

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Business Health Trust,

Aggrieved Party

Docket No. 14-0246

AGGRIEVED PARTY'S OPPOSITION TO
COMMISSIONER'S REQUEST FOR A
DETERMINATION OF NO
THREATENED AGENCY ACTION

I. INTRODUCTION

Pursuant to RCW 48.04.010(1), the Commissioner "*shall* hold a hearing... upon written demand for a hearing made by *any person aggrieved by any act, threatened act, or failure of the commissioner to act*, if such failure is deemed an act under any provision of this code, or by any report, promulgation, or order of the commissioner other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing" (emphasis added).

Business Health Trust (the "Aggrieved Party"), as the plan administrator and fiduciary for the Association-sponsored member-group governed plans ("Association Health Plans") has been aggrieved by threatened retroactive and future actions of the Commissioner regarding both a finding that the Association Health Plans are not sponsored by an employer as defined by 29 U.S.C. § 1002(5), Section 3(5) of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") and that Premera Blue Cross's ("Premera") rate filing methodology is not in compliance with Washington State law. Therefore, the Aggrieved Party is entitled to both a hearing and an automatic stay of such threatened retroactive and future actions of the Commissioner under Washington State law.

The threshold question in front of the Hearings Unit is whether the threatened actions of the Commissioner constitute a threat of "agency action" for which an automatic stay is granted

1 pursuant to RCW 48.04.010 and RCW 48.04.020. *See* Commissioner's Brief Requesting a
2 Determination of No Threatened Agency Action ("Commissioner's Brief"). Because an
3 "agency action" is defined by RCW 34.05.010(3) as the "implementation or enforcement of a
4 statute" or the "application of an agency rule," such determinations by the Commissioner with
5 respect to: (i) the ERISA Section 3(5) status of the sponsoring Associations and (ii) rating
6 methodology utilized by the Association Health Plans are clearly "agency actions" within the
7 meaning of RCW 48.04.010. Moreover, the statements of the Commissioner that each
8 Association Health Plan's structure and rating methodology must be changed or a disapproval
9 will be issued are clearly "threatened acts" within the meaning of RCW 48.04.010 and RCW
10 48.04.020 and, therefore, the Hearings Unit must find that the Aggrieved Party is entitled to a
11 hearing and an automatic stay as a matter of law.

12 Contrary to the Commissioner's briefing, these threatened actions do not solely involve
13 a determination of Premera's contract filing, as the Commissioner took no action on such
14 contract during the contractual term. The Commissioner's public policy arguments that its
15 decision is necessary to protect the public from unlawful policies being sold are clearly
16 disingenuous as the 2014 policies at issue have terminated. No one is currently covered by such
17 policies and the policies are no longer being sold. Thus, the issues before the Hearings Unit
18 involve not only the proposed actions of the Commissioner that may be taken in the future, but
19 whether the Commissioner has authority to now enter a disapproval after the expiration of the
20 Premera contractual term. The issues with respect to retroactive threatened actions are as
21 follows:

22 1. Whether the Commissioner can now enter any formal disapproval, as the contract
23 period has expired and no one is covered by the policy;

24 2. Having previously approved each Association's ERISA Section 3(5) status and
25 structure during the contractual period, can the Commissioner enter a retroactive disapproval,
26 without notice and opportunity to be heard, after the contractual period has expired;

1 industry groups (“Associations”), which have historically been organized as subgroups of
2 Seattle Metropolitan Chamber of Commerce, established thirteen Association Health Plans,
3 effective January 1, 2014. *Id.*, Ex. C at ¶ 6. Employer-members satisfying the requisite
4 geographical and industry classification requirements can purchase large-group insurance
5 coverage from each Association Health Plan in order to continue to provide access to medical
6 insurance to their employees and their employees’ dependents. *See id.*

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8 The Association Health Plans have partnered with Premera since their inception in order
9 to provide benefits to the employees of the member companies of the sponsoring Associations.
10 *Id.*, Ex. C. at ¶ 11. Premera offers a large group insurance contract to the Association Health
11 Plans provided such plan is sponsored by an Association or industry group that is an
12 “employer” within the meaning of ERISA Section 3(5). *Id.*

13 Under WAC 284-43-920 and RCW 48.44.020, Premera, as a health plan issuer, must file
14 its large group health plans with the Commissioner in order to continue to market the plans in
15 Washington State. Washington State law further provides “An issuer must not offer or issue a
16 plan to individuals or small groups through an association or member-governed group as a
17 large group plan unless the association or member-governed group to whom the plan is issued
18 constitutes *an employer under 29 U.S.C. § 1002(5) of the Employee Retirement Income*
19 *Security Act of 1974...*” WAC 284-170-958(1) (emphasis added). However, the carrier is
20 required only to make a good faith determination of an association’s ERISA Section 3(5) status
21 and the Commissioner’s review is limited to whether such a good faith determination was
22 made. WAC 284-170-858(2). The Commissioner has no authority to engage in rulemaking with
23 respect to an association’s ERISA Section 3(5) status, as the statute specifically adopts and
24 incorporates federal law on this issue.
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1 In February 2014, Premera submitted to the Commissioner rate filing applications for
2 each of the Association Health Plans for large-group coverage. Birmingham Decl. ¶ 4, Ex. C at
3 ¶ 14. These applications included all information requested by the Commissioner, including
4 information demonstrating that each sponsoring Association is an ERISA Section 3(5)
5 Employer. *Id.* In addition, as required by the rate filing instructions, Premera relied on an
6 opinion of legal counsel as to the central issue of whether the sponsor of the group insurance
7 contract is an ERISA Section 3(5) employer.
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9 On March 26, 2013, the Commissioner sent a letter indicating that the structure of the
10 Association that would sponsor the Aerospace Industry Health Trust qualified as an ERISA
11 Section 3(5) employer. Birmingham Decl. ¶ 5, Ex. D. Similarly, on May 7, 2013, the
12 Commissioner sent a letter to the Aggrieved Party, acknowledging that the Agriculture Industry
13 would qualify as an ERISA Section 3(5) employer. *Id.* ¶ 6, Ex. E. The other eleven (11)
14 Association Health Plans were submitted for review with this understanding. The letters
15 approving the ERISA Section 3(5) status of the Agriculture Industry Association and the
16 Aerospace Industry Associations were received while the Premera policy was in force.
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18 On April 2, 2014, the Commissioner suddenly reversed its position with respect to the
19 status of the Associations as ERISA Section 3(5) employers, sending Premera an objection
20 letter for all of the Association Health Plans, except the Agriculture Industry Health Trust and
21 Aerospace Industry HealthTrust, indicating that it was suspending its review of Premera's rate
22 filing applications pending further documentation establishing that the corresponding
23 Associations qualified as ERISA Section 3(5) employers. Birmingham Decl. ¶ 4, Ex. C at ¶ 16.
24 The requested responses were submitted by Premera on or around May 8, 2014. *Id.*
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26 On September 8, 2014, the Commissioner sent a second objection letter indicating that
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1 additional documentation establishing that the Associations qualified as ERISA Section 3(5)
2 employers was required for continued review of the rate filing applications for the Association
3 Health Plans. *Id.*, Ex. C at ¶ 17. The requested documentation was provided to the
4 Commissioner on or around October 7, 2014. *Id.*

5 On October 28, 2014, the Commissioner sent a letter to Ms. Maud Daudon, President
6 and Chief Executive Office of the Seattle Metropolitan Chamber of Commerce and Trustee of
7 Business Health Trust, indicating that, despite the repeated submission of additional
8 information supporting the Associations' ERISA Section 3(5) employer status, the
9 reorganization of the Aggrieved Party would not be able to overcome the Bend Chamber of
10 Commerce decision. Birmingham Decl. ¶ 7, Ex. F. In relevant part, the letter provides:

12 As I shared with you in an email dated July 31, 2012, the U.S. Department of
13 Labor's Susan Reed shared that she did not believe that Seattle Chamber was
14 capable of satisfying ERISA's definition of "employer" even with the proposed
15 structural changes.

16 *Id.*

17 It is significant to note that this letter was written outside of the rate filing review
18 process as the letter was not addressed to Premera, but rather to Maud Daudon, in her
19 capacity as a Trustee of Business Health Trust. *Id.* The letter did not discuss the Premera
20 filing. *Id.* Rather, the purpose of the letter was to inform the Aggrieved Party that the
21 thirteen (13) group health plans that it administered were not sponsored by an ERISA
22 Section 3(5) employer. *See id.* In other words, the letter threatened the ability of the
23 Aggrieved Party to contract with any carrier for group health insurance.

25 On December 15, 2014, a conference call was held between representatives of the
26 Aggrieved Party and the Commissioner to discuss the ERISA Section 3(5) employer status of

1 the Association Health Plans. During this call, the Commissioner indicated that the proposed
2 structural changes would not be sufficient to satisfy the definition of employer set forth by
3 ERISA. Birmingham Decl. ¶ 4, Ex. C at ¶ 18. The Aggrieved Party understood this to mean
4 that it would not be able to sponsor any group health plan in Washington state and its groups
5 would have to transition to another sponsor. The Commissioner had previously also expressed
6 concern about the rating methodology utilized by the Associations. *Id.* ¶ 2, Ex. A at ¶ 14.

