

First Judicial District Court
Case No. 17 OC 00261
Electronically Filed
May 12 2020 05:49 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

**APPELLANT'S APPENDIX
VOLUME XIII OF XIV
(AA002384 – AA002582)**

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INDEX TO APPELLANT’S APPENDIX IN CHRONOLOGICAL ORDER

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Complaint and Application for Order to Show Cause (Cause No. 17.0050)	05/09/17	I	AA000001 – AA000010
Application for Subpoena Duces Tecum to Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty (“HWAN”) (Cause No. 17.0050)	05/09/17	I	AA000011 – AA000014
Order to Show Cause (Cause No. 17.0050)	05/11/17	I	AA000015 – AA000018
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	05/11/17	I	AA000019 – AA000022
Petition to Enlarge Time to Respond to Subpoena Duces Tecum, with cover letter (Cause No. 17.0050)	06/01/17	I	AA000023 – AA000029
Notice of Non-Opposition to Respondent’s Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/01/17	I	AA000030 – AA000031
Order on Petition to Enlarge Time to Respond to Subpoena Duces Tecum (Cause No. 17.0050)	06/05/17	I	AA000032 – AA000035
Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/14/17	I	AA000036 – AA000039
Notice of Non-Opposition to Respondent’s Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/16/17	I	AA000040 – AA000041
Joint Request to Continue Hearing (Cause No. 17.0050)	06/20/17	I	AA000042 – AA000044
Order on Motion Requesting Extension of Time and Order on Joint Request for Continuance (Cause No. 17.0050)	06/22/17	I	AA000045 – AA000047
Pre-hearing Order (Cause No. 17.0050)	06/22/17	I	AA000048 – AA000053
Motion for Pre-hearing Deposition Subpoenas or, in the alternative, Application for Hearing Subpoenas and Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/14/17	I	AA000054 – AA000064

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Second Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/19/17	I	AA000065 – AA000071
Request to Continue Hearing (Cause No. 17.0050)	07/20/17	I	AA000072 – AA000073
Limited Opposition to Motion for Pre-hearing Deposition Subpoenas or, in the alternative, Application for Hearing Subpoenas and Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/21/17	I	AA000074 – AA000076
Notice of No Opposition to Request to Continue Hearing (Cause No. 17.0050)	07/24/17	I	AA000077 – AA000078
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	07/26/17	I	AA000079 – AA000083
Order on Motions (Cause No. 17.0050)	07/27/17	I	AA000084 – AA000091
Subpoena for Appearance at Hearing to Dolores Bennett (Cause No. 17.0050)	08/04/17	I	AA000092 – AA000095
Subpoena for Appearance at Hearing to Sanja Samardzija (Cause No. 17.0050)	08/04/17	I	AA000096 – AA000099
Subpoena for Appearance at Hearing to Vincent Capitini (Cause No. 17.0050)	08/04/17	I	AA000100 – AA000103
Subpoena Duces Tecum to the Commissioner of the State of Nevada Division of Insurance (the “Division”) (Cause No. 17.0050)	08/09/17	I	AA000104 – AA000108
Subpoena for Appearance at Hearing to Chloe Stewart (Cause No. 17.0050)	08/09/17	I	AA000109 – AA000112
Subpoena for Appearance at Hearing to Derrick Dennis (Cause No. 17.0050)	08/09/17	I	AA000113 – AA000116
Subpoena for Appearance at Hearing to Geoffrey Hunt (Cause No. 17.0050)	08/09/17	I	AA000117 – AA000120
Subpoena for Appearance at Hearing to Linda Stratton (Cause No. 17.0050)	08/09/17	I	AA000121 – AA000124
Subpoena for Appearance at Hearing to the State of Nevada, Division of Insurance Person Most Knowledgeable as to the Creation of the Division’s Annual Renewal Application Forms (Cause No. 17.0050)	08/09/17	I	AA000125 – AA000128

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Subpoena for Appearance at Hearing to the State of Nevada, Division of Insurance Person Most Knowledgeable as to the Date of the Division's Knowledge of the Violations Set Forth in the Division's Complaint on File in this Cause (Cause No. 17.0050)	08/09/17	I	AA000129 – AA000132
Subpoena for Appearance at Hearing to Vicki Folster (Cause No. 17.0050)	08/09/17	I	AA000133 – AA000136
Subpoena for Appearance at Hearing to Kim Kuhlman (Cause No. 17.0050)	08/09/17	I	AA000137 – AA000140
Subpoena for Appearance at Hearing to Martin Reis (Cause No. 17.0050)	08/09/17	I	AA000141 – AA000144
Subpoena for Appearance at Hearing to Mary Strong (Cause No. 17.0050)	08/09/17	I	AA000145 – AA000148
Joint Request for Pre-hearing Conference (Cause No. 17.0050)	08/16/17	I	AA000149 – AA000152
Order Setting Pre-hearing Conference (Cause No. 17.0050)	08/17/17	I	AA000153 – AA000158
Order on Joint Application to Conduct Deposition (Cause No. 17.0050)	08/17/17	I	AA000159 – AA000164
Joint Application to Conduct Deposition to Preserve Hearing Testimony (Cause No. 17.0050)	08/21/17	I	AA000165 – AA000168
Amended Complaint and Application for Order to Show Cause (Cause No. 17.0050)	09/05/17	I	AA000169 – AA000177
Division's Pre-hearing Statement (Cause No. 17.0050)	09/06/17	I	AA000178 – AA000188
Proposed Hearing Exhibits and Witness List by Division (Cause No. 17.0050) (<i>Exhibits 1, 3, 6, 8-11, 13-20, 24-29, and 38-40 excluded from appendix as irrelevant to this appeal</i>)	09/06/17	II	AA000189 – AA000275
Hearing Exhibit List by HWAN (Cause No. 17.0050) (<i>Exhibits D, F-H, J-K, M-N, W-X, and HH excluded from appendix as irrelevant to this appeal</i>)	09/06/17	III	AA000276 – AA000499
HWAN's Pre-hearing Statement (Cause No. 17.0050)	09/08/17	IV	AA000500 – AA000513
List of Hearing Witnesses by HWAN (Cause No. 17.0050)	09/08/17	IV	AA000514 – AA000517

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Updated Hearing Exhibits and Updated Witness List by Division (Cause No. 17.0050) <i>(Exhibits 41-42 excluded from appendix as irrelevant to this appeal)</i>	09/08/17	IV	AA000518 – AA000521
HWAN's Notice of Intent to File Supplemental Hearing Exhibits and Amended Hearing Exhibit List (Cause No. 17.0050)	09/11/17	IV	AA000522 – AA000582
Transcript of Hearing Proceedings on September 12, 2017 (Cause No. 17.0050)	09/12/17	IV-V	AA000583 – AA000853
Transcript of Hearing Proceedings on September 13, 2017 (Cause No. 17.0050)	09/13/17	V-VI	AA000854 – AA001150
Transcript of Hearing Proceedings on September 14, 2017 (Cause No. 17.0050)	09/14/17	VII	AA001151 – AA001270
HWAN's Notice of Filing Supplemental Hearing Exhibit SS (Cause No. 17.0050)	09/21/17	VII	AA001271 – AA001295
Order regarding Post-hearing Briefs and Written Closing Arguments (Cause No. 17.0050)	10/13/17	VII	AA001296 – AA001298
Division's Post-hearing Brief Pursuant to Order (Cause No. 17.0050)	10/30/17	VII	AA001299 – AA001307
HWAN's Post-hearing Brief on Hearing Officer's Inquiry (Cause No. 17.0050)	10/30/17	VII	AA001308 – AA001325
Motion to Strike Portions of the Division's Post-hearing Brief (Cause No. 17.0050)	11/13/17	VII	AA001326 – AA001332
Division's Opposition to Respondent's Motion to Strike Portions of the Division's Post-hearing Brief (Cause No. 17.0050)	11/14/17	VII	AA001333 – AA001338
Order regarding Motion to Strike and Written Closing Arguments (Cause No. 17.0050)	11/14/17	VII	AA001339 – AA001340
Division's Closing Statement (Cause No. 17.0050)	11/17/17	VII	AA001341 – AA001358
HWAN's Closing Argument (Cause No. 17.0050)	11/22/17	VIII	AA001359 – AA001378
Findings of Fact, Conclusions of Law, Order of Hearing Officer, and Final Order of the Commissioner (Cause No. 17.0050)	12/18/17	VIII	AA001379 – AA001409
Affirmation (Initial Appearance) (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001410 – AA001411

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001412 – AA001458
Civil Cover Sheet (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001459
Order for Briefing Schedule (Case No. 17 OC 00269 1B)	12/26/17	VIII	AA001460 – AA001462
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance – Attorney General (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001463 – AA001464
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance –Commissioner of Insurance (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001465
Administrative Record (Case No. 17 OC 00269 1B)	01/12/18	VIII	AA001466 – AA001470
Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/16/18	VIII	AA001471 – AA001486
Statement of Intent to Participate (Case No. 17 OC 00269 1B)	01/19/18	VIII	AA001487 – AA001489
Division’s Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/30/18	VIII	AA001490 – AA001503
Supplement to Division’s Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/31/18	VIII	AA001504 – AA001537
Reply in Support of Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	02/08/18	VIII	AA001538 – AA001548
Request for Submission of Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	02/08/18	VIII	AA001549 – AA001551
Notice of Entry of Order Denying Motion for Stay (Case No. 17 OC 00269 1B)	02/16/18	VIII	AA001552 – AA001559
Petitioner’s Opening Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	02/16/18	IX	AA001560 – AA001599
Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/15/18	IX	AA001600 – AA001601

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Respondent's Answering Brief (Case No. 17 OC 00269 1B)	03/19/18	IX	AA001602 – AA001641
Certificate of Service of Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/28/18	IX	AA001642 – AA001643
Reply Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	04/11/18	IX	AA001644 – AA001662
Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	04/19/18	IX	AA001663 – AA001680
Opposition to Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/04/18	IX	AA001681 – AA001687
Reply in Support of Petitioner's Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/14/18	IX	AA001688 – AA001701
Request for Submission of Petitioner's Motion for Leave to Present Additional Evidence and Petitioner's Request for Hearing on its Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/14/18	IX	AA001702 – AA001704
Order to Set for Hearing (Case No. 17 OC 00269 1B)	05/16/18	IX	AA001705 – AA001706
Hearing Date Memo (Case No. 17 OC 00269 1B)	06/06/18	IX	AA001707
Transcript of Hearing Proceedings on August 6, 2018 (Case No. 17 OC 00269 1B)	08/06/18	IX	AA001708 – AA001731
Order Granting Petitioner's Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	09/06/18	IX	AA001732 – AA001735
Order regarding Exhibits KK, LL & MM (Cause No. 17.0050)	10/31/18	IX	AA001736 – AA001738
HWAN's Brief regarding Exhibits KK, LL, and MM (Cause No. 17.0050)	11/13/18	IX	AA001739 – AA001745
Division's Opposition to HWAN's Proposed Exhibits KK, LL, and MM (Cause No. 17.0050)	11/20/18	IX	AA001746 – AA001753
HWAN's Reply to Division's Opposition to its Brief regarding Exhibits KK, LL and MM (Cause No. 17.0050)	11/21/18	IX	AA001754 – AA001758

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Order on Remand (Cause No. 17.0050)	01/22/19	IX	AA001759 – AA001767
Substitution of Attorney (Cause No. 17.0050)	01/24/19	IX	AA001768 – AA001770
Substitution of Attorney (Case No. 17 OC 00269 1B)	01/25/19	IX	AA001771 – AA001773
Notice of Filing Hearing Officer's Administrative Order (Case No. 17 OC 00269 1B)	01/28/19	X	AA001774 – AA001787
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	02/01/19	X	AA001788 – AA001801
Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	02/22/19	X	AA001802 – AA001961
Notice of Non-Opposition to Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal and Notice of Submission of Proposed Order (Case No. 17 OC 00269 1B)	03/12/19	X	AA001962 – AA001968
Request for Submission of Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	03/12/19	X	AA001969 – AA001971
Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	03/13/19	X	AA001972 – AA001973
Stipulation and Order (1) Withdrawing Notice of Non-Opposition and Request for Submission of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal; and (2) Extending the Time for Opposition to and Reply in Support of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	03/25/19	X	AA001974 – AA001976

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Entry of Order for Stipulation regarding (1) Withdrawing Notice of Non-Opposition and Request for Submission of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal; and (2) Extending the Time for Opposition to and Reply in Support of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	04/01/19	X	AA001977 – AA001982
Division’s Opposition to Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (erroneously filed in Case No. 19 OC 00015 1B)	04/03/19	XI	AA001983 – AA002003
Reply Memorandum of Points and Authorities in Support of Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	04/15/19	XI	AA002004 – AA002008
Request for Submission of Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	05/06/19	XI	AA002009 – AA002011
Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/08/19	XI	AA002012 – AA002013
Notice of Entry of Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/21/19	XI	AA002014 – AA002018
Notice of Entry of Order Granting Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	05/21/19	XI	AA002019 – AA002023
Petitioner’s Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002024 – AA002138

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002139 – AA002169
Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/30/19	XI	AA002170 – AA002173
Request for Submission of Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/31/19	XI	AA002174 – AA002176
Order on Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	06/05/19	XI	AA002177 – AA002179
Notice of Entry of Order on Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	06/06/19	XI	AA002180 – AA002185
Order Granting Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	06/18/19	XI	AA002186 – AA002189
Notice of Entry of Order Granting Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	07/10/19	XI	AA002190 – AA002194
Respondents’ Response to Petitioner’s Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	08/08/19	XII	AA002195 – AA002209
Petitioner’s Reply in Support of its Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002210 – AA002285
Request for Hearing on Petition for Judicial Review Pursuant to NRS 233B.133(4) (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002286 – AA002288

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice to Set (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002289 – AA002291
Hearing Date Memo (Case No. 17 OC 00269 1B)	08/28/19	XII	AA002292 – AA002294
Legislative History Statement Regarding NRS 690C.325(1) and NRS 690C.330 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002295 – AA002358
Respondent's Statement of Legislative History of NRS 690C.325 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002359 – AA002383
Transcript of Hearing Proceedings on November 7, 2019 (Case No. 17 OC 00269 1B)	11/07/19	XIII	AA002384 – AA002455
Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	11/15/19	XIII	AA002456 – AA002494
Notice of Submission of Competing Proposed Order (Case No. 17 OC 00269 1B)	11/22/19	XIII	AA002495 – AA002516
Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty (Case No. 17 OC 00269 1B)	11/25/19	XIII	AA002517 – AA002521
Notice of Entry of Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty (Case No. 17 OC 00269 1B)	11/27/19	XIII	AA002522 – AA002530
Respondent's Opposition to Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	11/27/19	XIII	AA002531 – AA002541

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Reply in Support of Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/04/19	XIII	AA002542 – AA002570
Request for Submission of Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/04/19	XIII	AA002571 – AA002573
Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIII	AA002574 – AA002582
Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002583 – AA002639
Case Appeal Statement (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002640 – AA002645
Notice of Appeal (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002646 – AA002693
Opposition to Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/09/19	XIV	AA002694 – AA002698
Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/09/19	XIV	AA002699 – AA002702
Request for Submission of Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/10/19	XIV	AA002703 – AA002705
Reply in Support of Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/10/19	XIV	AA002706 – AA002716

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Entry of Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/11/19	XIV	AA002717 – AA002723
Order Denying Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/12/19	XIV	AA002724 – AA002725
Notice of Entry of Order Denying Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/18/19	XIV	AA002726 – AA002731
Division's Opposition to Petitioner's Motion for Stay (Case No. 17 OC 00269 1B)	12/19/19	XIV	AA002732 – AA002741
Reply in Support of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/26/19	XIV	AA002742 – AA002755
Request for Submission of Motion to Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/26/19	XIV	AA002756 – AA002758
Order Denying Petitioner's Motion for Stay Pending Appeal (Case No. 17 OC 00269 1B)	12/31/19	XIV	AA002759 – AA002764
Notice of Entry of Order Denying Petitioner's Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	01/07/20	XIV	AA002765 – AA002775

INDEX TO APPELLANT’S APPENDIX IN ALPHABETICAL ORDER

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Administrative Record (Case No. 17 OC 00269 1B)	01/12/18	VIII	AA001466 – AA001470
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance – Attorney General (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001463 – AA001464
Affidavit of Service of Petition for Judicial Review on State of Nevada, Department of Business and Industry, Division of Insurance –Commissioner of Insurance (Case No. 17 OC 00269 1B)	01/02/18	VIII	AA001465
Affirmation (Initial Appearance) (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001410 – AA001411
Amended Complaint and Application for Order to Show Cause (Cause No. 17.0050)	09/05/17	I	AA000169 – AA000177
Application for Subpoena Duces Tecum to Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty (“HWAN”) (Cause No. 17.0050)	05/09/17	I	AA000011 – AA000014
Case Appeal Statement (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002640 – AA002645
Certificate of Service of Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/28/18	IX	AA001642 – AA001643
Civil Cover Sheet (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001459
Complaint and Application for Order to Show Cause (Cause No. 17.0050)	05/09/17	I	AA000001 – AA000010
Division’s Closing Statement (Cause No. 17.0050)	11/17/17	VII	AA001341 – AA001358
Division’s Opposition to HWAN’s Proposed Exhibits KK, LL, and MM (Cause No. 17.0050)	11/20/18	IX	AA001746 – AA001753
Division’s Opposition to Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (erroneously filed in Case No. 19 OC 00015 1B)	04/03/19	XI	AA001983 – AA002003

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Division's Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/30/18	VIII	AA001490 – AA001503
Division's Opposition to Petitioner's Motion for Stay (Case No. 17 OC 00269 1B)	12/19/19	XIV	AA002732 – AA002741
Division's Opposition to Respondent's Motion to Strike Portions of the Division's Post-hearing Brief (Cause No. 17.0050)	11/14/17	VII	AA001333 – AA001338
Division's Post-hearing Brief Pursuant to Order (Cause No. 17.0050)	10/30/17	VII	AA001299 – AA001307
Division's Pre-hearing Statement (Cause No. 17.0050)	09/06/17	I	AA000178 – AA000188
Findings of Fact, Conclusions of Law, Order of Hearing Officer, and Final Order of the Commissioner (Cause No. 17.0050)	12/18/17	VIII	AA001379 – AA001409
Hearing Date Memo (Case No. 17 OC 00269 1B)	06/06/18	IX	AA001707
Hearing Date Memo (Case No. 17 OC 00269 1B)	08/28/19	XII	AA002292 – AA002294
Hearing Exhibit List by HWAN (Cause No. 17.0050) (<i>Exhibits D, F-H, J-K, M-N, W-X, and HH excluded from appendix as irrelevant to this appeal</i>)	09/06/17	III	AA000276 – AA000499
HWAN's Brief regarding Exhibits KK, LL, and MM (Cause No. 17.0050)	11/13/18	IX	AA001739 – AA001745
HWAN's Closing Argument (Cause No. 17.0050)	11/22/17	VIII	AA001359 – AA001378
HWAN's Notice of Filing Supplemental Hearing Exhibit SS (Cause No. 17.0050)	09/21/17	VII	AA001271 – AA001295
HWAN's Notice of Intent to File Supplemental Hearing Exhibits and Amended Hearing Exhibit List (Cause No. 17.0050)	09/11/17	IV	AA000522 – AA000582
HWAN's Post-hearing Brief on Hearing Officer's Inquiry (Cause No. 17.0050)	10/30/17	VII	AA001308 – AA001325
HWAN's Pre-hearing Statement (Cause No. 17.0050)	09/08/17	IV	AA000500 – AA000513

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
HWAN's Reply to Division's Opposition to its Brief regarding Exhibits KK, LL and MM (Cause No. 17.0050)	11/21/18	IX	AA001754 – AA001758
Joint Application to Conduct Deposition to Preserve Hearing Testimony (Cause No. 17.0050)	08/21/17	I	AA000165 – AA000168
Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/30/19	XI	AA002170 – AA002173
Joint Request for Pre-hearing Conference (Cause No. 17.0050)	08/16/17	I	AA000149 – AA000152
Joint Request to Continue Hearing (Cause No. 17.0050)	06/20/17	I	AA000042 – AA000044
Legislative History Statement Regarding NRS 690C.325(1) and NRS 690C.330 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002295 – AA002358
Limited Opposition to Motion for Pre-hearing Deposition Subpoenas or, in the alternative, Application for Hearing Subpoenas and Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/21/17	I	AA000074 – AA000076
List of Hearing Witnesses by HWAN (Cause No. 17.0050)	09/08/17	IV	AA000514 – AA000517
Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	11/15/19	XIII	AA002456 – AA002494
Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	02/22/19	X	AA001802 – AA001961
Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	04/19/18	IX	AA001663 – AA001680
Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIII	AA002574 – AA002582

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Motion for Pre-hearing Deposition Subpoenas or, in the alternative, Application for Hearing Subpoenas and Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/14/17	I	AA000054 – AA000064
Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/16/18	VIII	AA001471 – AA001486
Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002583 – AA002639
Motion to Strike Portions of the Division's Post-hearing Brief (Cause No. 17.0050)	11/13/17	VII	AA001326 – AA001332
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	02/01/19	X	AA001788 – AA001801
Notice of Amendment to Record on Appeal (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002139 – AA002169
Notice of Appeal (Case No. 17 OC 00269 1B)	12/06/19	XIV	AA002646 – AA002693
Notice of Entry of Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty (Case No. 17 OC 00269 1B)	11/27/19	XIII	AA002522 – AA002530
Notice of Entry of Order Denying Motion for Stay (Case No. 17 OC 00269 1B)	02/16/18	VIII	AA001552 – AA001559
Notice of Entry of Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/11/19	XIV	AA002717 – AA002723
Notice of Entry of Order Denying Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/18/19	XIV	AA002726 – AA002731

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Entry of Order Denying Petitioner's Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	01/07/20	XIV	AA002765 – AA002775
Notice of Entry of Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/21/19	XI	AA002014 – AA002018
Notice of Entry of Order for Stipulation regarding (1) Withdrawing Notice of Non-Opposition and Request for Submission of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal; and (2) Extending the Time for Opposition to and Reply in Support of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	04/01/19	X	AA001977 – AA001982
Notice of Entry of Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	05/21/19	XI	AA002019 – AA002023
Notice of Entry of Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	07/10/19	XI	AA002190 – AA002194
Notice of Entry of Order on Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	06/06/19	XI	AA002180 – AA002185
Notice of Filing Hearing Officer's Administrative Order (Case No. 17 OC 00269 1B)	01/28/19	X	AA001774 – AA001787
Notice of No Opposition to Request to Continue Hearing (Cause No. 17.0050)	07/24/17	I	AA000077 – AA000078

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Notice of Non-Opposition to Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal and Notice of Submission of Proposed Order (Case No. 17 OC 00269 1B)	03/12/19	X	AA001962 – AA001968
Notice of Non-Opposition to Respondent's Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/01/17	I	AA000030 – AA000031
Notice of Non-Opposition to Respondent's Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/16/17	I	AA000040 – AA000041
Notice of Submission of Competing Proposed Order (Case No. 17 OC 00269 1B)	11/22/19	XIII	AA002495 – AA002516
Notice to Set (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002289 – AA002291
Opposition to Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/04/18	IX	AA001681 – AA001687
Opposition to Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/09/19	XIV	AA002694 – AA002698
Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Cause No 17.0050 in the Matter of Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty (Case No. 17 OC 00269 1B)	11/25/19	XIII	AA002517 – AA002521
Order Denying Petitioner's Motion for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/09/19	XIV	AA002699 – AA002702
Order Denying Petitioner's Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/12/19	XIV	AA002724 – AA002725

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Order Denying Petitioner's Motion for Stay Pending Appeal (Case No. 17 OC 00269 1B)	12/31/19	XIV	AA002759 – AA002764
Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/08/19	XI	AA002012 – AA002013
Order for Briefing Schedule (Case No. 17 OC 00269 1B)	12/26/17	VIII	AA001460 – AA001462
Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	03/13/19	X	AA001972 – AA001973
Order Granting Petitioner's Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	06/18/19	XI	AA002186 – AA002189
Order Granting Petitioner's Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	09/06/18	IX	AA001732 – AA001735
Order on Joint Application to Conduct Deposition (Cause No. 17.0050)	08/17/17	I	AA000159 – AA000164
Order on Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	06/05/19	XI	AA002177 – AA002179
Order on Motion Requesting Extension of Time and Order on Joint Request for Continuance (Cause No. 17.0050)	06/22/17	I	AA000045 – AA000047
Order on Motions (Cause No. 17.0050)	07/27/17	I	AA000084 – AA000091
Order on Petition to Enlarge Time to Respond to Subpoena Duces Tecum (Cause No. 17.0050)	06/05/17	I	AA000032 – AA000035
Order on Remand (Cause No. 17.0050)	01/22/19	IX	AA001759 – AA001767
Order regarding Exhibits KK, LL & MM (Cause No. 17.0050)	10/31/18	IX	AA001736 – AA001738
Order regarding Motion to Strike and Written Closing Arguments (Cause No. 17.0050)	11/14/17	VII	AA001339 – AA001340

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Order regarding Post-hearing Briefs and Written Closing Arguments (Cause No. 17.0050)	10/13/17	VII	AA001296 – AA001298
Order Setting Pre-hearing Conference (Cause No. 17.0050)	08/17/17	I	AA000153 – AA000158
Order to Set for Hearing (Case No. 17 OC 00269 1B)	05/16/18	IX	AA001705 – AA001706
Order to Show Cause (Cause No. 17.0050)	05/11/17	I	AA000015 – AA000018
Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/22/17	VIII	AA001412 – AA001458
Petition to Enlarge Time to Respond to Subpoena Duces Tecum, with cover letter (Cause No. 17.0050)	06/01/17	I	AA000023 – AA000029
Petitioner's Opening Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	02/16/18	IX	AA001560 – AA001599
Petitioner's Reply in Support of its Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002210 – AA002285
Petitioner's Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	05/28/19	XI	AA002024 – AA002138
Pre-hearing Order (Cause No. 17.0050)	06/22/17	I	AA000048 – AA000053
Proposed Hearing Exhibits and Witness List by Division (Cause No. 17.0050) (<i>Exhibits 1, 3, 6, 8-11, 13-20, 24-29, and 38-40 excluded from appendix as irrelevant to this appeal</i>)	09/06/17	II	AA000189 – AA000275
Reply Brief in Support of Petition for Judicial Review (Case No. 17 OC 00269 1B)	04/11/18	IX	AA001644 – AA001662
Reply in Support of Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/04/19	XIII	AA002542 – AA002570

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Reply in Support of Motion for Order Shortening Time for Briefing and Decision of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/10/19	XIV	AA002706 – AA002716
Reply in Support of Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	02/08/18	VIII	AA001538 – AA001548
Reply in Support of Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/26/19	XIV	AA002742 – AA002755
Reply in Support of Petitioner’s Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/14/18	IX	AA001688 – AA001701
Reply Memorandum of Points and Authorities in Support of Petitioner’s Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	04/15/19	XI	AA002004 – AA002008
Request for Hearing on Petition for Judicial Review Pursuant to NRS 233B.133(4) (Case No. 17 OC 00269 1B)	08/15/19	XII	AA002286 – AA002288
Request for Submission of Joint Motion for Clarification and/or Reconsideration of the May 8, 2019 Order Denying Request for Submission (Case No. 17 OC 00269 1B)	05/31/19	XI	AA002174 – AA002176
Request for Submission of Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	05/06/19	XI	AA002009 – AA002011
Request for Submission of Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN’s Petition for Judicial Review (Case No. 17 OC 00269 1B)	12/04/19	XIII	AA002571 – AA002573
Request for Submission of Motion for Leave to File Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	03/12/19	X	AA001969 – AA001971

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Request for Submission of Motion for Order Shortening Time for Briefing and Decision on Motion for Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/10/19	XIV	AA002703 – AA002705
Request for Submission of Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	02/08/18	VIII	AA001549 – AA001551
Request for Submission of Motion to Stay Pending Appeal Pursuant to NRCP 62(D) (Case No. 17 OC 00269 1B)	12/26/19	XIV	AA002756 – AA002758
Request for Submission of Petitioner’s Motion for Leave to Present Additional Evidence and Petitioner’s Request for Hearing on its Motion for Leave to Present Additional Evidence (Case No. 17 OC 00269 1B)	05/14/18	IX	AA001702 – AA001704
Request to Continue Hearing (Cause No. 17.0050)	07/20/17	I	AA000072 – AA000073
Respondent’s Answering Brief (Case No. 17 OC 00269 1B)	03/19/18	IX	AA001602 – AA001641
Respondent’s Opposition to Petitioner’s Motion for Leave of Court for Limited Reconsideration of Court’s Findings on HWAN’s Petition for Judicial Review (Case No. 17 OC 00269 1B)	11/27/19	XIII	AA002531 – AA002541
Respondent’s Statement of Legislative History of NRS 690C.325 (Case No. 17 OC 00269 1B)	11/06/19	XII	AA002359 – AA002383
Respondents’ Response to Petitioner’s Supplemental Memorandum of Points and Authorities Pursuant to NRS 233B.133 (Case No. 17 OC 00269 1B)	08/08/19	XII	AA002195 – AA002209
Second Application for Subpoena Duces Tecum (Cause No. 17.0050)	07/19/17	I	AA000065 – AA000071
Second Request for Extension of Time to Comply with Subpoena Duces Tecum (Cause No. 17.0050)	06/14/17	I	AA000036 – AA000039
Statement of Intent to Participate (Case No. 17 OC 00269 1B)	01/19/18	VIII	AA001487 – AA001489

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Stipulation and Order (1) Withdrawing Notice of Non-Opposition and Request for Submission of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal; and (2) Extending the Time for Opposition to and Reply in Support of Motion for Leave to File Supplemental Memo of Points and Authorities Pursuant to NRS 233B.133 and Amend the Record on Appeal (Case No. 17 OC 00269 1B)	03/25/19	X	AA001974 – AA001976
Stipulation and Order for Interpleading of Fines Pending Final Decision (Case No. 17 OC 00269 1B)	03/15/18	IX	AA001600 – AA001601
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	05/11/17	I	AA000019 – AA000022
Subpoena Duces Tecum to HWAN (Cause No. 17.0050)	07/26/17	I	AA000079 – AA000083
Subpoena Duces Tecum to the Commissioner of the State of Nevada Division of Insurance (the “Division”) (Cause No. 17.0050)	08/09/17	I	AA000104 – AA000108
Subpoena for Appearance at Hearing to Dolores Bennett (Cause No. 17.0050)	08/04/17	I	AA000092 – AA000095
Subpoena for Appearance at Hearing to Sanja Samardzija (Cause No. 17.0050)	08/04/17	I	AA000096 – AA000099
Subpoena for Appearance at Hearing to Vincent Capitini (Cause No. 17.0050)	08/04/17	I	AA000100 – AA000103
Subpoena for Appearance at Hearing to Chloe Stewart (Cause No. 17.0050)	08/09/17	I	AA000109 – AA000112
Subpoena for Appearance at Hearing to Derrick Dennis (Cause No. 17.0050)	08/09/17	I	AA000113 – AA000116
Subpoena for Appearance at Hearing to Linda Stratton (Cause No. 17.0050)	08/09/17	I	AA000121 – AA000124
Subpoena for Appearance at Hearing to Vicki Folster (Cause No. 17.0050)	08/09/17	I	AA000133 – AA000136
Subpoena for Appearance at Hearing to Kim Kuhlman (Cause No. 17.0050)	08/09/17	I	AA000137 – AA000140
Subpoena for Appearance at Hearing to Mary Strong (Cause No. 17.0050)	08/09/17	I	AA000145 – AA000148

EXHIBIT DESCRIPTION	DATE	VOL.	PAGE NOS.
Subpoena for Appearance at Hearing to Geoffrey Hunt (Cause No. 17.0050)	08/09/17	I	AA000117 – AA000120
Subpoena for Appearance at Hearing to Martin Reis (Cause No. 17.0050)	08/09/17	I	AA000141 – AA000144
Subpoena for Appearance at Hearing to the State of Nevada, Division of Insurance Person Most Knowledgeable as to the Creation of the Division's Annual Renewal Application Forms (Cause No. 17.0050)	08/09/17	I	AA000125 – AA000128
Subpoena for Appearance at Hearing to the State of Nevada, Division of Insurance Person Most Knowledgeable as to the Date of the Division's Knowledge of the Violations Set Forth in the Division's Complaint on File in this Cause (Cause No. 17.0050)	08/09/17	I	AA000129 – AA000132
Substitution of Attorney (Case No. 17 OC 00269 1B)	01/25/19	IX	AA001771 – AA001773
Substitution of Attorney (Cause No. 17.0050)	01/24/19	IX	AA001768 – AA001770
Supplement to Division's Opposition to Motion for Stay of Final Administrative Decision Pursuant to NRS 233B.140 (Case No. 17 OC 00269 1B)	01/31/18	VIII	AA001504 – AA001537
Transcript of Hearing Proceedings on September 12, 2017 (Cause No. 17.0050)	09/12/17	IV-V	AA000583 – AA000853
Transcript of Hearing Proceedings on September 13, 2017 (Cause No. 17.0050)	09/13/17	V-VI	AA000854 – AA001150
Transcript of Hearing Proceedings on September 14, 2017 (Cause No. 17.0050)	09/14/17	VII	AA001151 – AA001270
Transcript of Hearing Proceedings on August 6, 2018 (Case No. 17 OC 00269 1B)	08/06/18	IX	AA001708 – AA001731
Transcript of Hearing Proceedings on November 7, 2019 (Case No. 17 OC 00269 1B)	11/07/19	XIII	AA002384 – AA002455
Updated Hearing Exhibits and Updated Witness List by Division (Cause No. 17.0050) <i>(Exhibits 41-42 excluded from appendix as irrelevant to this appeal)</i>	09/08/17	IV	AA000518 – AA000521

1 IN THE FIRST DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR CARSON CITY, NEVADA

3 **CERTIFIED COPY**

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

7 Petitioner,

8 vs.

Case No.
17 OC 00269 1B

9 STATE OF NEVADA, DEPARTMENT OF
10 BUSINESS AND INDUSTRY - DIVISION
11 OF INSURANCE, a Nevada
12 administrative agency,

13 Respondent.
14 _____

15 HEARING BEFORE JUDGE JAMES T. RUSSELL

16 Carson City, Nevada

17 Thursday, November 7, 2019

18 2:28 p.m.

19 _____
20 Proceedings recorded by electronic sound recording;
21 transcript produced by transcription service.
22 _____

23
24 Transcribed by: Becky J. Parker, RPR, CCR
25 Nevada Certified Court Reporter No. 934

Page 2

1 APPEARANCES:

2

3 For Petitioner:

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9 RICHARD P. YIEN
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11 100 North Carson
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12 775.684.1100

13 Also Present:

14 BRIAN S. TRETTER
(via telephone)

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CARSON CITY, NEVADA

THURSDAY, NOVEMBER 7, 2019, 2:28 P.M.

-oOo-

THE COURT: Okay. For the record, again,
this is Case Number 17-OC-00269, Home Warranty
Administrator of Nevada, Inc., d/b/a Choice Home
Warranty versus State of Nevada, Department of Business
Industry - Division of Insurance. On behalf of the
petitioners is Constance Akridge. On behalf of the
State of Nevada is Richard Yien.

MR. YIEN: Yes, Your Honor.

THE COURT: Good morning.

In respect this matter at this time is set
for argument on regards to petition for judicial review.

First of all, I'd like to thank you both for
the legislative history statements. I -- I -- I was --
as I was going through them, I thought it was kind of
interesting. I was wondering if there was any
legislative history that would help answer one of my
questions in regards to this particular case, so I
appreciate it very much in regards to that.

Ms. Akridge, this is your petition, so if you
want to proceed.

MS. AKRIDGE: Thank you, Your Honor. We're

Page 4

1 here today on behalf of Petitioner Home Warranty
2 Administrator of Nevada, Inc., which we will refer to as
3 HWAN, with respect to its petition for jud- -- judicial
4 review filed pursuant to NRS 233B.130 appealing a
5 December 18, 2017 administrative decision of the
6 Nevada Division of Insurance, which we will refer to as
7 the Division's order.

8 The Division's order is being challenged.
9 Came about as a result of a complaint and order to show
10 cause filed by the Division against HWAN, alleging
11 various violations of Nevada law and asking the hearing
12 officer to refuse to renew and revoke HWAN's certificate
13 of registration.

14 But the Division's order itself contains
15 findings that were never noticed in the original
16 complaint or the amended complaint filed one week before
17 the underlying hearing. In fact, only one of the
18 alleged violations in the complaint was adjudicated in
19 favor of the Division. That would be the alleged
20 failure to provide information on service contracts to
21 the Division. The rest of the alleged violations in the
22 complaint were adjudicated in favor of HWAN.

23 The majority of the violations and resulting
24 fines against HWAN in the Division's order are based on
25 violations that were never noticed prior to hearing.

1 And those are, number one, HWAN using an unregistered
2 administrator, CHW Group, Inc. Number two, HWAN listing
3 self as administrator on application renewal forms. And
4 a single -- and number three, a single instance of HWAN
5 failing to disclose use of an unapproved sales contract.

6 Today we'll go through each alleged violation
7 and the fines assessed in the Division's order and
8 explain how, under the applicable provisions of the
9 Nevada Insurance Code Title 57 and applying the
10 standards of review of the administrative decisions
11 under 233B.135 Subsection 3, each ruling made in the
12 Division's order must be overturned because in its zest
13 to throw HWAN out of the State of Nevada, the Division's
14 order substantially prejudice the rights of HWAN by
15 exceeding the authority provided to the Division by the
16 legislature under NRS Chapter 690C and abused its
17 authority by creating requirements for HWAN not applied
18 to other registered service contract providers and
19 failed to provide HWAN due process guaranteed to
20 licensees under NRS 690C.325, NRS 233B.127, and the
21 Nevada constitution.

22 Before we get into why the Division's order
23 must be overturned, however, let's talk about what a
24 service contract is and what it is not. NRS 690C.080
25 defines a service contract to mean a contract pursuant

Page 6

1 to which a provider, in exchange for separately stated
2 consideration, is obligated for a specified period to a
3 holder to repair, replace, or perform maintenance on or
4 indemnify or reimburse a holder for the cost of
5 repairing, replacing, or performing maintenance on goods
6 that are described in the service contract in which have
7 an operational or structural -- structural failure as a
8 result of a defect in materials, workmanship, or normal
9 wear and tear, including, without limitation, and the
10 one -- the section that applies to us is B, the contract
11 that provides for the repair, replacement, or
12 maintenance of goods or for damages that result from
13 power surges or accidental damage from handling.

14 Service contracts are -- are not the
15 transaction of insurance, Your Honor. And service
16 contract providers are not insurers. I think that even
17 the legislative history made it clear that that was the
18 case, that the legislature indicated that it didn't want
19 to regulate service contract providers as insurers, that
20 that would be too onerous and would discourage the
21 service contract provider business from being performed
22 in the State of Nevada.

23 THE COURT: But 690C came into being
24 basically to provide some kind of regulation over
25 service contracts.

1 MS. AKRIDGE: Correct.

2 THE COURT: Isn't that correct?

3 MS. AKRIDGE: That's correct. And -- and
4 because there was -- that was originally passed in 1999
5 and it -- you know, it required a registration of
6 service contract providers, along with the most
7 important part, and that is the financial showing that
8 there was some financial solvency and ability to pay
9 claims of the service contracts that were being sold to
10 residents in the state of Nevada. Those were --

11 THE COURT: Well, in my reading of all the
12 facts and everything else, HWAN basically was an
13 administrator. But -- but the one who was actually
14 selling policies was Choice Home -- let's see. It was
15 Choice Home Warranty Group. Aren't they the ones who
16 are really selling the policies? That was the way I
17 understood it.

18 MS. AKRIDGE: Well, the way -- the way it
19 worked, and even the legislature talked about this issue
20 as well, this is part of what we sent to you yesterday,
21 Your Honor, basically saying the distinction between the
22 provider who's the obligor of the service contract,
23 right, who -- who is required to post the financial
24 security with the state and prove that they are solvent
25 and able to pay claims; right? That's the service

Page 8

1 contract provider. They are the obligor.

2 The administrator is the one who is
3 contracted with the provider to perform administrative
4 services and also to sell service contracts. But
5 they're not selling their own service contracts.
6 They're selling the service contracts of the obligor,
7 the provider.

8 So with the legislature, the comments that
9 were made in the legislative history April 5th, 1999,
10 which is Exhibit 1 to our filing yesterday, said that
11 the administrator was the one who managed the program
12 behind the scenes. Administrators are not contractually
13 bound to provide the service, but made filings with the
14 state, oversaw the accounting of the program to ensure
15 financial standards were met.

16 THE COURT: And they're not required to get a
17 C -- COR, are they?

18 MS. AKRIDGE: No. COR --

19 THE COURT: Only the ones required to get the
20 COR are the providers; correct?

21 MS. AKRIDGE: That's correct, Your Honor.

22 THE COURT: And that's what my question is,
23 who is the real provider of the contracts in this
24 particular case? Was it Choice Home Warranty Group
25 rather than HWAN? Because if I'm reading the facts as

1 determined by the hearing officer, basically she's
2 saying, as I'm reading it, that HWAN basically was more
3 the administrator and they were not really a provider.

