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### Summary of Western Surety Co. v. ADCO Credit Inc., 127 Nev. Adv. Op. No. 8

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*Nevada Law Journal*

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*Western Surety Co. v. ADCO Credit Inc.*, 127 Nev. Adv. Op. No. 8 (Mar. 17, 2011)<sup>1</sup>  
ADMINISTRATIVE LAW – BOND ENFORCEMENT

Summary

The Court considered an appeal from a district court order granting a petition for judicial review in a Department of Motor Vehicles bond matter.

Disposition/Outcome

The Court concluded that the district court properly granted the petition for judicial review because NRS § 482.345 is “clear and unambiguous” and the meaning of the phrase “any person” includes a defrauded finance company.

Factual and Procedural History

Western issued a dealer licensing bond for \$50,000 as surety for Joshua’s Auto Sales.<sup>2</sup> ADCO provided Joshua’s with a line of credit to purchase vehicles at auction. Neither Western nor ADCO disputed that Joshua’s defrauded ADCO by purchasing some of its own vehicles with the line of credit.<sup>3</sup>

ADCO petitioned the DMV to be reimbursed from the proceeds of the dealer’s surety bond Western provided to Joshua’s. A DMV administrative law judge first heard the matter and determined that ADCO was not entitled to compensation from the bond because a “dealer’s surety bond is intended for the protection of the consumer, not to safeguard finance companies.” ADCO challenged this finding by filing a petition for judicial review in district court.

The district court granted ADCO’s petition. Finding that ADCO was entitled to recover on the bond, the district court subsequently remanded the matter for further determinations. Western appealed.

Discussion

The Nevada Supreme Court reviews questions of law and statutory interpretation *de novo*.<sup>4</sup> If a statute is clear and unambiguous, the Court gives effect to the plain and ordinary meaning of the statute’s language.<sup>5</sup>

Western argued that ADCO did not fall within the scope of persons NRS Chapter 482 intended to include.<sup>6</sup> ADCO countered that the statute includes more than simply defrauded consumers because NRS § 482.345(6) states that the bond must provide an opportunity for “any person” to apply for compensation from the bond.

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<sup>1</sup> By Meredith Still

<sup>2</sup> Joshua’s Auto Sales is not a party to this appeal.

<sup>3</sup> Most of the cars were sold to consumers, and ADCO received some repayment from the line of credit.

<sup>4</sup> *Sims v. Dist. Ct.*, 125 Nev. \_\_\_, \_\_\_, 206 P.3d 980, 982 (2009).

<sup>5</sup> *Seput v. Lacayo*, 122 Nev. 499, 502, 134 P.3d 733, 735 (2006).

The Court acknowledged that NRS Chapter 482 provides no definition for “any person” and that the scope of the statute is not constrained by limiting language. Based on the plain language of the phrase “any person” as used in NRS § 482.345(6), the Court agreed with ADCO and concluded that the statute permits corporate entities such as ADCO to apply for compensation from the bond.

In support of its conclusion, the Court noted that its opinion in *State Dept. of Motor Vehicles v. Garcia-Mendoza*<sup>7</sup> did not eliminate the possibility of nonconsumers recovering funds from the bond under NRS 482.345.<sup>8</sup> In addition, the Court offered the statute’s legislative history and noted that the statute appears to focus on protecting the public in general, not solely consumers.

The Court concluded that the district court did not abuse its discretion in granting the petition for judicial review and finding that ADCO could recover from the bond pursuant to NRS § 482.345(6).

### Conclusion

The Court concluded that the provision for “any person” under NRS § 482.345 includes defrauded finance companies.

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<sup>7</sup> *State Dept. of Motor Vehicles v. Garcia-Mendoza*, 114 Nev. 1187, 971 P.2d 377 (1998).

<sup>8</sup> In fact, the Court noted that the DMV may have been eligible to recover from the bond had it complied with the proper procedures for executing on its claim. *Id.* at 1192, 971 P.2d at 380.