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8 On December 17, 2014, the Aggrieved Party filed a federal action against the
9 Commissioner, seeking a declaratory judgment with respect to the status of the Associations as
10 ERISA Section 3(5) employers, a federal question. That same day, the Aggrieved Party
11 demanded a hearing in front of the Hearings Unit on behalf of the Association Health Plans in
12 order to preserve its rights to an administrative hearing pursuant to RCW 48.04.010 and an
13 automatic stay against the Commissioner pursuant to RCW 48.04.020. The demand also
14 requested that the hearing be stayed pending the determination of the federal question –
15 whether each of the Association Health Plans is sponsored by an ERISA Section 3(5) employer
16 – in federal court.

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18 In connection with the federal action, the Commissioner has in fact confirmed that he
19 intends to disapprove Premera's applications for the Association Health Plans on two separate
20 grounds: 1) the Association sponsors' status as ERISA Section 3(5) employers; and 2)
21 Premera's rating methodology – as the rates are inconsistent with single large group rates.

22
23 Representatives of the Commissioner, in sworn testimony, have indicated that upon
24 issuance of a final disapproval, Premera will be instructed to stop selling the insurance plans
25 and to provide a transition plan for moving the current 14,000 enrollees to compliant plans
26 within 60 days of receipt. *See* Birmingham Decl. ¶ 2, Ex. A at ¶ 16; *see id.*, ¶ 3, Ex B at ¶ 4.

1 Such compliant group plans could not be sponsored through the Associations as the
2 Commissioner's determination that such plans are not sponsored by an ERISA Section 3(5)
3 employer would prevent any other carrier from reaching a contrary interpretation on this issue.

4 If the Commissioner issues a finding that the Associations are not ERISA Section 3(5)
5 Employers, the Associations will not only be unable to sponsor the Premera plan, but will be
6 unable to sponsor any group health plan of any carrier, as no carrier can make a good faith
7 determination that the Associations are ERISA Section 3(5) employers after contrary findings
8 by the Commissioner. *See* WAC 284-170-958(2). Thus, the Aggrieved Party, which has been
9 sponsoring group health policies since 2004, will essentially be forced out of business without
10 notice or opportunity to be heard. In addition, if Premera's rating methodology is disapproved,
11 the 14,000 participants signed up through 661 employer-members will be forced to move off
12 the current plans to more expensive compliant plans. *See* Birmingham Decl. ¶ 3, Ex B at ¶ 4.

13 III. ARGUMENT

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16 **A. Whether the Commissioner's retroactive formal disapproval of both the**
17 **Premera Rate filing and each Association's ERISA Section 3(5) status**
18 **should be stayed as the Commissioner took no action during the contract**
19 **period.**

20 Contrary to the Commissioner's statements, neither Premera nor an Association Health
21 Plan needs the Commissioner's approval of its group insurance contract. Pursuant to RCW 48.
22 44.020 and WAC 284-43-920, a carrier must file its group health plan within 30 days of the
23 renewal date of the policy. RCW 48.44.020 states that the Commissioner "may" review and
24 "may" disapprove the policy, but only for one or more of the enumerated reasons set forth in
25 RCW 48.44.020, subsections (a) through (g), or for the reasons set forth in RCW 48.44.030.

26 In the instant case, the carrier timely filed its contract but the Commissioner did not
27 timely review the policy. The 2014 Premera contract has now expired; no one is covered by the

1 policy and the policy is no longer being sold. Therefore, pursuant to RCW 48.44.020, the
2 contract was permitted to be offered and sold because there was no disapproval issued during
3 the policy term. The Commissioner does not have the authority to enter a formal disapproval of
4 either the contract or any issue under the contract at this late date.

5 A similar issue of retroactivity relates to the Association Health Plan and this issue is
6 not solely confined to the Premera rate filing. The Commissioner had previously sent to
7 representatives of the Aggrieved Party, and not to Premera, a letter approving the structure
8 utilized by the Association Health Plans as being consistent with the requirements of ERISA
9 section 3(5). *See* Birmingham Decl. ¶ 6, Ex. E. This letter was received during the contractual
10 term and during the period of the Commissioner's discretionary review. In addition, Premera
11 filed a good faith determination of the employer status under ERISA Section 3(5) and complied
12 with the Commissioner's rate filing instruction. The materials supplied to the Commissioner
13 fully complied with the requirements of WAC 284-170-958(2). Under RCW 48.44.020(f) the
14 Commissioner's review is limited to enforcement of the regulations and the regulation, WAC
15 284-170-958(2), only requires the carrier to make a "good faith determination of the
16 employer's ERISA section 3(5) status." The Commissioner has no statutory authority to reject
17 the Premera filing on other grounds. The attempt of the Commissioner to reverse a prior
18 approval of ERISA Section 3(5) status after the contract period has expired and outside the
19 scope of his review authority should be stayed pending an administrative hearing on the legality
20 of such action. Moreover, the denial of ERISA Section 3(5) status does not relate to a review of
21 the policy, but to whether any approved policy can be sold to and sponsored by the Association
22 Health Plans, an issue of federal law, not within this agency's jurisdiction. Because this issue
23 involves an issue outside the scope of the Premera filing and after the expiration of the contract,
24 a determination on that issue should be stayed pending a hearing on the issue.

25 Because the Aggrieved Party has raised the following issues that question the ability of
26 the Commissioner to make a formal retroactive determination, such determination must be

1 stayed pending a hearing: 1) Whether the Commissioner can retroactively enter a formal
2 disapproval after the expiration of the contract term; 2) having approved the Associations'
3 general structure as an ERISA Section 3(5) employer status during the contractual term, can the
4 Commissioner enter a formal disapproval, retroactively disapproving the Associations' ERISA
5 Section 3(5) status after the expiration of the contractual period; 3) whether, under the facts of
6 this case, the entry of a formal retroactive disapproval of each Association's ERISA Section
7 3(5) status exceeds the Commissioner's statutory authority; and 4) whether the Commissioner
8 can retroactively disapprove Premera's rating methodology after the contract period has
9 expired. The issues of threatened future action also require a stay for the reasons more fully set
10 forth below.¹

11 **B. Whether the Aggrieved Party is entitled to a mandatory hearing as a person**
12 **aggrieved by threatened agency action.**

13 The Hearings Unit's jurisdiction is mandatory under RCW 48.04.010. The
14 Commissioner offers no authority, and the Aggrieved Party is aware of none, allowing the
15 Hearings Unit to forego the requirements of RCW 48.04.010 on the Commissioner's theory
16 that the Commissioner's fulfillment of a regulatory duty is not an "agency action" for purposes
17 of RCW 48.04.010. Nothing in the Washington State statute allows such a conclusion.

18 Because the Commissioner's determination of the sponsor's ERISA Section 3(5)
19 employer status and the findings with respect to Premera's rating methodology are both agency
20 actions within the meaning of RCW 34.05.010(3) by which Business Health Trust was
21 aggrieved, the Aggrieved Party is entitled to an administrative hearing under RCW 48.04.010.

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25 ¹ Nonetheless, the Aggrieved Party made clear in its demand for a hearing that jurisdiction over the ERISA Section
26 3(5) issue is exclusively federal and that it would challenge the jurisdiction of any state proceeding. The
27 Aggrieved Party, therefore, reserves the right to contest the jurisdiction of any administrative tribunal regarding
whether the Association sponsors are employers within the meaning of ERISA Section 3(5). The Aggrieved Party
also hereby amends its request for a hearing to specifically incorporate the issues raised herein.

1 **1. The Commissioner's disapproval of the Associations' ERISA Section**
2 **3(5) status and rating methodology is agency action within the**
3 **meaning of RCW 34.05.010(3).**

4 The Commissioner urges in the Commissioner's Brief that his retroactive disapproval of
5 an Employer's ERISA 3(5) status and a health plan carrier's rating methodology is not
6 reviewable in an administrative hearing under RCW 48.04.010 as the Commissioner's
7 completion of his statutory obligation cannot be the type of act that entitles a third party to a
8 hearing. The Commissioner, however, misstates the issues before the Hearings Unit and he also
9 misstates the law.