4 MS. AKRIDGE: No, Your Honor. The provider
5 definition basically says, this is 690C.070, that
6 defines a provider for purposes of the statute to mean,
7 quote, a person who is obligated to -- to a holder
8 pur- -- pursuant to the terms of the service contract.
9 That was always HWAN. HWAN was always the one that was
10 contractually liable to the holders of the service
11 contracts. It was never the -- CHW never acted in that
12 capacity. CHW always just performed the administrative
13 services on behalf of -- on behalf of HWAN. And there's
14 no obligation under the 690C for an administrator to
15 have any sort of (indiscernible) under the legis- --
16 under 690C that even referred to an administrator.

17 One is the definition of administrator, which
18 means a person who is responsible for administering a
19 service contract that is issued, sold, or offered for
20 sale by a provider. The next one is -- requires the
21 provider who is applying for a registration certificate
22 to -- under 690C.160, Section 1, Sub D, requires the
23 provider on the application to give the name, address,
24 and telephone number of each administrator with whom the
25 provider intends to contract. That's the only

Page 10

1 information, Your Honor, that the legislature said the
2 provider had to provide to the State of Nevada Insurance
3 Division about the administrator. No contract between
4 the administrator and the provider is required.

5 THE COURT: What about NRS 690C.150, says a
6 provider shall not issue, sell, or offer for sale
7 service contracts in the state unless the provider has
8 been issued a certificate of registration pursuant to
9 the provisions of this chapter.

10 Does that -- doesn't that mean that they're
11 the ones that are basically providing the contracts?

12 MS. AKRIDGE: Your Honor, that means that you
13 can't have a provider operating in the state selling
14 service contracts either -- either on its own behalf or
15 an administrator selling it as a sales agent for the
16 provider. You can't go doing that in the state without
17 a certificate of registration.

18 It's like, Your Honor, the case with an
19 insurer; right? Insurance companies have to be -- have
20 to have a certificate of regis- -- certificate of
21 authority under NRS 688.

22 As it turns out, sales agents for insurance
23 companies and administrators for insurance companies
24 have to be li- -- have to be registered and licensed
25 under Chapter 683A. None of those provisions provide --

1 apply in our case. There's no requirement whatsoever in
2 the Nevada insurance code for a sales agent for a
3 service contract provider or for administrator for a
4 service contract provider to have -- be any -- be
5 licensed at all.

6 I mean, think about it, Your Honor. It makes
7 no sense that you would have HWAN, who is the provider,
8 with the one with the registration, right, that has to
9 fulfill the financial requirements, and then also
10 require the administrator to meet the same require --
11 financial requirements and other requirements for the
12 same population of service contract providers. Your
13 Honor, it makes no sense.

14 You already have the legislature only
15 provided for that to be done by the service contract
16 provider, the one that's obligated to the holder, not
17 the -- not the administrator, the -- the mere seller of
18 the contract but not otherwise obligated.

19 THE COURT: The hearing officer in this
20 particular case basically found that Respondent HWAN was
21 fined under NRS 686A.183.1(a) for making a false entry
22 of material fact in a record or statement in violation
23 of NRS 686A.070. And the basis for that entire claim
24 was it listed itself as the administrator. That was the
25 finding by the hearing officer. Tell me why that's an

Page 12

1 incorrect determination.

2 MS. AKRIDGE: Well, that's an incorrect
3 determination because that -- there are a couple
4 reasons. One is the -- the Division knew that HWAN had
5 a separate administrator because --

6 THE COURT: Well, now you're making that
7 assumption. So let's -- let's --

8 MS. AKRIDGE: No, it's not an assumption,
9 Your Honor. They had a copy of the service contract
10 that we filed in 2011. They approved it. And the
11 service contracts had on there that CHW was the
12 administrator of the service contracts. So they knew
13 CHW was admin- -- they approved it.

14 THE COURT: But they still --

15 MS. AKRIDGE: Now that --

16 THE COURT: But why didn't they put that on
17 the form?

18 MS. AKRIDGE: Well, that's a mistake. Okay?
19 I can't tell you that -- I can't tell you that that
20 wasn't a mistake. It was kind of one of those things
21 that from year to year you make the mistake and it just
22 gets replicated from year to year. It was not
23 intentional. They didn't do it on purpose. It was
24 inadvertent.

25 THE COURT: Well, that's the basis for their

1 determination. I'm just telling you what the -- what it
2 said.

3 MS. AKRIDGE: Yeah. And I'm saying they
4 otherwise knew that CHW was our administrator because it
5 was in the approved contract that they -- service
6 contract that they approved. So they otherwise knew it
7 from that as well.

8 So, Your Honor, the other piece of -- of
9 information is the -- the procedure for reviewing
10 renewal applications, which is kind of a check-off list
11 that the Division used in processing renewal
12 applications for service contract providers. Even this
13 checklist says, Number 4, and this is Record Tab 35,
14 Exhibit CC, The company may or may not have a
15 third-party administrator. Third-party administrators
16 are not required to be registered for service contracts.
17 They specifically in their own checklist say that.

18 THE COURT: I don't -- I don't disagree with
19 you on that issue. I guess I'm going with what the
20 hearing officer held, and the hearing officer was --
21 again, I'm looking at her findings in regards to what it
22 basically said and indicated and was fined \$30,000
23 basically based upon the fact -- and I'm just talking
24 about the first determination made, \$30,000 based on the
25 fact that they failed to indicate who their

Page 14

1 administrator was and put self. So again --

2 MS. AKRIDGE: No, I understand.

3 THE COURT: And I understand what you're
4 saying. You're saying, well, they knew or they should
5 have known, but -- okay.

6 MS. AKRIDGE: Sir, the other mistake the --
7 one of the other mistakes the hearing officer made,
8 Your Honor, was the instance in which -- when -- which
9 the hearing officer ruled that the certificate of
10 registration of HWAN expired as a matter of law. And
11 this -- this is really a serious violation of HWAN's due
12 process rights as a licensee.

13 The reason, Your Honor, it's such a problem,
14 if you look at 690C.160, Number 3, which is the
15 provision that governs what has to be in the
16 application. Number 3 says, A certificate of
17 registration is valid for one year after the date -- the
18 date the commissioner issues the certificate to the
19 provider. Provider may renew his or her certificate of
20 registration if, before the certificate expires the
21 provider submits to the commissioner. And then it talks
22 about an application form and the fee.

23 So basically the -- the hearing officer's
24 saying that even though HWAN filed a renewal application
25 on November 7th, 2016, and their expiration date --

1 their one-year anniversary would have been 11/18/2016.
2 So even though -- so basically what they're -- what the
3 hearing officer is saying, that expired even though they
4 timely filed their renewal application. The Division
5 failed to -- the Division failed to tell them there was
6 any deficiency to the application, and wasn't until
7 eight months later they told them it had expired. But
8 in the meantime, they received other emails from the
9 Division, including an email on February 1st -- or the
10 Division says it sent this email on February 1st, we're
11 say -- we're saying we never received it.

12 But in this email, Mary Strong from the
13 Division says, The Division of Insurance is in the
14 process of reviewing the renewal application for Home
15 Warranty Administrators of Nevada doing business as
16 Choice Home Warranty.

17 THE COURT: Well, didn't -- didn't the
18 hearing officer state the Division failed to handle the
19 renewal application to respondent for November 7, 2016,
20 correctly? That's a determination by the hearing
21 officer.

22 MS. AKRIDGE: Yes. Exactly. Even she agreed
23 with that. But then she turned around in her order and
24 then she said it's expired. And the only way it can --
25 can expire, according to Nevada law and according to the

Page 16

1 Division's bulletin on this issue is -- which is
2 Exhibit 36, is if a renewal application is not timely
3 filed. That's the only way you can get an -- get an
4 expiration.

5 Otherwise, Your Honor, you're required under
6 690C.325, if you're not going to renew the application,
7 you have to give notice in a hearing to the registrant
8 and that hearing has to be held and then there has to be
9 a determination made. And none of that was done before
10 she said basically -- see, you can't -- you can't just
11 get the application and take no action on it and then
12 just wait for it to, quote, expire. That's not what --

13 THE COURT: What about her finding that
14 Respondent HWAN was fined \$500 pursuant to
15 NRS 690C.350.1 for failure to make its records available
16 for inspection. And I -- I'm just going through her
17 specific decisions --

18 MS. AKRIDGE: Right.

19 THE COURT: -- and what she said. And that's
20 the decision she made. And it was predicated upon the
21 fact that none of the documents were provided and
22 finally they had to be subpoenaed, if I'm not correct,
23 and as a result of that she fined them \$500.

24 MS. AKRIDGE: Right. So, Your Honor, what
25 she's saying on that one -- just a second. Let me find

1 my... sorry.

2 So what she's saying on that one is there's a
3 violation under 690C.320 for failure to make records
4 available. And she -- they're saying that they asked
5 for op- -- the open service contracts and financial
6 information showing reserves for these open -- for open
7 contracts.

8 The -- the one email I was mentioning,
9 Your Honor, with the February 1st email from Mary Strong
10 is the one we're saying we didn't receive. That's the
11 one where she said, I'm reviewing your renewal contract,
12 but we need copies of the open service. Your -- your --
13 we need copies of your service contracts that are still
14 open. And we -- so we didn't -- we're saying we didn't
15 receive that email. But in any event, with this one we
16 did end up giving the information to the Division.

17 THE COURT: Well, they say eventually they
18 got it and everything else and that, but it --

19 MS. AKRIDGE: Right. Right.

20 THE COURT: -- wasn't provided. And they
21 were fining you \$500 for failure to make it available.
22 I guess that's the way I read her decision.

23 MS. AKRIDGE: Right. Right. I agree.

24 THE COURT: What about -- and then this kind
25 of gets to the -- the harder issues in an issue that

Page 18

1 Respondent HWAN was fined \$50 for each act or violation
2 for conducting business in an unauthorized manner, which
3 is under the same statute that we're looking at,
4 NRS 690C.321B, by allowing an unregistered entity to
5 issue and offer service contracts in Nevada.

6 And I guess what she's saying is CHW Group
7 basically issued 23,890 contracts in Nevada and that
8 HWAN allowed them to do that without basically their
9 being registered. Now why is that not a violation?

10 MS. AKRIDGE: We'll, Your Honor, I don't
11 think she's saying CHW ever issued any contracts. I
12 think she's saying that CHW was the administrator, and
13 we let them be the administrator. And she's saying
14 that -- that's a violation because --

15 THE COURT: CHW is different than CHW Group.

16 MS. AKRIDGE: Well, CHW Group, right. But,
17 see, the confusion came because --

18 THE COURT: Well, there's a lot of confusion
19 in this case. And I will tell you it's -- there's a
20 significant amount because you have various legal
21 entities. One legal entity, obviously you have HWAN of
22 Nevada which is basically a separate legal entity.

23 MS. AKRIDGE: Right.

24 THE COURT: You have basically CHW Group
25 which is a separate legal entity.

1 MS. AKRIDGE: Yes.

2 THE COURT: But they're doing business as
3 Choice Home Warranty. And then the Division turns
4 around and requires basically --

5 MS. AKRIDGE: Yes.

6 THE COURT: -- the requirement --

7 MS. AKRIDGE: HWAN.

8 THE COURT: -- that HWAN --

9 MS. AKRIDGE: Yes.

10 THE COURT: -- do business as Choice Home
11 Warranty.

12 MS. AKRIDGE: Yes. I thought that created
13 even more confusion.

14 THE COURT: So -- so it creates extreme
15 amount of confusion --

16 MS. AKRIDGE: Yes.

17 THE COURT: -- in this case. A lot of the
18 confusion in this case is from both ends, from the
19 Division standpoint and from basically Home Warranty
20 Administrators too.

21 So I -- I'm back to -- I'm going through what
22 she decided. There's a lot of issues in her decision
23 that basically the bottom line of it, she made four
24 determinations at the end. That's what I'm looking at.
25 The determ- -- two of them we've gone through.

1 The third one basically, again, says
2 basically that, you know, HWAN should be fined for
3 basically allowing the unauthor- -- unauthorized manner
4 by allowing an unregistered entity to issue and offer
5 service contracts. They allowed basic -- CHW Group to
6 issue 23,890 contracts and that's her determination,
7 indicating essentially that they're the ones that issued
8 them and it should have been another entity, I guess.

9 MS. AKRIDGE: Well, I -- I'm not aware of any
10 evidence that CHW Group, Inc., ever was the obligor of
11 any service contracts issued in the state of Nevada.
12 Those were all under the registration of and issued by
13 the obligor HWAN, Your Honor.

14 So I think what she's saying is that even in
15 the administrative activities, they, CHW Group, Inc.,
16 was involved in, that that constituted -- and she --
17 there's -- they -- they argue the provision, Your Honor,
18 you started off with, NRS 690C.150, that a provider
19 shall not issue, sell, et cetera, but it doesn't -- but
20 they don't ever say that CHW Group, Inc., was the
21 obligor. I think they're saying that as the
22 administrator, they shouldn't allow -- they shouldn't be
23 allowed to be the sales agent for HWAN. They shouldn't
24 be allowed to administer claims, which is -- which is
25 all they were doing. CHW Group, Inc., was never the

1 obligor under any contract issued in Nevada. That's
2 never -- that's not even part of what the facts were in
3 the case. HWAN --

4 THE COURT: So you're saying the only one
5 that was obligated on those contracts was HWAN?

6 MS. AKRIDGE: That's correct, Your Honor.
7 And that's why -- because an administrator is not
8 required to be registered or licensed in any form or
9 fashion in this state, that decision --

10 THE COURT: So I don't disagree with you on
11 that. I don't think an administrator is required,
12 but --

13 MS. AKRIDGE: No. So that's why the decision
14 about under 690C.325 defined them for that activity is
15 just dead wrong.

16 And the other thing that is wrong about that
17 decision is that if you look at 690C.325 closely, what
18 it says is -- what its legislature is telling the
19 commissioner is, okay, you have tools in your
20 disciplinary toolbox. You can -- you can suspend, you
21 can revoke if you -- if there's this conduct here that
22 they're describing that someone engage -- that a
23 registered service contract provider engages in.

24 In lieu of revoking or suspending though,
25 Your Honor, you can -- you can assess all these fines

Page 22

1 under, one, in lieu of such suspension or revocation,
2 the commissioner may levy upon the provider and the
3 provider shall pay an administrative fine of not more
4 than \$1,000 for each act or violation.

5 In this case, Your Honor, the hearing officer
6 didn't give HWAN its license back and say, Okay, you can
7 go down the road now and still continue to have a
8 license in the state of Nevada. We're going to in lieu
9 of that, in lieu of jerking your license, we're going to
10 fine you all this money.

11 So my client ended up, under this section,
12 which is totally wrong, with a big fine, but still not
13 able to tran- -- you know, be licensed in the state
14 according to the original hearing officer. So that is
15 totally contra to what the legislature laid out in
16 690C.325, Your Honor. So that is a huge error.

17 THE COURT: Well, in her -- in her decision
18 under Number 4, she said if HWAN wishes to continue to
19 engage in business of service contracts in Nevada, they
20 must apply for a COR. And yet --

21 MS. AKRIDGE: They already had.

22 THE COURT: They already had one.

23 MS. AKRIDGE: They already had one, but they
24 wouldn't give it -- she wouldn't give it to them in this
25 order, Your Honor. She had to do one or the other. She

1 did both. She wouldn't give them the con- -- she
2 wouldn't give them their license. She said it expired,
3 and she assessed them a big fine.

4 The purpose of the fine in that form of
5 discipline is you can still discipline somebody because
6 of this bad stuff you say they did. But they can still
7 keep operating in the state. But you can't do both
8 under the statute.

9 THE COURT: I thought she made a
10 determination in her decision, and I'll ask Mr. Yien
11 about it, that basically that it was Choice Home
12 Warranty was the ones who were providing the contracts
13 in Nevada, but maybe I'm wrong.

14 MR. YIEN: They were issuing all the
15 contracts, Your Honor.

16 THE COURT: They were issuing all the
17 contracts.

18 MR. YIEN: That's correct. They were issuing
19 and selling contracts. HWAN, the petitioner, is the
20 one-person entity run by --

21 THE COURT: And that's Choice Home Warranty
22 Group was issuing all the contracts?

23 MR. YIEN: That's correct. They have a large
24 staff of people that sell, solicit, marketing, do all
25 the claims processing.

Page 24

1 THE COURT: See, and I thought that's what --

2 MS. AKRIDGE: As an administrative function,
3 they were handling all the administration, but they were
4 never the obligor. The service contractor -- service
5 contract specifically says only HWAN is the obligor,
6 Your Honor. Never says -- it says that Choice Home
7 Warranty is the administrator and HWAN is the obligor,
8 the provider. That's a distinction. They were just
9 handling sales activities like a sales -- like an
10 insurance -- insurance agent or administrator duties
11 such that an administrator does including adjusting, you
12 know, handling claims.

13 When they -- when Richard says they're
14 issuing the contracts, literally, they're not issuing
15 them on their own behalf. They're just doing that
16 administratively because they're running the back office
17 for HWAN, the obligor. That doesn't turn them into a
18 service contract provider. The service contract
19 provider is the one that's the obligor. That never
20 changed in any of the facts in this case.

21 THE COURT: Well, see, that's real confusing
22 because I'm not sure that's totally what she said or
23 determined. But go ahead.

24 MS. AKRIDGE: Right. So -- and that --
25 that's the other problem too, that none of this was

1 noticed originally when the -- when the Division sent
2 out its complaint and order to show cause.

3 So with respect to the fines, Your Honor,
4 it's our view that 690C.325 and 690C.330 can be
5 harmonized.

6 THE COURT: Well, let's talk about that a
7 little bit because I --

8 MS. AKRIDGE: Okay.

9 THE COURT: -- I read through the legislative
10 history and --

11 MS. AKRIDGE: Okay.

12 THE COURT: -- went through it and looked at
13 it and everything else. One of the interesting things
14 about the legislative history that I thought was
15 fascinating was that it does clearly indicate that
16 basically the -- prior to the adoption of 690C.30
17 basically -- 690 -- excuse me. Prior to the adoption of
18 NRS 690C.325, basically providers were being disciplined
19 and fined under 690C.330. And the legislative --

20 MS. AKRIDGE: Correct.

21 THE COURT: -- history says that's the
22 stat- -- they were doing it.

23 MS. AKRIDGE: Yes.

24 THE COURT: They were basically -- they
25 were -- they were fining them or whatever actions they

Page 26

1 were taking under that. It looks to me that
2 NRS 690C.325 was added basically to expand the authority
3 of the commission over -- over providers to allow
4 decisions to suspend, limit, or revoke a service
5 contract, so --

6 MS. AKRIDGE: Correct.

7 THE COURT: -- they expanded that.

8 MS. AKRIDGE: Yes.

9 THE COURT: My point being, I guess, and when
10 I was reading both, and then they raised the fine
11 capacity from 500 to 1,000.

12 MS. AKRIDGE: Correct.

13 THE COURT: But at no time did they ever
14 address the cap that's set forth in the original section
15 of 690C.330, and they never addressed the cap. They
16 never say anything about the cap. They never went back
17 to the cap. Never did anything in respect to that cap.
18 Yet we -- if you look under the definition of a
19 provider, it says it's a person. And I even went to
20 Black's Law Dictionary before you cited to that and it
21 says basically civil penalties. Fine, it's nothing but
22 a civil penalty.

23 MS. AKRIDGE: Right.

24 THE COURT: And so it's referring to the same
25 thing.

1 MS. AKRIDGE: Yes.

2 THE COURT: So the issue is whether or not
3 there was ever any legislative intent to do away with
4 the cap in regards to the additional actions that were
5 being allowed, I guess, under 690C.325. So that's the
6 issue and I've got it down, but --

7 MS. AKRIDGE: Right. And I think the cap
8 really only applies to -- it's to limit. If someone's
9 done multiple instances of the same conduct; right?
10 It's --

11 THE COURT: What about -- what about the
12 argument that -- that -- that basically HWAN, if it did
13 allow -- if it did allow basically the Choice Home
14 Warranty Group to sell policies and that, is that one
15 act by them or is that the 200 -- I mean, the 23,000
16 acts that were done by Choice Home Warranty Group
17 selling their policies? Is that one act or is that
18 23,000 acts that they should be fined?

19 MS. AKRIDGE: Right. Well, I would say it's
20 one act, Your Honor. It's -- it's one violation, you
21 know, that that was the case. I mean, and even if they
22 did, it's not a violation of Nevada law in any event
23 because they were allowed to hire an administrator to
24 run their business, to do the administrative task and be
25 the sales agent. There's nothing that says they

Page 28

1 couldn't do that.

2 THE COURT: What about your argument about
3 the statute of limitations in regards to NRS 11? I
4 looked at that. There's only a two-year statute of
5 limitations. I thought that was kind of -- I mean,
6 there are a lot of interesting arguments --

7 MS. AKRIDGE: Right.

8 THE COURT: -- that were raised.

9 MS. AKRIDGE: So that's our -- that's our
10 view, Your Honor, that NRS 11.190 Subsection 4(b)
11 provides to provide a statute of limitations for --
12 because it covers an action upon a statute or penalty or
13 forfeiture where the action is given to a person or a
14 state or both, except when the statute opposing it
15 prescribes a different limitation.

16 So that definitely applies in this situation.
17 So if some of these fines were going to be assessed, but
18 that statute of limitation should apply as should the
19 cap.

20 THE COURT: Do you think -- do you think that
21 HWAN and CHW are two entities or really one entity?

22 MS. AKRIDGE: No. They are definitely two
23 different entities, Your Honor. HWAN is a Nevada
24 corporation and CHW Group, Inc., is a New Jersey
25 corporation. They operate separately. They may have --

1 you know, they may do -- it's kind of like under the,
2 you know, Holding Company Act where you have insurance
3 companies contracting with affiliates to do certain --
4 certain tasks. I mean, that's all this, is they have
5 use -- they're using a related entity to perform
6 administrative services. There's nothing in Nevada law
7 that says there's anything wrong with that.

8 THE COURT: Do you think equitable estoppel
9 applies?

10 MS. AKRIDGE: Equitable estoppel?

11 THE COURT: Yeah. Do you think it's
12 applicable in this case? I mean, the argu- --

13 MS. AKRIDGE: I would say that the
14 State is --

15 THE COURT: Estopped to deny anything?

16 MS. AKRIDGE: I mean, possibly it could be --
17 it could apply, yeah.

18 THE COURT: Okay. Thank you.

19 MS. AKRIDGE: Thank you.

20 THE COURT: Mr. Yien, basically I -- I -- I
21 do believe that the Division isn't clean in this case,
22 so to speak. So tell me, there's just too many things
23 that just -- if you troop along -- why did the Division,
24 I guess, turn around and watch -- ask HWAN to file a
25 d/b/a as Choice Warranty?

1 MR. YIEN: So that the testimony from I
2 believe it was the chief of property and casualty, Rijat
3 Jane (phonetic), testified at the administrative hearing
4 that that Division at that time had been receiving
5 complaints from numerous Nevada consumers from an entity
6 called Choice Home Warranty. So they started
7 investigating Choice Home Warranty and found at some
8 point in time that Victor Mandalawi was connected to
9 Choice Home Warranty. They did not know who Choice Home
10 Warranty was, but they did connect that Victor Mandalawi
11 was president of HWAN, the petitioner.

12 At that point in time, I believe his
13 testimony was to reduce confusion, they wanted HWAN to
14 register as Choice Home Warranty because that's who
15 Victor Mandalawi told them they were one and the same.
16 They were unaware that there was a separate entity
17 called Choice Home Warranty Group doing business as
18 Choice Home Warranty at that point in time. It wasn't
19 revealed until the administrative hearing as a part of
20 their defense that they didn't have to disclose
21 disciplinary action against Choice Home Warranty Group
22 doing business as Choice.

23 THE COURT: In other states where they had
24 complaints filed and everything else against them;
25 right?

1 MR. YIEN: That's correct. And at that point
2 in time, they used the two entity defense to say, Hey,
3 we didn't have to disclose this in our applications
4 because that's a separate legal entity and we're not
5 responsible for their actions.

6 But, you know, on the same note, as Your
7 Honor was asking, it was revealed during the
8 administrative hearing from direct questioning from the
9 administrative hearing officer to the president of
10 petitioner, who's also the president of CHW Group doing
11 business at Choice Home Warranty, that there was only --
12 the petitioner is the one-person entity. And as Your
13 Honor had the question, the -- the rest of the staff
14 that does all of the issuing, marketing, selling, claims
15 processing, it's another entity called Choice --
16 CHW Group doing business as Choice Home Warranty.

17 THE COURT: If -- if -- if I'm -- getting
18 some feedback, and I don't know if it's because I'm on
19 the line --

20 COURT CLERK: I think it's on his phone.

21 THE COURT: Anyway, if I'm HWAN of Nevada and
22 basically -- and -- and isn't -- isn't the intent of the
23 registration to have the person basically who's selling
24 these -- these contracts to be registered?

25 MR. YIEN: That's correct. And so the

Page 32

1 statute is very clear. As you pointed out, NRS 690C.150
2 requires that a provider shall not issue, sell, or offer
3 for sale service contracts in the state unless the
4 provider has been issued a certificate of registration
5 pursuant to the provisions of this chapter. The words
6 "issue," "sell," and "offer for sale" appear in
7 Chapter 690C no fewer than seven times, and they always
8 point to the provider. Why? Because only a provider
9 can do these things.

10 THE COURT: So Choice Home Warranty Group
11 wasn't registered at all to sell anything in Nevada.

12 MR. YIEN: No.

13 THE COURT: Is that correct?

14 MR. YIEN: They're essentially doing the
15 functions of a provider. They're selling and issuing
16 contracts in Nevada, but they do not have a certificate
17 of registration to do so.

18 So the hearing officer's finding in Number 3
19 is correct because HWAN -- and this is an undisputed
20 fact. HWAN is a one-person entity. This is testified
21 by their own president that -- that they're allowing
22 CHWG Group to sell, issue, and offer for sale service
23 contracts in Nevada. And therefore, that's a sound
24 interpretation that they're violating the statute
25 because they admit -- CHWG Group admits buying through

1 its own principals that they do not have a certificate
2 of registration.

3 THE COURT: Is HWAN really basically, you
4 know, an administrator rather than a provider then? I
5 mean it's confusing. I mean it --

6 MR. YIEN: Right.

7 THE COURT: To me, how this ends up here,
8 somebody at the Insurance Division should have picked up
9 on this earlier somehow. I'm just -- I'm just saying
10 that it's confusing from that standpoint.

11 MR. YIEN: No. And it's confusing to the
12 Division too. And that's as a result of the
13 petitioner's only renewal applications. Every year they
14 say they're self-administered. That's why they always
15 believed they are one entity, even when Your Honor's
16 first question was, how did this all come to be where
17 they required them to register the d/b/a as Choice Home
18 Warranty. It was because they were receiving complaints
19 from Nevada consumers. And when they confronted
20 Mr. Mandalawi, he said they're one and the same. So the
21 confusion that the Division suffers from comes from the
22 petitioner's own actions.

23 THE COURT: And that's not even correct
24 because they're a separate legal entity.

25 MR. YIEN: Right.

1 THE COURT: Choice Home Warranty Group is a
2 separate legal entity, and they were the ones who were
3 doing business at Choice Home Warranty.

4 MR. YIEN: That's exactly right. And that's
5 exactly why, you know, as Ms. Akridge acknowledges
6 that's a mistake. I mean, she says they didn't
7 intentionally do it, but she acknowledges they
8 mistakenly, whether intentional or not --

9 THE COURT: List itself as -- yeah.

10 MR. YIEN: -- put itself as administrator.

11 THE COURT: Do you think that HWAN didn't
12 provide records for inspection when they were requested
13 as the hearing officer determined?

14 MR. YIEN: That's exactly correct. So they
15 submitted an application in 2016, and there were a few
16 blanks in that application. These are findings of fact.
17 And the regulators, the staff requested information that
18 they wanted to know the number of claims they had out
19 there to calculate their statutory deposit. They never
20 provided that. It wasn't until, as Your Honor points
21 out, that -- and at the beginning of the administrative
22 hearings, too, counsel requested that as well and still
23 they did not provide it. And it wasn't until subpoenas
24 were issued that petitioner finally provided those
25 statistics.

1 So the application from 2016 was never
2 complete until the -- the issuance of the subpoena, and
3 there the petitioner's compliance with that subpoena.
4 So the hearing officer's number two, fining them \$500
5 for failing to make records available, is sound as well.
6 It's based on a reasonable --

7 THE COURT: I'll ask you the same question
8 basically. Do you think that basically HWAN's allowing
9 Choice Home Warranty Group to sell in Nevada is one act
10 by them or 23,000 acts?

11 MR. YIEN: Well, the hearing officer
12 determines that each act -- each sale is HWAN allowing
13 their -- well, CHW Group who's selling and soliciting as
14 an individual act. There is no -- there is no aggregate
15 total in 325 that limits the ability of the insurance
16 regulator to assess --

17 THE COURT: What about the cap?

18 MR. YIEN: -- similar acts.

19 THE COURT: What about the cap in 629.330,
20 because I -- I --

21 MR. YIEN: Well --

22 THE COURT: -- I've spent some time on that.
23 Because I think that's probably a significant issue in
24 this case, because I think there's a rule. And the rule
25 is legislative statutes must be interpreted in

Page 36

1 pari materia, which means you have to give legal effect
2 to all of them so that they can be read in continuity.

3 And if you do that in this case, then the cap applies.

4 I -- I know you maybe disagree with that,
5 but it -- what's really -- again, what's really
6 interesting -- I'm not arguing. I'm just explaining
7 what I think -- what's really interesting to the Court
8 is back when the original legislation was changed in
9 2011, they talked about basically what the fine was to a
10 provider. And I read it and it went through, you
11 know -- you know, you can be fined 500. We need more
12 authority -- and I'm paraphrasing. But basically what
13 we really want is we want the ability to revoke,
14 suspend, and do some other things, so they added that.
15 Then they added -- they raised the fine to 1,000, but
16 they could just as easily at that point in time have
17 addressed the cap but nobody even bothered to even
18 mentioned or said anything about that cap; isn't that
19 correct?

20 MR. YIEN: That is correct. That's all part
21 of the legislative history in Your Honor's
22 understanding. But I would also point that the
23 legislative history also indicates that they wanted to
24 mirror that statute.

25 THE COURT: Yeah, I looked at the other -- I

1 looked at the other statute.

2 MR. YIEN: There's no cap there.

3 THE COURT: Yeah.

4 MR. YIEN: And that supports why that they
5 wanted to -- to expand the disciplinary power of the
6 commissioner.

7 And I would also point out that they use a
8 different phrase between 325 and 330 in that 325 applies
9 to licensees whereas 3 -- 330 applies to any persons.
10 And so I -- I believe that the distinction is made so
11 that 330 is a catchall to anybody who's operating
12 illegally in Nevada who's not a licensee. Therefore,
13 say the Division were to go after CHW Group doing
14 business as Choice Home Warranty for illegally selling
15 and issuing contracts in Nevada, NRS 690C.330 would
16 apply.

17 But I would say that the most convincing --
18 to address your question, the most convincing thing is
19 that the language mirrors the insurance statute. The
20 insurance statute has no cap.

21 THE COURT: What about the argument that
22 equitable estoppel should apply because the Division's
23 basically involvement, knowledge, and everything else
24 should basically preclude them going after HWAN?

25 MR. YIEN: Right. So there's two cases that

Page 38

1 we point out, Chanos where estoppel cannot prevent the
2 state from performing its government functions. But
3 let's just set that aside for a second and apply the --
4 the test for estoppel.

5 The first part of that test being that the
6 party being estopped needs to be apprised of the facts,
7 the true facts. And in this case, where the petitioner
8 actively conceals the very fact that it's trying to
9 assert the Division should have been aware, known about,
10 that's reason enough to say -- to put a stop to the
11 estoppel argument and that, you know, they actively
12 concealed the very fact that they're trying to say the
13 Division knew about this two-entity team, one being just
14 the licensee holder and then the other doing all of the
15 issuing and selling.

16 So if we were just to try -- if we were just
17 to try to figure out whether or not the Division was
18 aware of it, the fact that petitioner in its renewal
19 application every year indicates that it's
20 self-administered, how is the Division supposed to
21 ascertain that, that the true fact behind what's going
22 on and that --

23 THE COURT: Well --

24 MR. YIEN: -- therefore it fails on the first
25 part of the estoppel test?

1 THE COURT: Well, that --

2 MR. YIEN: The Division -- and there's no
3 finding of fact here that the Division ever approved
4 CHW Group doing business at Choice Home Warranty to
5 sell, solicit --

6 THE COURT: Well, that's -- that's -- that
7 was going to be my statement. There's no statement or
8 anything provided by the Division of which they could
9 rely upon where they were basically -- didn't have to
10 get registered or anything along those lines; right?

11 MR. YIEN: No. And it's supported by the
12 testimony from all of the witnesses, that we don't know
13 of this other entity. It wasn't until this
14 administrative hearing did that come to the attention of
15 the Division. And that was used as petitioner's defense
16 to say, Hey, we're not responsible for the acts of this
17 other group, this other group that has all this
18 disciplinary action in all these different states.

19 THE COURT: I do think that the Exhibits KK,
20 LL, and MM are -- are -- have some materiality, but I
21 don't think they change anything in the Court's view on
22 what it's going to do. But I'm just indicating that.

23 It's kind of interesting because you read the
24 notes and it says Choice Home Warranty -- there's some
25 language up there. But there -- I don't read any of

Page 40

1 that to come forth with any exact statement that would
2 allow HWAN to rely on under any circumstances, so I'm
3 making that finding as well.

4 MR. YIEN: Thank you, Your Honor.

5 THE COURT: Thank you. Okay. Anything
6 further?

7 MR. YIEN: No. Is there anything I haven't
8 addressed? I just wanted to make sure that --

9 THE COURT: What about the statute of
10 limitations under NRS 11, you didn't --

11 MR. YIEN: So yeah, they --

12 THE COURT: Please.

13 MR. YIEN: -- counsel or petitioner
14 continue -- you know, makes the distinguishment between
15 service contracts and the insurance chapters. That
16 falls under the insurance chapter, so it's inapplicable
17 to -- to -- to service contracts. I think that's what
18 our argument was. I believe that's what our argument
19 was.

20 THE COURT: Thank you.

21 MR. YIEN: All right. Thank you, Your Honor.

22 THE COURT: Back for any additional comment?

23 MS. AKRIDGE: Yes. Very briefly, Your Honor.
24 There -- I think it's clear that the Division knew that
25 Choice Home Warranty or CHW Group, Inc., was a separate

1 entity than HWAN. They knew it the day we filed the
2 service contract, which was in 2011, which specifically
3 says in here that --

4 THE COURT: But why -- but why in their
5 applications -- it would be so simple in their
6 applications to indicate the right people. And they
7 didn't.

8 MS. AKRIDGE: Well, this was part -- this was
9 part of their application and --

10 THE COURT: Well, there's -- there's a
11 reason.

12 MS. AKRIDGE: Well, it was a mistake,
13 Your Honor. It was just an inadvertent mistake.

14 THE COURT: It went on and on and on over a
15 series of years.

16 MS. AKRIDGE: It was one of those things
17 where you're filling -- you had somebody filling out
18 these applications and they just make -- you know, they
19 just -- the same mistake continues from one year to the
20 next. I've seen it happen before.

21 THE COURT: Okay.

22 MS. AKRIDGE: It was a prepopulated blank;
23 right? And so, you know, that's what happened. But at
24 no point did CHW Group, Inc., ever become the obligor of
25 any service contract issued in the state of Nevada.

Page 42

1 They only ever did administrative.

2 THE COURT: They're the ones that sold them
3 though.

4 MS. AKRIDGE: Selling them, Your Honor, as a
5 sales agent, much like an insurance agent sells an
6 insurance contract, doesn't make that sales agent the
7 obligor under an insurance contract; right? They're
8 just selling it as a sales agent. There's no obligation
9 for sales agents under NRS 690C or any of the other
10 provisions applicable --

11 THE COURT: Isn't --

12 MS. AKRIDGE: -- for sales agents or
13 administers to be licensed.

14 The Division -- the legislature knows how to
15 license sales agents and administrators. They do so on
16 behalf of insurers under Chapter 683A. That chapter
17 under NRS 690C.120, the applicability provision, is not
18 sucked into 690C.

19 THE COURT: But NRS 690C.070 says a provider
20 means a person who's obligated to a holder pursuant to
21 the terms of the service contract.

22 MS. AKRIDGE: Exactly. It's the obligor.

23 THE COURT: Okay.

24 MS. AKRIDGE: Your Honor. That's what I've
25 been saying all along.

1 THE COURT: But if you go over to 690C.150,
2 it says, The provider shall not issue, sell, or offer
3 for sale service contracts in the state unless the
4 provider has been issued a certificate of registration.

5 MS. AKRIDGE: Right. And that's offering
6 them -- issuing them as the obligor. Doesn't say they
7 can't use an administrator to do those tasks on its
8 own -- on its behalf.

9 And in this case, Your Honor, the Nevada
10 legislature, even though they know how to license
11 administrators and sales agents for insurance companies,
12 under 683 chose not to have that same statutory regiment
13 here because they wanted service contract providers that
14 the regulations -- with respect to service contract
15 providers be less onerous than insurers, that they're
16 trying to -- the Division is trying to add on all this
17 regulation that was never intended by the legislature.

18 THE COURT: But then --

19 MS. AKRIDGE: That's the problem.

20 THE COURT: -- let's go to the third finding
21 then by the hearing officer, which says basically for
22 conducting business in an unauthorized manner by
23 allowing an unregistered entity to issue and offer
24 service contracts. Isn't that -- isn't that what
25 happened?

Page 44

1 MS. AKRIDGE: No. That --

2 THE COURT: Didn't HWAN allow --

3 MS. AKRIDGE: They only did it not on -- not
4 on their behalf as the obligor, as the provider. They
5 did it as the administrator. And their own checklist
6 says the administrators don't have to be licensed. What
7 is the meaning of an administrator then? If -- if that
8 was the case, what does it -- what does an administrator
9 do under 690C? Then that term is completely
10 superfluous, Your Honor. But the legislature and the
11 legislative history and in -- under the service contract
12 provider Chapter 690C.020, says the administrator means
13 a person who's responsible for administering service
14 contract --

15 THE COURT: But -- but then you read 690C.020
16 and it says administrator means a person who's
17 responsible for administering a service contract that is
18 issued, sold, or offered for sale by a provider.

19 MS. AKRIDGE: Right. Because they're the
20 ones that can only do it because they're taking --
21 they're the ones who are posting the financial
22 wherewithal and are complying with the requirements
23 under 690C as the obligor.

24 MR. YIEN: That's right.

25 THE COURT: Yeah.

1 MR. YIEN: That's right.

2 MS. AKRIDGE: The service contract provider
3 is not -- the provider is not -- not the administrator.
4 The service contract provider.

5 THE COURT: You can't have it both ways.

6 MS. AKRIDGE: No. CHW Group was never the --
7 the provider, Your Honor. They were never the obligor.
8 That's the only thing, the only --

9 THE COURT: Well, if they were not a provider
10 and they were selling contracts in the state of Nevada,
11 aren't they in violation of the statute?

12 MS. AKRIDGE: No, Your Honor, because they're
13 selling them on behalf of a registered service contract
14 provider, HWAN. That's why. That's what this says.
15 Otherwise, why isn't the administrator required to be
16 licensed? They're not.

17 THE COURT: Well, they're not because the
18 provider of the contract's the one that basically --
19 administrator means the person responsible for
20 administering the contract has been, in fact, sold or
21 issued or offered for sale by a provider, yet in this
22 case you have H -- you have Choice Home Warranty Group
23 is the ones who are basically selling the contracts.
24 You don't think that's a violation?

25 MS. AKRIDGE: No, Your Honor, because they're

Page 46

1 not selling it as their own contract. They're selling
2 it as an administrator, a sales agent on behalf of a
3 registered obligor, service contract provider. That's
4 why.

5 THE COURT: I disagree. I'm sorry.

6 MS. AKRIDGE: That's what the legislature --
7 legislative history said, the administrator is the one
8 who managed the program behind the scenes.

9 THE COURT: But again, but an administrator
10 cannot sell the policies.

11 MS. AKRIDGE: No. They're selling it on
12 behalf of the obligor. There -- there was never --
13 there was never a case that was --

14 THE COURT: You're missing the point.

15 MS. AKRIDGE: -- administrator has to be
16 registered.

17 THE COURT: Mr. Yien, am I out to lunch or
18 what?

19 MR. YIEN: No, Your Honor. Your Honor is
20 exactly right. And only -- per counsel's own words,
21 only a provider can issue, sell, or offer for sale --

22 THE COURT: Correct.

23 MR. YIEN: -- service contracts. The reason
24 behind that is because they're the ones that have posted
25 the financial security.

