

STATE OF WASHINGTON

MIKE KREIDLER
STATE INSURANCE COMMISSIONER



FILED

OLYMPIA OFFICE:
INSURANCE BUILDING
P.O. BOX 40258
OLYMPIA, WA 98504-0258
Phone: (360) 725-7000

2014 SEP -2 A 10: 11

OFFICE OF
INSURANCE COMMISSIONER

August 29, 2014

George A. Finkle, Superior Court Judge (Ret.)
Presiding Hearing Officer
Office of the Insurance Commissioner
P. O. Box 40255
Olympia, Washington 98504-0255

SUBJECT: Request for Pre-hearing Conference Call in Benefit Marketing Solutions and Benefit Services Association, Matter No. 14-0081

Dear Judge Finkle:

On August 29, 2014, the Superior Court of Thurston County dismissed the matter of Benefit Services Association, et al. v. Washington State Office of the Insurance Commissioner No. 14-2-01156-1. A copy of the Court's order is attached.

The Office of the Insurance Commissioner respectfully requests you schedule a brief conference call with myself and opposing counsel to clarify the next steps. In particular, it would help to know the status of the stay of the administrative proceeding in light of the dismissal.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Marcia G. Stickler".

Marcia G. Stickler
Insurance Enforcement Specialist
Office of the Insurance Commissioner
(360) 725-7048
MarciaS@oic.wa.gov

CC: Gulliver A. Swenson and Jerry Kindinger
Ryan Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034
swenson@ryanlaw.com

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FILED
AUG 29 2014
SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set:
4 Date: 8/29/2014
5 Time: 9:00 AM
6 The Honorable Carol Murphy

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

8 BENEFIT SERVICES ASSOCIATION,
9 et al

10 Plaintiffs,
11 v.
12 WASHINGTON STATE OFFICE OF
13 INSURANCE COMMISSIONER,

14 Defendant.

NO. 14-2-01156-1

ORDER GRANTING THE OFFICE
OF THE INSURANCE
COMMISSIONER'S MOTION TO
DISMISS

14 THIS MATTER came before the Court on the Defendant Office of the Insurance
15 Commissioner's Motion To Dismiss. The Court has considered the Complaint for Declaratory
16 Relief (Complaint), the Insurance Commissioner's Amended Order to Cease and Desist, which
17 was referenced in the Complaint, the arguments of counsel, and the papers filed by the parties
18 in this matter. The court ~~has~~ has not considered the Order on Motion for Stay of Amended
19 Cease and Desist Order and the Order on Motion for Stay of proceedings entered by the
20 Commissioner.

21 Based on the foregoing, the Court finds that Plaintiffs Benefit Solutions Association
22 and Benefit Marketing Solutions, LLC (collectively "Benefit") have failed to exhaust
23 administrative remedies, and have failed to allege or hypothesize facts that justify an
24 exemption from the exhaustion requirement. *state a claim under 12(b)(6)*

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It is therefore **ORDERED** that Defendant Office of the Insurance Commissioner's Motion To Dismiss is hereby **GRANTED**, *without prejudice and without addressing whether Plaintiffs can petition the court to amend the complaint.*

WJ
23

ENTERED this 29th day of August, 2014.

Carol Murphy

The Honorable Carol Murphy

Presented by:

ROBERT W. FERGUSON
Attorney General

Marta U. DeLeon

MARTA U. DELEON, WSBA #35779
Assistant Attorney General
Attorneys for Defendant
Washington State Office of the Insurance Commissioner

Approved as to form:

RYAN, SWANSON & CLEVELAND, PLLC

Jerry Kindinger

JERRY KINDINGER, WSBA #5231
GULLIVER A. SWENSON, WSBA #35974
Attorneys for Plaintiffs
Benefit Services Association and
Benefit Marketing Solutions, LLC