10 As previously indicated, contrary to the Commissioner's suggestion, the threatened acts
11 do not relate solely to the Premera rate filing. The issues involve whether the Commissioner
12 can make any retroactive determination on an expired policy and whether the Commissioner
13 can enter findings on the ERISA Section 3(5) determination that exceed both his review
14 authority and extend beyond the Premera filing to the prohibition of the Association Health
15 Plans from offering any group health contracts in this state. As such, the Commissioner's
16 decision with respect to these determinations is an "act" that can be the subject of an
17 adjudicative proceeding. RCW 48.04.010(1)(b). The fact that the Commissioner alleges that he
18 is acting while fulfilling a statutory obligation is irrelevant and the Commissioner has provided
19 no evidence to the contrary. *See In the Matter of Annette Cabin, Order on the Office of the*
20 *Insurance Commissioner's Motion to Dismiss, Docket No. 09-0112.*

21 The Hearings Unit should instead focus on the plain meaning of the definition of an
22 "agency action" under the Washington State statute. The legislature has defined "agency
23 action" in RCW 34.05.010(3) as follows: "Agency action" means licensing, the
24 *implementation or enforcement of a statute*, the adoption or *application of an agency rule* or
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1 order, the imposition of sanctions, or the granting or *withholding of benefits*” (emphasis
2 added). The Commissioner’s action fits squarely within this definition of “agency action”: (1)
3 the Commissioner’s determination that the Association sponsors are not ERISA Section 3(5)
4 employers is a misguided attempt of *implementation or enforcement* of the federal
5 requirements contained in WAC 284-170-958(1); and (2) the disapproval of the rating
6 methodology that Premera applies to the coverage offered to the Association Health Plans
7 purports to *apply an agency rule*, and purports to *enforce* WAC 284-43-920 and RCW
8 48.44.020.
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10 The former Chief Hearing Officer recently concluded that “[T]he OIC’s actions in
11 approving the Exchange filings do indeed constitute acts of the Commissioner involving
12 ‘*implementation or enforcement of a statute*’ as well as ‘*application of an agency rule*’ under
13 RCW 48.04.010(1) and RCW 34.05.010(3).” See In the Matter of Seattle Children’s Hospital,
14 Order on Insurance Commissioner’s Motion to Dismiss, Docket No. 13-0293 at 4. If the
15 approval of a rate filing is an agency action, there should be no question that the
16 Commissioner’s disapproval of Premera’s rate filings or the disapproval of each Association’s
17 status as an ERISA Section 3(5) employer is an act that rises to the level of the agency action
18 that would entitle Business Health Trust, as a party aggrieved by such action, to an adjudicative
19 hearing.²
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21 Furthermore, the Commissioner’s argument that this decision may create a dangerous
22 precedent has no relevance herein with respect to the Aggrieved Party’s right to a hearing. As
23 the former Chief Hearing Officer has stated, “The likelihood of opening the floodgates to
24 excessive litigation in this area would be a matter for the legislature and is not relevant in an
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26 ² In fact, the Commissioner has not disputed in other cases that the *approval* of an Exchange plan is an act
27 involving the implementation of statutes. See In the Matter of Seattle Children’s Hospital, Order on Insurance
Commissioner’s Motion to Dismiss, Docket No. 13-0293 at 3.

1 analysis of RCW 48.04.010 as it is currently written.” See In the Matter of Annette Cabin,
2 Order on the Office of the Insurance Commissioner’s Motion to Dismiss, Docket No. 09-0112
3 at 4.

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5 **2. The Commissioner’s oral and verbal “expression of doubts” and**
6 **statements regarding pending disapprovals in public court filings**
7 **constitute a sufficient threat of “agency action” within the meaning**
8 **of RCW 34.05.010.**

9 The Commissioner contends that the Aggrieved Party failed to show facts sufficient to
10 support its claim of threatened action at the time the hearing was requested, specifically stating
11 that the Commissioner had made no such threat. The Commissioner further characterizes the
12 Aggrieved Party as acting “[i]n anticipation of a determination disapproving the plans.” The
13 Aggrieved Party counters that its demand was not in anticipation of a determination, but rather
14 in response to a specific threat by the Commissioner to (1) disapprove each Association’s status
15 as an ERISA Section 3(5) employer, preventing the Associations from sponsoring any group
16 insurance, and (2) disapprove the rating methodology utilized by all the Association Health
17 Plans in the state, threats that were made both to Premera and independently to representatives
18 of the Aggrieved Party.

19 The Aggrieved Party submitted the October 28, 2014, letter from the Commissioner to
20 Maud Daudon of the Seattle Metropolitan Chamber of Commerce in support of the Aggrieved
21 Party’s position that the Commissioner had threatened to disapprove each Association’s ERISA
22 Section 3(5) status and business structure, which went beyond the Premera rate filing as it
23 affects the ability of the Association Health Plans to sponsor any group health plan in the state.
24 The letter was not submitted as the sole evidence of the threatened action as the Commissioner
25 had previously issued a letter approving the proposed structure. Rather, the letter adds context
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1 to the other communications between the Commissioner, his various representatives,
2 representatives for the Aggrieved Party, and Counsel for the Aggrieved Party during which it
3 became apparent that the Commissioner intended to reject the status of the sponsors of the
4 group health insurance as ERISA 3(5) employers and to broadly attack the rating methodology
5 utilized by all the Association Health Plans and to more narrowly disapprove the Premera
6 filings.

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8 The appropriateness of the Aggrieved Party's response to the Commissioner's oral and
9 written threats is clearly supported by the Commissioner's own statements in both public
10 federal court filings and in the Commissioner's Brief. Representatives for the Commissioner
11 have publicly indicated in sworn declarations that the Commissioner intends to find that the
12 thirteen (13) Association Health Plans are not sponsored by ERISA Section 3(5) employers.
13 Birmingham Decl. ¶ 2, Ex. A at ¶ 15. In addition, representatives for the Commissioner have
14 publicly indicated in sworn declarations that the Commissioner intends to disapprove the
15 Premera applications due to the rating methodology utilized. *Id.* The Commissioner has made
16 no point of hiding that he is prepared to disapprove the filings and, in fact, he has indicated that
17 he has uploaded his disapproval findings into the electronic system.

18
19 Lastly, for avoidance of any doubt, to the extent the early comments of the
20 Commissioner were not sufficient to constitute a threat, the Aggrieved Party hereby amends its
21 hearing request to specifically reference the above threatened actions by the Commissioner.
22 Since the Aggrieved Party has demanded a hearing on the specific threats and issues as
23 amended by this filing, and this demand was made prior to the effective date of any agency
24 action, an automatic stay must be issued.
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1 **3. The Aggrieved Party, as the administrator and fiduciary for the**
2 **Association Health Plans, is a person aggrieved by “agency action.”**

3 It would be unreasonable to conclude that the Aggrieved Party, as the administrator and
4 the fiduciary of the Association Health Plans, is not aggrieved by the Commissioner’s
5 threatened action. The insurance-related activities in which the Association Health Plans, and
6 Business Health Trust, engage in for their business are called into question as a result of the
7 Commissioner’s action.

8 The Associations, after meeting with the Commissioner and receiving general approval
9 of their proposed structure for the new Association Health Plans, incurred substantial costs in
10 establishing, marketing and administering the large-group insurance contracts. After such
11 meeting, the Commissioner suddenly reversed his decision and now intends to disapprove
12 issues that he previously approved. As previously indicated, it is significant to note that the
13 approval was given during the contractual term and the formal retroactive disapproval will take
14 place after the contract has expired, calling into question the legality of such action. Because
15 the Commissioner has now indicated on multiple occasions that he intends to disapprove not
16 only Premera’s rate filings, but the Aggrieved Party’s status as an ERISA Section 3(5)
17 employer, the Aggrieved Party’s entire business purpose and legal compliance has been called
18 into question. This has an immediate impact on the Association Health Plans and the insurance
19 marketplace regardless if there is a transition date for compliance.
20

21
22 In particular, any determination by the Commissioner that the Associations are not
23 ERISA Section 3(5) employers directly and negatively impacts the Aggrieved Party. If the
24 Commissioner were to include in his disapproval of Premera’s rate filings a decision that the
25 Associations are not ERISA Section 3(5) employers, the Association Health Plans would be
26 barred from partnering, not only with Premera, but with any other health plan issuer for
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1 purposes of marketing large-group coverage to their employer-members. A determination of
2 this issue is not relevant to the 2014 Premera filing as no one is covered by that contract and the
3 contract is no longer being sold. However, by the mere act of issuing a formal retroactive
4 determination, the Associations will no longer be able to sponsor any group health plans as no
5 carrier will be able to make a good faith determination as required by WAC 248-170-958(2) of
6 ERISA Section 3(5) employer status when the Commissioner has published a contrary finding.
7 Thus, it is the Commissioner's decision itself that aggrieves Business Health Trust, not solely
8 the actions taken after the decision has been issued.
9

10 **C. Whether the Aggrieved Party is entitled to an automatic stay of such**
11 **threatened agency action pursuant to RCW 48.04.020(1).**

12 Pursuant to RCW 48.04.020(1), "Such demand for a hearing received by the
13 commissioner prior to the effective date of action taken or proposed to be taken by him or her
14 shall stay such action pending the hearing..." Under the strict language of this statute, a person
15 aggrieved by agency action and who requests a hearing under RCW 48.04.010 prior to the
16 effective date of the agency action is entitled to an automatic stay of such agency action.
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18 Here, there is no question that the Aggrieved Party's demand was received by the
19 Commissioner prior to the effective date of the agency action. Because the agency action
20 challenged is a threatened act, a final determination has not been made and the determination
21 has not yet taken effect.