1 THE COURT: And they're the ones that have to
2 get the C- -- COR.

3 MR. YIEN: That's exactly correct. And the
4 Hearing Officer Emmermann's conclusion that the way they
5 want us to read the statute is that anybody who's not a
6 provider can issue, sell, or offer for sale. And it
7 nullifies the entirety of 690C. If you're going to read
8 it that way, it just doesn't make any sense. It doesn't
9 accomplish any of the rationale that the legislature
10 intended 690C to apply to.

11 THE COURT: Thank you.

12 MS. AKRIDGE: Let me see.

13 THE COURT: Well, again, thank you. What's
14 going to happen in this particular case is going to
15 happen as follows. It's my understanding that basically
16 HWAN of Nevada, in regards to their current
17 registration, where do they stand in regards to the
18 current registration? Because the hearing officer did
19 not disallow their registration, the way I read it. She
20 basically allowed them to continue to be registered in
21 Nevada; is that correct?

22 MS. AKRIDGE: No, she did not. No. She said
23 it was expired. She said they could apply for -- they
24 could file a renewal application. That was it. She
25 didn't say they were in and they could continue to

Page 48

1 operate.

2 THE COURT: Well, but she also clearly made,
3 and I think she clearly said that the Division didn't
4 handle that correctly and --

5 MS. AKRIDGE: Right.

6 THE COURT: -- and I think that's wrong.

7 MS. AKRIDGE: She said it was expired.

8 THE COURT: Well, this is going to be the
9 decision of the Court in this particular case. I think
10 the hearing officer was absolutely correct in regards to
11 decision number one, that HWAN should be fined under
12 NRS 686A.185.1(a) for making false entry of material
13 fact in a record or statement in violation NRS 686A.070
14 when it continues to list itself as the administrator
15 when it clearly knew that it was not the administrator
16 in respect to this particular matter. So I think that's
17 a correct determination by the hearing officer.

18 In regards to Respondent HWAN being fined
19 \$500 pursuant to NRS 690C.325.1, failure to make its
20 records available for inspection, again, I think the
21 hearing officer was correct. I think that's a
22 violation. I'm upholding the hearing officer in regards
23 to that.

24 I also think the hearing officer correctly
25 determined that HWAN should be fined for basically

1 allowing Choice Home Warranty Group to an unau- --
2 unregistered entity to issue and sell service contracts
3 in Nevada. Because I think whoever issues or sells
4 those service contracts in Nevada is the provider, and
5 the provider has to be licensed in respect to get a
6 certificate of registration to some extent in regards to
7 that.

8 However, I do -- don't believe -- I believe
9 that basically under NRS 690C.325 that basically there's
10 a limitation in regards to the amount that -- I think
11 the cap applies is what I'm saying, NRS 690C.330. I
12 think the cap applies so that there's a cap of \$10,000
13 that should only be applied in regards to the fines in
14 regards to that. Not one million, two hundred and -- I
15 wrote down the amount. 1,224,000, et al., shouldn't
16 have been the fine. The fine should only have been up
17 to a cap of 10,000 in respect to this particular matter.

18 And as a result of that, I'm making a
19 determination that this Court will refund the moneys
20 that had been deposited over and above that particular
21 amount in regards to that. I think that's the fair
22 thing to do in regards to that.

23 Additionally, I think that I want the
24 Division -- I think the Division messed up in regards
25 to -- the Division's not clean in this. I really don't.

Page 50

1 But I think that basically HWAN of Nevada should be able
2 to be registered, continue to be registered. I think
3 it's got to be cleared up in regards to who's issuing
4 and selling these contracts in the state of Nevada in
5 regards to that. So I'm allowing basically them to --
6 to reversing if I have to. I'm not sure I have to --
7 the hearing officer in regards to -- she basically
8 said -- the hearing officer said that -- the following
9 language which was -- wishes to -- if HWAN wishes to
10 continue engaging in business in Nevada, it must apply
11 for a C- -- COR. Basically I'm saying it can recontinue
12 on with the C- -- COR without losing any break in its
13 service or anything else, because I think the Division
14 should have allowed that. I think the Division was
15 wrong.

16 Am I making sense?

17 MS. AKRIDGE: Yes. Absolute sense. Thank
18 you, Your Honor.

19 MR. YIEN: Your Honor, so since the time of
20 this order, the petitioner complied and they did
21 submit --

22 THE COURT: So they're all in compliance, so
23 that would -- that would take care of the issue, I
24 guess.

25 MR. YIEN: But -- but they complied in the

1 sense that they submitted a -- and this is at issue in
2 the subsequent --

3 THE COURT: Okay.

4 MS. AKRIDGE: -- PJR too.

5 MR. YIEN: Right. That -- that the
6 petitioner complied with it, but the Nevada Division of
7 Insurance denied that application for some of the
8 reasons contained here, but also for a new reason as
9 well. That's the subject of a PJR. So I'm only saying
10 this to you because that's at issue in another case.

11 THE COURT: Well, we'll have to deal with
12 that in another one. But take this order of what the
13 Court's view is and see if we can't resolve the other
14 one. You two can talk and see where you are in regards
15 to that.

16 My intent is that -- that basically I don't
17 think the Division is clean in all this either. So as a
18 result of that, I -- I think that they should be treated
19 fairly and basically have the ability -- once they --
20 these fines have all been paid and everything else to
21 operate, provided that, again, I think that if you're a
22 provider and if Choice Home Warranty Group is the
23 provider, they need to file a COR. They need to be --
24 do that. That's the way I read the statutes.

25 MS. AKRIDGE: Understood, Your Honor.

Page 52

1 THE COURT: Get it done.

2 MR. YIEN: I want to clarify then that --
3 that this allowance to allow the petitioner to continue
4 to operate in Nevada is conditional upon their
5 administrator being licensed as well.

6 THE COURT: Well, that's the way I think. I
7 think if the administrator is selling policies, then
8 that's what's going to happen.

9 Now, Mr. Yien you're going to prepare the
10 order for the Court.

11 MR. YIEN: Yes, Your Honor.

12 THE COURT: I'm affirming in part and
13 reversing in part is what I'm really doing. You two can
14 talk and --

15 MS. AKRIDGE: They can run it by us as well,
16 Your Honor.

17 THE COURT: Absolutely.

18 MS. AKRIDGE: Okay.

19 THE COURT: Look at it in respect to this
20 matter. I want to tell you, this has been one of the
21 most complicated administrative law cases I have ever
22 dealt with. You have no idea how much time and effort I
23 have spent on trying to figure out who's on first and
24 who's on second in respect to this matter. And again,
25 I'm blaming both parties. I'm not just blaming one.

1 I'm blaming both. Because the bottom line from the
2 court's standpoint is basically I think HWAN, if they're
3 registered as a COR, they need to basically -- they
4 can't -- only a C- -- COR can offer to sell, issue, or
5 whatever in the State of Nevada. So they -- you need to
6 clean up how they're -- they're licensed how they take
7 place and we go from there.

8 MR. YIEN: Okay. It's understood,
9 Your Honor.

10 THE COURT: Okay.

11 MS. GAMBEE: Your Honor, to clarify one --
12 one bit there. So it's the sales activity, correct, but
13 not the fact that the administrator itself needs to be
14 registered, just the sales part?

15 THE COURT: An administrator does not have to
16 be licensed. But if the administrator, as in this case,
17 is selling, offer to sale, or issuing, then they have to
18 have a COR.

19 MS. GAMBEE: Understood.

20 THE COURT: That's clear.

21 MS. AKRIDGE: Okay.

22 MR. YIEN: Yes, Your Honor. I understand.
23 And certainly thank you for your efforts to unravel all
24 this. It was -- I believe it was a headache for both of
25 us as well.

Page 54

1 MS. AKRIDGE: Thank you, Your Honor, for all
2 the time you spent. We appreciate your diligence.

3 THE COURT: You have no idea. Thank you.
4 The court will be in recess.

5 MS. AKRIDGE: Thank you.

6 (Hearing concluded at 3:33 p.m.)

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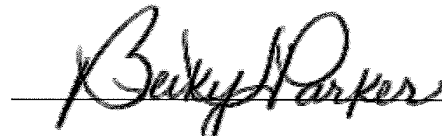
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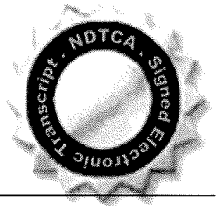
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C E R T I F I C A T E

I, BECKY J. PARKER, do hereby certify
that the foregoing pages constitute a full, true, and
accurate transcript of the digital recording, all
transcribed to the best of my skill and ability.

WITNESS my hand this 25th day of
November, 2019.





BECKY J. PARKER, RPR, CCR

Nevada Certified Court Reporter No. 934

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ability (5) 7:8 35:15 36:13 51:19 55:6 able (3) 7:25 22:13 50:1 Absolute (1) 50:17 absolutely (2) 48:10 52:17 abused (1) 5:16 accidental (1) 6:13 accomplish (1) 47:9 accounting (1) 8:14 accurate (1) 55:5 acknowledges (2) 34:5,7 act (9) 18:1 22:4 27:15,17,20 29:2 35:9,12,14 acted (1) 9:11 action (5) 16:11 28:12,13 30:21 39:18 actions (4) 25:25 27:4 31:5 33:22 actively (2) 38:8,11 activities (2) 20:15 24:9 activity (2) 21:14 53:12 acts (5) 27:16,18 35:10,18 39:16 add (1) 43:16 added (3) 26:2 36:14,15 additional (2) 27:4 40:22	Additionally (1) 49:23 address (3) 9:23 26:14 37:18 addressed (3) 26:15 36:17 40:8 adjudicated (2) 4:18,22 adjusting (1) 24:11 admin- (1) 12:13 administer (1) 20:24 administering (4) 9:18 44:13,17 45:20 administers (1) 42:13 administration (1) 24:3 administrative (18) 1:9 4:5 5:10 8:3 9:12 20:15 22:3 24:2 27:24 29:6 30:3,19 31:8,9 34:21 39:14 42:1 52:21 administratively (1) 24:16 administrator (56) 1:4 3:7 4:2 5:2,3 7:13 8:2,11 9:3,14,16,17 9:24 10:3,4,15 11:3 11:10,17,24 12:5,12 13:4,15 14:1 18:12 18:13 20:22 21:7,11 24:7,10,11 27:23 33:4 34:10 43:7 44:5,7,8,12,16 45:3 45:15,19 46:2,7,9,15 48:14,15 52:5,7 53:13,15,16 administrators (8) 8:12 10:23 13:15 15:15 19:20 42:15 43:11 44:6 admit (1) 32:25 admits (1)	32:25 adoption (2) 25:16,17 affiliates (1) 29:3 affirming (1) 52:12 agency (1) 1:9 agent (10) 10:15 11:2 20:23 24:10 27:25 42:5,5 42:6,8 46:2 agents (5) 10:22 42:9,12,15 43:11 aggregate (1) 35:14 agree (1) 17:23 agreed (1) 15:22 ahead (1) 24:23 Akridge (91) 2:4 3:10,23,25 7:1,3 7:18 8:18,21 9:4 10:12 12:2,8,15,18 13:3 14:2,6 15:22 16:18,24 17:19,23 18:10,16,23 19:1,5,7 19:9,12,16 20:9 21:6,13 22:21,23 24:2,24 25:8,11,20 25:23 26:6,8,12,23 27:1,7,19 28:7,9,22 29:10,13,16,19 34:5 40:23 41:8,12,16,22 42:4,12,22,24 43:5 43:19 44:1,3,19 45:2,6,12,25 46:6,11 46:15 47:12,22 48:5 48:7 50:17 51:4,25 52:15,18 53:21 54:1 54:5 al (1) 49:15 alleged (4)	4:18,19,21 5:6 alleging (1) 4:10 allow (7) 20:22 26:3 27:13,13 40:2 44:2 52:3 allowance (1) 52:3 allowed (8) 18:8 20:5,23,24 27:5 27:23 47:20 50:14 allowing (9) 18:4 20:3,4 32:21 35:8,12 43:23 49:1 50:5 amended (1) 4:16 amount (5) 18:20 19:15 49:10,15 49:21 anniversary (1) 15:1 answer (1) 3:20 anybody (2) 37:11 47:5 Anyway (1) 31:21 appealing (1) 4:4 appear (1) 32:6 APPEARANCES (1) 2:1 applicability (1) 42:17 applicable (3) 5:8 29:12 42:10 application (19) 5:3 9:23 14:16,22,24 15:4,6,14,19 16:2,6 16:11 34:15,16 35:1 38:19 41:9 47:24 51:7 applications (7) 13:10,12 31:3 33:13 41:5,6,18 applied (2)

5:17 49:13 applies (9) 6:10 27:8 28:16 29:9 36:3 37:8,9 49:11 49:12 apply (10) 11:1 22:20 28:18 29:17 37:16,22 38:3 47:10,23 50:10 applying (2) 5:9 9:21 appreciate (2) 3:22 54:2 apprised (1) 38:6 approved (5) 12:10,13 13:5,6 39:3 April (1) 8:9 argu- (1) 29:12 argue (1) 20:17 arguing (1) 36:6 argument (7) 3:15 27:12 28:2 37:21 38:11 40:18,18 arguments (1) 28:6 ascertain (1) 38:21 aside (1) 38:3 asked (1) 17:4 asking (2) 4:11 31:7 assert (1) 38:9 assess (2) 21:25 35:16 assessed (3) 5:7 23:3 28:17 assumption (2) 12:7,8 attention (1) 39:14	Attorney (2) 2:9,10 authority (5) 5:15,17 10:21 26:2 36:12 available (5) 16:15 17:4,21 35:5 48:20 aware (3) 20:9 38:9,18 <hr/> B <hr/> B (1) 6:10 back (6) 19:21 22:6 24:16 26:16 36:8 40:22 bad (1) 23:6 based (4) 4:24 13:23,24 35:6 basic (1) 20:5 basically (59) 6:24 7:12,21 9:1,2,5 10:11 11:20 13:22 13:23 14:23 15:2 16:10 18:7,8,22,24 19:4,19,23 20:1,2,3 23:11 25:16,17,18 25:24 26:2,21 27:12 27:13 29:20 31:22 31:23 33:3 35:8,8 36:9,12 37:23,24 39:9 43:21 45:18,23 47:15,20 48:25 49:9 49:9 50:1,5,7,11 51:16,19 53:2,3 basis (2) 11:23 12:25 Becky (3) 1:24 55:3,13 beginning (1) 34:21 behalf (13) 3:9,10 4:1 9:13,13 10:14 24:15 42:16 43:8 44:4 45:13	46:2,12 believe (8) 29:21 30:2,12 37:10 40:18 49:8,8 53:24 believed (1) 33:15 best (1) 55:6 big (2) 22:12 23:3 bit (2) 25:7 53:12 Black's (1) 26:20 blaming (3) 52:25,25 53:1 blank (1) 41:22 blanks (1) 34:16 bothered (1) 36:17 bottom (2) 19:23 53:1 bound (1) 8:13 break (1) 50:12 BRIAN (1) 2:14 briefly (1) 40:23 bulletin (1) 16:1 business (18) 1:8 3:8 6:21 15:15 18:2 19:2,10 22:19 27:24 30:17,22 31:11,16 34:3 37:14 39:4 43:22 50:10 buying (1) 32:25 <hr/> C <hr/> C (3) 8:17 55:1,1 C- (4) 47:2 50:11,12 53:4	calculate (1) 34:19 called (3) 30:6,17 31:15 cap (19) 26:14,15,16,17,17 27:4,7 28:19 35:17 35:19 36:3,17,18 37:2,20 49:11,12,12 49:17 capacity (2) 9:12 26:11 care (1) 50:23 Carson (5) 1:2,15 2:11,11 3:1 case (28) 1:7 3:6,21 6:18 8:24 10:18 11:1,20 18:19 19:17,18 21:3 22:5 24:20 27:21 29:12 29:21 35:24 36:3 38:7 43:9 44:8 45:22 46:13 47:14 48:9 51:10 53:16 cases (2) 37:25 52:21 casualty (1) 30:2 catchall (1) 37:11 cause (2) 4:10 25:2 CC (1) 13:14 CCR (2) 1:24 55:13 certain (2) 29:3,4 certainly (1) 53:23 certificate (16) 4:12 9:21 10:8,17,20 10:20 14:9,16,18,19 14:20 32:4,16 33:1 43:4 49:6 Certified (2) 1:24 55:14
---	---	--	---

certify (1) 55:3 cetera (1) 20:19 challenged (1) 4:8 change (1) 39:21 changed (2) 24:20 36:8 Chanos (1) 38:1 chapter (9) 5:16 10:9,25 32:5,7 40:16 42:16,16 44:12 chapters (1) 40:15 check-off (1) 13:10 checklist (3) 13:13,17 44:5 chief (1) 30:2 Choice (38) 1:4 3:7 7:14,15 8:24 15:16 19:3,10 23:11 23:21 24:6 27:13,16 29:25 30:6,7,9,14 30:17,18,21,22 31:11,15,16 32:10 33:17 34:1,3 35:9 37:14 39:4,24 40:25 45:22 49:1 51:22 chose (1) 43:12 CHW (28) 5:2 9:11,12 12:11,13 13:4 18:6,11,12,15 18:15,16,24 20:5,10 20:15,20,25 28:21 28:24 31:10,16 35:13 37:13 39:4 40:25 41:24 45:6 CHWG (2) 32:22,25 circumstances (1) 40:2	cited (1) 26:20 City (4) 1:2,15 2:11 3:1 civil (2) 26:21,22 claim (1) 11:23 claims (7) 7:9,25 20:24 23:25 24:12 31:14 34:18 clarify (2) 52:2 53:11 clean (4) 29:21 49:25 51:17 53:6 clear (4) 6:17 32:1 40:24 53:20 cleared (1) 50:3 clearly (4) 25:15 48:2,3,15 CLERK (1) 31:20 client (1) 22:11 closely (1) 21:17 code (2) 5:9 11:2 come (3) 33:16 39:14 40:1 comes (1) 33:21 comment (1) 40:22 comments (1) 8:8 commission (1) 26:3 commissioner (5) 14:18,21 21:19 22:2 37:6 companies (5) 10:19,23,23 29:3 43:11 company (2) 13:14 29:2	complaint (6) 4:9,16,16,18,22 25:2 complaints (3) 30:5,24 33:18 complete (1) 35:2 completely (1) 44:9 compliance (2) 35:3 50:22 complicated (1) 52:21 complied (3) 50:20,25 51:6 complying (1) 44:22 con- (1) 23:1 concealed (1) 38:12 conceals (1) 38:8 concluded (1) 54:6 conclusion (1) 47:4 conditional (1) 52:4 conduct (2) 21:21 27:9 conducting (2) 18:2 43:22 confronted (1) 33:19 confusing (4) 24:21 33:5,10,11 confusion (7) 18:17,18 19:13,15,18 30:13 33:21 connect (1) 30:10 connected (1) 30:8 consideration (1) 6:2 Constance (2) 2:4 3:10 constitute (1)	55:4 constituted (1) 20:16 constitution (1) 5:21 consumers (2) 30:5 33:19 contained (1) 51:8 contains (1) 4:14 continue (8) 22:7,18 40:14 47:20 47:25 50:2,10 52:3 continues (2) 41:19 48:14 continuity (1) 36:2 contra (1) 22:15 contract (49) 5:5,18,24,25,25 6:6 6:10,16,19,21 7:6,22 8:1 9:8,19,25 10:3 11:3,4,12,15,18 12:9 13:5,6,12 17:11 21:1,23 24:5,18,18 26:5 41:2,25 42:6,7 42:21 43:13,14 44:11,14,17 45:2,4 45:13,20 46:1,3 contract's (1) 45:18 contracted (1) 8:3 contracting (1) 29:3 contractor (1) 24:4 contracts (47) 4:20 6:14,25 7:9 8:4,5 8:6,23 9:11 10:7,11 10:14 12:11,12 13:16 17:5,7,13 18:5,7,11 20:5,6,11 21:5 22:19 23:12,15 23:17,19,22 24:14 31:24 32:3,16,23
--	---	--	--

37:15 40:15,17 43:3 43:24 45:10,23 46:23 49:2,4 50:4 contractually (2) 8:12 9:10 convincing (2) 37:17,18 copies (2) 17:12,13 copy (1) 12:9 COR (11) 8:17,18,20 22:20 47:2 50:11,12 51:23 53:3 53:4,18 corporation (3) 1:5 28:24,25 correct (27) 7:1,2,3 8:20,21 16:22 21:6 23:18,23 25:20 26:6,12 31:1,25 32:13,19 33:23 34:14 36:19,20 46:22 47:3,21 48:10 48:17,21 53:12 correctly (3) 15:20 48:4,24 cost (1) 6:4 counsel (2) 34:22 40:13 counsel's (1) 46:20 couple (1) 12:3 court (135) 1:1,24 3:5,13 6:23 7:2 7:11 8:16,19,22 10:5 11:19 12:6,14 12:16,25 13:18 14:3 15:17 16:13,19 17:17,20,24 18:15 18:18,24 19:2,6,8,10 19:14,17 21:4,10 22:17,22 23:9,16,21 24:1,21 25:6,9,12,21 25:24 26:7,9,13,24 27:2,11 28:2,8,20	29:8,11,15,18,20 30:23 31:17,20,21 32:10,13 33:3,7,23 34:1,9,11 35:7,17,19 35:22 36:7,25 37:3 37:21 38:23 39:1,6 39:19 40:5,9,12,20 40:22 41:4,10,14,21 42:2,11,19,23 43:1 43:18,20 44:2,15,25 45:5,9,17 46:5,9,14 46:17,22 47:1,11,13 48:2,6,8,9 49:19 50:22 51:3,11 52:1 52:6,10,12,17,19 53:10,15,20 54:3,4 55:14 court's (3) 39:21 51:13 53:2 covers (1) 28:12 created (1) 19:12 creates (1) 19:14 creating (1) 5:17 current (2) 47:16,18 <hr/> D <hr/> D (1) 9:22 d/b/a (3) 3:7 29:25 33:17 damage (1) 6:13 damages (1) 6:12 date (3) 14:17,18,25 day (2) 41:1 55:7 dba (1) 1:4 dead (1) 21:15 deal (1)	51:11 dealt (1) 52:22 December (1) 4:5 decided (1) 19:22 decision (11) 4:5 16:20 17:22 19:22 21:9,13,17 22:17 23:10 48:9,11 decisions (3) 5:10 16:17 26:4 defect (1) 6:8 defense (3) 30:20 31:2 39:15 deficiency (1) 15:6 defined (1) 21:14 defines (2) 5:25 9:6 definitely (2) 28:16,22 definition (3) 9:5,17 26:18 denied (1) 51:7 deny (1) 29:15 Department (2) 1:8 3:8 deposit (1) 34:19 deposited (1) 49:20 DEPUTY (1) 2:9 described (1) 6:6 describing (1) 21:22 determ- (1) 19:25 determination (10) 12:1,3 13:1,24 15:20 16:9 20:6 23:10	48:17 49:19 determinations (1) 19:24 determined (4) 9:1 24:23 34:13 48:25 determines (1) 35:12 Dictionary (1) 26:20 different (5) 18:15 28:15,23 37:8 39:18 digital (1) 55:5 diligence (1) 54:2 direct (1) 31:8 disagree (4) 13:18 21:10 36:4 46:5 disallow (1) 47:19 disciplinary (4) 21:20 30:21 37:5 39:18 discipline (2) 23:5,5 disciplined (1) 25:18 disclose (3) 5:5 30:20 31:3 discourage (1) 6:20 distinction (3) 7:21 24:8 37:10 distinguishment (1) 40:14 DISTRICT (1) 1:1 Division (46) 1:8 3:9 4:6,10,19,21 5:15 10:3 12:4 13:11 15:4,5,9,10,13 15:13,18 17:16 19:3 19:19 25:1 29:21,23 30:4 33:8,12,21 37:13 38:9,13,17,20 39:2,3,8,15 40:24
--	---	---	---

42:14 43:16 48:3 49:24,24 50:13,14 51:6,17 Division's (11) 4:7,8,14,24 5:7,12,13 5:22 16:1 37:22 49:25 documents (1) 16:21 doing (16) 10:16 15:15 19:2 20:25 24:15 25:22 30:17,22 31:10,16 32:14 34:3 37:13 38:14 39:4 52:13 Drive (1) 2:5 due (2) 5:19 14:11 duties (1) 24:10	22:11 ends (2) 19:18 33:7 engage (2) 21:22 22:19 engages (1) 21:23 engaging (1) 50:10 ensure (1) 8:14 entire (1) 11:23 entirety (1) 47:7 entities (3) 18:21 28:21,23 entity (23) 18:4,21,22,25 20:4,8 23:20 28:21 29:5 30:5,16 31:2,4,12,15 32:20 33:15,24 34:2 39:13 41:1 43:23 49:2 entry (2) 11:21 48:12 equitable (3) 29:8,10 37:22 error (1) 22:16 essentially (2) 20:7 32:14 estopped (2) 29:15 38:6 estoppel (7) 29:8,10 37:22 38:1,4 38:11,25 et (2) 20:19 49:15 event (2) 17:15 27:22 eventually (1) 17:17 evidence (1) 20:10 exact (1) 40:1 exactly (7)	15:22 34:4,5,14 42:22 46:20 47:3 exceeding (1) 5:15 exchange (1) 6:1 excuse (1) 25:17 Exhibit (3) 8:10 13:14 16:2 Exhibits (1) 39:19 expand (2) 26:2 37:5 expanded (1) 26:7 expiration (2) 14:25 16:4 expire (2) 15:25 16:12 expired (7) 14:10 15:3,7,24 23:2 47:23 48:7 expires (1) 14:20 explain (1) 5:8 explaining (1) 36:6 extent (1) 49:6 extreme (1) 19:14	5:5 35:5 fails (1) 38:24 failure (6) 4:20 6:7 16:15 17:3 17:21 48:19 fair (1) 49:21 fairly (1) 51:19 falls (1) 40:16 false (2) 11:21 48:12 fascinating (1) 25:15 fashion (1) 21:9 favor (2) 4:19,22 February (3) 15:9,10 17:9 fee (1) 14:22 feedback (1) 31:18 fewer (1) 32:7 figure (2) 38:17 52:23 file (3) 29:24 47:24 51:23 filed (9) 4:4,10,16 12:10 14:24 15:4 16:3 30:24 41:1 filing (1) 8:10 filings (1) 8:13 filling (2) 41:17,17 finally (2) 16:22 34:24 financial (9) 7:7,8,23 8:15 11:9,11 17:5 44:21 46:25 find (1)
<hr/> E <hr/>			
E (2) 55:1,1 earlier (1) 33:9 easily (1) 36:16 effect (1) 36:1 effort (1) 52:22 efforts (1) 53:23 eight (1) 15:7 either (3) 10:14,14 51:17 electronic (1) 1:20 email (6) 15:9,10,12 17:8,9,15 emails (1) 15:8 Emmermann's (1) 47:4 ended (1)			
		<hr/> F <hr/>	
		F (1) 55:1 fact (15) 4:17 11:22 13:23,25 16:21 32:20 34:16 38:8,12,18,21 39:3 45:20 48:13 53:13 facts (6) 7:12 8:25 21:2 24:20 38:6,7 failed (5) 5:19 13:25 15:5,5,18 failing (2)	

16:25 finding (6) 11:25 16:13 32:18 39:3 40:3 43:20 findings (3) 4:15 13:21 34:16 fine (11) 22:3,10,12 23:3,4 26:10,21 36:9,15 49:16,16 fined (12) 11:21 13:22 16:14,23 18:1 20:2 25:19 27:18 36:11 48:11 48:18,25 fines (7) 4:24 5:7 21:25 25:3 28:17 49:13 51:20 fining (3) 17:21 25:25 35:4 first (7) 1:1 3:16 13:24 33:16 38:5,24 52:23 Floor (1) 2:5 following (1) 50:8 follows (1) 47:15 foregoing (1) 55:4 forfeiture (1) 28:13 form (4) 12:17 14:22 21:8 23:4 forms (1) 5:3 forth (2) 26:14 40:1 found (2) 11:20 30:7 four (1) 19:23 fulfill (1) 11:9 full (1) 55:4 function (1)	24:2 functions (2) 32:15 38:2 further (1) 40:6 <hr/> G <hr/> GAMBEE (3) 2:4 53:11,19 General (2) 2:9,10 getting (1) 31:17 give (8) 9:23 16:7 22:6,24,24 23:1,2 36:1 given (1) 28:13 giving (1) 17:16 go (8) 5:6 10:16 22:7 24:23 37:13 43:1,20 53:7 going (18) 3:18 13:19 16:6,16 19:21 22:8,9 28:17 37:24 38:21 39:7,22 47:7,14,14 48:8 52:8,9 Good (1) 3:13 goods (2) 6:5,12 government (1) 38:2 governs (1) 14:15 group (36) 5:2 7:15 8:24 18:6,15 18:16,24 20:5,10,15 20:20,25 23:22 27:14,16 28:24 30:17,21 31:10,16 32:10,22,25 34:1 35:9,13 37:13 39:4 39:17,17 40:25 41:24 45:6,22 49:1 51:22	guaranteed (1) 5:19 guess (8) 13:19 17:22 18:6 20:8 26:9 27:5 29:24 50:24 <hr/> H <hr/> H (1) 45:22 hand (1) 55:7 handle (2) 15:18 48:4 handling (4) 6:13 24:3,9,12 happen (4) 41:20 47:14,15 52:8 happened (2) 41:23 43:25 harder (1) 17:25 harmonized (1) 25:5 HART (1) 2:5 headache (1) 53:24 hearing (39) 1:14 4:11,17,25 9:1 11:19,25 13:20,20 14:7,9,23 15:3,18,20 16:7,8 22:5,14 30:3 30:19 31:8,9 32:18 34:13 35:4,11 39:14 43:21 47:4,18 48:10 48:17,21,22,24 50:7 50:8 54:6 hearings (1) 34:22 held (2) 13:20 16:8 help (1) 3:20 Hey (2) 31:2 39:16 Hillwood (1) 2:5	hire (1) 27:23 history (11) 3:17,20 6:17 8:9 25:10,14,21 36:21 36:23 44:11 46:7 holder (6) 6:3,4 9:7 11:16 38:14 42:20 holders (1) 9:10 Holding (1) 29:2 HOLLAND (1) 2:5 Home (40) 1:4,4 3:6,7 4:1 7:14 7:15 8:24 15:14,16 19:3,10,19 23:11,21 24:6 27:13,16 30:6 30:7,9,9,14,17,18,21 31:11,16 32:10 33:17 34:1,3 35:9 37:14 39:4,24 40:25 45:22 49:1 51:22 Honor (57) 3:12,25 6:15 7:21 8:21 9:4 10:1,12,18 11:6,13 12:9 13:8 14:8,13 16:5,24 17:9 18:10 20:13,17 21:6,25 22:5,16,25 23:15 24:6 25:3 27:20 28:10,23 31:7 31:13 34:20 40:4,21 40:23 41:13 42:4,24 43:9 44:10 45:7,12 45:25 46:19,19 50:18,19 51:25 52:11,16 53:9,11,22 54:1 Honor's (2) 33:15 36:21 huge (1) 22:16 hundred (1) 49:14 HWAN (63)
---	--	--	--

4:3,10,22,24 5:1,2,4 5:13,14,17,19 7:12 8:25 9:2,9,9,13 11:7 11:20 12:4 14:10,24 16:14 18:1,8,21 19:7,8 20:2,13,23 21:3,5 22:6,18 23:19 24:5,7,17 27:12 28:21,23 29:24 30:11,13 31:21 32:19,20 33:3 34:11 35:12 37:24 40:2 41:1 44:2 45:14 47:16 48:11 48:18,25 50:1,9 53:2 HWAN's (3) 4:12 14:11 35:8	Industry (2) 1:8 3:9 information (6) 4:20 10:1 13:9 17:6 17:16 34:17 inspection (3) 16:16 34:12 48:20 instance (2) 5:4 14:8 instances (1) 27:9 insurance (25) 1:9 3:9 4:6 5:9 6:15 10:2,19,22,23 11:2 15:13 24:10,10 29:2 33:8 35:15 37:19,20 40:15,16 42:5,6,7 43:11 51:7 insurer (1) 10:19 insurers (4) 6:16,19 42:16 43:15 intended (2) 43:17 47:10 intends (1) 9:25 intent (3) 27:3 31:22 51:16 intentional (2) 12:23 34:8 intentionally (1) 34:7 interesting (6) 3:19 25:13 28:6 36:6 36:7 39:23 interpretation (1) 32:24 interpreted (1) 35:25 investigating (1) 30:7 involved (1) 20:16 involvement (1) 37:23 issuance (1) 35:2 issue (24)	7:19 10:6 13:19 16:1 17:25 18:5 20:4,6 20:19 27:2,6 32:2,6 32:22 35:23 43:2,23 46:21 47:6 49:2 50:23 51:1,10 53:4 issued (14) 9:19 10:8 18:7,11 20:7,11,12 21:1 32:4 34:24 41:25 43:4 44:18 45:21 issues (4) 14:18 17:25 19:22 49:3 issuing (13) 23:14,16,18,22 24:14 24:14 31:14 32:15 37:15 38:15 43:6 50:3 53:17	12:4,12 13:4,6 14:4 38:13 40:24 41:1 48:15 know (22) 7:5 20:2 22:13 24:12 27:21 29:1,2 30:9 31:6,18 33:4 34:5 34:18 36:4,11,11 38:11 39:12 40:14 41:18,23 43:10 knowledge (1) 37:23 known (2) 14:5 38:9 knows (1) 42:14
I		J	L
idea (2) 52:22 54:3 illegally (2) 37:12,14 important (1) 7:7 inadvertent (2) 12:24 41:13 inapplicable (1) 40:16 including (3) 6:9 15:9 24:11 incorrect (2) 12:1,2 indemnify (1) 6:4 indicate (3) 13:25 25:15 41:6 indicated (2) 6:18 13:22 indicates (2) 36:23 38:19 indicating (2) 20:7 39:22 indiscernible (1) 9:15 individual (1) 35:14	insurer (1) 10:19 insurers (4) 6:16,19 42:16 43:15 intended (2) 43:17 47:10 intends (1) 9:25 intent (3) 27:3 31:22 51:16 intentional (2) 12:23 34:8 intentionally (1) 34:7 interesting (6) 3:19 25:13 28:6 36:6 36:7 39:23 interpretation (1) 32:24 interpreted (1) 35:25 investigating (1) 30:7 involved (1) 20:16 involvement (1) 37:23 issuance (1) 35:2 issue (24)	J (3) 1:24 55:3,13 JAMES (1) 1:14 Jane (1) 30:3 jerking (1) 22:9 Jersey (1) 28:24 jud- (1) 4:3 JUDGE (1) 1:14 judicial (2) 3:15 4:3	12:4,12 13:4,6 14:4 38:13 40:24 41:1 48:15 know (22) 7:5 20:2 22:13 24:12 27:21 29:1,2 30:9 31:6,18 33:4 34:5 34:18 36:4,11,11 38:11 39:12 40:14 41:18,23 43:10 knowledge (1) 37:23 known (2) 14:5 38:9 knows (1) 42:14
		K	
		keep (1) 23:7 kind (8) 3:18 6:24 12:20 13:10 17:24 28:5 29:1 39:23 KK (1) 39:19 knew (9)	L (1) 2:4 laid (1) 22:15 language (3) 37:19 39:25 50:9 large (1) 23:23 Las (1) 2:6 law (7) 4:11 14:10 15:25 26:20 27:22 29:6 52:21 legal (8) 18:20,21,22,25 31:4 33:24 34:2 36:1 legis- (1) 9:15 legislation (1) 36:8 legislative (13) 3:17,20 6:17 8:9 25:9 25:14,19 27:3 35:25 36:21,23 44:11 46:7 legislature (14) 5:16 6:18 7:19 8:8 10:1 11:14 21:18 22:15 42:14 43:10 43:17 44:10 46:6

47:9	14:14 21:17 26:18	34:6	9:23
let's (7)	52:19	meaning (1)	need (7)
5:23 7:14 12:7,7 25:6	looked (4)	44:7	17:12,13 36:11 51:23
38:3 43:20	25:12 28:4 36:25 37:1	means (7)	51:23 53:3,5
levy (1)	looking (3)	9:18 10:12 36:1 42:20	needs (2)
22:2	13:21 18:3 19:24	44:12,16 45:19	38:6 53:13
li- (1)	looks (1)	meet (1)	Nevada (61)
10:24	26:1	11:10	1:1,2,4,5,8,9,15,24
liable (1)	losing (1)	mentioned (1)	2:6,10,11 3:1,7,8,11
9:10	50:12	36:18	4:2,6,11 5:9,13,21
license (6)	lot (4)	mentioning (1)	6:22 7:10 10:2 11:2
22:6,8,9 23:2 42:15	18:18 19:17,22 28:6	17:8	15:15,25 18:5,7,22
43:10	lunch (1)	mere (1)	20:11 21:1 22:8,19
licensed (11)	46:17	11:17	23:13 27:22 28:23
10:24 11:5 21:8 22:13	<hr/> M <hr/>	messed (1)	29:6 30:5 31:21
42:13 44:6 45:16	maintenance (3)	49:24	32:11,16,23 33:19
49:5 52:5 53:6,16	6:3,5,12	met (1)	35:9 37:12,15 41:25
licensee (3)	majority (1)	8:15	43:9 45:10 47:16,21
14:12 37:12 38:14	4:23	million (1)	49:3,4 50:1,4,10
licensees (2)	making (6)	49:14	51:6 52:4 53:5
5:20 37:9	11:21 12:6 40:3 48:12	mirror (1)	55:14
lieu (4)	49:18 50:16	36:24	never (21)
21:24 22:1,8,9	managed (2)	mirrors (1)	4:15,25 9:11,11 15:11
limit (2)	8:11 46:8	37:19	20:25 21:2 24:4,6
26:4 27:8	Mandalawi (4)	missing (1)	24:19 26:15,16,16
limitation (4)	30:8,10,15 33:20	46:14	26:17 34:19 35:1
6:9 28:15,18 49:10	manner (3)	mistake (8)	43:17 45:6,7 46:12
limitations (4)	18:2 20:3 43:22	12:18,20,21 14:6 34:6	46:13
28:3,5,11 40:10	marketing (2)	41:12,13,19	new (2)
limits (1)	23:24 31:14	mistakenly (1)	28:24 51:8
35:15	Mary (2)	34:8	normal (1)
line (3)	15:12 17:9	mistakes (1)	6:8
19:23 31:19 53:1	materia (1)	14:7	North (1)
lines (1)	36:1	MM (1)	2:11
39:10	material (2)	39:20	note (1)
list (3)	11:22 48:12	money (1)	31:6
13:10 34:9 48:14	materiality (1)	22:10	notes (1)
listed (1)	39:20	moneys (1)	39:24
11:24	materials (1)	49:19	notice (1)
listing (1)	6:8	months (1)	16:7
5:2	matter (6)	15:7	noticed (3)
literally (1)	3:14 14:10 48:16	morning (1)	4:15,25 25:1
24:14	49:17 52:20,24	3:13	November (5)
little (1)	mean (13)	multiple (1)	1:16 3:2 14:25 15:19
25:7	5:25 9:6 10:10 11:6	27:9	55:8
LLP (1)	27:15,21 28:5 29:4	<hr/> N <hr/>	NRS (27)
2:5	29:12,16 33:5,5	name (1)	4:4 5:16,20,20,24
look (4)			10:5,21 11:21,23

