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STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

BENEFIT MARKETING SOLUTIONS LLC and  
BENEFIT SERVICES ASSOCIATION,

NO. 14-0081

**REPLY OF BENEFIT  
MARKETING SOLUTIONS LLC  
AND BENEFIT SERVICES  
ASSOCIATION IN SUPPORT OF  
MOTION FOR STAY**

The strident and heavy-handed tone of the OIC's opposition provides no substantive evidentiary or authoritative basis for denying Benefit Marketing Solutions, LLC and Benefit Services Association's ("Benefit") motion for stay. The OIC neither offers evidence of any harm that a stay would cause nor attempts to balance the interests at issue, nor provides any specific reason why a stay should not be granted when Benefit's request is expressly authorized by statute. OIC ignores the core issue: whether the Commissioner has the legal right/power to regulate Benefits business activities. All parties, as well as the Thurston County Superior Court, have acknowledged the existence of a good faith dispute.

"I believe, there are genuine issues that require resolution." Judge Carol Murphy, TR 23:14-16.

Benefit wants to resolve the underlying legal issue as soon as possible. It does not believe that the Insurance Commissioner has the right to regulate its business. For that reason, it does not believe that the Amended Cease & Desist Order ("Order") is valid. On its face, the Order requires certain action to be undertaken by Benefit before any determination

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BENEFIT SERVICES ASSOCIATION IN SUPPORT OF MOTION  
FOR STAY - 1

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1 of its efficacy. The action is expensive, disruptive and potentially harmful to Benefit's  
2 business relationships. It is premature and unnecessary if, as Benefit believes, the Order is  
3 invalid. No harm has been alleged or shown by the OIC that has occurred to date and none  
4 has been alleged or shown that would result from granting a stay pending resolution of the  
5 legal dispute in Thurston County Superior Court for declaratory relief. The opposite is true.  
6 Benefit will suffer if it is forced to undertake action contemplated by the subject Order before  
7 the validity of the Order is determined.

8 Benefit promptly pursued a declaratory judgment action in Thurston County Superior  
9 Court which is pending. Benefit filed the motion for stay in Thurston County Superior Court  
10 as authorized by RCW 48.040.020(2). The Court declined to grant the motion without  
11 prejudice until after the OIC's hearing unit rules on a stay. This motion is brought as a result  
12 of the Court's direction and the request of the OIC's counsel. This hearings unit has  
13 previously ordered a stay in a related matter (Notice of Hearing for Imposition of Fines -- 14-  
14 0081) pending determination of the declaratory judgment action.

15 The background facts support a stay of the Order because the Order was the result of  
16 an opinion of an individual OIC staff member unvetted and unsupported by any hearing  
17 process. Consider the following:

- 18 1. The subject Order was signed by the OIC's self-styled "prosecutor" without  
19 any notice to Benefit and without any discussions with its representatives.
- 20 2. The Order was not the result of any hearing or evidentiary process but rather a  
21 pen-stroke of an OIC staff member.
- 22 3. Upon receipt of the Order, Benefit's representatives immediately offered to  
23 meet with the OIC and explain why their product was not insurance and,  
24 notwithstanding that fact, offered to provide the OIC information to address its  
25 concerns. The offer was summarily rejected.
- 26 4. Benefit retained legal counsel who met with the same OIC staff attorney who  
authored the Order, Ms. Marcia Stickler. Counsel also attempted to explore  
possible resolution alternatives. When that failed, counsel sought to cooperate

1 and coordinate with Ms. Stickler an efficient way to resolve the existing  
2 disagreement. A full explanation of the steps Benefit intended to pursue,  
3 absent an ability to find an informal way to resolve the parties' disagreement,  
4 was given to Ms. Stickler. As part of the discussions, a stay of the Order was  
5 informally requested so that Benefit could pursue its declaratory judgment  
6 action and all parties could save time and costs contesting non-core issues.  
7 These discussions were memorialized in an email to Ms. Stickler who  
8 responded by confirming the accuracy of the agreement and understanding  
9 reached.

10 5. The OIC reneged upon or disclaimed that any agreement had been reached.  
11 Benefit promptly filed a formal statutory request for stay with the  
12 Commissioner which Ms. Stickler denied, citing no facts or concerns other  
13 than a desire for compliance with the insurance codes.

14 6. Benefit filed the declaratory judgment action in Thurston County Superior  
15 Court and a motion for stay. The Court suggested a technical requirement  
16 existed before proceeding with the motion for stay and therefore declined the  
17 motion without prejudice to bring the motion before the Court again if  
18 necessary, after presenting the motion to the OIC hearing's office.

19 Nothing in the OIC's opposition provides any substantive reason not to stay the Order  
20 pending determination of its validity.

21 Given the foregoing, for the OIC to claim that Benefit "continue to flout the  
22 Commissioner's legal and legitimate authority" misses the point and misrepresents the facts.  
23 Nobody is "flouting" anything. Benefit seeks a resolution of the genuine dispute and a  
24 determination of the efficacy of the Order and the authority of the Commissioner to regulate  
25 their business activities. Benefit believes the Order is invalid. For the OIC to urge imposition  
26 of a \$25,000 per day fine because Benefit believes the Commissioner's acts were *ultra vires*  
and to seek a determination of that issue sends a chilling message that those who respectfully  
question the Commissioner in a specific action will be punished for doing so. In this  
democratic republic, citizens have the right to respectfully test the legitimacy of governmental  
actions without fear of reprisal. Such threats are inappropriate and unhelpful to the issue  
presented in this motion, namely: should a temporary stay of a challenged Order be granted  
pending judicial determination in the superior court where no harm will result from granting



1 such a stay?

2 This motion is not the place to determine whether Benefit's activities or product  
3 constitutes insurance. That is the purpose of the pending declaratory judgment action. And,  
4 the OIC is wrong to claim that Benefit "ignores the foundation of the Commissioner's  
5 objection" that Benefit's product is insurance when the essence of the declaratory judgment  
6 action is to judicially resolve Benefit's disagreement with that position.

7 The purpose of this motion is to maintain the status quo pending judicial determination  
8 of the issue. OIC's objection is not a reason to deny the motion. Rather it is a reason to grant  
9 it so that the parties' genuine legal dispute can be resolved by the court.

10 **CONCLUSION**

11 Benefit's motion should be granted. Good reasons exist for doing so. No harm will  
12 result from a stay and none has been identified by the OIC. On the other hand, harm will be  
13 suffered by Benefit absent a stay.

14 DATED this 4th day of August, 2014.

15 RYAN, SWANSON & CLEVELAND, PLLC

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17  
18 By 

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