22 The Commissioner takes the position that the Hearings Unit must distinguish between
23 regulatory and enforcement action before determining whether an applicant is entitled to an
24 automatic stay. The Commissioner fails, however, to provide any authority to support this
25 position. Rather, the Commissioner again depends on the theory that the Commissioner's
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1 fulfillment of a statutorily assigned duty to review and examine the players and products sold in
2 the insurance market cannot be “agency action” for purposes of RCW 48.04.010. As discussed
3 above, RCW 34.05.010(3) defines “agency action” to include the regulatory function –
4 “implementation of a statute” or “application of an agency rule” – in addition to enforcement –
5 “enforcement of a statute.” Thus, the Commissioner’s distinction is fictional and contrary to the
6 specific statutory language. The statute specifically provides for an automatic stay of either
7 “action taken” or “proposed to be taken,” unless the action relates to: (a) an order on a hearing,
8 (b) under an order pursuant to a hearing, (c) under an order to make good an impairment of the
9 assets of the insurer, or (d) under an order of temporary suspension of a license issued pursuant
10 to RCW 48.17.450. Because none of these four exceptions to an automatic stay are present, a
11 stay is required of any proposed action to be taken.
12

13 For the reasons set forth above, the Hearings Unit must strictly abide by the language of
14 the statute. There is nothing in RCW 48.04.010 that permits the Hearings Unit to refuse to grant
15 an automatic stay so long as the following requirements are met: (1) a person aggrieved (2) by
16 agency action or threaten agency action (3) requests a hearing under RCW 48.04.010 (4) prior
17 to the effective date of the agency action. Because all of the requisite elements are met, the
18 Aggrieved Party is entitled to an automatic stay of the threatened agency action pursuant to
19 RCW 48.04.020.
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21 The Commissioner further argues that there is no practical need for an automatic stay of
22 a filing determination. First, there is no requirement of proof of a practical need for the stay
23 under the statute. If the requirements discussed above are met, an automatic stay is issued.
24 Second, the disapproval itself, and not the “enforcement” of such disapproval, has immediate
25 harmful effects on the Aggrieved Party and the Association Health Plans. Once the disapproval
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1 by the Commissioner of the Premera rate filings has been made on the basis that an Association
2 is not an ERISA Section 3(5) employer, the entire business model of the Aggrieved Party is
3 called into question. The Association Health Plans will not be able to conduct business with
4 another carrier with respect to any other group insurance contract because the carrier cannot
5 make a good faith determination of the sponsor's ERISA Section 3(5) status with an adverse
6 determination having been issued by the commissioner. Furthermore, the Commissioner's
7 disapprovals are not confidential or private; they are public records. It is irrelevant that there is
8 a "period of planning and transition" prior to sending discontinuance notices to consumers. The
9 business model of the Associations will effectively end when the Commissioner enters his
10 retroactive formal disapproval.
11

12 **D. Whether the scope of the action stayed includes the final disapproval as well**
13 **as the implementation of the Commissioner's disapproval or findings.**

14 As a result of the Aggrieved Party's timely hearing demand, it is clear that the agency
15 action should be stayed under RCW 48.04.020. The only question remaining is whether the
16 Commissioner should nevertheless be permitted to issue his formal retroactive disapproval and
17 only subsequent actions relating to that disapproval should be stayed. It is the Aggrieved
18 Party's position that both the formal retroactive determination and any subsequent actions
19 relating to such formal determination must be stayed as that is simply what the statute demands.
20

21 A formal retroactive determination should not be permitted to be entered as the issues
22 before this Hearings Unit go to the legality of such retroactive determination and, therefore, a
23 stay must be granted. The issues relating to the retroactive formal determination are: 1) whether
24 an approval of ERISA Section 3(5) status made during the contract period can be retroactively
25 disapproved after the expiration of the contract; 2) whether the disapproval of ERISA Section
26 3(5) status would exceed the Commissioner's authority to review the "good faith
27

1 determination” made by Premera; 3) whether the Commissioner can retroactively disapprove
2 the rating methodology of Premera after the expiration of the contract term, 4) whether the
3 Commissioner correctly applied federal law in making an ERISA Section 3(5) determination,
4 an issue that is beyond the scope of this administrative hearing; and 5) generally, whether any
5 retroactive determination can be made if it is not made within the contract period.

6 The Commissioner contends that it must enter its formal disapproval or its contractual
7 review will be delayed and the Aggrieved Party will never be aware of the specific reasons for
8 the disapproval. Even if these concerns had some validity in other contexts, these concerns are
9 not valid with respect to the factual issues before this Hearings Unit.

11 With respect to delay, delay is no longer an issue as the Commissioner has delayed any
12 action beyond the contract period and no one is currently covered by the policies. While
13 generally the reasons for disapproval may not be known until a formal determination is issued,
14 in the instant case the Commissioner has indicated in sworn court filings that he has made his
15 determination and has uploaded those findings into the electronic system. Therefore, the
16 Aggrieved Party can compel the Commissioner to release those findings through discovery
17 without the need for a formal determination. Moreover, the Commissioner often enters his
18 findings in a conclusory manner and discovery is generally necessary to determine the specific
19 reasons for such findings.
20

21 In the unlikely event that the Hearings Unit permits the formal retroactive approval to
22 be entered, any actions or proposed actions based on such disapproval are nevertheless stayed
23 for the reasons previously mentioned.
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IV. CONCLUSION

The Hearings Unit should deny the Commissioner's request and find that the Aggrieved Party is entitled to an administrative hearing pursuant to RCW 48.04.010 to challenge the Commissioner's threatened actions. The Hearings Unit should stay the entry of any retroactive formal determination by the Commissioner as the legality of such retroactive determination is one of the key issues before the Hearings Unit. The Hearings Unit should stay any actions of the Commissioner with respect to the Premera filing, the rate methodology or the determination of each Associations ERISA Section 3(5) status. The reason such stay should be granted is that the stay is automatic under the statute and this Hearings Unit cannot make exceptions as it is undisputed that the request for a hearing was made before the effective date of any agency action and it is undisputed that the agency action that was threatened will also be taken unless the stay is entered.

RESPECTFULLY SUBMITTED this 2nd day of February, 2015.

DAVIS WRIGHT TREMAINE LLP

Attorneys for Plaintiffs

By /s/ Richard J. Birmingham

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Suite 2200
1201 Third Avenue
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E-mail: richbirmingham@dwt.com

By /s/ Christine Hawkins

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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Electronically and via Certified US Mail

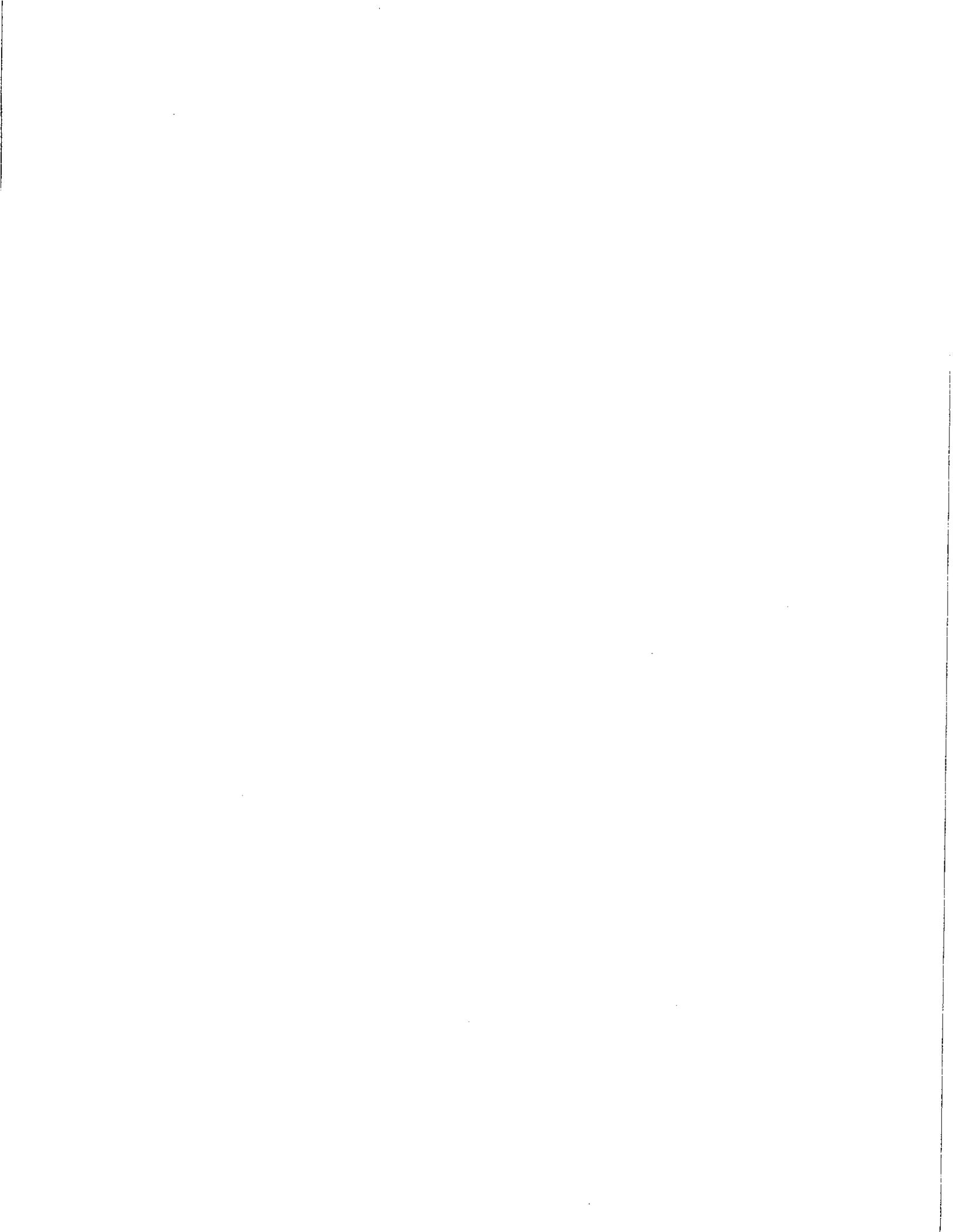
Marta DeLeon
Assistant Attorney General
Office of the Attorney General
Government Compliance and Enforcement Division
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
martad@atg.wa.gov