16:15 18:4 20:18 25:18 26:2 28:3,10 32:1 37:15 40:10 42:9,17,19 48:12,13 48:19 49:9,11 nullifies (1) 47:7 number (13) 3:6 5:1,2,4 9:24 13:13 14:14,16 22:18 32:18 34:18 35:4 48:11 numerous (1) 30:5	50:8 officer's (3) 14:23 32:18 35:4 okay (16) 3:5 12:18 14:5 21:19 22:6 25:8,11 29:18 40:5 41:21 42:23 51:3 52:18 53:8,10 53:21 once (1) 51:19 one-person (3) 23:20 31:12 32:20 one-year (1) 15:1 onerous (2) 6:20 43:15 ones (12) 7:15 8:19 10:11 20:7 23:12 34:2 42:2 44:20,21 45:23 46:24 47:1 oOo- (1) 3:3 op- (1) 17:5 open (5) 17:5,6,6,12,14 operate (4) 28:25 48:1 51:21 52:4 operating (3) 10:13 23:7 37:11 operational (1) 6:7 opposing (1) 28:14 order (15) 4:7,8,9,14,24 5:7,12 5:14,22 15:23 22:25 25:2 50:20 51:12 52:10 original (4) 4:15 22:14 26:14 36:8 originally (2) 7:4 25:1 oversaw (1) 8:14 overturned (2)	5:12,23 <hr/> P <hr/> P (1) 2:9 p.m (3) 1:17 3:2 54:6 pages (1) 55:4 paid (1) 51:20 paraphrasing (1) 36:12 pari (1) 36:1 Parker (3) 1:24 55:3,13 part (12) 7:7,20 21:2 30:19 36:20 38:5,25 41:8 41:9 52:12,13 53:14 particular (8) 3:21 8:24 11:20 47:14 48:9,16 49:17,20 parties (1) 52:25 party (1) 38:6 passed (1) 7:4 pay (3) 7:8,25 22:3 penalties (1) 26:21 penalty (2) 26:22 28:12 people (2) 23:24 41:6 perform (3) 6:3 8:3 29:5 performed (2) 6:21 9:12 performing (2) 6:5 38:2 period (1) 6:2 person (9) 9:7,18 26:19 28:13	31:23 42:20 44:13 44:16 45:19 persons (1) 37:9 petition (3) 3:15,23 4:3 petitioner (14) 1:6 2:3 4:1 23:19 30:11 31:10,12 34:24 38:7,18 40:13 50:20 51:6 52:3 petitioner's (4) 33:13,22 35:3 39:15 petitioners (1) 3:10 phone (1) 31:20 phonetic (1) 30:3 phrase (1) 37:8 picked (1) 33:8 piece (1) 13:8 PJR (2) 51:4,9 place (1) 53:7 Please (1) 40:12 point (12) 26:9 30:8,12,18 31:1 32:8 36:16,22 37:7 38:1 41:24 46:14 pointed (1) 32:1 points (1) 34:20 policies (6) 7:14,16 27:14,17 46:10 52:7 population (1) 11:12 possibly (1) 29:16 post (1) 7:23
--	---	--	--

posted (1) 46:24	prove (1) 7:24	38:10	50:11
posting (1) 44:21	provide (9) 4:20 5:19 6:24 8:13 10:2,25 28:11 34:12 34:23	Q	record (4) 3:5 11:22 13:13 48:13
power (2) 6:13 37:5	provided (8) 5:15 11:15 16:21 17:20 34:20,24 39:8 51:21	question (5) 8:22 31:13 33:16 35:7 37:18	recorded (1) 1:20
preclude (1) 37:24	provider (63) 6:1,21 7:22 8:1,3,7,23 9:3,4,6,20,21,23,25 10:2,4,6,7,13,16 11:3,4,7,16 14:19,19 14:21 20:18 21:23 22:2,3 24:8,18,19 26:19 32:2,4,8,8,15 33:4 36:10 42:19 43:2,4 44:4,12,18 45:2,3,4,7,9,14,18 45:21 46:3,21 47:6 49:4,5 51:22,23	questioning (1) 31:8	recording (2) 1:20 55:5
predicated (1) 16:20		questions (1) 3:21	records (5) 16:15 17:3 34:12 35:5 48:20
prejudice (1) 5:14		quote (2) 9:7 16:12	reduce (1) 30:13
prepare (1) 52:9		R	refer (2) 4:2,6
prepopulated (1) 41:22		R (2) 2:4 55:1	referred (1) 9:16
prescribes (1) 28:15		raised (3) 26:10 28:8 36:15	referring (1) 26:24
Present (1) 2:13		rationale (1) 47:9	refund (1) 49:19
president (4) 30:11 31:9,10 32:21		read (11) 17:22 25:9 36:2,10 39:23,25 44:15 47:5 47:7,19 51:24	refuse (1) 4:12
prevent (1) 38:1	providers (11) 5:18 6:16,19 7:6 8:20 11:12 13:12 25:18 26:3 43:13,15	reading (4) 7:11 8:25 9:2 26:10	regards (22) 3:15,21,22 13:21 27:4 28:3 47:16,17 48:10 48:18,22 49:6,10,13 49:14,21,22,24 50:3 50:5,7 51:14
principals (1) 33:1	provides (2) 6:11 28:11	real (2) 8:23 24:21	regiment (1) 43:12
prior (3) 4:25 25:16,17	providing (2) 10:11 23:12	really (12) 7:16 9:3 14:11 27:8 28:21 33:3 36:5,5,7 36:13 49:25 52:13	regis- (1) 10:20
probably (1) 35:23	provision (3) 14:15 20:17 42:17	reason (5) 14:13 38:10 41:11 46:23 51:8	register (2) 30:14 33:17
problem (3) 14:13 24:25 43:19	provisions (5) 5:8 10:9,25 32:5 42:10	reasonable (1) 35:6	registered (17) 5:18 10:24 13:16 18:9 21:8,23 31:24 32:11 39:10 45:13 46:3,16 47:20 50:2,2 53:3 53:14
procedure (1) 13:9	pur- (1) 9:8	reasons (2) 12:4 51:8	registrant (1) 16:7
proceed (1) 3:24	purpose (2) 12:23 23:4	receive (2) 17:10,15	registration (19) 4:13 7:5 9:21 10:8,17 11:8 14:10,17,20 20:12 31:23 32:4,17 33:2 43:4 47:17,18 47:19 49:6
Proceedings (1) 1:20	purposes (1) 9:6	received (2) 15:8,11	
process (3) 5:19 14:12 15:14	pursuant (8) 4:4 5:25 9:8 10:8 16:14 32:5 42:20 48:19	receiving (2) 30:4 33:18	
processing (3) 13:11 23:25 31:15	put (4) 12:16 14:1 34:10	recess (1) 54:4	
produced (1) 1:21		recontinue (1)	
program (3) 8:11,14 46:8			
property (1) 30:2			

regulate (1) 6:19	5:17 11:9,11,11 44:22	33:6,25 34:4 37:25	15:10,13 20:1 21:18
regulation (2) 6:24 43:17	requires (4) 9:20,22 19:4 32:2	39:10 40:21 41:6,23	24:5,6,6,13 25:21
regulations (1) 43:14	reserves (1) 17:6	42:7 43:5 44:19,24	26:19,21 27:25 29:7
regulator (1) 35:16	residents (1) 7:10	45:1 46:20 48:5	34:6 39:24 41:3
regulators (1) 34:17	resolve (1) 51:13	51:5	42:19 43:2,21 44:6
reimburse (1) 6:4	respect (10) 3:14 4:3 25:3 26:17	rights (2) 5:14 14:12	44:12,16 45:14
related (1) 29:5	43:14 48:16 49:5,17	Rijat (1) 30:2	scenes (2) 8:12 46:8
rely (2) 39:9 40:2	52:19,24	road (1) 22:7	second (3) 16:25 38:3 52:24
renew (3) 4:12 14:19 16:6	respondent (7) 1:10 2:8 11:20 15:19	RPR (2) 1:24 55:13	section (4) 6:10 9:22 22:11 26:14
renewal (12) 5:3 13:10,11 14:24	16:14 18:1 48:18	rule (2) 35:24,24	security (2) 7:24 46:25
15:4,14,19 16:2	responsible (6) 9:18 31:5 39:16 44:13	ruled (1) 14:9	see (8) 7:14 16:10 18:17 24:1
17:11 33:13 38:18	44:17 45:19	ruling (1) 5:11	24:21 47:12 51:13
47:24	rest (2) 4:21 31:13	run (3) 23:20 27:24 52:15	51:14
repair (2) 6:3,11	result (7) 4:9 6:8,12 16:23	running (1) 24:16	seen (1) 41:20
repairing (1) 6:5	33:12 49:18 51:18	RUSSELL (1) 1:14	self (2) 5:3 14:1
replace (1) 6:3	resulting (1) 4:23		self-administered (2) 33:14 38:20
replacement (1) 6:11	revealed (2) 30:19 31:7	S	sell (17) 8:4 10:6 20:19 23:24
replacing (1) 6:5	reversing (2) 50:6 52:13	S (1) 2:14	27:14 32:2,6,11,22
replicated (1) 12:22	review (3) 3:15 4:4 5:10	sale (12) 9:20 10:6 32:3,6,22	35:9 39:5 43:2
Reporter (2) 1:24 55:14	reviewing (3) 13:9 15:14 17:11	35:12 43:3 44:18	46:10,21 47:6 49:2
requested (3) 34:12,17,22	revocation (1) 22:1	45:21 46:21 47:6	53:4
require (2) 11:10,10	revoke (4) 4:12 21:21 26:4 36:13	53:17	seller (1) 11:17
required (11) 7:5,23 8:16,19 10:4	revoking (1) 21:24	sales (18) 5:5 10:15,22 11:2	selling (25) 7:14,16 8:5,6 10:13
13:16 16:5 21:8,11	Richard (3) 2:9 3:11 24:13	20:23 24:9,9 27:25	10:15 23:19 27:17
33:17 45:15	right (35) 7:23,25 10:19 11:8	42:5,6,8,9,12,15	31:14,23 32:15
requirement (2) 11:1 19:6	16:18,24 17:19,19	43:11 46:2 53:12,14	35:13 37:14 38:15
requirements (5)	17:23,23 18:16,23	saying (25) 7:21 9:2 13:3 14:4,4	42:4,8 45:10,13,23
	24:24 26:23 27:7,9	14:24 15:3,11 16:25	46:1,1,11 50:4 52:7
	27:19 28:7 30:25	17:2,4,10,14 18:6,11	53:17
		18:12,13 20:14,21	sells (2) 42:5 49:3
		21:4 33:9 42:25	sense (6) 11:7,13 47:8 50:16,17
		49:11 50:11 51:9	51:1
		says (27) 9:5 10:5 13:13 14:16	sent (3) 7:20 15:10 25:1
			separate (8)

12:5 18:22,25 30:16 31:4 33:24 34:2 40:25 separately (2) 6:1 28:25 series (1) 41:15 serious (1) 14:11 service (69) 1:21 4:20 5:18,24,25 6:6,14,15,19,21,25 7:6,9,22,25 8:4,5,6 8:13 9:8,10,19 10:7 10:14 11:3,4,12,15 12:9,11,12 13:5,12 13:16 17:5,12,13 18:5 20:5,11 21:23 22:19 24:4,4,18,18 26:4 32:3,22 40:15 40:17 41:2,25 42:21 43:3,13,14,24 44:11 44:13,17 45:2,4,13 46:3,23 49:2,4 50:13 services (3) 8:4 9:13 29:6 set (3) 3:14 26:14 38:3 seven (1) 32:7 show (2) 4:9 25:2 showing (2) 7:7 17:6 significant (2) 18:20 35:23 similar (1) 35:18 simple (1) 41:5 single (2) 5:4,4 Sir (1) 14:6 situation (1) 28:16 skill (1)	55:6 sold (5) 7:9 9:19 42:2 44:18 45:20 solicit (2) 23:24 39:5 soliciting (1) 35:13 solvency (1) 7:8 solvent (1) 7:24 somebody (3) 23:5 33:8 41:17 someone's (1) 27:8 sorry (2) 17:1 46:5 sort (1) 9:15 sound (3) 1:20 32:23 35:5 speak (1) 29:22 specific (1) 16:17 specifically (3) 13:17 24:5 41:2 specified (1) 6:2 spent (3) 35:22 52:23 54:2 staff (3) 23:24 31:13 34:17 stand (1) 47:17 standards (2) 5:10 8:15 standpoint (3) 19:19 33:10 53:2 started (2) 20:18 30:6 stat- (1) 25:22 state (29) 1:1,8 2:10 3:8,11 5:13 6:22 7:10,24 8:14 10:2,7,13,16 15:18	20:11 21:9 22:8,13 23:7 28:14 29:14 32:3 38:2 41:25 43:3 45:10 50:4 53:5 stated (1) 6:1 statement (5) 11:22 39:7,7 40:1 48:13 statements (1) 3:17 states (2) 30:23 39:18 statistics (1) 34:25 statute (18) 9:6 18:3 23:8 28:3,4 28:11,12,14,18 32:1 32:24 36:24 37:1,19 37:20 40:9 45:11 47:5 statutes (2) 35:25 51:24 statutory (2) 34:19 43:12 stop (1) 38:10 Strong (2) 15:12 17:9 structural (2) 6:7,7 stuff (1) 23:6 Sub (1) 9:22 subject (1) 51:9 submit (1) 50:21 submits (1) 14:21 submitted (2) 34:15 51:1 subpoena (2) 35:2,3 subpoenaed (1) 16:22	subpoenas (1) 34:23 Subsection (2) 5:11 28:10 subsequent (1) 51:2 substantially (1) 5:14 sucked (1) 42:18 suffers (1) 33:21 superfluous (1) 44:10 supported (1) 39:11 supports (1) 37:4 supposed (1) 38:20 sure (3) 24:22 40:8 50:6 surges (1) 6:13 suspend (3) 21:20 26:4 36:14 suspending (1) 21:24 suspension (1) 22:1 SYDNEY (1) 2:4
T			
T (3) 1:14 55:1,1			
Tab (1) 13:13			
take (4) 16:11 50:23 51:12 53:6			
talk (4) 5:23 25:6 51:14 52:14			
talked (2) 7:19 36:9			
talking (1) 13:23			
talks (1)			

14:21 task (1) 27:24 tasks (2) 29:4 43:7 team (1) 38:13 tear (1) 6:9 telephone (2) 2:14 9:24 tell (7) 11:25 12:19,19 15:5 18:19 29:22 52:20 telling (2) 13:1 21:18 term (1) 44:9 terms (2) 9:8 42:21 test (3) 38:4,5,25 testified (2) 30:3 32:20 testimony (3) 30:1,13 39:12 thank (15) 3:16,25 29:18,19 40:4 40:5,20,21 47:11,13 50:17 53:23 54:1,3 54:5 thing (5) 21:16 26:25 37:18 45:8 49:22 things (6) 12:20 25:13 29:22 32:9 36:14 41:16 think (46) 6:16 11:6 18:11,12 20:14,21 21:11 27:7 28:20,20 29:8,11 31:20 34:11 35:8,23 35:24 36:7 39:19,21 40:17,24 45:24 48:3 48:6,9,16,20,21,24 49:3,10,12,21,23,24 50:1,2,13,14 51:17 51:18,21 52:6,7	53:2 third (2) 20:1 43:20 third-party (2) 13:15,15 thought (6) 3:18 19:12 23:9 24:1 25:14 28:5 three (1) 5:4 throw (1) 5:13 Thursday (2) 1:16 3:2 time (12) 3:14 26:13 30:4,8,12 30:18 31:2 35:22 36:16 50:19 52:22 54:2 timely (2) 15:4 16:2 times (1) 32:7 Title (1) 5:9 today (2) 4:1 5:6 told (2) 15:7 30:15 toolbox (1) 21:20 tools (1) 21:19 total (1) 35:15 totally (3) 22:12,15 24:22 tran- (1) 22:13 transaction (1) 6:15 transcribed (2) 1:24 55:6 transcript (2) 1:21 55:5 transcription (1) 1:21 treated (1)	51:18 TRETTTER (1) 2:14 troop (1) 29:23 true (3) 38:7,21 55:4 try (2) 38:16,17 trying (5) 38:8,12 43:16,16 52:23 turn (2) 24:17 29:24 turned (1) 15:23 turns (2) 10:22 19:3 two (10) 5:2 19:25 28:21,22 31:2 35:4 37:25 49:14 51:14 52:13 two-entity (1) 38:13 two-year (1) 28:4	unravel (1) 53:23 unregistered (5) 5:1 18:4 20:4 43:23 49:2 upholding (1) 48:22 use (4) 5:5 29:5 37:7 43:7
V			
valid (1) 14:17 various (2) 4:11 18:20 Vegas (1) 2:6 versus (1) 3:8 Victor (3) 30:8,10,15 view (4) 25:4 28:10 39:21 51:13 violating (1) 32:24 violation (14) 5:6 11:22 14:11 17:3 18:1,9,14 22:4 27:20,22 45:11,24 48:13,22 violations (5) 4:11,18,21,23,25 vs (1) 1:7			
W			
wait (1) 16:12 want (8) 3:24 6:18 36:13,13 47:5 49:23 52:2,20 wanted (6) 30:13 34:18 36:23 37:5 40:8 43:13 Warranty (40) 1:4,5 3:6,8 4:1 7:15 8:24 15:15,16 19:3			

19:11,19 23:12,21 24:7 27:14,16 29:25 30:6,7,9,10,14,17,18 30:21 31:11,16 32:10 33:18 34:1,3 35:9 37:14 39:4,24 40:25 45:22 49:1 51:22 wasn't (8) 12:20 15:6 17:20 30:18 32:11 34:20 34:23 39:13 watch (1) 29:24 way (11) 7:16,18,18 15:24 16:3 17:22 47:4,8,19 51:24 52:6 ways (1) 45:5 we'll (3) 5:6 18:10 51:11 we're (10) 3:25 15:10,11 17:10 17:14 18:3 22:8,9 31:4 39:16 we've (1) 19:25 wear (1) 6:9 week (1) 4:16 went (5) 25:12 26:16,19 36:10 41:14 whatsoever (1) 11:1 wherewithal (1) 44:22 wishes (3) 22:18 50:9,9 WITNESS (1) 55:7 witnesses (1) 39:12 wondering (1) 3:19 words (2)	32:5 46:20 worked (1) 7:19 workmanship (1) 6:8 wouldn't (4) 22:24,24 23:1,2 wrong (7) 21:15,16 22:12 23:13 29:7 48:6 50:15 wrote (1) 49:15 <hr/> X <hr/> Y <hr/> yeah (8) 13:3 29:11,17 34:9 36:25 37:3 40:11 44:25 year (8) 12:21,21,22,22 14:17 33:13 38:19 41:19 years (1) 41:15 yesterday (2) 7:20 8:10 Yien (48) 2:9 3:11,12 23:10,14 23:18,23 29:20 30:1 31:1,25 32:12,14 33:6,11,25 34:4,10 34:14 35:11,18,21 36:20 37:2,4,25 38:24 39:2,11 40:4 40:7,11,13,21 44:24 45:1 46:17,19,23 47:3 50:19,25 51:5 52:2,9,11 53:8,22 <hr/> Z <hr/> zest (1) 5:12 <hr/> 0 <hr/> 00269 (1) 1:7 <hr/> 1 <hr/>	1 (2) 8:10 9:22 1,000 (3) 22:4 26:11 36:15 1,224,000 (1) 49:15 10,000 (2) 49:12,17 100 (1) 2:11 11 (2) 28:3 40:10 11.190 (1) 28:10 11/18/2016 (1) 15:1 17 (1) 1:7 17-OC-00269 (1) 3:6 18 (1) 4:5 1999 (2) 7:4 8:9 1B (1) 1:7 1st (3) 15:9,10 17:9 <hr/> 2 <hr/> 2:28 (2) 1:17 3:2 200 (1) 27:15 2011 (3) 12:10 36:9 41:2 2016 (4) 14:25 15:19 34:15 35:1 2017 (1) 4:5 2019 (3) 1:16 3:2 55:8 23,000 (3) 27:15,18 35:10 23,890 (2) 18:7 20:6 233B.127 (1)	5:20 233B.130 (1) 4:4 233B.135 (1) 5:11 25th (1) 55:7 2nd (1) 2:5 <hr/> 3 <hr/> 3 (5) 5:11 14:14,16 32:18 37:9 3:33 (1) 54:6 30,000 (2) 13:22,24 325 (3) 35:15 37:8,8 330 (3) 37:8,9,11 35 (1) 13:13 36 (1) 16:2 <hr/> 4 <hr/> 4 (2) 13:13 22:18 4(b) (1) 28:10 <hr/> 5 <hr/> 50 (1) 18:1 500 (7) 16:14,23 17:21 26:11 35:4 36:11 48:19 57 (1) 5:9 5th (1) 8:9 <hr/> 6 <hr/> 629.330 (1) 35:19 683 (1)
---	---	---	--

43:12	7 (3)		
683A (2)	1:16 3:2 15:19		
10:25 42:16	702.669.4600 (1)		
686A.070 (2)	2:6		
11:23 48:13	775.684.1100 (1)		
686A.183.1(a) (1)	2:12		
11:21	7th (1)		
686A.185.1(a) (1)	14:25		
48:12			
688 (1)	8		
10:21	89134 (1)		
690 (1)	2:6		
25:17	89701 (1)		
690C (11)	2:11		
5:16 6:23 9:14,16			
32:7 42:9,18 44:9	9		
44:23 47:7,10	934 (2)		
690C.020 (2)	1:24 55:14		
44:12,15	9555 (1)		
690C.070 (2)	2:5		
9:5 42:19			
690C.080 (1)			
5:24			
690C.120 (1)			
42:17			
690C.150 (4)			
10:5 20:18 32:1 43:1			
690C.160 (2)			
9:22 14:14			
690C.30 (1)			
25:16			
690C.320 (1)			
17:3			
690C.321B (1)			
18:4			
690C.325 (10)			
5:20 16:6 21:14,17			
22:16 25:4,18 26:2			
27:5 49:9			
690C.325.1 (1)			
48:19			
690C.330 (5)			
25:4,19 26:15 37:15			
49:11			
690C.350.1 (1)			
16:15			
7			

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

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

Petitioner,

v.

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

Respondent.

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

**MOTION FOR LEAVE OF COURT
PURSUANT TO FJDCR 15(10) AND DCR
13(7) FOR LIMITED
RECONSIDERATION OF FINDINGS
PERTAINING TO HWAN'S PETITION
FOR JUDICIAL REVIEW**

Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty ("HWAN"), by and through its counsel of record, Holland & Hart LLP, hereby seek leave of Court for the limited reconsideration of HWAN's petition for judicial review, filed herein on December 22, 2017 and heard on November 7, 2019 at 1:30 p.m. The Court made a finding at the hearing that third-party sellers of service contracts, even those who sell service contracts on behalf of a service contract provider who holds a certificate of registration, must themselves be registered under NRS Chapter 690C. HWAN seeks reconsideration of this finding because it is not based on Nevada law and it directly contradicts the Nevada Division of Insurance (the

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1 “Division”)’s practices, policies, and procedures with respect to other Nevada service contract
2 providers and third-party sellers of service contracts, as detailed in the Memorandum of Point and
3 Authorities Supporting Limited Reconsideration herein.

4 Based on the foregoing, HWAN respectfully requests leave of Court for reconsideration
5 or clarification. This Motion and request is made and based upon FJDCR 15(10) and DCR 13(7),
6 the following Memorandum of Points and Authorities, the papers and pleadings on file herein,
7 and any oral argument this Court may allow.

8 DATED this 15th day of November, 2019.

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19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 Every day in Nevada, service contracts are sold on behalf of service contract providers at
22 electronics retailers, furniture stores, and more. For example, every customer purchasing a
23 television or other good at Best Buy is offered an “extended warranty,” which is a service contract
24 under NRS Chapter 690C. Under NRS 690C.070¹, only service contract providers registered

25
26 ¹ NRS 690C.070 “Provider” defined. “Provider” means a person who is obligated to a holder
27 pursuant to the terms of a service contract to repair, replace or perform maintenance on, or to
28 indemnify the holder for the costs of repairing, replacing or performing maintenance on, goods.

1 under NRS Chapter 690C (“Provider(s)”) are obligated to service contract holders under the
2 service contracts being sold. Providers typically sell service contracts thorough sales agents, who
3 are not in any way obligated to a holder under the service contracts they sell (“Sales Agent(s)”).
4 For instance, Best Buy is not a registered Provider, but Best Buy in its capacity as a Sales Agent
5 sells service contracts to consumers on behalf of the registered Provider AIG WarrantyGuard,
6 Inc., on forms the Division has approved. Based on the Court’s ruling at oral argument in this
7 case, it would be illegal for Best Buy as the Sales Agent, and every other entity merely acting as
8 Sales Agents on behalf of Providers in Nevada, to sell service contracts unless all Sales Agents
9 obtain a Provider certificate of registration from the Division. But this is neither required under
10 NRS Chapter 690C nor consistent with how the Division operates in practice with respect to
11 Providers and Sales Agents.

12 Despite its approval of this Sales Agent-Provider relationship for other Providers, the
13 Division has unfairly attempted to punish HWAN for the same arrangement. The Division
14 regularly approves relationships between Sales Agents of service contracts on behalf of registered
15 Providers, each time it approves service contracts for registered Providers that are to be sold by
16 “unregistered” third-party Sales Agents . In fact, the Division approved one such contract for
17 AIG WarrantyGuard, Inc. in August 2018. Attached hereto as **Exhibit “1”** is a Declaration of
18 Coverage Page approved by the Division and available on the Division’s website at
19 http://di.nv.gov/ins/f?p=600:36:::NO::P36_SEARCH_PRO.P36_CONTRACT_TYPE:2338,SC
20 [AB.²](http://di.nv.gov/ins/f?p=600:36:::NO::P36_SEARCH_PRO.P36_CONTRACT_TYPE:2338,SC) The Declaration page has Variable Logos at the top and ends with “[Insert Sellers Name]
21 [Insert Sellers Address] [Insert Sellers City]. Thus, just a few months after the Division argued
22 that such activity was illegal under Nevada law in this case, the Division reviewed and approved
23 this form, which clearly contemplates the use of a Sales Agent that is not AIG WarrantyGuard.

24
25 ² Numerous similar contracts have been approved for AIG WarrantyGuard, Inc. See
26 http://di.nv.gov/ins/f?p=600:36:::NO::P36_SEARCH_PRO.P36_CONTRACT_TYPE:2338,SC
27 [B:](http://di.nv.gov/ins/f?p=600:36:::NO::P36_SEARCH_PRO.P36_CONTRACT_TYPE:2338,SC)
28 [C:](http://di.nv.gov/ins/f?p=600:36:::NO::P36_SEARCH_PRO.P36_CONTRACT_TYPE:2338,SC)
[E.](http://di.nv.gov/ins/f?p=600:36:::NO::P36_SEARCH_PRO.P36_CONTRACT_TYPE:2338,SC)

1 Inc. Now the Division seeks to impose registration requirements on HWAN's Sales Agent, CHW
2 Group, Inc., and would allow this Court to believe that those requirements are (1) supported by
3 Nevada law and (2) uniformly imposed on all Nevada Providers. They are not.

4 **II. STATEMENT OF RELEVANT FACTS**

5 At the hearing on November 7, 2019 regarding HWAN's Petition for Judicial Review, the
6 Division conceded that third-party administrators of service contracts need not be registered with
7 the Division under NRS Chapter 690C, but distinguished third-party Sales Agents who issue, sell
8 or offer for sale service contracts *on behalf of* registered Providers. The Division argued that
9 only Providers who hold a certificate of registration can "issue, sell or offer for sale service
10 contracts,"³ going so far as to argue that third-party Sales Agents who are not registered with the
11 Division cannot sell service contracts *on behalf of* registered Providers. In an attempt to confuse
12 the Court, the Division maintained this position even though the third-party Sales Agent is *not*
13 the obligor under the service contract and is therefore not the Provider. In fact, all parties appeared
14 to agree that CHW Group, Inc. dba Choice Home Warranty in this case is *not* a Provider, i.e.,
15 obligor, under the terms of HWAN's service contracts, but merely the *third-party Sales Agent*
16 (and administrator) of contracts *on behalf of HWAN*. See Record, Tab 35, Ex. EE at 3, also
17 attached hereto as **Exhibit "2"** (HWAN's service contract approved by the Division listing
18 HWAN as "obligor" and Choice Home Warranty as "administrator"). The Court agreed with the
19 Division that third-party Sales Agents of service contracts must be registered, even where the
20 Sales Agent sells the contract on behalf of a registered Provider. This ruling is a sea change that
21 impacts not just HWAN, but the entire service contract industry.

22 Exhibit 2, which was approved by the Division in 2011 (and prior to HWAN adopting the
23 fictitious firm name Choice Home Warranty at the Division's request), clearly shows that the
24 Division approved CHW Group, Inc. dba Choice Home Warranty, in its capacity as administrator,
25 to sell service contracts where HWAN is the Provider. It cannot be disputed that the Division
26

27 ³ The Division cited language in NRS 690C.150 requiring *Providers* to obtain a certificate of
28 registration to "issue, sell or offer for sale service contracts," not third-party Sales Agents offering
contracts for sale on behalf of a registered Provider.

1 knew that CHW Group, Inc. was the Sales Agent on behalf of HWAN. The approved form states
2 “Welcome to Choice Home Warranty” and has large Choice Home Warranty logos. The second
3 page of the approved form states

4 Throughout this Agreement the words “We”, “Us” and “Our” refer
5 to Home Warranty Administrator of Nevada, Inc. (HWA), 90
6 Washington Valley Road, Bedminster, NJ 07921, the Obligor of this
7 Agreement and it is backed by the full faith and credit of HWA.
8 This Agreement is administered by Choice Home Warranty
9 (Administrator), 510 Thornall Street, Edison. NJ 08837.

10 No such distinction would be necessary had HWA been the same entity as Choice Home
11 Warranty.⁴ On Page 9 of Exhibit 2, Dolores Bennett Insurance Examiner for the Division states,
12 “Choice Home Warranty is not registered as a service contract provider in Nevada”, but then goes
13 on to state “That pending filing is still under review pending the company response to our
14 objections to certain statements, wording and typographical errors in the contract. We will
15 approve the contract after they correct those errors.” Thus, the Division knew, and approved, of
16 CHW Group, Inc.’s role as Sales Agent. The Hearing Officer found otherwise but did not explain
17 this finding, which is contrary to the evidence: the very contract the Division itself approved.

18 HWAN now moves this Court for reconsideration solely on the legal issue of whether a
19 third-party Sales Agent who sells service contracts on behalf of a Provider but is not obligated
20 under the service contract must be registered under NRS Chapter 690C. The Division’s position
21 taken at the November 7, 2019 hearing contradicts its own practices, policies, and procedures
22 with respect to other third-party Sales Agents who sell service contracts on behalf of other
23 registered Providers in this state. The Division already does not require other Providers to use
24 registered third-party Sales Agents to sell their contracts. In fact, nothing in NRS Chapter 690C
25 requires a third-party Sales Agent of a contract *on behalf of a registered Provider* to be registered,
26 and there are absolutely no provisions in NRS Chapter 690C or the associated regulations that

27 ⁴ As the Hearing Officer notes, HWAN did not originally have the same fictitious firm name as
28 CHW Group, Inc. Initially CHW Group, Inc. was the only entity doing business as “Choice Home
Warranty.” Only after the Division requested HWAN register “Choice Home Warranty” as its
fictitious firm name in 2014 did both HWAN and CHW Group, Inc. have the same fictitious firm
name. Record, Tab 47 at 004052-004053.

1 require registration of a third-party Sales Agent of service contracts. The only registration
2 provision in the entire chapter pertains to **Providers**, not third-party Sales Agents .

3 Not only is the Division's interpretation of the registration requirement in NRS Chapter
4 690C inherently flawed, but the Division utterly failed to disclose that it currently allows other
5 service contract Providers to use unregistered third-party Sales Agents to sell contracts on behalf
6 of the registered Provider. See Ex. 1; see also Geek Squad Protection – Best Buy, available at
7 [https://www.bestbuy.com/site/geek-squad/geek-squad-](https://www.bestbuy.com/site/geek-squad/geek-squad-protection/pcmcat159800050001.c?id=pcmcat159800050001)
8 [protection/pcmcat159800050001.c?id=pcmcat159800050001](https://www.bestbuy.com/site/geek-squad/geek-squad-protection/pcmcat159800050001.c?id=pcmcat159800050001) and attached hereto as **Exhibit “3”**
9 (stating in footnote 1 that “AIG WarrantyGuard, Inc. is the Obligor and Administrator of the
10 coverage”); List of Registered Service Contract Providers, available at
11 <http://di.nv.gov/ins/f?p=600:35:0:> and attached hereto as **Exhibit “4”**. For example, the Division
12 approves an arrangement whereby registered Provider AIG WarrantyGuard, Inc. uses Best Buy,
13 an unregistered Sales Agent, to sell its service contracts. *Id.*

14 But this is par for the course for the Division. At every opportunity, the Division imposes
15 requirements on HWAN that are unsupported by Nevada law and are not imposed on other
16 similarly situated registered Providers. The Division cannot impose requirements on HWAN that
17 it does not impose on all other Providers. Furthermore, the Court's ruling that third-party Sales
18 Agents of service contracts who sell on behalf of registered Providers must themselves be
19 registered will have far reaching effects in the service contract industry in Nevada, as other
20 Providers already use unregistered third-party Sales Agents with the full knowledge and approval
21 of the Division.

22 **III. LEGAL ARGUMENT**

23 **A. Nevada Law Does Not Require Third-Party Sales Agents to Be Registered.**

24 There is no provision in NRS Chapter 690C that requires third-party Sales Agents to
25 register with the Division. Rather NRS Chapter 690C only requires **Providers** to be registered.
26 NRS 690C.150 states that “[a] **provider** shall not issue, sell or offer for sale service contracts in
27 this state unless the **provider** has been issued a certificate of registration pursuant to the provisions
28 of this chapter.” NRS 690C.150 (emphasis added). The Division asserts that this provision

1 mandates that only registered Providers may “. . . issue, sell or offer for sale service contracts . . .”
2 as opposed to the Sales Agent selling service contracts on behalf of a registered Provider. The
3 Division, however, is wrong. This provision, which was one of the original NRS Chapter 690C
4 service contract provisions adopted in 1999, was passed to make it clear that if Providers want to
5 transact service contracts in the state of Nevada, the Providers must be registered; otherwise, they
6 would be subject to discipline under NRS 690C.330 as unregistered Providers. NRS 690C.070
7 expressly defines “provider” as simply “a person who is *obligated* to a holder *pursuant to the*
8 *terms of a service contract* to repair, replace or perform maintenance on, or to indemnify the
9 holder for the costs of repairing, replacing or performing maintenance on, goods.” The statute
10 does not preclude a Provider from using a third-party Sales Agent to sell contracts on its behalf.

11 There is no separate definition of “persons who sell”, but the chapter contemplates that
12 such persons may exist independent of Providers (as defined in NRS 690C.070) and
13 administrators (as defined in NRS 690C.020). Indeed, 690C.120 specifically calls out “person
14 who sells service contracts” as a person separate and apart from the categories of “provider,”
15 “administrator,” and “any other person,” necessarily implying that a “person who sells service
16 contracts” could be someone other than a “provider” or even “administrator.” See NRS
17 690C.120(2) (“A provider, *person who sells service contracts*, administrator or any other person
18 is not required to obtain a certificate of authority from the Commissioner pursuant to chapter
19 680A of NRS to issue, sell, offer for sale or administer service contracts.”) (emphasis added).
20 Because there is only a registration requirement for Providers, and no such requirement for
21 “administrators” or “persons who sell,” it follows that the Nevada Legislature did not intend for
22 administrators or persons who sell to be registered. Only the Provider, the person obligated under
23 the contract, must be registered. Indeed, a finding that only Providers can sell service contracts
24 would render the phrase “person who sells service contracts” in NRS 690C.120(2) superfluous
25 and duplicative—a reading that goes against well settled principles of statutory construction.

26 Here, it is undisputed that the Provider under the contract is HWAN. Ex. 2. The Hearing
27 Officer recognized that “CHW Group sells service contracts on behalf of HWAN” in her order.
28 Record, Tab 47 at 004038, ln. 14. The Division approved a service contract form listing HWAN

as obligor and CHW Group, Inc. as administrator. Record, Tab 47 at 004039, Ins. 4-9; Record, Tab 35, Ex. EE at 3, also attached hereto as Ex. 2. CHW Group, Inc. dba Choice Home Warranty is merely the administrator and third-party Sales Agent (selling contracts on behalf of HWAN). Only the Provider, HWAN, is required to be registered under Nevada law. This is because only the Provider, HWAN, is obligated under the service contracts entered into with Nevada consumers. Only HWAN backs those contracts and can provide adequate financial security for those contracts.

B. The Division Does Not Require Third-Party Sales Agents to Be Registered in Practice.

What's more, the Division does not actually in practice require third-party Sales Agents who sell service contracts on behalf of registered Providers to be registered. For instance, when a consumer buys a good from a store, for example, Best Buy, the store often offers for sale protection plans, or service contracts, on the goods. Best Buy's cashiers often offer these protection plans for sale at the point of purchase; the cashier offers the plan for sale to the consumer at the checkout. But Best Buy is not the Provider, i.e., obligor, of these service contracts. AIG WarrantyGuard, Inc. is the obligor as the Provider of the service contract. See Geek Squad Protection – Best Buy, available at <https://www.bestbuy.com/site/geek-squad/geek-squad-protection/pcmcat159800050001.c?id=pcmcat159800050001> and attached hereto as Ex. 3 (stating in footnote 1 that "AIG WarrantyGuard, Inc. is the Obligor and Administrator of the coverage"); see also Ex. 1. Best Buy is merely the Sales Agent of the service contract, and Best Buy is not obligated under the contract.

This is important because Best Buy is not registered with the Division, despite selling service contracts. Ex. 4. A simple search of the Providers registered with the Division using the Division's own "Service-Contracts Look-Up Tool" on its website reveals that only AIG WarrantyGuard, Inc., not Best Buy, is a registered service contract Provider.⁵ See List of

⁵ Notably, there is no separate third-party Sales Agent "look-up tool," nor is there a separate application for certificates of registration for third-party Sales Agents who sell on behalf of Providers. See Service Contracts webpage, available at <http://doi.nv.gov/Insurers/Property-Casualty/Filing-Information/Service-Contracts/> (listing only service contract Provider application).

1 Registered Service Contract Providers, available at <http://di.nv.gov/ins/f?p=600:35:0>: and
2 attached hereto as Ex. 4.

3 While Best Buy (the third-party Sales Agent) is not required to be registered with the
4 Division to sell AIG WarrantyGuard Inc.'s (the Provider's) service contracts to consumers, the
5 Division seeks to impose a different requirement on HWAN here. The Division represented to
6 the Court that CHW Group, Inc. (the third-party Sales Agent) would need to be registered with
7 the Division to sell service contracts on behalf of HWAN (the Provider). But this is not required
8 by Nevada law or even required by the Division itself with respect to other third-party Sales
9 Agents.

10 More importantly, adopting this interpretation of NRS Chapter 690C that forces Providers
11 to sell their own service contracts without the assistance of Sales Agents (unless the Sales Agents
12 are also registered and also obligated under the service contracts they sell) fundamentally alters
13 the service contract industry and will have a detrimental impact on consumers in Nevada.
14 Specifically, all third-party Sales Agents would have to cease selling service contracts. For
15 example, consumers will be unable to purchase their service contracts at Best Buy at the time they
16 purchase an item, something Best Buy and consumers have been doing (with the Division's
17 blessing) for at least as long as NRS Chapter 690C has been in effect.⁶

18
19 ⁶ Indeed, to take the Court's ruling and the Division's position to its logical conclusion reveals
20 that it is not possible in practice for CHW Group, Inc. to register. If CHW Group, Inc., the third-
21 party Sales Agent who is not obligated on the service contracts, is required to register with the
22 Division, questions abound. How should CHW Group, Inc. apply? There is no third-party Sales
23 Agent application. Should CHW Group, Inc. apply then as a service contract **Provider**? How
24 should CHW Group, Inc. calculate its financial security requirements under NRS 690C.170, when
25 the only contracts that could be relevant for calculating such security are those for which HWAN,
26 the Provider/obligor, has already provided financial security? Is CHW Group, Inc. required to
27 provide financial security on the same population of contracts as HWAN, since CHW Group, Inc.
28 sold the contracts (on behalf of HWAN), even though it is **HWAN** that is obligated under those
contracts? How is CHW Group, Inc. to calculate its financial security at all, when it is not entitled
to any of the "unearned gross consideration received by the provider for any unexpired service
contracts"? NRS 690C.170(1)(b). There are no answers to these questions because there is
simply no requirement that a third-party Sales Agent who is not obligated at all on the underlying
service contract be registered with the Division. Only the **Provider**, the one who is **obligated**
under the service contract, must be registered. HWAN is obligated under the service contracts at
issue, not CHW Group, Inc. Ex. 2. The Hearing Officer ignored this fact in her order, despite

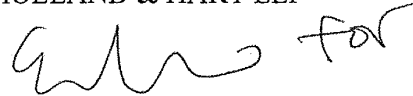
1 The Division would have this Court believe that there is a uniform rule in Nevada
2 requiring third-party Sales Agents who sell contracts on behalf of Providers to be registered, but
3 this is simply not the case. There is no such statutory requirement. And there is no requirement
4 in practice. In fact, if there were such a requirement, one would expect the Division to require all
5 unregistered third-party Sales Agents, such as Best Buy, to register with the Division or require
6 Providers, such as AIG WarrantyGuard, Inc., to stop using their unregistered third-party Sales
7 Agents. But the reality is the Division seeks to impose rules and requirements on HWAN that
8 are not imposed on other service contract Providers in the state.

9 **IV. CONCLUSION**

10 For these reasons, HWAN respectfully requests reconsideration of this Court's ruling on
11 November 7, 2019 with respect to third-party Sales Agents. Third-party Sales Agents, such as
12 CHW Group, Inc., are not required to be registered with the Division under NRS Chapter 690C.
13 HWAN cannot be found to be unsuitable for using an unregistered third-party Sales Agent to sell
14 contracts on HWAN's behalf.