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2nd day of February, 2015, at Bellevue, Washington.

Davis Wright Tremaine LLP
Attorneys for Plaintiffs

By /s/ Christine Hawkins
Christine Hawkins, WSBA #44972
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777 108th Avenue NE
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FILED

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Business Health Trust,

Aggrieved Party.

2015 FEB -2 P 4: 24

Docket No. 14-0246

DECLARATION OF RICHARD J.
BIRMINGHAM IN SUPPORT OF
AGGRIEVED PARTY'S OPPOSITION TO
COMMISSIONER'S REQUEST FOR A
DETERMINATION OF NO
THREATENED AGENCY ACTION

I, Richard J. Birmingham, declare and state as follows:

1. I am a partner with the law firm of Davis Wright Tremaine LLP, and counsel of record for the Aggrieved Party, Business Health Trust. I make this declaration based on personal knowledge and am competent to testify as to the matters set forth herein.

2. Attached hereto as Exhibit A is a true and correct copy of the Declaration of Molly Nollete, which was filed in support of the Washington State Insurance Commissioner's Opposition to Plaintiffs' Motion for Temporary Restraining Order in the federal action as docket no. 16-2.

3. Attached hereto as Exhibit B is a true and correct copy of the Declaration of Keith VanderZanden, which was filed in support of Plaintiffs' Motion for Temporary Restraining Order in the federal action as docket no. 11.

4. Attached hereto as Exhibit C is a true and correct copy of the Declaration of Maud Daudon, which was filed in support of Plaintiffs' Motion for Temporary Restraining Order in the federal action as docket no. 14.

5. Attached hereto as Exhibit D is a true and correct copy of a letter dated March 26, 2013, from Carol Sureau, Deputy Commissioner, Legal Affairs, to Mr. Jeff Marcell regarding the Aerospace Industry Health Trust and the Commissioner's determination that the membership constitutes an ERISA Section 3(5) employer.

6. Attached hereto as Exhibit E is a true and correct copy of a letter dated May 7, 2013, from Charles Brown, Acting Deputy Legal Affairs, to Mr. Jason Froggatt regarding the Commissioner's finding that the Agriculture Industry Health Trust may be considered an ERISA Section 3(5) employer.

7. Attached hereto as Exhibit F is a true and correct copy of a letter dated October 28, 2014, from Commissioner Kriedler to Maud Daudon regarding the impending disapproval of the Association Health Plans as ERISA Section 3(5) employers.

8. Attached hereto as Exhibit G is a true and correct copy of the Memorandum Decision on Plaintiffs' Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment issued in *Associated Industries of the Inland Northwest v. State of Washington Office of the Insurance Commissioner et. al*, Docket No. 2007-02-00592-1, which was entered in the Superior Court of Washington for Spokane County on August 27, 2007.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 2nd day of February, 2015, at Seattle, Washington.

/s/ Richard J. Birmingham
Richard J. Birmingham



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The Honorable Robert S. Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

BUSINESS HEALTH TRUST, in its
fiduciary capacity for an association or
member-governed group plans; and THE
ASSOCIATION OR MEMBER GROUP-
GOVERNED PLANS,

Plaintiffs,

v.

MIKE KREIDLER, in his capacity as
WASHINGTON STATE INSURANCE
COMMISSIONER,

Defendant.

NO. 2:14-CV-01918

DECLARATION OF MOLLY
NOLLETTE IN SUPPORT OF
THE WASHINGTON STATE
INSURANCE COMMISSIONER'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER

I, Molly Nollette, am over the age of eighteen years old. I make the following declaration based on first hand personal knowledge and am competent to testify to the facts set forth herein.

1. I am the Deputy Insurance Commissioner for the Division of Rates and Forms.

I have been in that position since June 25, 2013.

2. My responsibilities include supervising the review of health plan filings to

ensure compliance with applicable state and federal laws.

1 3. At least as early as 2012, my division began working with issuers and
2 associations in the State of Washington to help them understand the changing landscape of the
3 large group market, in light of the Affordable Care Act's more limited definition of employer.

4 4. I and my staff have also worked with health plan issuers to help them
5 understand the filing requirements they would be expected to satisfy when filing large group
6 health plans.

7 5. In addition to adopting rules, my office issued filing instructions to all carriers,
8 indicating that the documentation the issuer relied on in making its good faith determination
9 that a group is an employer under WAC 284-170-958(2) should be filed with the issuer's rate
10 and form filing.

11 6. I have viewed the 13 large group health plan rate and form filings submitted by
12 Premera on February 12, 2014, via the System for Electronic Rate and Form Filing (SERFF),
13 each of which indicated that it would be sold to one of the 13 groups listed in the complaint as
14 an "association".

15 7. Because health plans sold to large groups are negotiated, issuers generally do
16 not have to file their rates before they begin to sell their product.

17 8. However, our office still has the authority to review large group health plan
18 filings, and to reject or "disapprove" such filings in the event they do not comply with the law.

19 9. All issuers must submit their health plans for review in SERFF. All questions
20 and concerns concerning the rate and form filing submitted by an issuer are communicated to
21 the issuers as "objections" in SERFF. All responses to those objections must be made through
22 the SERFF System.
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1 10. The SERFF review process includes review of threshold questions, such as the
2 appropriate market for the health plan that has been submitted, compliance review of the forms
3 that have been filed, and a technical actuarial review of the rating methodology submitted by
4 the issuer.

5
6 11. In April 2014, our staff began requesting information such as: additional detail
7 including how association members were/are solicited; who is entitled to participate and who
8 actually participates in the association; the process by which it was formed (including whether
9 it is a sub-trust of a larger association, the history of the larger association, and the history of
10 the sub-trust itself); what, if any, were the pre-existing relationships of its members (including
11 a description of what other sub-trusts exist within the larger association, and a description of
12 activities delegated to the sub-trust or retained to the association); and what industry
13 relationship exists between employer members apart from participating in the same or similar
14 industry.

15
16 12. By September 2014, our staff was still requesting information such as: how
17 members are/were solicited, now and prior to January 2014; who actually participated/s, now
18 and prior to January 2014; the membership and activities of the Washington Trade Conference,
19 as compared with the membership and activities of the Group, demonstrating the origins of the
20 Group. Documentation of the described meetings and trainings (now and prior to January
21 2014) including but not limited to attendance lists, minutes, curriculum, agenda, trainers and
22 sponsors; detailed explanation and supporting documentation of the organized activities to
23 support the mission of the Group, including economic activities, business promotion,
24 networking and business development, public affairs and business advocacy. The process by
25
26

1 which the Group was formed, including the principal advisors and drafters of the documents;
2 the pre-existing relationships between the employer members, Maud Daudon, Business Health
3 Trust, and Wells Fargo Ins. Services; identification of Group members who participate/d in the
4 control, direction and selection of the offered health plans, including names, meeting dates and
5 agendas, and specific activities.
6

7 13. For each of the 13 health plans submitted by Premera, there are roughly 150 to
8 200 pages of documents chronicling the Commissioner's repeated requests for information.
9 Unfortunately, the documentation supporting the conclusory statements provided by Premera
10 was never provided in response to our requests.

11 14. In addition to requests for documents, and specific information supporting
12 Premera's assertions that these 13 entities are associations, my staff also requested information
13 concerning the rating methodology and rates being used by Premera for these large group
14 health plans. The information provided is inconsistent with a single large employer group
15 filing.
16

17 15. At this time, the Commissioner's review of Premera's 13 filings is technically
18 still pending. My staff had prepared and loaded its disapproval notices for Premera's 13 health
19 plan filings. However, due to a question of the impact of the requested administrative
20 proceeding, we have not yet issued decisions in SERFF to Premera. Currently the OIC
21 anticipates two separate grounds for disapproval of Premera's plan filings: one ground, the
22 documentation submitted to date fails to demonstrate that the 13 associations are true
23 associations under the ERISA definition incorporated into the Affordable Care Act; and two,
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THE HONORABLE ROBERT S. LASNIK

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUSINESS HEALTH TRUST, in its fiduciary)
capacity for an association or member-governed)
group plans; and THE ASSOCIATION OR)
MEMBER GROUP-GOVERNED PLANS,)

Plaintiffs,)

v.)

MIKE KREIDLER, in his capacity as)
Washington State Insurance Commissioner,)

Defendant.)

No. 2:14-cv-01918-RSL

**DECLARATION OF
KEITH VANDERZANDEN IN
SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER**

I, Keith VanderZanden, declare and state as follows:

1. I am a Senior Vice President at Wells Fargo Insurance Services USA, Inc. and, in this capacity, I provide administrative service to the Business Health Trust and Member Group-Governed Plans ("Health Benefit Trusts") named as Plaintiffs in the above-captioned action. I make this declaration based on personal knowledge and am competent to testify as to the matters set forth herein.

2. As of December 1, 2014, the Health Benefit Trusts covered 839 member-employers and 18,887 employee and dependent participants. There are no individuals currently covered by the 2014 policy that is the subject of recent threatened activity by the Washington State Office of the Insurance Commissioner.

1 3. The Health Benefit Trusts began marketing and selling policies for the 2015
2 calendar year prior to the date on which the Washington State Office of the Insurance
3 Commissioner indicated that it intended to issue a finding that the sponsoring Associations are
4 not employers within the meaning of ERISA Section 3(5).

5 4. As of January 1, 2015, the Health Benefit Trusts have enrolled 661 member-
6 companies and 14,892 employee and dependent participants. This number is fluid and is
7 expected to increase as there are still 166 outstanding employer-companies that have not yet
8 renewed or terminated coverage.

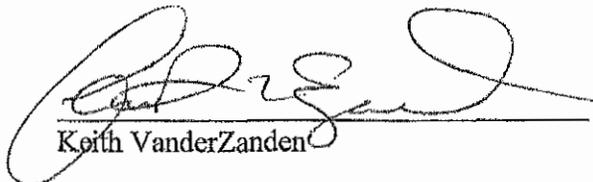
9 5. The rate filing application for large-group coverage offered in 2015 is due
10 February 12, 2015.

11 6. If member-employers are forced to obtain coverage outside of one of the thirteen
12 (13) Health Benefit Trusts, I was informed by Premera Blue Cross that the estimated cost of
13 insurance for such member-employers in 2015 would increase between five percent (5%) and
14 twenty percent (20%).

15 7. If the Health Benefit Trusts are forced to transition members to other insurance
16 coverage in 2015, prior to this Court ruling whether such Trusts are sponsored by a ERISA
17 Section 3(5) Employer, the business of the Trusts will be damaged.

18 I declare under penalty of perjury under the laws of the United States that the foregoing
19 is true and correct.

20 Executed this 8 day of January, 2015, at Seattle,
21 Washington.

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Keith VanderZanden

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CERTIFICATION OF SERVICE

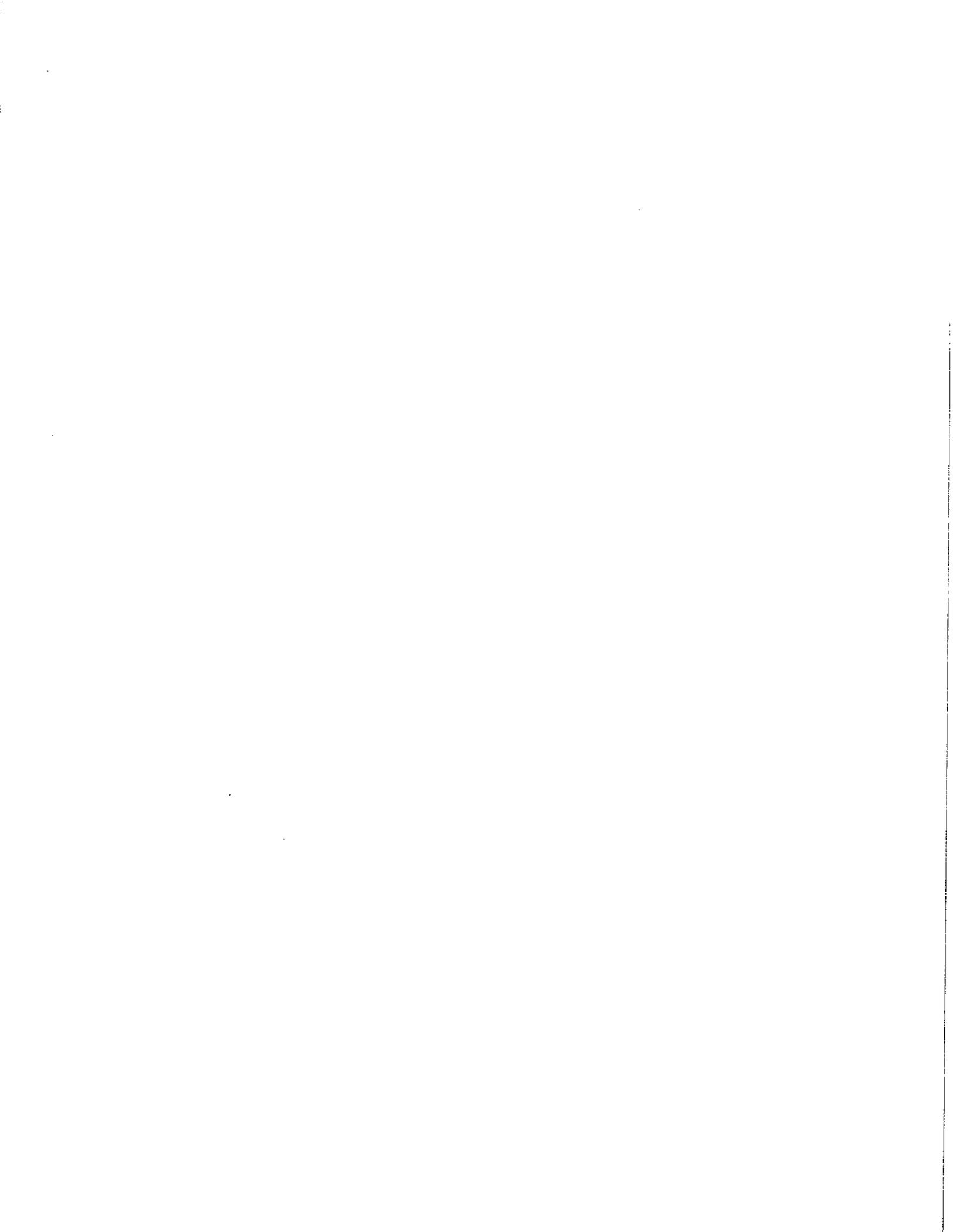
I hereby declare under penalty of perjury under the laws of the State of Washington, that on January 12, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Marta DeLeon
Assistant Attorney General
Office of the Attorney General
Government Compliance and Enforcement Division
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
martad@atg.wa.gov

DATED this 12th day of January, 2015.

Davis Wright Tremaine LLP
Attorneys for Plaintiffs

By /s/ Christine Hawkins
Christine Hawkins, WSBA #44972
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Bellevue, WA 98004-5149
Telephone: 425-646-6100
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THE HONORABLE ROBERT S. LASNIK

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUSINESS HEALTH TRUST, in its fiduciary)
capacity for an association or member-governed)
group plans; and THE ASSOCIATION OR)
MEMBER GROUP-GOVERNED PLANS,)
Plaintiffs,)
v.)
MIKE KREIDLER, in his capacity as)
Washington State Insurance Commissioner,)
Defendant.)

No. 2:14-cv-01918-RSL

**DECLARATION OF MAUD
DAUDON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER**

I, Maud Daudon, declare and state as follows:

1. I am a Trustee for Business Health Trust, the third party administrator and named fiduciary for thirteen (13) industry-specific Health Benefit Trusts. As the administrator, we keep copies of Bylaws and the Trust Agreements for the various Health Benefit Trusts that we administer in the ordinary course of business. I make this declaration based on personal knowledge and am competent to testify as to the matters set forth herein.

2. Business Health Trust was established in July 1, 2007, as a "group insurance arrangement" as defined by ERISA to hold insurance policies through which participating employer-members can provide programs of health and other insurance benefits under the employee benefit plans maintained by the employer-members for their employees and such

1 employees' dependents. Business Health Trust stopped providing access to medical insurance
2 for its employer-members on December 31, 2013.