15 DATED this 15th day of November, 2019.

16 HOLLAND & HART LLP

17  for

18 Constance L. Akridge
19 Nevada Bar No. 3353
20 Sydney R. Gambee
21 Nevada Bar No. 14201
22 Brittany L. Walker
23 Nevada Bar No. 14641
24 9555 HILLWOOD DRIVE, 2ND FLOOR
25 LAS VEGAS, NV 89134

26 *Attorneys for Home Warranty Administrator of*
27 *Nevada, Inc.*
28 *dba Choice Home Warranty*

the Division-approved service contract being admitted into evidence, but the Court cannot ignore
this undisputed evidence that HWAN is the obligor, not CHW Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2019, a true and correct copy of the foregoing **MOTION FOR LEAVE OF COURT PURSUANT TO FJDCR 15(10) AND DCR 13(7) FOR LIMITED RECONSIDERATION OF FINDINGS PERTAINING TO HWAN'S PETITION FOR JUDICIAL REVIEW** was served by the following method(s):

☒ **U.S. Mail:** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
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ryien@ag.nv.gov

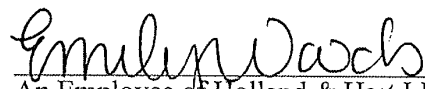
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Of Business and Industry – Division of
Insurance*

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Of Business and Industry – Division of
Insurance*

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An Employee of Holland & Hart LLP

INDEX OF EXHIBITS

EXHIBIT 1	AIG WarrantyGuard, Inc. Declaration of Coverage Page approved by the Division	Pages 1 – 2
EXHIBIT 2	Record, Tab 35, Ex. EE: HWAN/CHW Group, Inc. Service Contract Form approved by the Division	Pages 3 – 12
EXHIBIT 3	Geek Squad Protection – Best Buy	Pages 13 – 17
EXHIBIT 4	List of Registered Service Contract Providers	Pages 18 – 27

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EXHIBIT 1

AIG WarrantyGuard, Inc.
Declaration of Coverage Page
approved by the Division

[Variable Logo]

[Variable Logo]

Declaration of Coverage

Customer ID: [Insert Agreement #]

Dear [Insert Agreement Holders Name],

Thank you for purchasing your Agreement on [Insert Purchase Date]. The appliances and systems within your plan are now protected from unexpected mechanical or electrical breakdown. Enclosed are your Terms and Conditions which together with this Declaration of Coverage and any state specific amendments constitute the Agreement between you and us. Please read these carefully and file them in a safe place (the Terms and Conditions are also available for viewing at [Insert Web Site Address]).

Covered Property Address:

[Insert Agreement Holders Address]

[Insert Agreement Holders City], [Insert Agreement Holders State] [Insert Agreement Holders Zip Code]

Coverage Selected:

[Insert Plan Name] (Refer to Terms for individual items covered under this plan)

Additional Covered Items:

[Insert Add-on #1]

[Insert Add-on #2]

[Insert Add-on #3]

There is a thirty (30) day waiting period after the Purchase Date. In this thirty (30) day waiting period you are not eligible for coverage. Your coverage is effective beginning [Insert Effective Date]. Your initial payment was [Insert Initial Payment] which includes the Agreement Price of [Insert Agreement Price] and a non-refundable application fee of [Insert Application Fee]. Your [Insert Payment Method] will be automatically charged on a [Insert Term] basis from your initial purchase date for the amount of [Insert Agreement Price] until and unless the agreement is cancelled in writing.

In the event of a covered breakdown, you can call our claims and dispatch number at [Insert Phone Number] and select claims from the menu. Our claims office is open 24 hours a day, 7 days a week. Service for non-emergencies will be dispatched during normal working hours. Your trade service fee for each trade service requested is [Insert Trade Service Fee].

Should you have questions pertaining to billing or enrollment, then please call our office at [Insert Phone Number] and select the billing option from the menu.

Please do not hesitate to call us if you have any questions about your Agreement.

[Insert Sellers Name]

[Insert Sellers Address]

[Insert Sellers City], [Insert Sellers City] [Insert Sellers City]

130858 (7/18)

In Texas, AIG WarrantyGuard, Inc., 500 West Madison, Suite 3000, Chicago, IL 60606-6613 is the licensed home warranty provider and administrator for your plan. American Residential Warranty is authorized to sell this plan on behalf of AWG WarrantyGuard, Inc.

Ex. Page No.002

AA002469

EXHIBIT 2

Record, Tab 35, Ex. EE:
HWAN/CHW Group, Inc.
Service Contract Form
approved by the Division

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You are here: [Filing Search \(filingSearch.xhtml\)](#)
> [Filing Search Results \(filingSearchResults.xhtml\)](#) > [Filing Summary](#)

[New Search](#)

[Refine Search](#)

[Return to Search Results](#)

[Health Plan Binder Search](#)

Filing Summary

Filing Information

Product Name:

home service agreement

Type Of Insurance:

33.0 Other Lines of Business

Sub Type Of Insurance:

33.0004 Service Contracts

Filing Type:

Form

SERFF Tracking Number:

BLNK-127328348

Submission Date:

7/19/11

Filing Status:

Closed - Approved

12,000
380
12,380

Filing Outcome

SERFF Status:

Closed

Disposition Date:

08/26/2011

Approved

YOUR HOME SERVICE AGREEMENT



CHOICE HOME WARRANTY

America's Choice in Home Warranty Protection

Obligor: Home Warranty Administrator of Nevada, Inc.

Dear Test Account,

Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a home warranty. We appreciate your business and look forward to providing you with quality service for all your home protection needs.

To obtain the most value from your new home warranty, please take a moment to read and understand your coverage. Your coverage is dependant on the plan you have selected.

Should you have a problem with any of your covered systems or appliances, please call us toll-free at (888)-531-5403. We are available 24 hours a day, 7 days a week, 365 days a year, or simply log on to our website located at www.ChoiceHomeWarranty.com and file your claim online.

THIS CONTRACT EXPLAINS THE COVERAGE, LIMITATIONS, & EXCLUSIONS. PLEASE REVIEW YOUR CONTRACT

Contract Number: 123456789
Contract Term: 01/01/2011 – 01/01/2012
Covered Property:
 123 Main Street
 City, State 12345
Property Type: Single Family
Rate: \$430.00
Service Call Fee: \$60.00

Coverage Plan: Gold Plan
Includes: Air Conditioning System, Heating System,
 Electrical System, Plumbing System, Plumbing
 Stoppage, Water Heater, Whirlpool Bathtub, Refrigerator,
 Oven/Range/Stove, Cooktop, Dishwasher, Garbage
 Disposal, Built-In Microwave, Clothes Washer, Clothes
 Dryer, Ductwork, Garage Door Opener, Ceiling &
 Exhaust Fans
Optional Coverage: None

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HWANW-0711

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Ex. Page No.005

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YOUR HOME SERVICE AGREEMENT

Throughout this Agreement the words "We", "Us" and "Our" refer to Home Warranty Administrator of Nevada, Inc. (HWA), 90 Washington Valley Road, Bedminster, NJ 07921, the Obligor of this Agreement and it is backed by the full faith and credit of HWA. This Agreement is administered by Choice Home Warranty (Administrator), 510 Thornall Street, Edison, NJ 08837.

A. COVERAGE

During the coverage period, Our sole responsibility will be to arrange for a qualified service contractor ("Service Provider") to repair or replace, at Our expense (up to the limits set forth below), the systems and components mentioned as "Included" in accordance with the terms and conditions of this contract so long as such systems and components:

1. Are located inside the confines of the main foundation of the home or attached or detached garage (with the exception of the exterior pool/spa, well pump, septic tank pumping and air conditioner); and
2. Become inoperative due to normal wear and tear; and
3. Are in place and in proper working order on the effective date of this home warranty contract. This contract does not cover any known or unknown pre-existing conditions. It is understood that WE ARE NOT A SERVICE PROVIDER and are not ourselves undertaking to repair or replace any such systems or components. This contract covers single-family homes (including manufactured homes), new construction homes, condominiums, townhomes, and mobile homes under 5,000 square feet, unless an alternative dwelling type (i.e. above 5,000 square foot or multi-unit home) is applied, and appropriate fee is paid. Coverage is for occupied, owned or rented residential property, not commercial property or residences used as businesses, including, but not limited to, day care centers, fraternity/sorority houses, and nursing/care homes. This contract describes the basic coverage and options available. Coverage is subject to limitations and conditions specified in this contract. Please read your contract carefully. NOTE: This is not a contract of insurance, residential service, warranty, extended warranty, or implied warranty.

B. COVERAGE PERIOD

Coverage starts 30 days after acceptance of application by Us and receipt of applicable contract fees and continues for 365 days from that date. Your coverage may begin before 30 days if We receive proof of prior coverage, showing no lapse of coverage, through another carrier within 15 days of the order date.

C. SERVICE CALLS - TO REQUEST SERVICE: 1-888-531-5403

1. You or your agent (including tenant) must notify The Administrator for work to be performed under this contract as soon as the problem is discovered. The Administrator will accept service calls 24 hours a day, 7 days a week, 365 days a year at 1-888-881-3658. Notice of any malfunction must be given to the Administrator prior to expiration of this contract.
2. Upon request for service, the Administrator will contact an authorized Service Provider within two (2) days during normal business hours and four (4) days on weekends and holidays. The authorized Service Provider will contact You to schedule a mutually convenient appointment during normal business hours.
3. We define an emergency as a breakdown of a covered system which renders the dwelling unfit to live in because of defects that endanger the health and safety of the occupants. Upon request for services that fall within the emergency guidelines the Administrator will commence repairs within 24 hours. If repairs cannot be completed within three calendar days, the Administrator will provide you with a status report. If you should request the Administrator to perform non-emergency service outside of normal business hours, you will be responsible for payment of additional fees and/or overtime charges.
4. The Administrator has the sole and absolute right to select the Service Provider to perform the service; and We will not reimburse for services performed without prior approval.
5. You will pay a trade service call fee ("Service Fee") per claim (amount shown on page one) or the actual cost, whichever is less. The Service Fee is for each visit by Our approved Service Provider, except as noted Section C(6), and is payable to the Us approved Service Provider at the time of each visit. The service fee applies to each call dispatched and scheduled, including but not limited to those calls wherein coverage is included, excluded, or denied. The service fee also applies in the event You fail to be present at a scheduled time, or in the event You cancel a service call at the time a service contractor is en route to your home or at your home.
6. If service work performed under this contract should fail, then We will make the necessary repairs without an additional trade service call fee for a period of 90 days on parts and 30 days on labor.

D. COVERAGE (COVERAGE DEPENDANT ON PLAN)
The Coverage is for no more than one unit, system, or appliance, unless additional fees are paid. If no additional fees are paid, covered unit, system, or appliance is at Our sole discretion; certain limitations of liability apply to Covered systems and appliances.

1. CLOTHES DRYER

INCLUDED: All components and parts, except:

EXCLUDED: Noise - Venting - Lint screens - Knobs and dials - Doors - Door seals - Hinges - Glass - Leveling and balancing - Damage to clothing.

2. CLOTHES WASHER

INCLUDED: All components and parts, except:

EXCLUDED: Noise - Plastic mini-tubs - Soap dispensers - Filter screens - Knobs and dials - Door seals - Hinges - Glass - Leveling and balancing - Damage to clothing.

3. KITCHEN REFRIGERATOR

NOTE: Must be located in the kitchen.

INCLUDED: All components and parts, including integral freezer unit, except:

EXCLUDED: Racks - Shelves - Lighting and handles - Freon - Ice makers, ice crushers, beverage dispensers and their respective equipment - Water lines and valve to ice maker - Line restrictions - Leaks of any kind - Interior thermal shells - Freezers which are not an integral part of the refrigerator - Wine coolers or mini refrigerators - Food spoilage - Doors - Door seals and gaskets - Hinges - Glass - Audio/Visual equipment and internet connection components.

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HWA-NV-0711

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Ex. Page No.006

AA002473

YOUR HOME SERVICE AGREEMENT

4. AIR CONDITIONING/COOLER

NOTE: Not exceeding 5 (five) ton capacity and designed for residential use.

INCLUDED: Ducted electric central air conditioning ducted electric wall air conditioning. All components and parts, for units below 13 SEER and when We are unable to facilitate repair/replacement of failed covered equipment at the current SEER rating, repair/replacement will be performed with 13 SEER equipment and/or 7.7 HSPF or higher compliant, except:

EXCLUDED: Gas air conditioning systems - Condenser casings - Registers and Grills - Filters - Electronic air cleaners - Window units - Non-ducted wall units - Water towers - Humidifiers - Improperly sized units - Chillers - All exterior condensing, cooling and pump pads - Roof ducted wall units - Water towers - Condensate pumps - Commercial grade equipment - Cost for crane rentals - Air conditioning with mounts, jacks, stands or supports - Improper use of metering devices - Thermal expansion mismatched condensing unit and evaporative coil per manufacturer specifications - Improper use of metering devices - Thermal expansion valves - Refrigerant conversion - Leak detections - Water leaks - Drain line stoppages - Maintenance - Noise. No more than two systems covered unless purchased separately at time of enrollment. We are not responsible for the costs associated with matching dimensions, brand or color made. We will not pay for any modifications necessitated by the repair of existing equipment or the installation of new equipment.

5. HEATING SYSTEM OR BUILT-IN WALL UNIT

NOTE: Main source of heat to home not to exceed 5 (five) ton capacity and designed for residential use.

INCLUDED: All components and parts necessary for the operation of the heating system. For units below 13 SEER and when We are unable to facilitate repair/replacement of failed covered equipment at the current SEER rating, repair/replacement will be performed with 13 SEER equipment and/or 7.7 HSPF or higher compliant, except:

EXCLUDED: All components and parts relating to geothermal, water source heat pumps including: outside or underground piping, components for geothermal and/or water source heat pumps, redrilling of walls for geothermal and/or water source heat pumps, and well pump and well pump components for geothermal and/or water source heat pumps. Access - Radiators or valves - Baseboard casings - Radiant heating - Dampers - Valves - Fuel storage tanks - Portable units - Solar heating systems - Fireplaces and key valves - Filters - Line dryers and filters - Oil filters, nozzles, or strainers - Registers - Backflow preventers - Evaporator coil pan - Primary or secondary drain pans - Grills - Clocks - Timers - Add-ons for zoned systems - Heat lamps - Humidifiers - Flues and vents - Improperly sized heating systems - Mismatched systems - Chimneys - Pellet stoves - Cable heat (in ceiling) - Wood stoves (even if only source of heating) - Calcium build-up - Maintenance. NOTE: We will pay no more than \$1,500 per covered item per contract term for access, diagnosis and repair or replacement of any glycol, hot water, or steam circulating heating systems.

6. WATER HEATER (Gas and/or Electric)

INCLUDED: All components and parts, including circulating pumps, except:

EXCLUDED: Access - Insulation blankets - Pressure reducing valve - Sediment build-up - Rust and corrosion - Main, Holding or storage tanks - Vents and flues - Thermal expansion tanks - Low boy and/or Squat water heaters - Solar water heaters - Solar components - Fuel, holding or storage tanks - Noise - Energy management systems - Commercial grade equipment and units exceeding 75 gallons - Drain pans and drain lines - Tankless water heaters.

7. ELECTRICAL SYSTEM

INCLUDED: All components and parts, including built-in bathroom exhaust fans, except:

EXCLUDED: Fixtures - Carbon monoxide alarms, smoke detectors, detectors or related systems - Intercoms and door bell systems associated with intercoms - Inadequate wiring capacity - Solar power systems and panels - Solar Components - Energy Management Systems - Direct current (D.C.) wiring or components - Attic exhaust fans - Commercial grade equipment - Auxiliary or sub-panels - Broken and/or severed wires - Rewinding of new wiring for broken wires - Wire tracing - Garage door openers - Central vacuum systems - Damages due to power failure or surge - Circuit Overload. We will pay no more than \$500 per contract term for access, diagnosis and repair and/or replacement.

8. PLUMBING SYSTEM/STOPPAGE

INCLUDED: Leaks and breaks of water, drain, gas, waste or vent lines, except if caused by freezing or roots - Toilet tanks, bowls and mechanisms (replaced with builder's grade as necessary), toilet wax ring seals - Valves for shower, tub, and diverter angle stops, flists and gate valves - Permanently installed interior sump pumps - Built-in bathtub whirlpool motor and pump assemblies - Stoppages/Clogs in drain and sewer lines up to 100 feet from access point. Mainline stoppages are only covered if there is an accessible ground level clean out, except:

EXCLUDED: Stoppages and clogs in drain and sewer lines that cannot be cleared by cable or due to roots, collapsed, broken, or damaged lines outside the confines of the main foundation (even if within 100 feet of access point) - Access to drain or sewer lines from vent or removal of water closets - Cost to locate, access or install ground level clean out - Slab leaks - Polybutylene or Quast piping - Galvanized drain lines - Hose Bibs - Drum traps - Flange - Collapse of or damage to water, drain, gas, waste or vent lines caused by freezing, settlement and/or roots - Faucets, fixtures, cartridges, shower heads & shower arms - Roman tubs - Bath tub drain mechanisms - Sinks - Toilet lids - Showers - Cracked porcelain - Glass - Shower enclosures and base pans - Roman tubs - Bath tub drain mechanisms - Sinks - Toilet lids - Showers and seats - Cabling or grouting - Whirlpool jets - Whirlpool control panel - Septic tanks - Sewage ejector pumps - Water softeners - Pressure regulators - Inadequate or excessive water pressure - Flow restrictions in fresh water lines caused by rust, corrosion or chemical deposits - Holding or storage tanks - Saunas and/or steam rooms. NOTE: We will provide access to plumbing systems through unobstructed walls, ceilings or floors, only, and will return the access opening to rough finish condition. We will pay no more than \$500 per contract term for access, diagnosis and repair and/or replacement. Our authorized Service Provider will close the access opening and return it to rough finish condition, subject to the \$500 limit indicated. We shall not be responsible for payment of the cost to remove and replace any built-in appliances, cabinets, floor coverings or other obstructions impeding access to walls, ceilings, and/or floors.

9. BUILT-IN MICROWAVE

INCLUDED: All components and parts, except:

EXCLUDED: Doors - Hinges - Handles - Doors - Door glass - Lights - Interior linings - Trays - Clocks - Shelves - Portable or counter top units - Arcing - Meat probe assemblies - Rotisseries.

10. OVEN/RANGE/STOVE/COOKTOP (Gas or Electric; Built-in, Portable or Free Standing).

INCLUDED: All components and parts, except:

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FWA-NY-07-11

CHW073379

Ex. Page No.007

AA002474

YOUR HOME SERVICE AGREEMENT

EXCLUDED: Clocks (unless they affect the cooking function of the unit) - Meat probe assemblies - Rollers - Racks - Handles - Knobs - Door seals - Doors - Hinges - Lighting and handles - Glass - Sensi-heat burners will only be replaced with standard burners.

11. DISHWASHER

INCLUDED: All components and parts, except:

EXCLUDED: Racks - Baskets - Rollers - Hinges - Handles - Doors - Door gaskets - Glass - Damage caused by broken glass - Cleaning.

12. GARBAGE DISPOSAL

INCLUDED: All components and parts, including entire unit, except:

EXCLUDED: Problems and/or jams caused by bones, glass, or foreign objects other than food.

13. CEILING AND EXHAUST FANS

INCLUDED: Motors - Switches - Controls - Bearings - Blades, except:

EXCLUDED: Fans - Blades - Belts - Shutters - Filters - Lighting. Note: Builder's standard is used when replacement is necessary.

14. DUCTWORK

INCLUDED: Duct from heating unit to point of attachment at registers or grills, except:

EXCLUDED: Registers and grills - Insulation - Asbestos-insulated ductwork - Vents, flues and breaching - Ductwork exposed to outside elements - Improperly sized ductwork - Separation due to settlement and/or lack of support - Damper motors - Diagnostic testing of, or locating leaks to ductwork, including but not limited to, as required by any federal, state or local law, ordinance or regulation, or when required due to the installation or replacement of system equipment. We will provide access to ductwork through unobstructed walls, ceilings or floors, only, and will return the access opening to rough finish condition. With respect to concrete covered, embedded, encased, or otherwise inaccessible ductwork, We will pay no more than \$500 per contract term for access, diagnosis and repair or replacement. Our authorized Service Provider will close the access opening and return to a rough finish condition, subject to the \$500 limit indicated. We shall not be responsible for payment of the cost to remove and replace any built-in appliances, cabinets, floor coverings or other obstructions impeding access to walls, ceilings, and/or floors.

15. GARAGE DOOR OPENER

INCLUDED: All components and parts, except:

EXCLUDED: Garage doors - Hinges - Springs - Sensors - Chains - Travelers - Tracks - Rollers - Remote receiving and/or transmitting devices.

16. GREEN

INCLUDED: If a covered system or appliance (limited to Clothes Washer, Clothes Dryer, Refrigerator, Dishwasher, Heating System, and Water Heater) breaks down per Section A above and subject to all other contract inclusions, exclusions and limitations, and it can not be repaired, We will replace the appliance with an ENERGY STAR qualified product (subject to availability, exclusions and limitations), one with similar and like features as existing appliance, except:

EXCLUDED: All other contract limitations of liability and exclusions apply.

E. OPTIONAL COVERAGE (Requires Additional Payment)
NOTE: You may purchase any Optional Coverage for up to 30 days after commencement of Coverage. However, Coverage shall not commence until receipt of payment by Us and such Coverage shall expire upon expiration of Coverage period in Section B.

1. POOL AND/OR SPA EQUIPMENT

INCLUDED: Both pool and built-in spa equipment (exterior hot tub and whirlpool) are covered if they utilize common equipment. If they do not utilize common equipment, then only one or the other is covered unless an additional fee is paid. Coverage applies to above ground, accessible working components and parts of the heating, pumping and filtration system as follows: Heater - Pump - Motor - Filter - Filter timer - Gaskets - Blower - Timer - Valves, limited to back flush, actuator, check, and 2 and 3-way valves - Relays and switches - Pool sweep motor and pump - Above ground plumbing pipes and wiring, except:

EXCLUDED: Portable or above ground pools/spas - Control panels and electronic boards - Lights - Liners - Maintenance - Structural defects - Solar equipment - Jets - Ornamental fountains, waterfalls and their pumping systems - Pool cover and related equipment - Fill line and fill valve - Built-in or detachable cleaning equipment such as, but not limited to, pool sweeper, pop up heads - Turbo valves, skimmers, chlorinators, and ionizers - Fuel storage tanks - Disposable filtration mediums - Cracked or corroded filter casings - Grids - Cartridges - Heat pump - Salt water systems. We will pay no more than \$500 per contract term for access, diagnosis and repair and/or replacement.

2. SEPTIC TANK PUMPING

INCLUDED: Main line stoppages/clogs (one time only, and must have existing access or clean out). If a stoppage is due to a septic tank back up, then we will pump the septic tank one time during the term of the plan.

Coverage can only become effective if a septic certification was completed within 90 days prior to close of sale. We reserve the right to request a copy of the certification prior to service dispatch.

EXCLUDED: The cost of gaining or finding access to the septic tank and the cost of sewer hook ups - Disposal of waste - Chemical treatments - Tanks - Leach lines - Cess pools - Mechanical pump systems. Limited to a total of \$200 maximum.

3. WELL PUMP

INCLUDED: All components and parts of well pump utilized for main dwelling only, except:

EXCLUDED: Holding or storage tanks - Digging - Locating pump - Pump retrieval - Redrilling of wells - Well casings - Pressure tanks - Pressure switches and gauges - Check valve - Relief valve - Drop pipe - Piping or electrical lines leading to or connecting pressure tank and main dwelling including wiring from control box to the pump - Booster pumps - Well pump and well pump components for geothermal and/or water source heat pumps. We will pay no more than \$500 per contract term for access, diagnosis and repair and/or replacement.

4. SUMP PUMP

INCLUDED: Permanently installed sump pump for ground water, within the foundation of the home or attached garage, except:

EXCLUDED: Sewerage ejector pumps - Portable pumps - Backflow preventors - Check valves - Piping modifications for new installs.

5. CENTRAL VACUUM

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HWA NY 07/11

CHW073380

Ex. Page No.008

AA002475

YOUR HOME SERVICE AGREEMENT

INCLUDED: All mechanical system components and parts, except:
EXCLUDED: Ductwork - Hoses - Blockages - Accessories.

6. LIMITED ROOF LEAK (Single Family Homes Only)

INCLUDED: Repair of shake, shingle, and composition roof leaks over the occupied living area.

EXCLUDED: Porches - Patios - Cracked and/or missing material - Foam roofs - Tar and gravel or metal roof - Camwood shakes - Masonite shingles - Flat or built-up roof - Structural leaks adjacent to or caused by appendages of any kind - Downspouts - Flashing - Gutters - Skylights - Decks - Patio covers - Solar equipment - Roof jacks - Antennae - Satellite components - Chimneys - Partial roof replacement - Preventative maintenance.

NOTE: If roof must be partially or completely replaced to effect repair, this coverage does not apply.

7. STAND ALONE FREEZER

INCLUDED: All parts and components that affect the operation of the unit, except:

EXCLUDED: Ice-makers, crumbers, dispensers and related equipment - Internal shell - Racks - Shelves - Glass displays - Lights - Knobs and caps - Dials - Doors - Door seals and gaskets - Door hinges - Door handles - Glass - Condensation pans - Clogged drains and clogged lines - Grates - Food spoilage - Freon - Disposal and recapture of Freon.

8. SECOND REFRIGERATOR

INCLUDED: All components and parts, including integral freezer unit, except:

EXCLUDED: Racks - Shelves - Lighting and handles - Freon - Ice makers, ice crushers, beverage dispensers and their respective equipment - Water lines and valve to ice maker - Line restrictions - Leaks of any kind - Interior thermal shells - Freezers which are not an integral part of the refrigerator - Food spoilage - Doors - Door seals and gaskets - Hinges - Glass - Audio/Visual equipment and Internet connection components.

9. SEPTIC SYSTEM

INCLUDED: Sewage ejector pump - Jet pump - Aerobic pump - Septic tank and line from house.

EXCLUDED: Leach lines - Field lines - Lateral lines - Tile fields and leach beds - Insufficient capacity - Clean out - Pumping. We will pay no more than \$500 per contract term for access, diagnosis and repair and/or replacement.

F. LIMITATIONS OF LIABILITY

- The following are not included during the contract term; (i) malfunction or improper operation due to rust or corrosion of all systems and appliances, (ii) collapsed ductwork, (iii) known or unknown pre-existing conditions.
- We are not responsible for providing access to or closing access from any covered item which is concrete-encased or otherwise obstructed or inaccessible.
- At times it is necessary to open walls or ceilings to make repairs. The Service Provider obtained by We will close the opening, and return to a rough finish condition. We are not responsible for restoration of any wall coverings, floor coverings, plaster, cabinets, counter tops, tiling, paint, or the like.
- We are not responsible for the repair of any cosmetic defects or performance of routine maintenance.
- Electronic or computerized energy management or lighting and appliance management systems, solar systems and equipment are not included.
- You may be charged an additional fee by the Service Provider to dispose of an old appliance, system or component, including, but not limited to the following items: condensing units, evaporator coils, compressors, capacitors, refrigerators, freezers, water heaters, and any system or appliance which contains dangerous or hazardous materials.
- We are not liable for service involving hazardous or toxic materials including but not limited to mold, lead paint, or asbestos, nor costs or expenses associated with refrigerant recovery, recycling, reclaiming or disposal. We are not liable for any failure to obtain timely service due to conditions beyond our control, including, but not limited to, labor difficulties or delays in obtaining parts or equipment.
- We are not liable for repair of conditions caused by chemical or sedimentary build up, rust or corrosion, mildew, mold, misuse or abuse, failure to clean or maintain as specified by the equipment manufacturer, missing parts, structural changes, fire, freezing, electrical failure or surge, water damage, lightning, mud, earthquake, soil movement, soil settlement, settling of home, storms, accidents, pest damage, acts of God, or failure due to excessive or inadequate water pressure.
- We have the sole right to determine whether a covered system or appliance will be repaired or replaced. We are responsible for installing replacement equipment of similar features, capacity, and efficiency, but not for matching dimensions, brand or color. We are not responsible for upgrades, components, parts, or equipment required due to the incompatibility of the existing equipment with the replacement system or appliance or component or part thereof or with new type of chemical or material utilized to run the replacement equipment including, but not limited to, differences in technology, refrigerant requirements, or efficiency as mandated by federal, state, or local governments. If parts are no longer available, We will offer a cash payment in the amount of the average cost between parts and labor of the covered repair. We reserve the right to locate parts at any time. We are not liable for replacement of entire systems or appliances due to obsolete, discontinued or unavailability of one or more integral parts. However, We will provide reimbursement for the costs of those parts determined by reasonable allowance for the fair value of like parts. We reserve the right to rebuild a part or component, or replace with a rebuilt part or component.
- We are not liable for repairs related to costs of construction, carpentry or other incidental costs associated with alterations or modifications of appliances, components or installation of different equipment and/or systems. Except as required to maintain compatibility with equipment manufactured to be 13 SEER and/or 7.7 HSPF or higher compliant. We are not responsible for providing upgrades, components, parts or equipment required due to the incompatibility of the existing equipment with the replacement system, appliance or component/part, including but not limited to efficiency as mandated by federal, state or local governments.
- We are not responsible for repairs related to inadequacy, lack of capacity, improper installation, mismatched systems, oversized systems, undersized systems, previous repair or design, manufacturer's defect, and any modification to the system or appliance.
- We are not liable for normal or routine maintenance. We will not pay for repairs or failures that result from the Contract holder's failure to perform normal or routine maintenance. For example, you are responsible for providing maintenance and cleaning pursuant to

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HWA-NY-0711

CHW073381

Ex. Page No.009

AA002476

YOUR HOME SERVICE AGREEMENT

manufacturers' specifications, such as periodic cleaning of heating and air conditioning systems, evaporator coils and condenser coils, as well as periodic filter replacement.

13. We are not liable for the repair or replacement of commercial grade equipment, systems or appliances. We shall pay no more than \$1,000 in aggregate for professional service or like appliances such as, but not limited to, brand names such as Sub Zero, Viking, Wolf, Bosch, Jenn-Air, GE Monogram, Thermador, and etc.

14. We reserve the right to obtain a second opinion at Our expense.

15. We are not responsible for any repair, replacement, installation, or modification of any covered system or appliance arising from a manufacturer's recall or defect of sold covered items, nor any covered item while still under an existing manufacturer's, distributor's, or in-home warranty.

16. We reserve the right to offer cash back in lieu of repair or replacement in the amount of Our actual cost (which at times may be less than retail) to repair or replace any covered system, component or appliance.

17. We are not responsible for the repair or replacement of any system or appliance or component or part thereof that has been previously, or is subsequently, determined to be defective by the Consumer Product Safety Commission or the manufacturer and for which either has issued, or issues, a warning or recall, or which is otherwise necessitated due to failure caused by the manufacturer's improper design, use of improper materials, formula, manufacturing process or other manufacturing defect.

18. We will not pay for the repair or replacement of any covered systems or appliances if they are inoperable as a result of known or unknown pre-existing conditions, deficiencies and/or defects.

19. You agree that We are not liable for the negligence or other conduct of the Service Provider, nor are We an insurer of Service Provider's performance. You also agree that We are not liable for consequential, incidental, indirect, secondary, or punitive damages. You expressly waive the right to all such damages. Your sole remedy under this agreement is recovery of the cost of the required repair or replacement, whichever is less. You agree that, in no event, will Our liability exceed \$1500 per contract item for access, diagnosis and repair or replacement.

G. Mediation

In the event of a dispute over claims or coverage you agree to file a written claim with us and allow us thirty (30) calendar days to respond to the claim. The parties agree to mediate in good faith before resorting to mandatory arbitration in the State of Nevada. Except where prohibited, if a dispute arises from or relates to this Agreement or its breach, and if the dispute cannot be settled through direct discussions you agree that:

1. Any and all disputes, claims and causes of action arising out of or connected with this Agreement shall be resolved individually, without resort to any form of class action, and exclusively by the American Arbitration Association in the state of Nevada under its Commercial Mediation Rules. Controversies or claims shall be submitted to arbitration regardless of the theory under which they arise, including without limitation contract, tort, common law, statutory, or regulatory duties or liability.

2. Any and all claims, judgments and awards shall be limited to actual out-of-pocket costs incurred to a maximum of \$1500 per claim, but in no event attorneys' fees.

3. Under no circumstances will you be permitted to obtain awards for, and you hereby waive all rights to claim, indirect, punitive, incidental and consequential damages and any other damages, other than for actual out-of-pocket expenses, and any and all rights to have damages multiplied or otherwise increased. All issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement, shall be governed by, and construed in accordance with, the laws of the State of Nevada, U.S.A. without giving effect to any choice of law or conflict of law rules (whether of the State of Nevada or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than the State of Nevada.

H. Severability

If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, such provision shall be of no force or effect; but the remainder of this Agreement shall continue in full force and effect.

I. BUILDING AND ZONING CODE REQUIREMENTS OR VIOLATIONS

1. We will not contract for services to meet current building or zoning code requirements or to correct for code violations, nor will it contract for services when permits cannot be obtained. We will not pay for the cost to obtain permits.

2. Except as required to maintain compatibility with equipment manufactured to be 13 SEER and/or 7.7 HSPF or higher compliant, we are not responsible for upgrade or additional costs or expenses that may be required to meet current building or zoning code requirements or correct for code violations. This includes city, county, state, federal and utility regulations and upgrades required by law.

J. MULTIPLE UNITS AND INVESTMENT PROPERTIES

1. If the contract is for duplex, triplex, or fourplex dwelling, then every unit with in such dwelling must be covered by Our contract with applicable optional coverage for coverage to apply to common systems and appliances.

2. If this contract is for a unit within a multiple unit of 5 or more, then only items contained within the confines of each individual unit are covered. Common systems and appliances are excluded.

3. Except as otherwise provided in this section, common systems and appliances are excluded.

K. TRANSFER OF CONTRACT & RENEWALS

1. If your covered property is sold during the term of this contract You must notify Us of the change in ownership and submit the name of the new owner by phoning 1-888-681-3656 in order to transfer coverage to the new owner.

2. You may transfer this contract at any time. There is no fee to transfer contract.

3. This contract may be renewed at Our option and where permitted by state law. In that event You will be notified of the prevailing rate and terms for renewal.

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CHW073382

Ex. Page No.010

AA002477

YOUR HOME SERVICE AGREEMENT

4. If You select the monthly payment option and We elect to renew your contract, We will notify You of applicable rate and terms of renewal during the tenth month of your contract. You will automatically be renewed for a monthly coverage period unless You notify Us in writing 30 days prior to the expiration of the contract. Your first payment for the next contract term will be construed as authorization for month-to-month charges.

L. CANCELLATION

This is a service contract for repair, replacement, or partial replacement of the products listed that are deemed manufactured or sold by the manufacturer. This is not a contract of insurance, residential service, warranty, extended warranty, or implied warranty. You may cancel within the first 30 days of the order date for a refund of the paid contract fees. You may cancel after the first 30 days and You shall be entitled to a pro rata refund of the paid contract fee for the unexpired term, less a \$50 administrative fee. If We do not provide a refund within 15 days of cancellation a ten percent penalty for each 30 day period or portion thereof shall be added to the refund.

This contract shall be non-cancelable by Us except for:

1. Failure by You to pay an amount when due.
2. You are convicted of a crime which results in an increase in the service required under the service contract.
3. Fraud or misrepresentation of facts material by You to the issuance of this contract; or in presenting a claim.
4. An act or omission by You or a violation of any condition of the service contract by You, provided that the act, omission, or violation occurred after the effective date of the service contract and substantially and materially increases the service required under the service contract.
5. A material change in the nature or extent of the required service or repair which occurs after the effective date of the service contract and which causes the required service or repair to be substantially and materially increased beyond that contemplated at the time that the service contract was issued or sold.

If We cancel this agreement for one of the reasons listed above You shall be entitled to a pro rata refund of the paid contract fee for the unexpired term, and will not be charged an administrative fee. We will provide 15 days notice prior to cancellation of this contract. All cancellation requests must be submitted in writing.

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CHW073383

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Ex. Page No.011

AA002478

Dolores Bennett

From: Dolores Bennett
Sent: Wednesday, July 27, 2011 2:39 PM
To: Harland Amborn; David Hall
Cc: Ted Bader; Gennady Stolyarov
Subject: RE: Choice Home Warranty

Mr. Hall:

Choice Home Warranty is not registered as a service contract provider in Nevada.

Home Warranty Administrator Of Nevada, Inc. (Org. ID # 113194) is registered as a service contract provider in Nevada, and only has one service contract **approved** for sale in Nevada at this time: Home Service Agreement # HWAADMIN-8/2/10 (Approved: 11/22/10). That contract is under the "Home Warranty Administrators" name and makes no mention of Choice Home Warranty. However, Home Warranty Administrator of Nevada, Inc. has a **pending** form filing (Filing # 25290) in SERFF for a new contract called "Choice Home Warranty" (Home Service Agreement # HWA-NV-0711) listing Home Warranty Administrator Of Nevada, Inc. as the Obligor, and listing Choice Home Warranty as the Administrator.

The cover letter contains both Choice Home Warranty and Home Warranty Administrators logos and reads,

- ❖ Welcome to Choice Home Warranty! You made a wise decision when you chose to protect your home with a home warranty. We appreciate your business and look forward to providing you with quality service for all your home protection needs. To obtain the most value from your new home warranty, please take a moment to read and understand your coverage. Your coverage is dependant on the plan you have selected. Should you have a problem with any of your covered systems or appliances, please call us toll-free at (888)-531-5403. We are available 24 hours a day, 7 days a week, 365 days a year, or simply log on to our website located at www.ChoiceHomeWarranty.com and file your claim online.

However, the agreement reads,

- ❖ Throughout this Agreement the words "We", "Us" and "Our" refer to Home Warranty Administrator of Nevada, Inc. (HWA), 90 Washington Valley Road, Bedminster, NJ 07921, the Obligor of this Agreement and it is backed by the full faith and credit of HWA. This Agreement is administered by Choice Home Warranty (Administrator), 510 Thomall Street, Edison, NJ 08837.

That pending filing is still under review pending the company response to our objections to certain statements, wording and typographical errors in the contract. We will approve the contract after they correct those errors.

Dolores Bennett, ARC, ARM, AIS, AINS

Insurance Examiner
Property & Casualty Section
Nevada Division of Insurance
1818 E. College Parkway, Suite 103
Carson City, NV 89706
direct: (775) 687-0763
main: (775) 687-0700
fax: (775) 687-0787
dbennett@doi.state.nv.us

Visit us online at the [Service Contracts Section](#) for service contract provider requirements, filing information, and more.

From: Harland Amborn
Sent: Wednesday, July 27, 2011 1:39 PM
To: David Hall
Cc: Dolores Bennett
Subject: Choice Home Warranty

1

CHW073384

Ex. Page No.012

AA002479

EXHIBIT 3

Geek Squad Protection – Best Buy

Top Deals Deal of the Day Credit Cards For Your Business Gift Cards Gift Ideas

Search Best Buy



Colorado BL... Open till 9 pm

Cart

Products Brands Deals Services

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Shopping History

Order Status

Saved Items

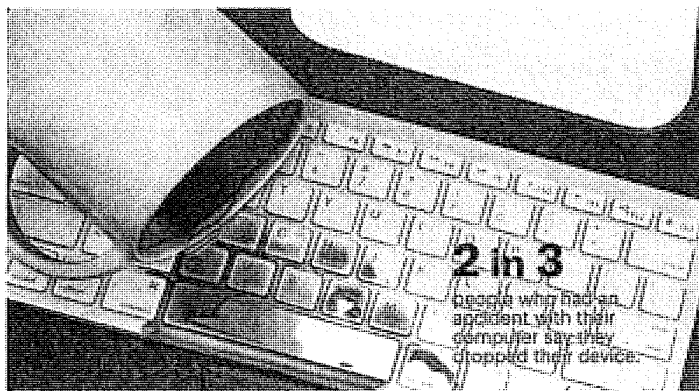
Best Buy > Services > Geek Squad

Already have a Protection Plan? See your account >

We fix it or replace it.

Geek Squad® Protection keeps your device safe when manufacturer warranties come up short. Because bad luck deserves good coverage.

Watch a video about Geek Squad Protection



Why choose Geek Squad Protection?

Manufacturer Warranty

Manufacturer warranties only cover you for so long.

Geek Squad Protection Plan

Geek Squad Protection¹ extends and enhances your coverage for up to five years.²

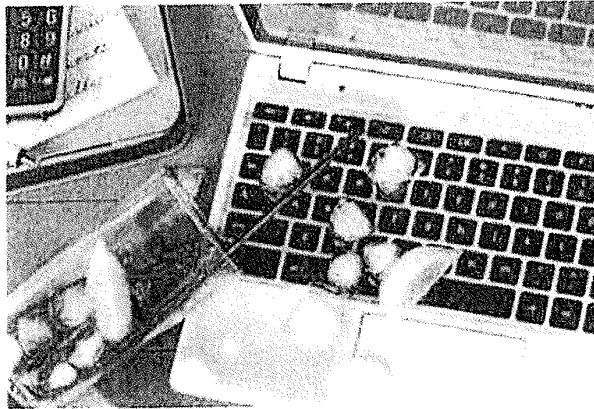
We have you and your technology covered.