3 3. There are thirteen (13) specific Industry Groups that are members of Business
4 Health Trust: the Wholesaling Industry Group (2) the Transportation Industry Group, (3) the
5 Information Technology Industry Group, (4) the Tourism Industry Group, (5) the Retail
6 Industry Group, (6) the Media Industry Group, (7) the Business Services Industry Group, (8)
7 the Construction Industry Group, (9) the Healthcare Industry Group, (10) the Community
8 Service Organization Industry Group, (11) the End-Line Manufacturing Industry Group, (12)
9 the Agriculture Industry Group, and (13) the Aerospace Industry Group. True and correct
10 copies of the Bylaws and Trust Agreement for the Aerospace Industry Group and Aerospace
11 Industry Health Trust, which were gathered and maintained in the ordinary course of
12 business, are attached and identified as Exhibits A-B. The Bylaws and Trust Agreements for
13 each Association and Health Benefit Trust are substantially the same.
14

15 4. The Industry Groups provide the following services to their participating
16 members: policy and advocacy work, networking opportunities, educational programing,
17 information sharing and project work that is relevant to their group.
18

19 5. Effective January 1, 2014, the Industry Groups established (1) the Wholesaling
20 Industry Health Trust, (2) the Transportation Industry Health Trust, (3) the Information
21 Technology Health Trust, (4) the Tourism Industry Health Trust, (5) the Retail Industry Health
22 Trust, (6) the Media Industry Health Trust, (7) the Business Services Industry Health Trust, (8)
23 the Construction Industry Health Trust, (9) the Healthcare Industry Health Trust, (10) the
24 Community Service Organization Industry Health Trust, (11) the End-Line Manufacturing
25 Industry Health Trust, (12) the Agriculture Industry Health Trust, and (13) the Aerospace
26

27
DECLARATION OF MAUD DAUDON
ISO MOTION FOR TEMPORARY RESTRAINING ORDER
(Case No. 2:14-cv-01918-RSL) - 2
DWT 25866865v2 0083762-000003

Davis Wright Tremaine LLP
LAW OFFICES
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
206.622.3150 main • 206.757.7700 fax

1 Industry Health Trust, respectively, to offer health benefits to the employees of member-
2 companies based on industry sector.

3 6. Each Industry Group or Association sponsors a Health Benefit Trust as an
4 ERISA employer.

5 7. Participation in a Health Benefit Trust is based on a voluntary application
6 submitted by the member-employer and a member-employer may be an Association member
7 without participating in a Health Benefit Trust. The insurer, Premera Blue Cross, has no role in
8 soliciting the members based on any perceived insurance risk.

9 8. Each Industry Group ties its members that participate in a Health Benefit Trust
10 with a common economic and representation interest and genuine organizational relationship
11 unrelated to the provision of benefits. The members have a history of organized activities,
12 including economic activities, to support the mission of the industry group, including providing
13 educational opportunities, industry training, business promotion, networking and business
14 development, and public affairs and business advocacy.

15 9. The Health Benefit Trusts are tax-exempt trusts under I.R.C. § 501(c)(9) and
16 provide medical, dental, vision, prescription drug, life or disability benefits, or other benefits
17 limited to the benefits described in 29 U.S.C. § 1002(1).

18 10. The Health Benefit Trusts partner with Premera Blue Cross in order to offer
19 benefits to the employees of the member companies of the sponsoring Industry Groups.
20 Premera Blue Cross offers a large group insurance contract to the Health Benefit Trusts,
21 provided such trust is sponsored by an Association or industry group that is an Employer within
22 the meaning of 29 U.S.C. § 1002(5), ERISA Section 3(5).

23 11. Since January 1, 2014, Premera Blue Cross has issued an insured large-group
24 contract to each of the Health Benefit Trusts.

25 12. The Associations engaged with the Washington State Office of the Insurance
26 Commissioner in order to ensure compliance with Washington State law (WAC 284-170-

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DECLARATION OF MAUD DAUDON
ISO MOTION FOR TEMPORARY RESTRAINING ORDER
(Case No. 2:14-cv-01918-RSL) - 3
DWT 25866865v2 0083762-000003

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1 958(1) and (2)) and each Health Benefit Trust was developed after meetings between the
2 Washington State Office of the Insurance Commissioner and the Associations to establish the
3 breadth of the “industry” and establish operations compliant with the commonality of interest
4 test for purposes of 29 U.S.C. § 1002(5), ERISA Section 3(5).

5 13. In February 2014, Premera Blue Cross submitted rate filing applications to the
6 Washington State Office of the Insurance Commissioner for each of the Health Benefit Trusts
7 for large-group coverage. These applications included all of the information requested by the
8 Office of the Insurance Commissioner, including information demonstrating that the
9 Association was an ERISA Section 3(5) Employer.

10 14. In March of 2013, the Washington State Office of the Insurance Commissioner
11 indicated that the approach taken by the Health Benefit Plans would be sufficient to constitute
12 an “Employer” within the meaning of ERISA Section 3(5).

13 15. On April 2, 2014, the Washington State Office of the Insurance Commissioner
14 sent to each of the Health Benefit Trusts, except the Agriculture Industry Health Trust, an
15 objection letter indicating that it was suspending its review of the Health Benefit Trusts’ rate
16 filing applications pending further documentation establishing that the corresponding
17 Associations qualified as ERISA Section 3(5) Employers. The requested responses were
18 submitted by Premera Blue Cross on May 8, 2014.

19 16. On September 8, 2014, the Washington State Office of the Insurance
20 Commissioner sent to each of the Health Benefit Trusts an objection letter indicating that
21 additional documentation establishing that the Associations qualified as 29 U.S.C. § 1002(5),
22 ERISA Section 3(5) Employers was required for continued review of the rate filing
23 applications for the Health Benefit Trusts. The Health Benefit Trusts responded with the
24 requested documentation on October 7, 2014.

25 17. On December 15, 2014, the Washington State Office of the Insurance
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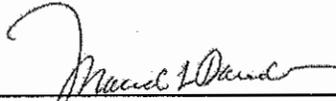
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DECLARATION OF MAUD DAUDON
ISO MOTION FOR TEMPORARY RESTRAINING ORDER
(Case No. 2:14-cv-01918-RSL) - 4
DWT 25866865v2 0083762-000003

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1 Commissioner threatened to deny a pending application for the Health Benefit Trusts regarding
2 their qualification for large-group coverage under Washington State law on the basis of their
3 failure to qualify as an "Employer" within the meaning of 29 U.S.C. § 1002(5), ERISA Section
4 3(5).

5
6 I declare under penalty of perjury under the laws of the United States that the foregoing
7 is true and correct.

8 Executed this 9th day of January, 2015, at Seattle, Washington.

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11 _____
12 Maud Daudon

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DECLARATION OF MAUD DAUDON
ISO MOTION FOR TEMPORARY RESTRAINING ORDER
(Case No. 2:14-cv-01918-RSL) - 5
DWT 25866865v2 0083762-000003

Davis Wright Tremaine LLP
LAW OFFICES
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1201 Third Avenue
Seattle, WA 98101-3045
206.622.3150 main • 206.757.7700 fax

1 **CERTIFICATION OF SERVICE**

2
3 I hereby declare under penalty of perjury under the laws of the State of Washington,
4 that on January 12, 2015, I electronically filed the foregoing with the Clerk of the Court
5 using the CM/ECF system which will send notification of such filing to the following:

6 Marta DeLeon
7 Assistant Attorney General
8 Office of the Attorney General
9 Government Compliance and Enforcement Division
10 1125 Washington Street SE
11 PO Box 40100
12 Olympia, WA 98504-0100
13 martad@atg.wa.gov

14 DATED this 12th day of January, 2015.

15 Davis Wright Tremaine LLP
16 Attorneys for Plaintiffs

17 By /s/ Christine Hawkins
18 Christine Hawkins, WSBA #44972
19 Suite 2300
20 777 108th Avenue NE
21 Bellevue, WA 98004-5149
22 Telephone: 425-646-6100
23 Fax: 425-646-6199
24 E-mail: christinehawkins@dwt.com

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DECLARATION OF MAUD DAUDON
ISO MOTION FOR TEMPORARY RESTRAINING ORDER
(Case No. 2:14-cv-01918-RSL) - 6
DWT 25866865v2 0083762-000003

Davis Wright Tremaine LLP
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EXHIBIT A

AEROSPACE INDUSTRY GROUP

BYLAWS

ARTICLE I.

PURPOSE

The Aerospace Industry Group is a voluntary membership-based organization. The group's purpose is to provide support for aerospace industry employers who are located in Washington State.

ARTICLE II.

MEMBERSHIP

Section 1. Eligibility. Subject to any additional qualifications for membership that may be established from time to time by the group, any employer in Washington State whose primary business purpose is engaging in the aerospace industry is eligible for membership in the group. Examples of such employers include manufacturers of components, equipment and vehicles used for commercial aircraft and space flight.