Geek Squad Protection¹ extends and enhances your coverage for up to five years.²

Over 20,000 Geek Squad Agents are ready to help you online, on the phone, in your home, and at all Best Buy stores. Our Service Centers have the expertise to repair thousands of products, no matter where you bought them.



Ex*Page No:014



Optional coverage.

Accidental Damage from Handling.

Get complete peace of mind. This coverage for drops, spills and cracks is available with many of our Protection Plans.

Save 20% on Geek Squad Protection¹ with a Total Tech Support membership.

Enjoy peace of mind at a lower price. Get 20% off Geek Squad Protection so you're covered when your warranty comes up short.

[Learn more about Total Tech Support](#)



Geek Squad Protection Plans



Appliances



Cameras
and
camcorders



Car
electronics



Cell
phones



Computers
and
tablets



Gaming
consoles
and
handhelds



Product Replacement Plans.

Available for smaller products like printers, security cameras, small appliances and more. If your product stops working, a

Ex. Page No.015



replacement or store credit will be provided at a Best Buy store or by mail.

[Learn about Product Replacement Plans ›](#)

How to buy protection.

You'll be able to choose a Geek Squad Protection Plan once you add a product to your cart.

Manufacturer warranties.

While the Geek Squad Protection Plan enhances and extends the manufacturer's warranty, get further details by accessing the applicable manufacturer's warranty.

[See contact info ›](#)

Getting help is easy.

[Chat with an Agent ›](#)
or call 1-800-433-5778

[Protection Plan FAQs ›](#)

[Update your credit card for Geek Squad monthly billing ›](#)

1. Please refer to the [terms and conditions](#) for a complete description of coverage and exclusions. Service fees and claim limits will apply for cell phones. AIG WarrantyGuard, Inc. is the Obligor and Administrator of the coverage under this plan.

2. Parts and coverage available under the manufacturer's warranty are not covered by the Plan.

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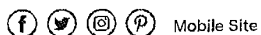
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Ex. Page No.016

<https://www.bestbuy.com/site/geek-squad/geek-squad-protection/pcmcat159800050001.c?id=pcmcat159800050001>

3/4

AA002483

11/12/2019

Geek Squad Protection - Best Buy

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EXHIBIT 4

List of Registered Service Contract Providers

11/12/2019

Service Contract Provider Search

Department of Business and Industry

Nevada Division of Insurance

FAQ

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Sitemap

State of Nevada Links

Consumers

Health Insurance Rates

Licensing

Insurers

Captive Insurers

Self-Insured

News & Notices

Service Contract Providers

Provider

Select Contract Type

Service Contract Provider ↑

Service Contract Provider ↑	Contract Type	Contracts on File
3M COMPANY	Vehicle \ Road Assistance	19
4WARRANTY CORPORATION	Computers \ Electronics	13
4WARRANTY CORPORATION	Home \ Home Appliances	35
4WARRANTY CORPORATION	Miscellaneous \ Others	14
ACCLAIMED HOME WARRANTY LLC	Home \ Home Appliances	1
AEGIS EXTENDED SERVICE LLC	Vehicle \ Road Assistance	4
AIG WARRANTYGUARD INC	Computers \ Electronics	29
AIG WARRANTYGUARD INC	Home \ Home Appliances	11
AIG WARRANTYGUARD INC	Miscellaneous \ Others	1
ALLY SERVICE AGREEMENT CORPORATION	Vehicle \ Road Assistance	5
ALPHA WARRANTY SERVICES INC	Vehicle \ Road Assistance	58
AMAZON HOME WARRANTY OF NEVADA, LLC DBA AMAZON HOME WARRANTY	Home \ Home Appliances	1
AMERICA'S CHOICE HOME WARRANTY	Home \ Home Appliances	1
AMERICAN AUTO GUARDIAN INC	Vehicle \ Road Assistance	1
AMERICAN AUTO SHIELD LLC	Vehicle \ Road Assistance	71
AMERICAN GUARDIAN WARRANTY SERVICES INC	Vehicle \ Road Assistance	122
AMERICAN HOME SHIELD CORPORATION	Home \ Home Appliances	27
AMERICAN HONDA MOTOR COMPANY, INC.	Vehicle \ Road Assistance	4
AMERICAN ROAD ADMINISTRATIVE COMPANY (DBA)	Vehicle \ Road Assistance	8

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Ex. Page No.019

1/9

AA002486

11/12/2019

Service Contract Provider Search

Service Contract Provider ↑

Contract Type Contracts on File

AMERICAN WATER RESOURCES LLC	Home \ Home Appliances	11
AMT WARRANTY CORP	Computers \ Electronics	30
AMT WARRANTY CORP	Home \ Home Appliances	138
AMT WARRANTY CORP	Vehicle \ Road Assistance	30
AMT WARRANTY CORP	Miscellaneous \ Others	33
APPLE INC	Computers \ Electronics	11
APPLECARE SERVICE COMPANY INC	Computers \ Electronics	16
ASURE EXTENDED SERVICE COMPANY LLC	Home \ Home Appliances	3
ASURION CONSUMER SOLUTIONS INC	Computers \ Electronics	18
ASURION CONSUMER SOLUTIONS INC	Home \ Home Appliances	20
ASURION CONSUMER SOLUTIONS INC	Vehicle \ Road Assistance	2
ASURION CONSUMER SOLUTIONS INC	Miscellaneous \ Others	15
ASURION SERVICE PLANS INC	Computers \ Electronics	33
ASURION SERVICE PLANS INC	Home \ Home Appliances	20
ASURION SERVICE PLANS INC	Miscellaneous \ Others	59
ASURION TECHNOLOGY SERVICES INC	Computers \ Electronics	8
ASURION TECHNOLOGY SERVICES INC	Miscellaneous \ Others	1
ASURION WARRANTY PROTECTION SERVICES LLC	Computers \ Electronics	25
ASURION WARRANTY SERVICES INC	Computers \ Electronics	13
ASURION WARRANTY SERVICES INC	Miscellaneous \ Others	4
AUTO KNIGHT MOTOR CLUB INC	Vehicle \ Road Assistance	87
AUTO KNIGHT MOTOR CLUB INC	Miscellaneous \ Others	2
AUTO SERVICES COMPANY INC	Vehicle \ Road Assistance	14
AUTOGUARD ADVANTAGE CORPORATION	Vehicle \ Road Assistance	52
AUTOMOBILE PROTECTION CORPORATION (APCO)	Vehicle \ Road Assistance	95
AUTOMOTIVE WARRANTY SERVICES INC	Vehicle \ Road Assistance	89
AXIOM PRODUCT ADMINISTRATION LLC	Vehicle \ Road Assistance	7
BANKERS WARRANTY GROUP INC	Computers \ Electronics	54
BANKERS WARRANTY GROUP INC	Home \ Home Appliances	86
BANKERS WARRANTY GROUP INC	Vehicle \ Road Assistance	2

Ex. Page No.020

di.nv.gov/ins/f?p=600:35:0:

2/9

AA002487

11/12/2019

Service Contract Provider Search

Service Contract Provider ↑

	Contract Type	Contracts on File
BANKERS WARRANTY GROUP INC	Miscellaneous \ Others	43
BLACK DIAMOND ADMINISTRATIVE COMPANY, LLC	Vehicle \ Road Assistance	12
BRIGHTSTAR DEVICE PROTECTION, LLC	Computers \ Electronics	16
BROWARD FACTORY SERVICE INC DBA BFS HOME WARRANTY	Home \ Home Appliances	5
CAL-TEX PROTECTIVE COATINGS, INCORPORATED	Vehicle \ Road Assistance	2
CAPITAL AUTO PROTECTION SERVICES L.L.C.	Vehicle \ Road Assistance	14
CAPITAL PROCESSING SYSTEMS INC	Vehicle \ Road Assistance	7
CAREGARD WARRANTY SERVICES INC	Vehicle \ Road Assistance	4
CARGUARD ADMINISTRATION, INC	Vehicle \ Road Assistance	21
CARS PROTECTION PLUS INC	Vehicle \ Road Assistance	34
CE CARE PLAN CORP	Computers \ Electronics	16
CE CARE PLAN CORP	Home \ Home Appliances	4
CE CARE PLAN CORP	Vehicle \ Road Assistance	1
CE CARE PLAN CORP	Miscellaneous \ Others	1
CENTRAL ADMINISTRATIVE SERVICE CORPORATION INC	Vehicle \ Road Assistance	20
CENTURY AUTOMOTIVE SERVICE CORPORATION	Vehicle \ Road Assistance	40
CENTURY WARRANTY SERVICES INC	Vehicle \ Road Assistance	16
CNA WARRANTY SERVICES INC	Computers \ Electronics	1
CNA WARRANTY SERVICES INC	Home \ Home Appliances	76
CNA WARRANTY SERVICES INC	Miscellaneous \ Others	1
CONSUMER PROGRAM ADMINISTRATORS INC	Vehicle \ Road Assistance	113
CONTINENTAL SERVICE PROVIDER INC	Vehicle \ Road Assistance	52
CONTINENTAL WARRANTY INC	Vehicle \ Road Assistance	3
CORNERSTONE UNITED INC	Home \ Home Appliances	2
CORNERSTONE UNITED INC	Vehicle \ Road Assistance	20
D & P HOLDINGS, INC	Vehicle \ Road Assistance	42
DEALER PERFORMANCE INC	Vehicle \ Road Assistance	5
DEALERS ALLIANCE CORPORATION	Computers \ Electronics	3
DEALERS ALLIANCE CORPORATION	Home \ Home Appliances	3
DEALERS ALLIANCE CORPORATION	Vehicle \ Road Assistance	196

Ex. Page No.021

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3/9

AA002488

11/12/2019

Service Contract Provider Search

Service Contract Provider ↑	Contract Type	Contracts on File
DELL MARKETING LP	Computers \ Electronics	10
DENT WIZARD WARRANTY COMPANY LLC	Vehicle \ Road Assistance	29
DENT ZONE INC	Vehicle \ Road Assistance	24
DIAMOND WARRANTY CORPORATION	Vehicle \ Road Assistance	3
DISCOUNT TIRE CERTIFICATE, LLC	Vehicle \ Road Assistance	1
EFG HOME SERVICES LLC	Home \ Home Appliances	3
ELECTROLUX WARRANTY CORPORATION	Home \ Home Appliances	6
ELITE WARRANTY INC	Vehicle \ Road Assistance	4
ENDURANCE DEALER SERVICES LLC	Vehicle \ Road Assistance	36
ENTERPRISE FINANCIAL GROUP INC	Vehicle \ Road Assistance	114
ENTERPRISE SERVICE AGREEMENT CORPORATION	Vehicle \ Road Assistance	4
ETHOS GROUP, INC	Vehicle \ Road Assistance	23
EXPRESS SYSTEMS INC	Vehicle \ Road Assistance	34
EXPRESS SYSTEMS INC	Miscellaneous \ Others	1
EXTENDED VEHICLE PROTECTION LLC	Vehicle \ Road Assistance	74
FCA SERVICE CONTRACT LLC	Vehicle \ Road Assistance	133
FEDERAL WARRANTY SERVICE CORPORATION	Computers \ Electronics	51
FEDERAL WARRANTY SERVICE CORPORATION	Home \ Home Appliances	60
FEDERAL WARRANTY SERVICE CORPORATION	Vehicle \ Road Assistance	14
FEDERAL WARRANTY SERVICE CORPORATION	Miscellaneous \ Others	67
FIDELITY NATIONAL HOME WARRANTY COMPANY	Home \ Home Appliances	9
FIDELITY WARRANTY SERVICES INC	Vehicle \ Road Assistance	58
FIRST AMERICAN HOME WARRANTY CORPORATION	Home \ Home Appliances	215
FIRST AUTOMOTIVE SERVICE CORPORATION	Vehicle \ Road Assistance	44
FORD MOTOR SERVICE COMPANY	Vehicle \ Road Assistance	23
FORTRESS WARRANTY CORPORATION	Home \ Home Appliances	1
FORTRESS WARRANTY CORPORATION	Vehicle \ Road Assistance	2
FREEDOM WARRANTY OF AMERICA, LLC	Vehicle \ Road Assistance	8
FURNITURE CARE PROTECTION INC	Home \ Home Appliances	9
GAI WARRANTY COMPANY	Vehicle \ Road Assistance	67

Ex. Page No.022

AA002489

11/12/2019

Service Contract Provider Search

Service Contract Provider ↑	Contract Type	Contracts on File
GLOBAL AUTO SOLUTIONS INC	Vehicle \ Road Assistance	49
GOPRO CARE, INC.	Computers \ Electronics	7
GS ADMINISTRATORS INC	Vehicle \ Road Assistance	17
GUARDIAN PROTECTION PRODUCTS INC	Home \ Home Appliances	22
GUARDSMAN US LLC	Home \ Home Appliances	30
GWC WARRANTY CORPORATION	Vehicle \ Road Assistance	26
HELZBERGS DIAMOND SHOPS INC	Miscellaneous \ Others	2
HENDRICK AUTOGUARD INC	Vehicle \ Road Assistance	12
HLWP OF NEVADA LLC	Home \ Home Appliances	4
HOME BUYERS RESALE WARRANTY CORPORATION DBA 2-10 HOME BUYERS WARRANTY	Home \ Home Appliances	15
HOME SECURITY OF AMERICA INC DBA HSA HOME WARRANTY	Home \ Home Appliances	4
HOME SERVICE CLUB WARRANTY CORP	Home \ Home Appliances	7
HOME WARRANTY OF AMERICA INC	Home \ Home Appliances	14
HOME WARRANTY OF AMERICA INC	Miscellaneous \ Others	1
HOMESURE OF AMERICA INC	Home \ Home Appliances	59
HOMESURE OF AMERICA INC	Miscellaneous \ Others	1
HSB SECURE SERVICES INC	Home \ Home Appliances	2
HSB SECURE SERVICES INC	Miscellaneous \ Others	2
IAS Warranty, Inc.	Vehicle \ Road Assistance	62
INTEGRITY WARRANTY LLC	Vehicle \ Road Assistance	5
INTERSTATE NATIONAL DEALER SERVICES INC	Vehicle \ Road Assistance	215
IWS ACQUISITION CORPORATION	Vehicle \ Road Assistance	25
JM CARE PLAN INC	Miscellaneous \ Others	3
JOHNSON CONTROLS INC	Home \ Home Appliances	1
KAWASAKI MOTORS CORP USA	Vehicle \ Road Assistance	3
KORNERSTONE ADMINISTRATIVE SERVICES LLC	Vehicle \ Road Assistance	8
KUBOTA TRACTOR ACCEPTANCE CORPORATION	Vehicle \ Road Assistance	2
LANDCAR AGENCY, INC. DBA TOTAL CARE AUTO	Vehicle \ Road Assistance	20
LENOVO (UNITED STATES) INC.	Computers \ Electronics	12
LIBERTY HOME GUARD LLC	Home \ Home Appliances	1

Ex. Page No.023

AA002490

11/12/2019

Service Contract Provider Search

Service Contract Provider ↑	Contract Type	Contracts on File
MARATHON ADMINISTRATIVE CO INC	Vehicle \ Road Assistance	42
MATRIX FINANCIAL SERVICES, LLC	Vehicle \ Road Assistance	11
MERCURY MARINE DIVISION OF BRUNSWICK CORPORATION	Vehicle \ Road Assistance	6
MERCURY SELECT MANAGEMENT COMPANY INC	Vehicle \ Road Assistance	13
MPP CO., INC	Vehicle \ Road Assistance	28
NATION MOTOR CLUB LLC	Vehicle \ Road Assistance	450
NATIONAL AUTO CARE CORPORATION	Vehicle \ Road Assistance	25
NATIONAL HOME REPAIR WARRANTY INC	Home \ Home Appliances	12
NATIONAL HOME WARRANTY INC DBA RESIDENTIAL SERVICE CENTER	Home \ Home Appliances	1
NATIONAL PRODUCT CARE COMPANY	Computers \ Electronics	25
NATIONAL PRODUCT CARE COMPANY	Home \ Home Appliances	104
NATIONAL PRODUCT CARE COMPANY	Vehicle \ Road Assistance	2
NATIONAL PRODUCT CARE COMPANY	Miscellaneous \ Others	29
NATIONAL WARRANTY CORP	Vehicle \ Road Assistance	17
NISSAN EXTENDED SERVICES NORTH AMERICA GP	Vehicle \ Road Assistance	6
NOBILIS ADMINISTRATIVE SERVICES, INC.	Vehicle \ Road Assistance	18
NORTH AMERICAN WARRANTY, INC.	Home \ Home Appliances	78
NORTH AMERICAN WARRANTY, INC.	Miscellaneous \ Others	26
NORTHCOAST WARRANTY SERVICES, INC.	Computers \ Electronics	30
NORTHCOAST WARRANTY SERVICES, INC.	Home \ Home Appliances	8
NORTHCOAST WARRANTY SERVICES, INC.	Vehicle \ Road Assistance	131
NORTHCOAST WARRANTY SERVICES, INC.	Miscellaneous \ Others	13
NWAN, INC.	Vehicle \ Road Assistance	204
OLD REPUBLIC HOME PROTECTION COMPANY INC	Home \ Home Appliances	34
OLD REPUBLIC INSURED AUTOMOTIVE SERVICES INC	Vehicle \ Road Assistance	68
ONEGUARD NEVADA LLC DBA ONEGUARD HOME WARRANTIES	Home \ Home Appliances	7
OWNERGUARD CORPORATION	Vehicle \ Road Assistance	88
OWNERGUARD CORPORATION	Miscellaneous \ Others	1
OWNERSHIELD INC	Vehicle \ Road Assistance	85
PABLO CREEK SERVICES INC	Vehicle \ Road Assistance	126

Ex. Page No.024

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6/9

AA002491

11/12/2019

Service Contract Provider Search

Service Contract Provider ↑	Contract Type	Contracts on File
PALMER ADMINISTRATIVE SERVICES, INC.	Vehicle \ Road Assistance	105
PHOENIX AMERICAN WARRANTY COMPANY INC	Vehicle \ Road Assistance	31
POLARIS SALES INC	Vehicle \ Road Assistance	1
PORTFOLIO SERVICES LIMITED INC	Vehicle \ Road Assistance	30
PRCO INC	Vehicle \ Road Assistance	4
PREFERRED WARRANTIES INC	Vehicle \ Road Assistance	26
PREMIER DEALER SERVICES INC	Vehicle \ Road Assistance	62
PRIME AUTO CARE INC.	Vehicle \ Road Assistance	9
PRIME RESERVE PLUS INC	Vehicle \ Road Assistance	3
PROTECT MY CAR LLC	Vehicle \ Road Assistance	8
PROTECTIVE ADMINISTRATIVE SERVICES INC DBA LYNDON ADMINISTRATIVE SERVICES	Vehicle \ Road Assistance	68
QBE ADMINISTRATION SERVICES, INC.	Vehicle \ Road Assistance	4
R C WILLEY HOME FURNISHINGS	Computers \ Electronics	7
R C WILLEY HOME FURNISHINGS	Home \ Home Appliances	1
R C WILLEY HOME FURNISHINGS	Miscellaneous \ Others	1
RED SHIELD ADMINISTRATION, INC	Vehicle \ Road Assistance	32
RESIDENTIAL WARRANTY SERVICES, INC.	Home \ Home Appliances	4
SAFE-GUARD PRODUCTS INTERNATIONAL, LLC	Vehicle \ Road Assistance	388
SAFEWARE, THE INSURANCE AGENCY INC. DBA SAFEWARE INC.	Computers \ Electronics	3
SAFEWARE, THE INSURANCE AGENCY INC. DBA SAFEWARE INC.	Home \ Home Appliances	3
SAFEWARE, THE INSURANCE AGENCY INC. DBA SAFEWARE INC.	Miscellaneous \ Others	1
SERVICE CONTRACT SPECIALISTS, INC.	Home \ Home Appliances	30
SERVICE NET WARRANTY LLC	Computers \ Electronics	20
SERVICE NET WARRANTY LLC	Home \ Home Appliances	49
SERVICE NET WARRANTY LLC	Miscellaneous \ Others	1
SERVICEGUARD SYSTEMS INC	Vehicle \ Road Assistance	8
SHERWOOD MANAGEMENT CO, INC dba DANIEL'S JEWELERS	Miscellaneous \ Others	1
SIGNET SERVICE PLANS, INC.	Miscellaneous \ Others	28
SILVERROCK AUTOMOTIVE, INC.	Vehicle \ Road Assistance	8
SISKIN ENTERPRISES INC	Vehicle \ Road Assistance	23

Ex. Page No.025

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7/9

AA002492

11/12/2019

Service Contract Provider Search

Service Contract Provider ↑	Contract Type	Contracts on File
SONSIO INTERNATIONAL INC	Vehicle \ Road Assistance	14
SPORTSMAN'S WAREHOUSE INC	Miscellaneous \ Others	1
ST PRODUCT CARE CORP	Computers \ Electronics	2
ST PRODUCT CARE CORP	Miscellaneous \ Others	3
STARR PROTECTION SOLUTIONS, LLC	Computers \ Electronics	7
STARR PROTECTION SOLUTIONS, LLC	Home \ Home Appliances	43
STARR PROTECTION SOLUTIONS, LLC	Miscellaneous \ Others	1
STERLING JEWELERS INC	Miscellaneous \ Others	6
TARMO, LLC	Home \ Home Appliances	161
TESLA, INC. DBA TESLA MOTORS NV INC.	Vehicle \ Road Assistance	6
TIRE SHIELD, INC	Vehicle \ Road Assistance	2
TMI SOLUTIONS, LLC	Computers \ Electronics	3
TMI SOLUTIONS, LLC	Home \ Home Appliances	9
TOYOTA MOTOR INSURANCE SERVICES INC	Vehicle \ Road Assistance	70
TRINITY WARRANTY SOLUTIONS LLC	Home \ Home Appliances	2
TSR PRODUCTS INC	Vehicle \ Road Assistance	2
TT OF FIRST MILE SERVICES INC dba FIRST MILE SERVICES	Vehicle \ Road Assistance	10
TWG HOME WARRANTY SERVICES INC	Home \ Home Appliances	7
UNITED CAR CARE INC	Vehicle \ Road Assistance	49
UNITED CAR CARE INC	Miscellaneous \ Others	14
UNITED SERVICE CONTRACT GROUP LLC	Vehicle \ Road Assistance	12
UNITED SERVICE PROTECTION CORPORATION	Vehicle \ Road Assistance	268
UNITED SERVICE PROTECTION CORPORATION	Miscellaneous \ Others	1
UNITED STATES WARRANTY CORP OF FLORIDA	Vehicle \ Road Assistance	7
UNITED STATES WARRANTY CORPORATION	Vehicle \ Road Assistance	22
UNIVERSAL UNDERWRITERS SERVICE CORPORATION	Vehicle \ Road Assistance	38
UNIVERSAL WARRANTY CORPORATION	Vehicle \ Road Assistance	40
UTILITY SERVICE PARTNERS PRIVATE LABEL INC, dba: SERVICE LINE WARRANTIES OF AMERICA	Home \ Home Appliances	13
UTILITY SERVICE PARTNERS PRIVATE LABEL INC, dba: SERVICE LINE WARRANTIES OF AMERICA	Miscellaneous \ Others	1
VANTAGE WARRANTY INC	Vehicle \ Road Assistance	579

Ex. Page No.026

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8/9

AA002493

11/12/2019

Service Contract Provider Search

Service Contract Provider ↑	Contract Type	Contracts on File
VANTAGE WARRANTY INC	Miscellaneous \ Others	2
VEHICLE PROTECTION INC	Vehicle \ Road Assistance	63
VEHICLE SERVICE ADMINISTRATOR LLC	Vehicle \ Road Assistance	16
VERIZON WIRELESS SERVICES LLC	Computers \ Electronics	3
VISION WARRANTY CORPORATION	Vehicle \ Road Assistance	5
WALMART INC	Miscellaneous \ Others	1
WARRANTECH AUTOMOTIVE INC	Vehicle \ Road Assistance	107
WARRANTECH CONSUMER PRODUCT SERVICES INC	Computers \ Electronics	14
WARRANTECH CONSUMER PRODUCT SERVICES INC	Home \ Home Appliances	25
WARRANTECH CONSUMER PRODUCT SERVICES INC	Vehicle \ Road Assistance	5
WARRANTECH CONSUMER PRODUCT SERVICES INC	Miscellaneous \ Others	11
WARRANTY GLOBAL GROUP INC	Home \ Home Appliances	45
WARRANTY SUPPORT SERVICES LLC	Vehicle \ Road Assistance	113
WEST COAST ASSURANCE COMPANY	Vehicle \ Road Assistance	15
WESTERN DIVERSIFIED SERVICES INC	Vehicle \ Road Assistance	11
WESTERN GENERAL DEALER SERVICES INC	Vehicle \ Road Assistance	41
WESTERN SERVICE CONTRACT CORP	Vehicle \ Road Assistance	19
WHITE RIVER FINANCIAL SERVICES LLC	Vehicle \ Road Assistance	4
WISCONSIN A.U.L., INC. dba TRUSTMARK; TRUSTMARK WARRANTY	Vehicle \ Road Assistance	76
WS AFTERMARKET SERVICES CORPORATION	Vehicle \ Road Assistance	52
WYNNS EXTENDED CARE INC	Vehicle \ Road Assistance	2
ZCSC, LLC	Miscellaneous \ Others	12

row(s) 1 - 251 of 251

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9/9

AA002494

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blwalker@hollandhart.com

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

9
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,

14 Petitioner,

15 v.

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

18 Respondent.
19

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

**NOTICE OF SUBMISSION OF
COMPETING PROPOSED ORDER**

20 Petitioner HOME WARRANTY ADMINISTRATOR OF NEVADA, INC., dba CHOICE
21 HOME WARRANTY ("HWAN"), by and through its counsel of record Holland & Hart LLP,
22 hereby submits its proposed Order Affirming in Part, Modifying in Part, and Reversing in Part
23 Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the
24 Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada,
25 Inc. DBA Choice Home Warranty. The proposed Order is attached hereto as **Exhibit 1**.
26 Correspondence between counsel for the parties detailing the parties' positions with respect to the

27 ///

28

REC'D & FILED

2019 NOV 22 PM 4: 29

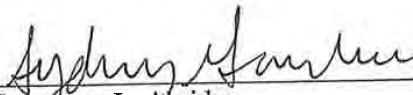
AUDREY ROWLATT
CLERK
J. HIGGINS
DEPUTY

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 proposed order is attached hereto as **Exhibit 2**. A redline of the parties' competing proposed
2 orders is attached hereto as **Exhibit 3**.

3 DATED this 22nd day of November, 2019.

4 HOLLAND & HART LLP

5 

6 Constance L. Akridge

7 Nevada Bar No. 3353

8 Sydney R. Gambee

9 Nevada Bar No. 14201

10 Brittany L. Walker

11 Nevada Bar No. 14641

12 9555 HILLWOOD DRIVE, 2ND FLOOR

13 LAS VEGAS, NV 89134

14 *Attorneys for Home Warranty Administrator of*
15 *Nevada, Inc. dba Choice Home Warranty*

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of November, 2019, a true and correct copy of the foregoing **NOTICE OF SUBMISSION OF COMPETING PROPOSED ORDER** was served by the following method(s):

- ☒ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Richard Yien
Deputy Attorney General
STATE OF NEVADA
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100 N. Carson St.
Carson City, Nevada 89701
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*Attorneys for State of Nevada, Department
Of Business and Industry – Division of
Insurance*

*Attorneys for State of Nevada, Department
Of Business and Industry – Division of
Insurance*

- ☒ Email: by electronically delivering a copy via email to the following e-mail address:

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ryien@ag.nv.gov


An Employee of Holland & Hart LLP

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INDEX OF EXHIBITS

EXHIBIT 1	Proposed Order	Pages 1 - 5
EXHIBIT 2	Correspondence between counsel for the parties detailing the parties' positions with respect to the proposed order	Pages 6 - 12
EXHIBIT 3	Redline of the parties' competing proposed orders	Pages 13 - 18

EXHIBIT 1

Proposed Order

EXHIBIT 1

Proposed Order

1 Constance L. Akridge
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8
9 *Attorneys for Home Warranty Administrator of Nevada, Inc.*
dba Choice Home Warranty

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

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

15
16 Petitioner,

17 v.

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

20 Respondent.
21

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

**ORDER AFFIRMING IN PART,
MODIFYING IN PART, AND
REVERSING IN PART FINDINGS OF
FACT, CONCLUSIONS OF LAW,
ORDER OF THE HEARING OFFICER,
AND FINAL ORDER OF THE
COMMISSIONER IN CAUSE NO. 17.0050
IN THE MATTER OF HOME
WARRANTY ADMINISTRATOR OF
NEVADA, INC DBA
CHOICE HOME WARRANTY**

22 This matter came on for hearing on November 7, 2019 on Home Warranty Administrator
23 of Nevada, Inc. dba Choice Home Warranty's ("Petitioner") Petition for Judicial Review of the
24 Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the
25 Commissioner in Administrative Cause 17.0050 ("Administrative Order 17.0050"), filed by the
26 Petitioner on December 22, 2017.

27 ///

28 ///

1 **A. Standard of Review**

2 The standard of review of an administrative decision is codified in NRS 233B.135. It
3 provides in pertinent parts:

4 ... 2. The final decision of the agency shall be deemed reasonable and lawful until
5 reversed or set aside in whole or in part by the court. The burden of proof is on the party
6 attacking or resisting the decision to show that the final decision is invalid pursuant to
7 subsection 3.

8 3. The court shall not substitute its judgment for that of the agency as to the weight
9 of evidence on a question of fact. The court may remand or affirm the final decision or
10 set it aside in whole or in part if substantial rights of the petitioner have been prejudiced
11 because the final decision of the agency is:

12 (a) In violation of constitutional or statutory provisions;

13 (b) In excess of the statutory authority of the agency;

14 (c) Made upon unlawful procedure;

15 (d) Affected by other error of law;

16 (e) Clearly erroneous in view of the reliable, probative and substantial
17 evidence on the whole record; or

18 (f) Arbitrary or capricious or characterized by abuse of discretion.

19 4. As used in this section, "substantial evidence" means evidence which a
20 reasonable mind might accept as adequate to support a conclusion.

21 *Id.*

22 When an administrative decision is challenged, the role of the reviewing court is "to
23 review the evidence presented to the [hearing officer] and ascertain whether [the hearing officer]
24 acted arbitrarily or capriciously, thus abusing [his or her] discretion." *O'Keefe v. State, Dep't of*
25 *Motor Vehicles*, 134 Nev. Adv. Op. 92, at *5, 431 P.3d 350, 353 (2018). "[F]actual findings will
26 only be overturned if they are not supported by substantial evidence, which, we have explained,
27 is evidence that a reasonable mind could accept as adequately supporting the agency's
28 conclusions. *Nassiri v Chiropractic Physicians' Ed.*, 130 Nev.245, 248, 327 P.3d 487, 489
(2014). (citations omitted). "We review issues pertaining to statutory construction de novo. We
nonetheless defer to an agency's interpretation of its governing statutes or regulations if the
interpretation is within the language of the statute." *Dutchess Bus. Servs. v. State, Ed. of Pharm.*,
124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008) (internal citations omitted).

29 ///

30 ///

1 The Court, having considered the pleadings, record, and other documents in the matter,
2 the law applicable to the issues and the arguments of counsel at the hearing, and being fully
3 advised finds as follows:

4 **B. Findings of Fact and Conclusions of Law**

5 1. The Findings of Fact and Conclusions of Law in the Administrative Order 17.0050
6 are hereby AFFIRMED in part, MODIFIED in part, and REVERSED in part as follows:

7 a. The Hearing Officer's finding of six (6) violations by the Petitioner of NRS
8 686A.070 for making false entries of material fact in report or statement is hereby AFFIRMED.

9 The total fine of \$30,000, at \$5,000 per violation, as allowed under NRS 686A.183(1)(a),
10 is AFFIRMED.

11 b. The Hearing Officer's finding of one (1) violation by the Petitioner of NRS
12 690C.320(2) for failure to make its records available to the Commissioner upon request is hereby
13 AFFIRMED.

14 The fine of \$500, as authorized pursuant to NRS 690C.325(1), in lieu of revocation, is
15 AFFIRMED.

16 c. The Court finds that NRS Chapter 690C does not require an administrator of
17 service contracts to be registered. Rather, the Court finds that NRS 690C.150 requires anyone
18 who wishes to issue, sell, or offer for sale service contracts in Nevada, even on behalf of a
19 registered provider, to possess a certificate of registration as a provider under Chapter 690C of
20 the NRS.

21 The Hearing Officer's finding of 23,889 instances of conducting business in an unsuitable
22 manner, in violation of NRS 690C.325(1)(b) and NRS 679B.125(2), by allowing an unregistered
23 entity to issue, sell and offer for sale service contracts in Nevada on behalf of Petitioner is hereby
24 AFFIRMED.

25 The Court finds that the aggregate cap of \$10,000 for violations of a similar nature,
26 codified in NRS 690C.330, applies to these 23,889 violations. The Court hereby MODIFIES the
27 fine of \$1,194,450 to be capped at \$10,000 total, in lieu of revocation.

28 ///

2. Petitioner interpleaded \$1,224,950 with the County Clerk's Trust Fund pending final decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation and Order for Interpleading of Fines Pending Final Decision filed herein on March 15, 2018. The Clerk of the Court will distribute the total fine of \$40,500 from Petitioner's interpleaded funds to the Respondent and refund the remaining \$1,184,450 to Petitioner.

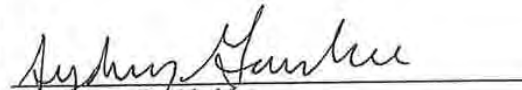
3. The Court further orders that Petitioner's Certificate of Registration be deemed active. The Court hereby REVERSES the finding of the Hearing Officer to the contrary because Respondent received timely renewal applications from Petitioner, and the Respondent was wrong when it deemed Petitioner's certificate of registration "expired" as a result of Respondent's failure to process Petitioner's renewal application. Petitioner is a registered service contract provider and may continue operating as a registered service contract provider. It is the intent of the Court that Petitioner be treated fairly and as a registered service contract provider without any break in service, i.e., without any break in its period of registration from November 18, 2016.

IT IS SO ORDERED.

DATED this ____ day of _____, 2019.

DISTRICT COURT JUDGE

Respectfully submitted by:



Constance L. Akridge
Sydney R. Gambee
Brittany L. Walker
HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

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

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EXHIBIT 2

Correspondence between counsel for the parties detailing the parties' positions with respect to the proposed order

EXHIBIT 2

Correspondence between counsel for the parties detailing the parties' positions with respect to the proposed order

Sydney R. Gambee

From: Connie Akridge
Sent: Friday, November 22, 2019 2:19 PM
To: Richard P. Yien; Joanna N. Grigoriev
Cc: Sydney R. Gambee
Subject: RE: HWAN's Redline Revisions to the DOI's PJR #1 Proposed Order
Attachments: Redline Proposed Orders.pdf

Hi Richard,

Attached is our redlines to your latest proposed order. Below are our responses to your edit points in red. Additionally, the judge specifically said that he is "affirming in part and reversing in part," and this must be reflected in the order. Further, the inclusion of the language "in lieu of revocation" with respect to the fines imposed under NRS 690C.325(1) is straight from the statute and should be included.

Please let us know if you intend to incorporate our edits or if we should submit our competing proposed order to the Court.

Thank you,

Connie

Constance L. Akridge

Partner
9555 Hillwood Drive Las Vegas, NV 89134
T 702.222.2543 M 702.785.3402



CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail.

From: Richard P. Yien <RYien@ag.nv.gov>
Sent: Thursday, November 21, 2019 5:20 PM
To: 'Connie Akridge' <CLAkridge@hollandhart.com>
Cc: Joanna N. Grigoriev <JGrigoriev@ag.nv.gov>; Sydney R. Gambee <SRGambee@hollandhart.com>
Subject: Re: HWAN's Redline Revisions to the DOI's PJR #1 Proposed Order

Good evening Connie,

We have reviewed your proposed revisions to the draft of the order that we sent to you on November 14, 2019 (pursuant to Judge Russell's directive that Respondent's counsel draft the proposed Order).

In order to make sure that this proposed Order accurately reflects the hearing, the Court's findings and directives, we obtained the audio recording from the hearing. We are attaching our revisions made after reviewing your redline revisions and the audio recording. We have edited our version of the Order, and incorporated manually those revisions proposed by you with which we agree. (See attached Order). Below, we address some of the revisions.

1. You've made edits to the standard of review (previously section A). For the cleanest standard of review, we provide direct quotes from NRS 233B.135 and relevant cases, instead of paraphrasing. Agreed.

2. You've made an edit to (previously section B2(a)), changing "record" to "report." The Hearing Officer's conclusions of law reference "records," (Administrative Order, 27:13-15), as does NRS 686A.070 "Falsification of *records* of financial statements prohibited." The statute itself says "report," not "record." The word "record" in the title of the statute is inapposite – the statute states a person "shall not knowingly make or cause to be made any false entry of a material fact in any book, report or statement of any person or knowingly omit to make a true entry of any material fact pertaining to such person's business in any book, report or statement of such person" (emphasis added).

3. You've deleted the "substantial evidence" language. This simply reiterates the standard for the Court's findings.. This is not supported by the hearing audio. The judge did not make this finding.

4. You've deleted an entire finding (previously B2(c)) "The Court finds that NRS 690C.150 requires anyone, including a service contract administrator, who wishes to issue, well, or offer for sale service contracts in Nevada, to possess a certificate of registration under Chapter 690C of the NRS." Judge Russell stated at the hearing: "I also think the hearing officer correctly determined that HWAN should be fined for basically allowing Choice Home Warranty Group, an unregistered entity, to issue and sell service contracts in Nevada because I think whoever issues or sells those service contracts in Nevada is the provider, and a provider has to be licensed in respect to get a certificate of registration." (See hearing audio recording at 2:28:03-26). This finding is not deleted. It is moved up a paragraph and edited to reflect the Court's actual findings that an administrator need not be registered (audio at 2:33), but anyone who sells must be registered as a provider (audio at 2:28).

This is one of the main issues, and, judging by your edits, it is quite necessary for Judge Russell to be crystal clear to the Petitioner that its use of CHWG to sell, issue, and offer for sale service contracts in Nevada is contrary to NRS 690C.150. Our language is consistent with Judge Russell's ruling, which is repeatedly reaffirmed, as indicated in #9 below. Our revised language is consistent with the judge's ruling, especially considering the fact that selling on behalf of a provider was such a key issue argued to the Court. The Court implicitly ruled that even those who sell on behalf of providers must be registered.

5. You've deleted the language "the fine of \$50 for each of the 23,889 violation, is affirmed." (previously B2(c)). The Hearing Officer's finding of 23,889 violations was affirmed by the Court, and a fine for each violation was imposed. Otherwise, logically, there couldn't be a "cap on violations of a similar nature." (see hearing audio recording at

2:28:33). The Court approached this fine differently from the others. Whereas he stated the other fines were "correct," he did not so state with respect to these fines. Instead, he stated that HWAN should be fined for allowing an unregistered entity to sell... however, the cap in NRS 690C.325.330 applies in regards to the \$1.2 million fines. (audio at 2:28) Our edits bring this language into conformity with how the court ruled.

6. Your addition of "Petitioner interpleaded \$1,224,950 with the County Clerk's Trust Fund..." (previously section B3) has been included, however, the precise refund can be determined later, based on Judge Russell's specific words to refund any amount "over and above that particular amount [\$40,500]." (hearing audio recording at 2:29:15) We believe it clearer and less likely to cause confusion with the Clerk's office to simply specify the amount to be released to each party.

7. You've crossed out (previously B4) language pertaining to the determination that the doctrine of estoppel does not apply. Said determination is a legal necessity for the findings by the Court in section B. Moreover, the Court did ask both sides about this issue. This is not supported by the hearing audio. The judge did not make this finding.

8. Likewise the finding (previously B5) as to sufficiency of due process, is a legal prerequisite for the findings of the Court in section B. This is not supported by the hearing audio. The judge did not make this finding.

9. You've replaced almost the entirety of previous section B6, with language that does not reflect what was stated at the hearing. The Court did not opine as to whether Petitioner's certificate of registration expired, nor did the Court order that HWAN "may continue operating as a registered service contract provider through November 18, 2020." Judge Russell stated: "HWAN of Nevada should be able to be registered... It's got to be cleared up in regards to who is issuing, selling these contracts with the State of Nevada." (hearing recording at 2:29:40). Clarifying further, Judge Russell stated: "An administrator does not have to be licensed. But **if the administrator, as in this case, is selling offering for sale or issuing, then they have to have a COR**" (hearing audio recording at 2:33:08) Therefore the language we use in (previously B6), accurately reflects Judge Russell's ruling. We believe our revision in the attached redline more accurately reflects what the judge stated at the hearing. The judge never used the term "reinstated" with respect to HWAN's COR. Rather, the judge stated that HWAN should continue to be registered, that he is reversing the Hearing Officer if he has to, and that HWAN can continue without losing any break in service. (audio 2:29-2:30) He stated the Division was wrong on this point and that HWAN should be treated fairly. These were specific findings at the hearing that must be included in the order.

Thanks,

Richard

From: Richard P. Yien
Sent: Thursday, November 21, 2019 11:11 AM
To: 'Connie Akridge'
Cc: Joanna N. Grigoriev; Sydney R. Gambee
Subject: RE: HWAN's Redline Revisions to the DOI's PJR #1 Proposed Order

Hi Connie, We are still working on this but anticipate getting you our comments today. And yes, per your recommendation and where we left off on the telephone call, it is fine to submit competing proposed orders should the parties continue to disagree. We will not submit until Friday. Thanks, Richard

From: Connie Akridge <CLAkridge@hollandhart.com>
Sent: Wednesday, November 20, 2019 9:13 PM
To: Richard P. Yien <RYien@ag.nv.gov>
Cc: Joanna N. Grigoriev <JGrigoriev@ag.nv.gov>; Sydney R. Gambee <SRGambee@hollandhart.com>
Subject: RE: HWAN's Redline Revisions to the DOI's PJR #1 Proposed Order

Hi Richard,

That is fine, but given your representation yesterday that the court is inquiring about the proposed order, please confirm that you will be submitting a proposed order no earlier than Friday. In the event we do not come to an agreement on a proposed order, we will submit a competing proposed order on Friday.

Thanks!

Connie

From: Richard P. Yien <RYien@ag.nv.gov>
Sent: Wednesday, November 20, 2019 2:40 PM
To: Connie Akridge <CLAkridge@hollandhart.com>
Cc: Joanna N. Grigoriev <JGrigoriev@ag.nv.gov>; Sydney R. Gambee <SRGambee@hollandhart.com>
Subject: RE: HWAN's Redline Revisions to the DOI's PJR #1 Proposed Order

Hi Connie,

We continue to review your edits and will respond to you by close of business tomorrow.

Thanks,
Richard

From: Connie Akridge <CLAkridge@hollandhart.com>
Sent: Tuesday, November 19, 2019 2:04 PM
To: Richard P. Yien <RYien@ag.nv.gov>
Cc: Joanna N. Grigoriev <JGrigoriev@ag.nv.gov>; Sydney R. Gambee <SRGambee@hollandhart.com>
Subject: HWAN's Redline Revisions to the DOI's PJR #1 Proposed Order

Hi Richard and Joanna,

It was a pleasure speaking with you today. Attached are our proposed redline revisions to your PJR #1 proposed order. Please let us know if you would like to discuss. In any event, since under FJDCR 19(4) the proposed order is due

to the Court no later than 10 judicial days following the hearing, which is Friday, November 22, 2019, please send us any feedback no later than tomorrow by close of business.

Thanks!

Connie

Constance L. Akridge

Partner

9555 Hillwood Drive Las Vegas, NV 89134

T 702.222.2543 M 702.785.3402



CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail.

From: Richard P. Yien <RYien@ag.nv.gov>

Sent: Thursday, November 14, 2019 5:43 PM

To: Connie Akridge <CLAkridge@hollandhart.com>; Sydney R. Gambee <SRGambee@hollandhart.com>

Cc: Joanna N. Grigoriev <JGrigoriev@ag.nv.gov>

Subject: proposed order

Good evening Connie, Good evening Sydney,

Please find attached, a copy of the proposed order pursuant to Judge Russell's instruction. Please let me know if you have any edits.

Thanks,
Richard

Richard Yien, Deputy Attorney General

State of Nevada

Office of the Attorney General

100 N. Carson St.

Carson City, Nevada 89701

RYien@ag.nv.gov

Phone: (775) 684-1129

Fax: (775) 684-1156



This e-mail contains the thoughts and opinions of Richard Yien and does not represent official Office of the Attorney General policy. This message and attachments are intended only for the addressee(s) and may contain information that is privileged and confidential. If the reader of the message is not the intended recipient or an authorized representative of the intended recipient, I

did not intend to waive and do not waive any privileges or the confidentiality of the messages and attachments, and you are hereby notified that any dissemination of this communication is strictly prohibited. If you receive this communication in error, please notify me immediately by e-mail at RYien@ag.nv.gov and delete the message and attachments from your computer and network. Thank you.

EXHIBIT 3

**Redline of the parties'
competing proposed orders**

EXHIBIT 3

**Redline of the parties'
competing proposed orders**

Constance L. Akridge
Nevada Bar No. 3353
Sydney R. Gambee
Nevada Bar No. 14201
Brittany L. Walker
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*Attorneys for Home Warranty Administrator of Nevada, Inc.
dba Choice Home Warranty*

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

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

Petitioner,

v.

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

Respondent.

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

**ORDER AFFIRMING IN PART, AND
MODIFYING IN PART, FINDINGS OF
FACT, CONCLUSIONS OF LAW,
ORDER OF THE HEARING OFFICER,
AND FINAL ORDER OF THE
COMMISSIONER IN CAUSE NO. 17-0050
IN THE MATTER OF HOME
WARRANTY ADMINISTRATOR OF
NEVADA, INC DBA
CHOICE HOME WARRANTY ORDER
AFFIRMING IN PART, MODIFYING IN
PART, AND REVERSING IN PART
FINDINGS OF
FACT, CONCLUSIONS OF LAW,
ORDER OF THE HEARING OFFICER,
AND FINAL ORDER OF THE
COMMISSIONER IN CAUSE NO. 17.0050
IN THE MATTER OF HOME
WARRANTY ADMINISTRATOR OF
NEVADA, INC DBA
CHOICE HOME WARRANTY**

This matter came on for hearing on November 7, 2019 on Home Warranty Administrator
of Nevada, Inc. dba Choice Home Warranty's ("Petitioner") Petition for Judicial Review of the

Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the Commissioner in Administrative Cause 17.0050 ("Administrative Order 17.0050"), filed by the Petitioner on December 22, 2017.

A. Standard of Review

The standard of review of an administrative decision is codified in NRS 233B.135. It provides in pertinent parts:

2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show that the final decision is invalid pursuant to subsection 3.

3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if substantial rights of the petitioner have been prejudiced because the final decision of the agency is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion.

4. As used in this section, "substantial evidence" means evidence which a reasonable mind might accept as adequate to support a conclusion.

Id.

When an administrative decision is challenged, the role of the reviewing court is "to review the evidence presented to the [hearing officer] and ascertain whether [the hearing officer] acted arbitrarily or capriciously, thus abusing [his or her] discretion." *O'Keefe v. State, Dep't of Motor Vehicles*, 134 Nev. Adv. Op. 92, at *5, 431 P.3d 350, 353 (2018). "[F]actual findings will only be overturned if they are not supported by substantial evidence, which, we have explained, is evidence that a reasonable mind could accept as adequately supporting the agency's conclusions. *Nassiri v. Chiropractic Physicians' Ed.*, 130 Nev.245, 248, 327 P.3d 487, 489 (2014). (citations omitted). "We review issues pertaining to statutory construction de novo. We nonetheless defer to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute." *Dutchess Bus. Servs. v. State, Ed. of Pharm.*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008) (internal citations omitted).

1 The Court, having considered the pleadings, record, and other documents in the matter, the
2 law applicable to the issues and the arguments of counsel at the hearing, and being fully advised
3 finds as follows:

4 **B. Findings of Fact and Conclusions of Law**

5 1. The Findings of Fact and Conclusions of Law in the Administrative Order 17.0050
6 are hereby AFFIRMED in part, ~~and~~ MODIFIED in part, and REVERSED in part as follows:

7 a. The Hearing Officer's finding of six (6) violations by the Petitioner of NRS
8 686A.070 for making false entries of material fact in ~~record-report~~ or statement is ~~supported by~~
9 ~~substantial evidence and is hereby AFFIRMED.~~

10 The total fine of \$30,000, at \$5,000 per violation, as allowed under NRS 686A.183(l)(a),
11 is AFFIRMED.

12 b. The Hearing Officer's finding of one (1) violation by the Petitioner of NRS
13 690C.320(2) for failure to make its records available to the Commissioner upon request is
14 ~~supported by substantial evidence and is hereby AFFIRMED.~~

15 The fine of \$500, as authorized pursuant to NRS 690C.325(1), in lieu of revocation, is
16 AFFIRMED.

17 c. The Court finds that NRS Chapter 690C does not require an administrator of service
18 contracts to be registered. Rather, The Court finds that NRS 690C.150 requires anyone, including
19 a service contract administrator, who wishes to issue, sell, or offer for sale service contracts in
20 Nevada, even on behalf of a registered provider, to possess a certificate of registration as a provider
21 under Chapter 690C of the NRS.

22 The Hearing Officer's finding of 23,889 instances of conducting business in an unsuitable
23 manner, in violation of NRS 690C.325(l)(b) and NRS 679B.125(2), by allowing an unregistered
24 entity to issue, sell and offer for sale service contracts in Nevada on behalf of Petitioner is hereby
25 AFFIRMED. ~~The Court finds that NRS 690C.150 requires anyone, including a service contract~~
26 ~~administrator, who wishes to issue, sell, or offer for sale service contracts in Nevada, to possess a~~
27 ~~certificate of registration under Chapter 690C of the NRS.~~

1 The ~~fine of \$50 for each of the 23,889 violations, is AFFIRMED; however, the Court finds~~
2 that the aggregate cap of \$10,000 for violations of a similar nature, codified in NRS 690C.330,
3 applies to these 23,889 violations. The Court hereby MODIFIES the fine of \$1,194,450 to be
4 capped at \$10,000 total, in lieu of revocation.

5 2. Petitioner interpleaded \$1,224,950 with the County Clerk's Trust Fund pending
6 final decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation
7 and Order for Interpleading of Fines Pending Final Decision filed herein on March 15, 2018. The
8 Clerk of the Court will distribute the total fine of \$40,500 from Petitioner's interpleaded funds to
9 the Respondent, and refund the remaining ~~balance~~ \$1,184,450 to Petitioner.

10 3. ~~The Court finds that the doctrine of estoppel does not apply in this case. The Court~~
11 ~~finds in favor of the Respondent on this issue.~~

12 4. ~~The Court finds that Petitioner was not denied due process. Petitioner had received~~
13 ~~sufficient notice and opportunity to prepare, and there was no unfair surprise. The Court finds in~~
14 ~~favor of the Respondent on this issue.~~

15 5. The Court further orders that ~~contingent upon Petitioner's compliance with NRS~~
16 ~~690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of~~
17 ~~Registration be reinstated~~ deemed active. The Court hereby REVERSES the finding of the Hearing
18 Officer to the contrary because Respondent received timely renewal applications from Petitioner.
19 and the Respondent was wrong when it deemed Petitioner's certificate of registration "expired" as
20 a result of Respondent's failure to process Petitioner's renewal application. In particular,
21 ~~Petitioner is prohibited from using an administrator to perform the duties of selling, issuing, or~~
22 ~~offering for sale service contracts in Nevada, unless said administrator has been granted a~~
23 ~~certificate of registration pursuant to NRS 690C and consistent with this Order~~ is a registered
24 service contract provider and may continue operating as a registered service contract provider. It
25 is the intent of the Court that Petitioner be treated fairly and as a registered service contract
26 ~~provider without any break in service, i.e., without any break in its period of registration from~~
27 November 18, 2016.

28 IT IS SO ORDERED.

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 DATED this ____ day of _____, 2019.
2
3

4
5 DISTRICT COURT JUDGE

6 Respectfully submitted by:
7

8
9 Constance L. Akridge
10 Sydney R. Gambia
11 Brittany L. Walker
12 HOLLAND & HART LLP
13 9555 HILLWOOD DRIVE, 2ND FLOOR
14 LAS VEGAS, NV 89134

15
16 *Attorneys for Home Warranty Administrator of Nevada, Inc.*
17 *dba Choice Home Warranty*

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1 AARON D. FORD
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2 JOANNA N. GRIGORIEV
Senior Deputy Attorney General
3 Nevada Bar No. 5649
555 E. Washington Ave. #3900
4 Las Vegas, NV 89101
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Deputy Attorney General
6 Nevada Bar No. 13035
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Carson City, NV 89701
8 E-mail: ryien@ag.nv.gov
Attorneys for Respondent
9 *Nevada Division of Insurance*

REC'D & FILED

2019 NOV 25 AM 7:47

AUDREY ROWLATT
CLERK
BY 
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,
14 Petitioner,

Case No.: 17 OC 00269 1B

Dept. No.: 1

15 vs.

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

19 Respondents.

20 **ORDER AFFIRMING IN PART, AND MODIFYING IN PART, FINDINGS OF**
21 **FACT, CONCLUSIONS OF LAW, ORDER OF THE HEARING OFFICER, AND**
22 **FINAL ORDER OF THE COMMISSIONER IN CAUSE NO. 17.0050 IN THE**
23 **MATTER OF HOME WARRANTY ADMINISTRATOR OF NEVADA, INC DBA**
CHOICE HOME WARRANTY

24 This matter came on for hearing on November 7, 2019 on Home Warranty
25 Administrator of Nevada, Inc. dba Choice Home Warranty's ("Petitioner") Petition for Judicial
26 Review of the Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final
27 Order of the Commissioner in Administrative Cause 17.0050 ("Administrative Order
28 17.0050"), filed by the Petitioner on December 22, 2017.

1 **A. Standard of Review**

2 The standard of review of an administrative decision is codified in NRS 233B.135. It
3 provides in pertinent parts:

4 ...
5 2. The final decision of the agency shall be deemed reasonable and
6 lawful until reversed or set aside in whole or in part by the court. The
7 burden of proof is on the party attacking or resisting the decision to show
8 that the final decision is invalid pursuant to subsection 3.

9 3. The court shall not substitute its judgment for that of the agency
10 as to the weight of evidence on a question of fact. The court may remand or
11 affirm the final decision or set it aside in whole or in part if substantial
12 rights of the petitioner have been prejudiced because the final decision of
13 the agency is:

- 14 (a) In violation of constitutional or statutory provisions;
- 15 (b) In excess of the statutory authority of the agency;
- 16 (c) Made upon unlawful procedure;
- 17 (d) Affected by other error of law;
- 18 (e) Clearly erroneous in view of the reliable, probative and substantial
19 evidence on the whole record; or
- 20 (f) Arbitrary or capricious or characterized by abuse of discretion.

21 4. As used in this section, "substantial evidence" means evidence
22 which a reasonable mind might accept as adequate to support a conclusion.

23 *Id.*

24 When an administrative decision is challenged, the role of the reviewing court is "to
25 review the evidence presented to the [hearing officer] and ascertain whether [the hearing
26 officer] acted arbitrarily or capriciously, thus abusing [his or her] discretion." *O'Keefe v. State,*
27 *Dep't of Motor Vehicles*, 134 Nev. Adv. Op. 92, at *5, 431 P.3d 350, 353 (2018). "[F]actual
28 findings will only be overturned if they are not supported by substantial evidence, which, we
29 have explained, is evidence that a reasonable mind could accept as adequately supporting the
30 agency's conclusions. *Nassiri v Chiropractic Physicians' Bd.*, 130 Nev.245, 248, 327 P.3d 487,
31 489 (2014). (citations omitted). "We review issues pertaining to statutory construction de
32 novo. We nonetheless defer to an agency's interpretation of its governing statutes or
33 regulations if the interpretation is within the language of the statute." *Dutchess Bus. Servs.*
34 *v. State, Bd. of Pharm.*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008) (internal citations
35 omitted).

1 The Court, having considered the pleadings, record, and other documents in the
2 matter, the law applicable to the issues and the arguments of counsel at the hearing, and
3 being fully advised finds as follows:

4 **B. Findings of Fact and Conclusions of Law**

5 1. The Findings of Fact and Conclusions of Law in the Administrative Order 17.0050
6 are hereby AFFIRMED in part, and MODIFIED in part as follows:

7 a. The Hearing Officer's finding of six (6) violations by the Petitioner
8 of NRS 686A.070 for making false entries of material fact in record or
9 statement is supported by substantial evidence and is hereby
10 AFFIRMED.

11 The total fine of \$30,000, at \$5,000 per violation, as allowed under NRS
12 686A.183(1)(a), is AFFIRMED.

13 b. The Hearing Officer's finding of one violation by the Petitioner of
14 NRS 690C.320(2) for failure to make its records available to the
15 Commissioner upon request is supported by substantial evidence and is
16 hereby AFFIRMED.

17 The fine of \$500, as authorized pursuant to NRS 690C.325(1) is
18 AFFIRMED,

19 c. The Hearing Officer's finding of 23,889 instances of conducting
20 business in an unsuitable manner, in violation of NRS 690C.325(1)(b) and
21 NRS 679B.125(2), by allowing an unregistered entity to issue, sell and
22 offer for sale service contracts in Nevada is hereby AFFIRMED. The Court
23 finds that NRS 690C.150 requires anyone, including a service contract
24 administrator, who wishes to issue, sell, or offer for sale service contracts
25 in Nevada, to possess a certificate of registration under Chapter 690C of
26 the NRS.

27 The fine of \$50 for each of the 23,889 violations, is AFFIRMED; however,
28 the Court finds that the aggregate cap of \$10,000 for violations of a similar

1 nature, codified in NRS 690C.330, applies. The Court hereby MODIFIES
2 the fine of \$1,194,450 to be capped at \$10,000 total.

3 2. Petitioner interpleaded \$1,224,950 with the County Clerk's Trust Fund pending final
4 decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation
5 and Order for interpleading of Fines Pending Final Decision filed herein on March 15, 2018.
6 The Clerk of the Court will distribute the total fine of \$40,500 from Petitioner's interpleaded
7 funds to the Respondent, and refund the remaining balance to Petitioner.

8 3. The Court finds that the doctrine of estoppel does not apply in this case. The Court
9 finds in favor of the Respondent on this issue.

10 4. The Court finds that Petitioner was not denied due process. Petitioner had received
11 sufficient notice and opportunity to prepare, and there was no unfair surprise. The Court
12 finds in favor of the Respondent on this issue.

13 5. The Court further orders that contingent upon Petitioner's compliance with NRS
14 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of
15 Registration be reinstated. In particular, Petitioner is prohibited from using an
16 administrator to perform the duties of selling, issuing, or offering for sale service contracts in
17 Nevada, unless said administrator has been granted a certificate of registration pursuant to
18 NRS 690C and consistent with this Order.


19 IT IS SO ORDERED

20 DATED this 25th day of November, 2019.

21
22 
DISTRICT COURT JUDGE

23 Respectfully submitted by:

24 AARON D. FORD
25 Attorney General

26 By: 
27 Richard P. Yien (Bar No. 13035)
28 Deputy Attorney General
Joanna N. Grigoriev (Bar No. 5649)
Senior Deputy Attorney General

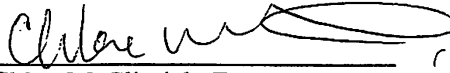
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 25 day of November, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Joanna N. Grigoriev, Esq.
Senior Deputy Attorney General
555 E. Washington Ave.
Las Vegas, NV 89101

Richard P. Yien, Esq.
Deputy Attorney General
100 N. Carson Street
Carson City, NV 89701

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


Chloe McClintick, Esq.
Law Clerk, Dept. 1

1 AARON D. FORD
Attorney General
2 RICHARD PAILI YIEN, Bar No. 13035
Deputy Attorney General
3 State of Nevada
Business and Taxation Division
4 100 N. Carson Street
Carson City, NV 89701
5 P: (775) 684-1129
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6 Email: ryien@ag.nv.gov

7 *Attorney for the Division of Insurance*

REC'D & FILED
2019 NOV 27 AM 10:43
AUBREY ROWLATT
CLERK
BY P. O'KEEFE
DEPUTY

8 IN THE FIRST JUDICIAL DISTRICT COURT OF
9 THE STATE OF NEVADA IN AND FOR CARSON CITY

10 HOME WARRANTY ADMINISTRATOR OF
11 NEVADA, INC., DBA CHOICE HOME
WARRANTY, a Nevada Corporation

Case No. 17-OC-00269-1B

Dept. No. I

12 Petitioner,

13 vs.

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

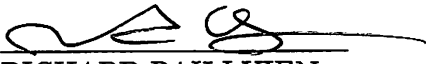
16 Respondent.

17 NOTICE OF ENTRY OF ORDER

18 Please take notice that the ORDER AFFIRMING IN PART, AND MODIFYING IN
19 PART, FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF THE HEARING
20 OFFICER, AND FINAL ORDER OF THE COMMISSIONER IN CAUSE NO. 17.0050 IN
21 THE MATTER OF HOME WARRANTY ADMINISTRATOR OF NEVADA, INC DBA
22 CHOICE HOME WARRANTY was signed by Judge James T. Russell on November 25,
23 2019, a conformed copy of which is attached hereto as Exhibit 1.

24 DATED November 26, 2019

25 AARON D. FORD
Attorney General

26 By: 
27 RICHARD PAILI YIEN
28 Deputy Attorney General
Attorney for the Division of Insurance


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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 November 26, 2019, 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.
Sydney R. Gambee, Esq.
Brittany L. Walker, Esq.
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

DATED November 26, 2019



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

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES (Excluding tabs)
1	Order Affirming In Part, And Modifying In Part, Findings Of Fact, Conclusions Of Law, Order Of The Hearing Officer, And Final Order Of The Commissioner In Cause No. 17.0050 In The Matter Of Home Warranty Administrator Of Nevada, Inc Dba Choice Home Warranty	4

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EXHIBIT 1

EXHIBIT 1

1 AARON D. FORD
Attorney General
2 JOANNA N. GRIGORIEV
Senior Deputy Attorney General
3 Nevada Bar No. 5649
555 E. Washington Ave. #3900
4 Las Vegas, NV 89101
E-mail: jgrigoriev@ag.nv.gov
5 RICHARD PAULI YIEN
Deputy Attorney General
6 Nevada Bar No. 13035
Office of the Attorney General
7 100 N. Carson Street
Carson City, NV 89701
8 E-mail: ryien@ag.nv.gov
Attorneys for Respondent
9 *Nevada Division of Insurance*

REC'D & FILED

2019 NOV 25 AM 7:47

AUDREY ROWLATT
CLERK
BY 
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,
14 Petitioner,

Case No.: 17 OC 00269 1B

Dept. No.: 1

15 vs.

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

19 Respondents.

20 **ORDER AFFIRMING IN PART, AND MODIFYING IN PART, FINDINGS OF**
21 **FACT, CONCLUSIONS OF LAW, ORDER OF THE HEARING OFFICER, AND**
22 **FINAL ORDER OF THE COMMISSIONER IN CAUSE NO. 17.0050 IN THE**
23 **MATTER OF HOME WARRANTY ADMINISTRATOR OF NEVADA, INC DBA**
CHOICE HOME WARRANTY

24 This matter came on for hearing on November 7, 2019 on Home Warranty
25 Administrator of Nevada, Inc. dba Choice Home Warranty's ("Petitioner") Petition for Judicial
26 Review of the Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final
27 Order of the Commissioner in Administrative Cause 17.0050 ("Administrative Order
28 17.0050"), filed by the Petitioner on December 22, 2017.

1 **A. Standard of Review**

2 The standard of review of an administrative decision is codified in NRS 233B.135. It
3 provides in pertinent parts:

4 ...
5 2. The final decision of the agency shall be deemed reasonable and
6 lawful until reversed or set aside in whole or in part by the court. The
7 burden of proof is on the party attacking or resisting the decision to show
8 that the final decision is invalid pursuant to subsection 3.

9 3. The court shall not substitute its judgment for that of the agency
10 as to the weight of evidence on a question of fact. The court may remand or
11 affirm the final decision or set it aside in whole or in part if substantial
12 rights of the petitioner have been prejudiced because the final decision of
13 the agency is:

- 14 (a) In violation of constitutional or statutory provisions;
- 15 (b) In excess of the statutory authority of the agency;
- 16 (c) Made upon unlawful procedure;
- 17 (d) Affected by other error of law;
- 18 (e) Clearly erroneous in view of the reliable, probative and substantial
19 evidence on the whole record; or
- 20 (f) Arbitrary or capricious or characterized by abuse of discretion.

21 4. As used in this section, "substantial evidence" means evidence
22 which a reasonable mind might accept as adequate to support a conclusion.

23 *Id.*

24 When an administrative decision is challenged, the role of the reviewing court is "to
25 review the evidence presented to the [hearing officer] and ascertain whether [the hearing
26 officer] acted arbitrarily or capriciously, thus abusing [his or her] discretion." *O'Keefe v. State,*
27 *Dep't of Motor Vehicles*, 134 Nev. Adv. Op. 92, at *5, 431 P.3d 350, 353 (2018). "[F]actual
28 findings will only be overturned if they are not supported by substantial evidence, which, we
29 have explained, is evidence that a reasonable mind could accept as adequately supporting the
30 agency's conclusions. *Nassiri v Chiropractic Physicians' Bd.*, 130 Nev.245, 248, 327 P.3d 487,
31 489 (2014). (citations omitted). "We review issues pertaining to statutory construction de
32 novo. We nonetheless defer to an agency's interpretation of its governing statutes or
33 regulations if the interpretation is within the language of the statute." *Dutchess Bus. Servs.*
34 *v. State, Bd. of Pharm.*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008) (internal citations
35 omitted).

1 The Court, having considered the pleadings, record, and other documents in the
2 matter, the law applicable to the issues and the arguments of counsel at the hearing, and
3 being fully advised finds as follows:

4 **B. Findings of Fact and Conclusions of Law**

5 1. The Findings of Fact and Conclusions of Law in the Administrative Order 17.0050
6 are hereby AFFIRMED in part, and MODIFIED in part as follows:

7 a. The Hearing Officer's finding of six (6) violations by the Petitioner
8 of NRS 686A.070 for making false entries of material fact in record or
9 statement is supported by substantial evidence and is hereby
10 AFFIRMED.

11 The total fine of \$30,000, at \$5,000 per violation, as allowed under NRS
12 686A.183(1)(a), is AFFIRMED.

13 b. The Hearing Officer's finding of one violation by the Petitioner of
14 NRS 690C.320(2) for failure to make its records available to the
15 Commissioner upon request is supported by substantial evidence and is
16 hereby AFFIRMED.

17 The fine of \$500, as authorized pursuant to NRS 690C.325(1) is
18 AFFIRMED,

19 c. The Hearing Officer's finding of 23,889 instances of conducting
20 business in an unsuitable manner, in violation of NRS 690C.325(1)(b) and
21 NRS 679B.125(2), by allowing an unregistered entity to issue, sell and
22 offer for sale service contracts in Nevada is hereby AFFIRMED. The Court
23 finds that NRS 690C.150 requires anyone, including a service contract
24 administrator, who wishes to issue, sell, or offer for sale service contracts
25 in Nevada, to possess a certificate of registration under Chapter 690C of
26 the NRS.

27 The fine of \$50 for each of the 23,889 violations, is AFFIRMED; however,
28 the Court finds that the aggregate cap of \$10,000 for violations of a similar

1 nature, codified in NRS 690C.330, applies. The Court hereby MODIFIES
2 the fine of \$1,194,450 to be capped at \$10,000 total.

3 2. Petitioner interpleaded \$1,224,950 with the County Clerk's Trust Fund pending final
4 decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation
5 and Order for interpleading of Fines Pending Final Decision filed herein on March 15, 2018.
6 The Clerk of the Court will distribute the total fine of \$40,500 from Petitioner's interpleaded
7 funds to the Respondent, and refund the remaining balance to Petitioner.

8 3. The Court finds that the doctrine of estoppel does not apply in this case. The Court
9 finds in favor of the Respondent on this issue.

10 4. The Court finds that Petitioner was not denied due process. Petitioner had received
11 sufficient notice and opportunity to prepare, and there was no unfair surprise. The Court
12 finds in favor of the Respondent on this issue.

13 5. The Court further orders that contingent upon Petitioner's compliance with NRS
14 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of
15 Registration be reinstated. In particular, Petitioner is prohibited from using an
16 administrator to perform the duties of selling, issuing, or offering for sale service contracts in
17 Nevada, unless said administrator has been granted a certificate of registration pursuant to
18 NRS 690C and consistent with this Order.


19 IT IS SO ORDERED

20 DATED this 25th day of November, 2019.

21
22 
DISTRICT COURT JUDGE

23 Respectfully submitted by:

24 AARON D. FORD
25 Attorney General

26 By: 
27 Richard P. Yien (Bar No. 13035)
28 Deputy Attorney General
Joanna N. Grigoriev (Bar No. 5649)
Senior Deputy Attorney General

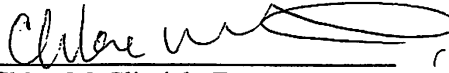
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 25 day of November, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Joanna N. Grigoriev, Esq.
Senior Deputy Attorney General
555 E. Washington Ave.
Las Vegas, NV 89101

Richard P. Yien, Esq.
Deputy Attorney General
100 N. Carson Street
Carson City, NV 89701

Constance L. Akridge, Esq.
Sydney R. Gambee, Esq.
Brittany L. Walker, Esq.
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9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134


Chloe McClintick, Esq.
Law Clerk, Dept. 1

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8 E-mail: ryien@ag.nv.gov
Attorneys for Respondent
9 *Nevada Division of Insurance*

REC'D & FILED
2019 NOV 27 AM 10:43
AUBREY ROWLATT
CLERK
BY P. O'KEEFE
DEPUTY

10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF**
11 **NEVADA 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
BUSINESS AND INDUSTRY –
17 DIVISION OF INSURANCE, a Nevada
administrative agency

18 Respondent.
19

20 **RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION FOR LEAVE**
21 **OF COURT FOR LIMITED RECONSIDERATION OF COURT'S FINDINGS**
22 **ON HWAN'S PETITION FOR JUDICIAL REVIEW**

23 State of Nevada, Department of Business and Industry, Division of Insurance
24 ("Respondent"), through their counsel, Nevada Attorney General, AARON D. FORD, and
25 his Deputy Attorney General, RICHARD P. YIEN and Senior Deputy Attorney General,
26 JOANNA N. GRIGORIEV, hereby file this Opposition ("Opposition") to Petitioner's Motion
27 for Leave of Court for Limited Reconsideration of Court's Findings on HWAN's Petition for
28 Judicial Review ("Motion for Leave").

1 I. FACTS AND PROCEDURAL HISTORY

2 On December 18, 2017, the Hearing Officer issued Findings of Fact and Conclusions
3 of Law in cause No. 17.0050, which the Commissioner of Insurance signed, finding that
4 Petitioner has engaged in numerous violations under title 57 ("17.0050 Order"). On
5 December 22, 2017, Petitioner filed a petition for judicial review ("PJR"). On November 7,
6 2019, the hearing was held before this Court on said PJR. After hearing oral arguments
7 from both parties, including extensive questioning by the Court on the issue at hand, the
8 Court issued its findings and directed counsel for the Respondents to draft the order.
9 Counsel provided a draft to counsel for the Petitioner on November 14, 2019, and received
10 an email in response requesting time until November 19, 2019 to review and comment. In
11 the meantime, on November 15, 2019, Petitioner filed this Motion for Leave "pursuant to
12 FJDCR 15(10) and DCR 13(7), requesting leave for "limited reconsideration" of the Court's
13 ruling. In its Motion, Petitioner attempts to introduce outside evidence, not on the record
14 in this case. On November 22, 2019, Respondent and Petitioner submitted competing
15 orders. On November 25, 2019, Judge Russell signed Respondent's proposed order
16 reflecting a rejection of Petitioner's legal stance on the issue raised in Petitioner's Motion
17 for Leave.

18 II. ARGUMENT

19 Petitioner's Motion for Leave is Improper and Must Be Denied

20 Petitioner yet again is attempting to circumvent the Nevada Administrative
21 Procedure Act. ("APA"). The Motion for Leave that Petitioner filed requesting
22 reconsideration of the Court's findings on judicial review, based on references outside the
23 scope of the record on appeal, is improper for various reasons, and must be denied.

24 ///

25 ///

26 ///

27 ///

28 ///

Petitioner procedurally justifies its Motion for Leave on FJDCR 15(10) and DCR 13(7)¹. However, such reliance is misplaced.² “The availability of a legal remedy depends on the statutes comprising the jurisdiction's Administrative Procedure Act and the agency-specific statutes involved . . .” *State, Dep’t of Human Servs v. Samantha Inc.*, 133 Nev. 809, 811, 407 P.3d 327, 329 (2017), citing *Crane v. Cont’l Tel. Co.*, 105 Nev. 399 at 401, 775 P.2d, 705 at 706 (1989).³ “Petition for reconsideration”, as an available procedural mechanism, is specifically addressed in the APA, however, *only* in reference to the final decision of the agency. NRS 233B.130 (4). Generally, “omissions of subject matters from statutory provisions are presumed to have been intentional.” *DaimlerChrysler Services of North America v. Dep’t of Taxation*, 121 Nev. 541, 548 119 P.3d 135, 139 (2005), citing *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967). (“The maxim ‘Expression Unius Est Exclusio Alterius’, the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State.” *Id.*). The fact that no such equivalent is mentioned for the final decision of the district court is thus presumed to have been intentional under the above doctrine. Petitioner’s sole procedural mechanism under the APA, as a party “aggrieved” by the final decision of the district court is an appeal, as provided in NRS 233B.150.

Moreover, the issue of who can lawfully sell service contracts in Nevada, has been argued by Petitioner a multitude of times--from Petitioner’s Opening Brief, through

¹ FJDCR 15(10) provides:

...
No motion once heard and disposed of shall be renewed in the same cause nor shall the same matters therein embraced be reheard unless by leave of Court granted upon motion therefor, after notice of such motion to the adverse parties. . . . *Id.*

DCR 13(7) provides:

...
No motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties. *Id.*

² Even on the face of these rules, they do not apply to final decisions on judicial review of administrative decisions.

³ “The procedures and requirements that apply to a petition for judicial review under the APA are set out specifically in NRS Chapter 233B and include directions for joinder of parties, NRS 233B.130(2)(a); transmittal of the agency record, NRS 233B.131; and the scope and extent of available judicial review, NRS 233B.135 . . .” *Samantha*, 133 Nev. at 812, 407 P.3d 329.

1 numerous motions, to the hearing on November 7, 2019. After receiving extensive briefings
2 on the issue, at the oral argument the Court devoted considerable attention to this issue
3 and afforded Petitioner an extensive opportunity to address it. The Court also questioned
4 Petitioner's counsel: "let's go to the third finding of the hearing officer that says basically
5 conducting business in an unauthorized manner by allowing an unregistered entity to issue
6 and offer service contracts. Isn't that what happened?" (hearing recording at 2:22:18 –
7 2:23:45), in response to which, Counsel Akridge presented the same unsupported argument
8 as in the Motion for Leave at hand.⁴ The Court proceeded to question Petitioner's
9 interpretation, specifically pointing out that NRS 690C.020 defines administrator as a
10 person who is responsible for administering a service contract that is "issued, sold, or
11 offered for sale" *"by a provider."* In her own words, Counsel Akridge acknowledged,
12 *"Right, because they're the ones that can only do it because they are the ones*
13 *posting the financial wherewithal and complying with the requirements as the*
14 *obligor."*⁵

15 Petitioner now attempts to re-iterate its argument yet again, hoping for a different
16 result. However, not only is this repetition of the same position on which the Court has
17 received exhaustive written briefing and oral arguments specifically addressing the issue,
18 it is also improper, as the APA does not provide a procedural mechanism therefor, except
19 as provided in NRS 233B.150.

20 Additionally, Petitioner again ignores NRS 233B.135 (1) (b), which provides that "1.
21 Judicial review of a final decision of an agency must be . . . (b) *Confined to the record.*"
22 *Id.* (emphasis added) and in its Motion for Leave unabashedly attaches exhibits not found
23 in the record, references documents, websites, and facts also not in the record.

24
25 ⁴ Respondent has repeatedly argued a statutory interpretation consistent with the
26 legislative intent of the statute. The parties agreed that the legislative intent behind NRS
27 690C was to limit the sales and issuance of service contracts to those who are able to prove
they have the financial backing to honor those. Respondent has consistently represented
that Petitioner's interpretation would lead to an absurd result of permitting *anyone* to sell,
issue, and offer for sale service contracts in Nevada and render NRS 690C a nullity.

28 ⁵ Hearing Recording at 2:22:18

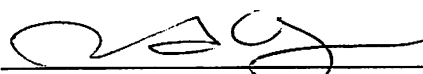
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III. CONCLUSION

For the reasons set forth above, Respondents respectfully request that Petitioner's Motion for Leave be denied.

DATED: November 27, 2019.

AARON D FORD
Attorney General

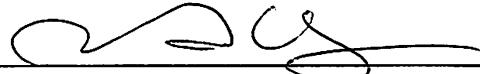
By: 
RICHARD YIEN, Bar No. 13035
Deputy Attorney General

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: November 27, 2019.

AARON D FORD
Attorney General

By: 
RICHARD PAILI YIEN, Bar No. 13035
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on the November 27, 2019, I served a copy of the foregoing **RESPONDENTS OPPOSITION TO PETITIONER'S MOTION FOR LEAVE OF COURT FOR LIMITED RECONSIDERATION OF COURT'S FINDINGS ON HWAN'S PETITION FOR JUDICIAL REVIEW**, by mailing a true and correct copy to the following:

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



An employee of the
Office of the Nevada Attorney General

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LIST OF EXHIBITS

Exhibit Number	Exhibit Description	Number of Pages
1	Proposed Order Denying Petitioner's Motion for Leave	2

EXHIBIT 1 PROPOSED ORDER

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Attorneys for Respondent
9 *Nevada Division of Insurance*

10 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **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.: 1

14 Petitioner,

15 vs.

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

19 Respondents.

20 **ORDER DENYING PETITIONER'S MOTION FOR LEAVE**

21 This matter is before the Court on Home Warranty Administrator of Nevada, Inc. dba
22 Choice Home Warranty's ("Petitioner") Motion for Leave of Court Pursuant to PJDCR 15(10)
23 and DCR 13(7) for Limited Reconsideration of Findings Pertaining to HWAN'S Petition for
24 Judicial Review, filed by the Petitioner on November 15, 2019. Respondent filed an
25 Opposition on November 27, 2019.

26 Based upon the papers, pleading, and order on file herein, the Court now finds and
27 **ORDERS:**

28 Petitioner's Motion for Leave of Court Pursuant to PJDCR 15(10) and DCR 13(7) for

1 Limited Reconsideration of Findings Pertaining to HWAN'S Petition for Judicial Review, is
2 hereby DENIED.


3 **IT IS SO ORDERED**

4 **DATED** this ____ day of _____, 2019.

5
6 _____
DISTRICT COURT JUDGE

7 Respectfully submitted by:

8 AARON D. FORD
9 Attorney General

10 By: 
11 Richard P. Yien (Bar No. 13035)
12 Deputy Attorney General
13 Joanna N. Grigoriev (Bar No. 5649)
14 Senior Deputy Attorney General
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8 *Attorneys for Home Warranty Administrator of Nevada, Inc. dba Choice Home Warranty*

9
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,

14 Petitioner,

15 v.

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

18 Respondent.
19

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

**REPLY IN SUPPORT OF MOTION FOR
LEAVE OF COURT PURSUANT TO
FJDCR 15(10) AND DCR 13(7) FOR
LIMITED RECONSIDERATION OF
FINDINGS PERTAINING TO HWAN'S
PETITION FOR JUDICIAL REVIEW**

20 Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty
21 ("HWAN"), by and through its counsel of record, Holland & Hart LLP, hereby files its reply in
22 support of its motion to seek leave of Court for the limited reconsideration of HWAN's petition
23 for judicial review, filed herein on December 22, 2017 and heard on November 7, 2019 at 1:30
24 p.m.¹ ("Reply"). This Reply is supported by the following Memorandum of Points and
25 Authorities, the papers and pleadings on file herein, and any oral argument this Court may allow.

26
27 ¹ The Order Affirming in Part, and Modifying in Part, Findings of Fact, Conclusions of Law,
28 Order of the Hearing Officer, and Final Order of the Commissioner in Cause No. 17.0050 in the
Matter of Home Warranty Administrator of Nevada, Inc. DBA Choice Home Warranty ("Order")
was filed herein on November 25, 2019, with notice of entry filed on November 27, 2019.

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AUDREY KOHLATT
CLERK
BY ~~COOPER~~
DEPUTY

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Division opposes HWAN's Motion almost entirely on procedural grounds, stating that the Nevada Administrative Procedures Act (NRS Chapter 233B or "APA") does not allow for motions for reconsideration of the Court's Order. But that interpretation would lead to absurd results. The Nevada Rules of Civil Procedure and the local rules of this court, the First Judicial District Court Rules, still apply in this action. The Division's position is inconsistent with its actual practice in this Court, as the Division has not once argued, for example, that the provisions of FJDCR 15 regarding the procedure for motions, oppositions, replies, etc. do not apply. Nor has the Division ever argued that provisions of the NRCP do not apply, such as NRCP 6 regarding calculating time. But now the Division takes the position that the procedural mechanisms of this Court are entirely limited by the APA. This is incorrect.

Nor can the Division credibly argue that "Respondent has repeatedly argued a statutory interpretation consistent with the legislative intent of the statute" and criticize HWAN's position as leading "to an absurd result of permitting *anyone* to sell, issue, and offer for sale service contracts in Nevada." Opp'n at 4, n. 4. Since the Order was entered and the Division now has a finding it can use against HWAN, the Division has, once again, taken the position that others who are not registered under NRS Chapter 690C may sell, issue, and offer for sale service contracts in Nevada. This is directly contrary to the position the Division presented to this Court. Indeed, the Division plainly seeks only to preclude HWAN from using an unregistered sales agent to sell service contracts on its behalf, while confirming that it will continue to allow every other sales agent in the industry to sell service contracts without being registered. The Division cannot be permitted to use the Order to create a rule applicable only to HWAN. For these reasons, this Court must grant the Motion to reconsider or rehear the Petition.

II. ADDITIONAL FACTUAL BACKGROUND

On November 27, 2019, the Service Contract Industry Council ("SCIC"), a national trade association that works with lawmakers across the country whose members offer approximately 80 percent of all appliance, consumer electronics, home, and vehicle service contracts in the

1 country, sent a newsletter to its members updating its members on a recent meeting it had with
2 the Nevada Division of Insurance-a meeting requested by the SCIC in part because of the Order.²
3 In the newsletter it stated that it had expressed concern that the Division was “taking the position
4 that all sellers of service contracts, even those that are not providers of service contracts, are
5 required to be licensed as service contract providers.” See Newsletter dated November 27, 2019
6 from the SCIC attached hereto as **Exhibit 1**. The SCIC represented that Mr. Timothy Ghan, the
7 Division’s Assistant Chief Examiner for the Property and Casualty Division, stated that “this is
8 not and will not be the Division’s position” and instead “confirmed” that the Division’s position
9 is “that *sellers of service contracts that are not providers do not need to be licensed as providers*
10 *or otherwise register with the Division.*” *Id.* (emphasis added). Mr. Ghan represented, however,
11 “that it is the Division’s position that service contract *administrators* are not permitted to sell
12 service contracts unless licensed as a service contract provider.” *Id.*

13 The Division’s position directly contradicts the Order, which states “NRS 690C.150
14 requires *anyone*, including a service contract administrator, who wishes to issue, sell, or offer for
15 sale service contracts in Nevada, to possess a certificate of registration under Chapter 690C of the
16 NRS.” See Order at 3:22-26 (emphasis added). While HWAN repeatedly argued that NRS
17 690C.150 and indeed the entire chapter of NRS 690C does not require a sales agent for a service
18 contract provider or an administrator to be licensed at all, the Division repeatedly falsely argued
19 to this Court that anyone who sells service contracts, even if they are selling on behalf of a
20 registered provider, must be licensed. True and correct excerpts from the Hearing Transcript at
21 10:22-11:5, 31:21-32:17, 45:6-47:10, attached hereto as **Exhibit 3**. The Division was forced to
22 admit its misrepresentation when faced with backlash in the industry because the Division has
23 never before required the sales agents for providers to be registered. In so doing, the Division
24 takes the position that sales agents do not need to be registered. The Court cannot remain a willing
25 participant in the Division’s transparent ploy to punish HWAN for conduct in which all others
26

27 ² Indeed, upon receiving a copy of the Order, the SCIC stated that the finding that only providers
28 could sell urged by the Division was “crazy.” See email from SCIC dated November 21, 2019
attached hereto as **Exhibit 2**.

1 are allowed to engage. Nor can the Court countenance the Division's intentional
2 misrepresentations.³

3 **III. LEGAL ARGUMENT**

4 **A. Petitioner's Motion is Proper under the Administrative Procedures Act.**

5 The Division argues that Petitioner is attempting to circumvent the APA, and that
6 somehow the First Judicial District Court Rules and District Court Rules are inapplicable to this
7 case. *See* Opp'n at 2. NRS 233B.020 sets forth the legislative intent behind enacting the APA
8 and states:

9
10 1. By this chapter, the Legislature intends to establish
11 *minimum* procedural requirements for the regulation-
12 making and *adjudication procedure* of all agencies of the
13 Executive Department of the State Government *and for*
14 *judicial review of both functions*, except those agencies
15 expressly exempted pursuant to the provisions of this
16 chapter. This chapter confers no additional regulation-
17 making authority upon any agency except to the extent
18 provided in subsection 1 of NRS 233B.050.

19 2. The provisions of this chapter are intended to
20 supplement statutes applicable to specific agencies. This
21 chapter does not abrogate or limit additional requirements
22 imposed on such agencies by statute or otherwise recognized
23 by law.

24 (emphasis added).

25 NRS 233B.130(1) entitles a party to judicial review of an adverse administrative decision,
26 however once a petition for judicial review is properly before a district court, the District Court
27 rules and local rules govern procedure in the proceedings to the extent they do not conflict with
28 the APA. *See* DCR 5 ("These rules cover the practice and procedure in all actions in the district
courts of all districts where no local rule covering the same subject has been approved by the
supreme court. Local rules which are approved for a particular judicial district shall be applied in
each instance whether they are the same as or inconsistent with these rules.") The First Judicial
District Court Rules are "supplemental to the District Court Rules." FJDCR 1(3). And the NRCP

³ Rather than file a motion for sanctions against the Division and its counsel for violating their
duty of candor to the Court, HWAN seeks to redress this injustice via the instant motion.

1 apply “in all civil actions and proceedings in the district courts, except as stated in Rule 81.”
2 NRCP 1. Rule 81 provides that the NRCP “do not govern procedure and practice in any special
3 statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice
4 provided by the applicable statute.” NRCP 81(a). Therefore, it is clear that the APA sets forth
5 only minimum procedural requirements with respect to petitions for judicial review, and the
6 NRCP, FJDCR, and DCR concurrently apply to the extent they do not conflict with the APA.

7 The Division argues the only procedural mechanism for reconsideration under the APA is
8 NRS 233B.130(4). Opp’n at 3. NRS 233B.130(4) reads “[a] petition for rehearing or
9 reconsideration must be filed within 15 days after the date of service of the final decision. An
10 order granting or denying the petition must be served on all parties at least 5 days before the
11 expiration of the time for filing the petition for judicial review. If the petition is granted, the
12 subsequent order shall be deemed the final order for the purpose of judicial review.” Accordingly,
13 NRS 233B.130(4) merely provides a procedural mechanism for *administrative* reconsideration
14 where there would otherwise be none and does not limit a district court’s ability to reconsider its
15 own decision which is governed by the District Court Rules and Local Rules. FJDCR 15(10) and
16 DCR 13(7) allow a district court to grant leave to reconsider issues before it, and nothing in NRS
17 Chapter 233B limits this authority.

18 Moreover, the doctrine of Expression Unius Est Exclusio Alterius, the expression of one
19 thing is the exclusion of the other, is not applicable here. *See* Opp’n at 3. As stated above, the
20 APA provides *minimum* procedural requirements with respect to petitions for judicial review.
21 The NRCP, FJDCR, and DCR still apply to the extent they do not conflict with the APA. There
22 is nothing in the APA that states the intention to exclude all other motion practice provided by
23 NRCP, DCR, or local rules. The Division’s argument that the APA is controlling in every aspect
24 of this case taken to its logical end would mean the Court’s own local rules would not apply, an
25 absurd result. *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007) (“a statute’s language should
26 not be read to produce absurd or unreasonable results.”).

27 ///

28 ///

1 **B. Despite its Representations to this Court to the Contrary, The Division Does**
2 **Not Require Third-Party Service Contract Sales Agents to Be Registered**
3 **Providers.**

4 At the hearing on November 7, 2019 regarding HWAN's Petition for Judicial Review, the
5 Division *conceded* that third-party administrators of service contracts need not be registered with
6 the Division under NRS Chapter 690C, but falsely claimed that third-party Sales Agents who
7 issue, sell or offer for sale service contracts on behalf of registered Providers must be registered
8 service contract providers. The Division maintained this position even though the third-party
9 Sales Agent is not the obligor under the service contract and is therefore not the Provider. Even
10 the Division's own Order, which was ultimately signed by this Court, states "NRS 690C.150
11 requires *anyone*, including a service contract administrator, who wishes to issue, sell, or offer for
12 sale service contracts in Nevada, to possess a certificate of registration under Chapter 690C of the
13 NRS." *See* Order at 3:22-26 (emphasis added).

14 Yet, thereafter, the Division's Assistant Chief Examiner for the Property and Casualty
15 Section Timothy Ghan represented to the SCIC that the Division "**is not and will not be**... taking
16 the position that all sellers of service contracts, even those that are not providers of service
17 contracts, are required to be licensed as service contract providers." *See* Exhibit 1. Instead, Mr.
18 Ghan represented "that it is the Division's position that service contract administrators are not
19 permitted to sell service contracts unless licensed as a service contract provider." *Id.* But "sellers
20 of service contracts that are not providers do not need to be licensed as providers or otherwise
21 register with the Division." Exhibit 1.

22 This is exactly what HWAN argued to the Court here and directly contradictory to the
23 arguments advanced by the Division in this case. HWAN maintained its position that its
24 administrator and third-party Sales Agent, CHW Group, Inc., merely sold service contracts on
25 behalf of HWAN and was never the provider, i.e., obligor, under those service contracts. The
26 Division took the position that it did not matter that CHW Group, Inc. was not the provider and
27 argued to the Court (and the Court accepted its argument) that anyone who sells, issues, or offers
28 for sale a service contract must be registered: period, full stop. Now, the Division contradicts the
29 position it took to this Court to obtain the Order a mere two days after the Order is entered. The

1 reason is clear. The Division has never forced third-party Sales Agents to register as providers
2 and never intended to. The Division simply wanted to find some reason to conclude that HWAN's
3 use of a third-party Sales Agent was improper, even if it then had to turn around and confirm to
4 the entire service contract industry that the rule would only be imposed against HWAN and not
5 against all other third-party Sales Agents. Accordingly, it is clear that the Division is targeting
6 HWAN in this case where the Division's position directly contradicts the Order. The Division
7 argued its position that *anyone* who sells must be registered to obtain the Order, and now
8 backtracks such that the rule only applies to HWAN's third-party Sales Agent.

9 **C. The Decision is Affected by Error of Law**

10 Although judicial review of an agency decision must be confined to the record, "the
11 reviewing court should reverse an appeals officer's decision, [] where the decision has been
12 affected by error of law." *Chappaz v. Golden Nugget*, 107 Nev. 938, 941, 822 P.2d 1114, 1117
13 (1991); NRS 233B.135. Here, the introduction of the matters of public record presented to the
14 Court demonstrate that the Hearing Officer made a clear error of law and the Court has now also
15 made a clear error of law in affirming the Hearing Officer's decision. The Court may take judicial
16 notice of facts "(a) generally known within the territorial jurisdiction of the trial court; or (b)
17 capable of accurate and ready determination by resort to sources whose accuracy cannot
18 reasonably be questioned, ↳ so that the fact is not subject to reasonable dispute." NRS 47.130.
19 The documents attached to the Motion are from the Division's own website, are generally known
20 within the territorial jurisdiction of the court and are capable of accurate and ready determination
21 by resort to sources whose accuracy cannot reasonably be questioned, i.e., the Division's own
22 website. Therefore, the Court may consider the Division's own website documents.

23 The Hearing Officer's decision is affected by error of law because there is no provision in
24 NRS Chapter 690C that requires third-party Sales Agents to register with the Division. The plain
25 language of NRS Chapter 690C demonstrates that there is no requirement for persons who sell to
26 register. For example, there is no separate definition of "persons who sell", but the NRS 690C.120
27 specifically distinguishes a "person who sells service contracts" from the category of persons
28 exempt from the requirement to obtain a certificate of authority under NRS Chapter 680A along

1 with providers and administrators indicating that the legislature did not intend administrators or
2 persons who sell to be registered. Only the Provider, the person obligated under the contract,
3 must be registered.

4 The Division clearly holds the same view, despite its representations to the Court to the
5 contrary. This is supported by the fact that a mere two days after the Order was entered, the
6 Division clarified to the SCIC that it does not take the position that all Sales Agents must be
7 registered. The Court cannot be precluded from reviewing the Division's actions contrary to the
8 Court's ruling a mere two days after entry of the Order simply because the Division's action is
9 not in the record. The Division took an extreme position contrary to the plain language of the
10 statute and contrary to its own application of the statute to all other service contract sales agents
11 in the industry to obtain an Order against HWAN, but the Division does not intend to apply this
12 interpretation of the statute to everyone. This is because the statute does not require anyone who
13 sells service contracts to be registered. It requires the obligor *under the service contract* offered
14 for sale be registered. The SCIC bulletin presented herewith is merely presented to further
15 demonstrate that the Hearing Officer's decision, and this Court's Order affirming the decision,
16 are affected by clear error of law. The fact that the Division's recently stated position contrary to
17 its position argued to the Court is not in the record is a quagmire of the Division's own making,
18 and this cannot be held against HWAN.

19 **IV. CONCLUSION**

20 For these reasons, HWAN respectfully requests reconsideration of this Court's Order with
21 respect to third-party Sales Agents. Third-party Sales Agents, such as CHW Group, Inc., are not

22 ///

23 ///

24 ///

25 ///

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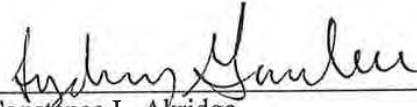
28 ///

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LAS VEGAS, NV 89134

1 required to be registered with the Division under NRS Chapter 690C. HWAN cannot be found
2 to be unsuitable for using an unregistered third-party Sales Agent to sell contracts on HWAN's
3 behalf.

4 DATED this 4th day of December, 2019.

5 HOLLAND & HART LLP

6
7 

8 Constance L. Akridge

9 Nevada Bar No. 3353

10 Sydney R. Gambee

11 Nevada Bar No. 14201

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14 9555 HILLWOOD DRIVE, 2ND FLOOR

15 LAS VEGAS, NV 89134

16 *Attorneys for Home Warranty Administrator of*
17 *Nevada, Inc. dba Choice Home Warranty*

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of December, 2019, a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR LEAVE OF COURT PURSUANT TO FJDCR 15(10) AND DCR 13(7) FOR LIMITED RECONSIDERATION OF FINDINGS PERTAINING TO HWAN'S PETITION FOR JUDICIAL REVIEW** was served by the following method(s):

- ☒ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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INDEX OF EXHIBITS

EXHIBIT 1	SCIC Newsletter Email dated November 27, 2019	Pages 1 - 3
EXHIBIT 2	SCIC Email dated November 21, 2019	Pages 4 - 6
EXHIBIT 3	Excerpts from Hearing Transcript	Pages 7 - 18

13912100_v1 104645.0001

EXHIBIT 1

**SCIC Newsletter Email
dated November 27, 2019**

EXHIBIT 1

**SCIC Newsletter Email
dated November 27, 2019**

EXHIBIT PAGE NO. 1

AA002553

From: Stephen McDaniel
Subject: UPDATE SCIC: Nevada DOI Data Call
Date: Wednesday, November 27, 2019 8:45:37 AM
Attachments: image002.png
image003.png
Data Call Letter of Instruction.pdf
SCP Data Call Spreadsheet.xlsx



Nevada Division of Insurance Data Call

Members,

Yesterday we met with the Nevada Division of Insurance ("Division") regarding several recent concerns in the regulation of service contract industry—specifically, the industry data call issued last week as well as the regulation of service contract sellers. This meeting was held with Jim Burleson of Meenan PA, Timothy Ghan, Assistant Chief Examiner for the Property and Casualty Division, and Gennady Stolyarov, Lead Actuary for the Property and Casualty Division.

As to the industry data call, the Division would not accept the argument that the statutory provision that is the justification for the data call does not apply to service contract providers as non-insurers, despite the plain language of the statute. Instead the Division asserts that it has the authority to request this information based on a combination of the purpose behind the "data call statute" and the fact that service contract providers are subject to certain provisions of the insurance code per Nev. Rev. Stat. 690C.120(1). As such, the Division has no plan to rescind the data call and expects all service contract providers licensed in the state of Nevada to respond.

With that said, Mr. Ghan did commit to allowing companies an extension of time to submit the data, but indicated that each company would individually need to request such an extension. Additionally, Mr. Ghan commented that the data request is intended to gain a better understanding of the industry, and that it is not intended to be adversarial in anyway. We expressed the industries concerns that this appears to be a first step towards full insurance regulation by the Division; however, Mr. Ghan responded 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. Mr. Ghan also emphasized that individual company data collected will not be published and that nothing from the data call will be published except for the possibility of the aggregated data being made available to the general public with no identifying information for any individual company.

EXHIBIT PAGE NO. 2

AA002554

We have the option to challenge the Division with an argument based on the plain language of the statute and the Division appearing to exceed its statutory authority against their statutory purpose and consumer protection focused arguments; however, given the level of deference that the Clark County Courts traditionally give the Division, it is doubtful that this would be a successful endeavor.

Given all of this, we recommend that you continue to compile the requested information as quickly as possible and request an extension immediately if it is possible you may need one. Additionally, we recommend that you familiarize yourself with the trade secret statutes applicable to the Division and utilize those protections with your submission notwithstanding Mr. Ghan's comments regarding there being no publication of individual company information.

As to the regulation of service contract sellers, there was some concern in the industry based on recent Division action as to an individual company that the Division may be taking the position that all sellers of service contracts, even those that are not providers of service contracts, are required to be licensed as service contract providers. I have confirmed with Mr. Ghan that this is not and will not be the Division's position and that sellers of service contracts that are not providers do not need to be licensed as providers or otherwise register with the Division. Mr. Ghan did, however, state that it is the Division's position that service contract administrators are not permitted to *sell* service contracts unless licensed as a service contract provider.

We will continue to monitor these issues and work with the Division should attempted regulation, legislation, or administrative action develop.

Thank you.



MEENAN

REGULATORY AND LEGISLATIVE ATTORNEYS

P.O. Box 11247 • Tallahassee, FL 32302-1247

Phone 850 425 4000 • Fax 850 425 4001

Web site: www.meenanlawfirm.com

You received this email because you are a member of the SCIC.

EXHIBIT 2

**SCIC Email
dated November 21, 2019**

EXHIBIT 2

**SCIC Email
dated November 21, 2019**

EXHIBIT PAGE NO. 4

AA002556

Sydney R. Gambee

From: Stephen McDaniel <stephen@meenanlawfirm.com>
Sent: Thursday, November 21, 2019 9:44 AM
To: Brian Tretter
Cc: Victor@ChoiceHomeWarranty.com
Subject: RE: Nevada Call

Thanks Brian. This is a crazy conclusion. Can you send me the Administrative Order?

Thank you.

Stephen K. McDaniel
Shareholder
Meenan PA
PO Box 11247
Tallahassee, FL 32302-1247
Work: (850) 425-4000
Mobile: (850) 509-8099
Email: stephen@meenanlawfirm.com
Web: www.meenanlawfirm.com



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From: Brian Tretter <btretter@choicehomewarranty.com>
Sent: Thursday, November 21, 2019 10:00 AM
To: Stephen McDaniel <stephen@meenanlawfirm.com>
Cc: Victor@ChoiceHomeWarranty.com
Subject: Nevada Call

Stephen,

In advance of our call this afternoon, I wanted to provide you with a copy of the order that the Division intends to submit to the Court for signature. We will be submitting our own competing order.

Brian S. Tretter | General Counsel | Choice Home Warranty
1090 King George's Post Road | Edison NJ 08837
v: 848.256.4635 | e: btretter@choicehomewarranty.com

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EXHIBIT 3

Excerpts from Hearing Transcript

EXHIBIT 3

Excerpts from Hearing Transcript

EXHIBIT PAGE NO. 7

AA002559

Transcription of Recorded Hearing Proceedings

Case:

Home Warranty Administrator of Nevada, Inc. v. State of Nevada
17 OC 00269 1B

Date:

11/07/2019



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EXHIBIT PAGE NO. 8

AA002560

1 IN THE FIRST DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR CARSON CITY, NEVADA
3

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

7 Petitioner,

8 vs.

Case No.
17 OC 00269 1B

9 STATE OF NEVADA, DEPARTMENT OF
10 BUSINESS AND INDUSTRY - DIVISION
11 OF INSURANCE, a Nevada
12 administrative agency,

13 Respondent.
14
15

16 HEARING BEFORE JUDGE JAMES T. RUSSELL
17
18

19 Carson City, Nevada
20
21

22 Thursday, November 7, 2019
23
24

25 2:28 p.m.
26
27

28 Proceedings recorded by electronic sound recording;
29 transcript produced by transcription service.
30
31

32 Transcribed by: Becky J. Parker, RPR, CCR
33 Nevada Certified Court Reporter No. 934
34
35

1 APPEARANCES:

2
3 For Petitioner:

4 CONSTANCE L. AKRIDGE
5 SYDNEY R. GAMBEE
6 HOLLAND & HART, LLP
7 9555 Hillwood Drive, 2nd Floor
8 Las Vegas, Nevada 89134
9 702.669.4600

10 For Respondent:

11 RICHARD P. YIEN
12 DEPUTY ATTORNEY GENERAL
13 State of Nevada
14 Office of Attorney General
15 100 North Carson
16 Carson City, Nevada 89701
17 775.684.1100

18 Also Present:

19 BRIAN S. TRETTER
20 (via telephone)
21
22
23
24
25

1 information, Your Honor, that the legislature said the
2 provider had to provide to the State of Nevada Insurance
3 Division about the administrator. No contract between
4 the administrator and the provider is required.

5 THE COURT: What about NRS 690C.150, says a
6 provider shall not issue, sell, or offer for sale
7 service contracts in the state unless the provider has
8 been issued a certificate of registration pursuant to
9 the provisions of this chapter.

10 Does that -- doesn't that mean that they're
11 the ones that are basically providing the contracts?

12 MS. AKRIDGE: Your Honor, that means that you
13 can't have a provider operating in the state selling
14 service contracts either -- either on its own behalf or
15 an administrator selling it as a sales agent for the
16 provider. You can't go doing that in the state without
17 a certificate of registration.

18 It's like, Your Honor, the case with an
19 insurer; right? Insurance companies have to be -- have
20 to have a certificate of regis- -- certificate of
21 authority under NRS 688.

22 As it turns out, sales agents for insurance
23 companies and administrators for insurance companies
24 have to be li- -- have to be registered and licensed
25 under Chapter 683A. None of those provisions provide --

1 apply in our case. There's no requirement whatsoever in
2 the Nevada insurance code for a sales agent for a
3 service contract provider or for administrator for a
4 service contract provider to have -- be any -- be
5 licensed at all.

6 I mean, think about it, Your Honor. It makes
7 no sense that you would have HWAN, who is the provider,
8 with the one with the registration, right, that has to
9 fulfill the financial requirements, and then also
10 require the administrator to meet the same require --
11 financial requirements and other requirements for the
12 same population of service contract providers. Your
13 Honor, it makes no sense.

14 You already have the legislature only
15 provided for that to be done by the service contract
16 provider, the one that's obligated to the holder, not
17 the -- not the administrator, the -- the mere seller of
18 the contract but not otherwise obligated.

19 THE COURT: The hearing officer in this
20 particular case basically found that Respondent HWAN was
21 fined under NRS 686A.183.1(a) for making a false entry
22 of material fact in a record or statement in violation
23 of NRS 686A.070. And the basis for that entire claim
24 was it listed itself as the administrator. That was the
25 finding by the hearing officer. Tell me why that's an

1 MR. YIEN: That's correct. And at that point
2 in time, they used the two entity defense to say, Hey,
3 we didn't have to disclose this in our applications
4 because that's a separate legal entity and we're not
5 responsible for their actions.

6 But, you know, on the same note, as Your
7 Honor was asking, it was revealed during the
8 administrative hearing from direct questioning from the
9 administrative hearing officer to the president of
10 petitioner, who's also the president of CHW Group doing
11 business at Choice Home Warranty, that there was only --
12 the petitioner is the one-person entity. And as Your
13 Honor had the question, the -- the rest of the staff
14 that does all of the issuing, marketing, selling, claims
15 processing, it's another entity called Choice --
16 CHW Group doing business as Choice Home Warranty.

17 THE COURT: If -- if -- if I'm -- getting
18 some feedback, and I don't know if it's because I'm on
19 the line --

20 COURT CLERK: I think it's on his phone.

21 THE COURT: Anyway, if I'm HWAN of Nevada and
22 basically -- and -- and isn't -- isn't the intent of the
23 registration to have the person basically who's selling
24 these -- these contracts to be registered?

25 MR. YIEN: That's correct. And so the

1 statute is very clear. As you pointed out, NRS 690C.150
2 requires that a provider shall not issue, sell, or offer
3 for sale service contracts in the state unless the
4 provider has been issued a certificate of registration
5 pursuant to the provisions of this chapter. The words
6 "issue," "sell," and "offer for sale" appear in
7 Chapter 690C no fewer than seven times, and they always
8 point to the provider. Why? Because only a provider
9 can do these things.

10 THE COURT: So Choice Home Warranty Group
11 wasn't registered at all to sell anything in Nevada.

12 MR. YIEN: No.

13 THE COURT: Is that correct?

14 MR. YIEN: They're essentially doing the
15 functions of a provider. They're selling and issuing
16 contracts in Nevada, but they do not have a certificate
17 of registration to do so.

18 So the hearing officer's finding in Number 3
19 is correct because HWAN -- and this is an undisputed
20 fact. HWAN is a one-person entity. This is testified
21 by their own president that -- that they're allowing
22 CHWG Group to sell, issue, and offer for sale service
23 contracts in Nevada. And therefore, that's a sound
24 interpretation that they're violating the statute
25 because they admit -- CHWG Group admits buying through

1 MR. YIEN: That's right.

2 MS. AKRIDGE: The service contract provider
3 is not -- the provider is not -- not the administrator.
4 The service contract provider.

5 THE COURT: You can't have it both ways.

6 MS. AKRIDGE: No. CHW Group was never the --
7 the provider, Your Honor. They were never the obligor.
8 That's the only thing, the only --

9 THE COURT: Well, if they were not a provider
10 and they were selling contracts in the state of Nevada,
11 aren't they in violation of the statute?

12 MS. AKRIDGE: No, Your Honor, because they're
13 selling them on behalf of a registered service contract
14 provider, HWAN. That's why. That's what this says.
15 Otherwise, why isn't the administrator required to be
16 licensed? They're not.

17 THE COURT: Well, they're not because the
18 provider of the contract's the one that basically --
19 administrator means the person responsible for
20 administering the contract has been, in fact, sold or
21 issued or offered for sale by a provider, yet in this
22 case you have H -- you have Choice Home Warranty Group
23 is the ones who are basically selling the contracts.
24 You don't think that's a violation?

25 MS. AKRIDGE: No, Your Honor, because they're

1 not selling it as their own contract. They're selling
2 it as an administrator, a sales agent on behalf of a
3 registered obligor, service contract provider. That's
4 why.

5 THE COURT: I disagree. I'm sorry.

6 MS. AKRIDGE: That's what the legislature --
7 legislative history said, the administrator is the one
8 who managed the program behind the scenes.

9 THE COURT: But again, but an administrator
10 cannot sell the policies.

11 MS. AKRIDGE: No. They're selling it on
12 behalf of the obligor. There -- there was never --
13 there was never a case that was --

14 THE COURT: You're missing the point.

15 MS. AKRIDGE: -- administrator has to be
16 registered.

17 THE COURT: Mr. Yien, am I out to lunch or
18 what?

19 MR. YIEN: No, Your Honor. Your Honor is
20 exactly right. And only -- per counsel's own words,
21 only a provider can issue, sell, or offer for sale --

22 THE COURT: Correct.

23 MR. YIEN: -- service contracts. The reason
24 behind that is because they're the ones that have posted
25 the financial security.

1 THE COURT: And they're the ones that have to
2 get the C- -- COR.

3 MR. YIEN: That's exactly correct. And the
4 Hearing Officer Emmermann's conclusion that the way they
5 want us to read the statute is that anybody who's not a
6 provider can issue, sell, or offer for sale. And it
7 nullifies the entirety of 690C. If you're going to read
8 it that way, it just doesn't make any sense. It doesn't
9 accomplish any of the rationale that the legislature
10 intended 690C to apply to.

11 THE COURT: Thank you.

12 MS. AKRIDGE: Let me see.

13 THE COURT: Well, again, thank you. What's
14 going to happen in this particular case is going to
15 happen as follows. It's my understanding that basically
16 HWAN of Nevada, in regards to their current
17 registration, where do they stand in regards to the
18 current registration? Because the hearing officer did
19 not disallow their registration, the way I read it. She
20 basically allowed them to continue to be registered in
21 Nevada; is that correct?

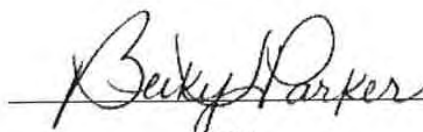
22 MS. AKRIDGE: No, she did not. No. She said
23 it was expired. She said they could apply for -- they
24 could file a renewal application. That was it. She
25 didn't say they were in and they could continue to

C E R T I F I C A T E

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I, BECKY J. PARKER, do hereby certify
that the foregoing pages constitute a full, true, and
accurate transcript of the digital recording, all
transcribed to the best of my skill and ability.

WITNESS my hand this 25th day of
November, 2019.





BECKY J. PARKER, RPR, CCR

Nevada Certified Court Reporter No. 934

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

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,

14 **Petitioner,**

15 **v.**

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

19 **Respondent.**

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

REQUEST FOR SUBMISSION

20 **Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty**
21 **(“HWAN”), by and through its counsel of record, Holland & Hart LLP, hereby requests that the**
22 **Motion for Leave of Court Pursuant to FJDCR 15(10) and DCR 13(7) for Limited**

23 **///**

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AUBREY ROWLATT

C. COOPER

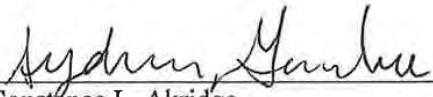
BY DEPUTY

HOLLAND & HART LLP
9555 HILLWOOD DRIVE, 2ND FLOOR
LAS VEGAS, NV 89134

1 Reconsideration of Findings Pertaining to HWAN's Petition for Judicial Review, filed in the
2 above-entitled matter on November 15, 2019, be submitted to the court for consideration.

3 DATED this 4th day of December, 2019.

4 HOLLAND & HART LLP

5
6 

7 Constance L. Akridge

8 Nevada Bar No. 3353

9 Sydney R. Gambee

10 Nevada Bar No. 14201

11 Brittany L. Walker

12 Nevada Bar No. 14641

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14 LAS VEGAS, NV 89134

15 *Attorneys for Home Warranty Administrator of*
16 *Nevada, Inc. dba Choice Home Warranty*

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of December, 2019, a true and correct copy of the foregoing **REQUEST FOR SUBMISSION** was served by the following method(s):

☒ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Richard Yien
Deputy Attorney General
STATE OF NEVADA
Office of Attorney General
100 N. Carson St.
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ryien@ag.nv.gov

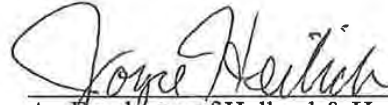
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Senior Deputy Attorney General
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Of Business and Industry – Division of
Insurance*

*Attorneys for State of Nevada, Department
Of Business and Industry – Division of
Insurance*

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jgrigoriev@ag.nv.gov
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8 *Attorneys for Home Warranty*
9 *Administrator of Nevada, Inc.*
dba Choice Home Warranty

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

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

15 Petitioner,

16 v.

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

19 Respondent.
20

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

**MOTION FOR ORDER SHORTENING
TIME FOR BRIEFING AND DECISION
OF MOTION FOR STAY PENDING
APPEAL PURSUANT TO NRCP 62(D)**

21 Petitioner Home Warranty Administrator of Nevada, Inc., dba Choice Home Warranty
22 ("HWAN" or "Petitioner"), by and through its counsel of record, Holland & Hart LLP, hereby
23 moves this Court for an Order Shortening Time for Briefing and Decision of HWAN's Motion
24 for Stay pursuant NRCP 62(D) ("Motion for Stay") of the Order Affirming in Part, and Modifying
25 in Part, Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of
26 the Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of
27
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AUDREY ROWLATT
CLERK
BY C. R. DEPUTY

1 Nevada, Inc., dba Choice Home Warranty (the “Order”) entered on November 25, 2019,¹ filed
2 concurrently herewith. A proposed Order is attached hereto as **Exhibit 1**. This Motion is made
3 and based upon the following memorandum of points and authorities, the pleadings and papers
4 on file herein, and any oral argument this Court may consider.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 Pursuant to Rule 9 of the First Judicial District Court Rules, the Court may consider
7 motions for shortening or extending time on 5 days’ notice to all parties. Here, good cause
8 supports an order shortening the time for briefing on and decision of HWAN’s Motion for Stay.

9 On November 25, 2019, the Court entered the Order, which ordered as follows:

10 1. The Findings of Fact and Conclusions of Law in the
11 Administrative Order 17.0050 are hereby AFFIRMED in part, and
MODIFIED in part as follows:

12 a. The Hearing Officer’s finding of six (6) violations by the
13 Petitioner of NRS 686A.070 for making false entries of
14 material fact in record or statement is supported by
substantial evidence and is hereby AFFIRMED.

15 The total fine of \$30,000, at \$5,000 per violation, as allowed
under NRS 686A.183(1)(a), is AFFIRMED.

16 b. The Hearing Officer’s finding of one violation by the
17 Petitioner of NRS 690C.320(2) for failure to make its
18 records available to the Commissioner upon request is
supported by substantial evidence and is hereby
AFFIRMED.

19 The fine of \$500, as authorized pursuant to NRS
20 6900.825(1) is AFFIRMED,

21 c. The Hearing Officer’s finding of 23,889 instances of
22 conducting business in an unsuitable manner, in violation of
23 NRS 690C.825(1)(b) and NRS 679B.125(2), by allowing an
unregistered entity to issue, sell and offer for sale service
24 contracts in Nevada is hereby AFFIRMED. The Court finds
that NRS 6900.150 requires anyone, including a service
contract administrator, who wishes to issue, sell, or offer for
25 sale service contracts in Nevada, to possess a certificate of
registration under Chapter 690C of the NRS.

26 The fine of \$50 for each of the 23,889 violations, is
AFFIRMED; however, the Court finds that the aggregate

27 ¹ The notice of entry was apparently served on November 26, 2019 and filed on November 27,
28 2019.

cap of \$10,000 for violations of a similar nature, codified in NRS 690C.330, applies. The Court hereby MODIFIES the fine of \$1,194,450 to be capped at \$10,000 total.

2. Petitioner interpleaded \$1,224,950 with the County Clerk's Trust Fund pending final decision of this Court on Petitioner's Petition for Judicial Review pursuant to the Stipulation and Order for interpleading of Fines Pending Final Decision filed herein on March 15, 2018. The Clerk of the Court will distribute the total fine of \$40,500 from Petitioner's interpleaded funds to the Respondent, and refund the remaining balance to Petitioner.

5. The Court further orders that contingent upon Petitioner's compliance with NRS 690C.150 and other requirements of chapter 690C of the NRS, Petitioner's Certificate of Registration be reinstated. In particular, Petitioner is prohibited from using an administrator to perform the duties of selling, issuing, or offering for sale service contracts in Nevada, unless said administrator has been granted a certificate of registration pursuant to NRS 690C and consistent with this Order.

Pursuant to NRCP 62(a)(1), "no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after service of written notice of its entry, unless the court orders otherwise." The Notice of Entry of the Order was served on November 26, 2019, which means the automatic stay is in effect until December 26, 2019. HWAN files its Motion for Stay concurrently herewith, requesting a stay of the Order, including all declaratory findings, such as those in subsection (1)(c) and (5) of the Order.

HWAN is required by NRAP 8(a)(1) to move first in this court for the requested stay before moving for the same in the Nevada Supreme Court. If the Motion for Stay is briefed and decided in the ordinary course, there will not be a decision before the December 26, 2019 expiration of the automatic stay under NRCP 62(a)(1), and there will likewise be no time for HWAN to move in the Nevada Supreme Court for a stay pursuant to NRAP 8, if necessary. Therefore, this Court should impose a slightly shortened briefing schedule such that the Motion for Stay may be briefed and decided with enough time for HWAN to bring a motion for the same in the Nevada Supreme Court under NRAP 8, if necessary. HWAN hereby moves for Order

1 Shortening Time of its Motion for Stay as soon as is practicable after service by mail of the Notice
2 of Entry of Order on November 26, 2019.²

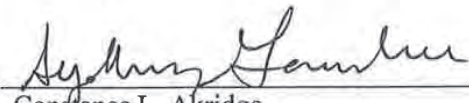
3 As such, HWAN requests that the Court shorten the time for briefing on the Motion
4 for Stay as follows so a decision may be issued on or before December 18, 2019, which will
5 give HWAN one week (excluding the Court holiday Christmas Day) to make a motion under
6 NRAP 8 to the Nevada Supreme Court before December 26, 2019, if necessary:

7 Respondents' Opposition to Motion for Stay: December 11, 2019

8 HWAN's Reply in support of Motion for Stay: December 16, 2019

9 DATED this 6th day of December, 2019.

10 HOLLAND & HART LLP

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12 

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20 LAS VEGAS, NV 89134

21 *Attorneys for Home Warranty*
22 *Administrator of Nevada, Inc.*
23 *dba Choice Home Warranty*

24
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28 ² The Thanksgiving holiday was on November 28, 2019.

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2019, a true and correct copy of the foregoing **MOTION FOR ORDER SHORTENING TIME FOR BRIEFING AND DECISION OF MOTION FOR STAY PENDING APPEAL PURSUANT TO NRCP 62(D)** was served by the following method(s):

- ☒ **U.S. Mail:** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

Richard Yien
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*Attorneys for State of Nevada, Department
Of Business and Industry – Division of
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*Attorneys for State of Nevada, Department
Of Business and Industry – Division of
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- ☒ **Email:** by electronically delivering a copy via email to the following e-mail address:

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INDEX OF EXHIBITS

EXHIBIT 1	Proposed Order Granting Motion for OST	Pages 1 - 3
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EXHIBIT 1

Proposed Order Granting Motion for OST

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Proposed Order Granting Motion for OST

1 Constance L. Akridge
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2 Sydney R. Gambee
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9 *Attorneys for Home Warranty*
10 *Administrator of Nevada, Inc.*
dba Choice Home Warranty

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

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

15 Petitioner,

16 v.

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

20 Respondent.

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

**ORDER GRANTING MOTION FOR
ORDER SHORTENING TIME FOR
BRIEFING AND DECISION OF
MOTION FOR STAY PENDING APPEAL
PURSUANT TO NRCP 62(D)**

21 This matter comes before the Court on Petitioner Home Warranty Administrator of
22 Nevada, Inc., dba Choice Home Warranty's ("HWAN" or "Petitioner"), Motion for Order
23 Shortening Time for Briefing and Decision of ("Motion for OST") HWAN's Motion for Stay
24 pursuant NRCP 62(D) ("Motion for Stay") of the Order Affirming in Part, and Modifying in Part,
25 Findings of Fact, Conclusions of Law, Order of the Hearing Officer, and Final Order of the
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27
28

1 Commissioner in Cause No. 17.0050 in the Matter of Home Warranty Administrator of Nevada,
2 Inc., dba Choice Home Warranty (the "Order") entered on November 25, 2019.¹

3 The Court having considered HWAN's Motion for OST and the papers and pleadings on
4 file, five (5) days' notice having been given to Respondents pursuant to FDJCR 9, and good cause
5 appearing,

6 **IT IS HEREBY ORDERED** that the Motion for OST is **GRANTED**. Respondents shall
7 file and serve their opposition to HWAN's Motion for Stay no later than _____.
8 HWAN shall file and serve its reply in support of HWAN's Motion for Stay no later than
9 _____.

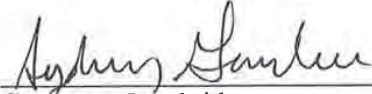
10 **IT IS SO ORDERED.**

11 DATED this ____ day of December, 2019.

12
13 _____
14 DISTRICT COURT JUDGE

15 Respectfully submitted by:

16
17 HOLLAND & HART LLP

18 

19 Constance L. Akridge
20 Nevada Bar No. 3353
21 Sydney R. Gambee
22 Nevada Bar No. 14201
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27 *Attorneys for Home Warranty*
28 *Administrator of Nevada, Inc.*
dba Choice Home Warranty

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¹ The notice of entry was apparently served on November 26, 2019 and filed on November 27, 2019.

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing **APPELLANT'S APPENDIX (VOLUME XIII OF XIV)** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on May 12, 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 as indicated below:

Via Electronic Filing System:

Richard P. Yien
Joanna N. Grigoriev

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