Section 2. Membership. Each employer who desires membership in the group shall submit an application for membership. The application for membership must be on the form that has been approved by the group, which form will indicate any other qualifications for membership. Any organization that is eligible and meets any other qualifications required by the group for membership will be accepted as a member. Membership in the group shall be retained as long as the member organization meets the respective qualifications and obligations of membership.

Section 3. Designation of Official Contact. Once a new member has joined the group, it shall provide the group with the name and business address of the individual within the member organization who shall serve as the member organization's official contact. This individual shall exercise the member organization's vote. A member may change Notice of change of address shall be effective only when done in accordance with this Section 7.

Section 4. Termination/Resignation of Membership. Membership in the group may be terminated for any action by a member that is detrimental to the best interests of the group or for failure to actively support the purposes of the group. Termination of membership requires the affirmative vote of two-thirds of the other members. Any member may resign by filing a written resignation.

Section 5. Transfer of Membership. Membership in this group is not transferable or assignable.

Section 6. Voting. Each member is entitled to one (1) vote.

Section 7. Directors and Officers. The members have the right to elect the officers and directors of the group by majority vote to serve such terms as determined by the members, or to remove or replace any such officer or director for any reason by majority vote.

ARTICLE III.
MEMBERSHIP MEETINGS

Section 1. Regular Meeting. Regular meetings of the members may be scheduled each year on a date to be approved by the Directors and as communicated by the Directors to the members. The meeting shall be held at a location, on a date and time designated by the Directors.

Section 2. Special Meeting. A special meeting of the members may be called by 20% or more of the members, to be held at such time and place as specified by such members.

Section 3. Notice of Meetings. Notice stating the place, date, and hour of each regular meeting shall be mailed or electronically transmitted to the official corporate contact of each member (as designated under Section 3 of Article II above) no less than ten (10) business days in advance of the meeting. Notice stating the place, date, hour, and purpose of any special meeting shall be mailed or delivered to the official corporate contact of each member (as designated under Section 3 of Article II above) not less than ten (10) business days before the meeting.

Section 4. Conduct of the Meeting. Members may participate in a meeting by conference telephone or similar communications equipment so that all persons participating in the meeting can hear each other at the same time. Participation by that method constitutes in-person presence at a meeting.

Section 5. Quorum. Ten (10) members shall constitute a quorum, and the act of a majority of the members present shall be the act of the membership.

Section 6. Voting. At every special or regular meeting of the membership, each member of record shall be entitled to cast one (1) vote in person through the designated official corporate contact. Additionally, voting may be conducted by mail, facsimile, and electronic means. Where a vote is taken by mail, facsimile, or electronic means the name of each candidate and/or the text of each proposal to be voted on shall be contained in the notice of meeting and the ballot. The designated address for receipt of the votes, such as by mail, facsimile or electronic mail, will be clearly stated within the notification. Members voting by mail, facsimile, or electronic transmission are considered present for all purposes of quorum, count of votes, and percentages of total voting power present.

Section 7. Waiver of Notice. Whenever any notice is required to be given to any member under these Bylaws, or by the laws of the State of Washington, a waiver of the notice in the form of a record, including without limitation, an electronic transmission from the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any special meeting of the membership need be specified in the waiver of notice of such a meeting. The attendance (or in-person presence in accordance with Section 4 of Article III above) of a

member at a meeting shall constitute a waiver of notice of such meeting, except where a member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE IV.

COMPENSATION, REIMBURSEMENT, AND INDEMNIFICATION

Section 1. Compensation of Directors and Officers. Directors and officers shall not be compensated for their services to the group. However, the board of directors may reimburse directors and officers for reasonable expenses actually incurred in carrying out assigned duties.

Section 2. Insurance. The group may purchase and maintain insurance on behalf of an individual who is or was a Director, or who, while a Director, is or was serving at the request of the group as a Trustee or Director of another foreign or domestic group partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a Trustee or Director, whether or not the group would have power to indemnify the individual against the liability.

ARTICLE V.

BOOKS AND RECORDS

Section 1. Maintenance and Inspection. The group shall keep accurate and complete books and records of account and shall keep minutes of the proceedings of its members, if any; the board of directors; and committees. All books and records of the group shall be inspected by any director for any proper purpose at any reasonable time. In addition, the books and records shall be open at any reasonable time to inspection by any member of more than three (3) months' standing. Any such member must have a purpose for inspection reasonably related to membership interests. Use or sale of members' lists by such member if obtained by inspection is prohibited. The costs of inspecting or copying shall be borne by the member.

Section 2. Designation of Fiscal Year. The books and records of the group shall be on a fiscal year that runs from January 1 through December 31.

ARTICLE VI.

CONTRACTS AND CONVEYANCES

All contracts, deeds, conveyances, negotiable instruments, and other instruments of like character which have first been approved by the board of directors shall be signed as directed by the board of directors. No contract of any officer of the group shall be valid without previous authorization or subsequent ratification of the board of directors.

ARTICLE VII.
AMENDMENT

These bylaws may be altered, amended, or repealed at any regular or special meeting of the members by a majority vote of those present.

Effective January 1, 2014.

EXHIBIT B

AEROSPACE INDUSTRY HEALTH TRUST AGREEMENT

THIS AEROSPACE INDUSTRY HEALTH TRUST AGREEMENT (this "Agreement") is entered into by and among the initial Participating Employers (the "Aerospace Group") as the Sponsor, and the undersigned Trustees.

ARTICLE I DECLARATION OF TRUST

1.01 Purpose. The purpose of this Agreement is to provide a trust under which the Eligible Employers may make certain Welfare Benefits available for their Participants, through group insurance or otherwise.

1.02 Establishment of Trust. The Aerospace Group establishes this trust as of January 1, 2014, to be known as the Aerospace Industry Health Trust (the "Trust"), which is intended to be a tax-exempt trust under Internal Revenue Code section 501(c)(9). The Trustees accept the appointment as Trustees for the Trust and agree to be bound by the terms and conditions of this Trust Agreement and the Participation Agreements attached hereto as Exhibit A and incorporated by reference herein.

1.03 Term. This Trust Agreement shall be effective as of January 1, 2014, and shall continue indefinitely, unless terminated in accordance with Section 8.01.

ARTICLE II. DEFINITIONS

2.01 "Administrator and Named Fiduciary" of any Plan provided under the Trust means that person or persons selected by the Participating Employer in the Participation Agreement to exercise the authority granted pursuant to Article VII, unless otherwise indicated by the Participating Employer.

2.02 "Employee(s)" means any individual(s) employed by a Participating Employer (or was so employed but is subsequently laid off, terminated or retired).

2.03 "Eligible Employer" means employers in Washington State, provided such employer has as its principal business purpose engaging in the aerospace industry and is included in the industry classifications described in Exhibit B, attached hereto and incorporated by reference herein.

2.04 "Employee" means any individual employed by an Eligible Employer (or who was so employed, but who is subsequently laid off, is terminated or retires).

2.05 "Insurer(s)" means the insurance carrier or carriers selected by the Trustees to issue policies to the Trust to insure benefits provided under a Plan.

2.06 "Participant(s)" means Employees, their dependents and retirees who are specified as eligible for Welfare Benefits by a Participating Employer, pursuant to Article III.

2.07 “Participation Agreement” means the Participation Agreement between any Eligible Employer and the Trust substantially in the form of Exhibit A attached hereto and incorporated by reference.

2.08 “Participating Employer” means any Eligible Employer that is an employer of common-law employees and has executed a Participation Agreement.

2.09 “Plan” means any employee welfare benefits plan created and administered for the benefit of Participants which provides Welfare Benefits covered by this Trust.

2.10 “Sponsor” means the Aerospace Group.

2.11 “Trustee(s)” means those persons appointed in accordance with Article VI, and their duly appointed or elected successors.

2.12 “Welfare Benefits” means the employee welfare benefits specified by the Trustees from time to time, including but not limited to medical, dental, surgical or hospital care or benefits in the event of sickness, accident, disability, death or unemployment. Such Welfare Benefits shall be evidenced either by contracts of insurance or, with respect to uninsured plans, if any, by plan documents.

ARTICLE III. PARTICIPATING EMPLOYERS AND PARTICIPANTS

3.01 Eligible Employers. Any Eligible Employer that is an employer of common-law employees may elect to become a Participating Employer hereunder by executing a Participation Agreement. In such Participation Agreement, the Eligible Employer will agree to be bound by the terms and conditions of this Agreement, to make contributions to pay for Welfare Benefits to be provided for its Participants, and to adopt such Welfare Benefits. The Welfare Benefits to be provided and the persons entitled to them shall be as selected by the Participating Employer in its Participation Agreement, and subject to its terms.

3.02 Participants. Subject to applicable insurance laws and regulations and the rules of the Trust, each Participating Employer shall select those of its Employees, dependents and/or retirees who shall be eligible for Welfare Benefits. Generally, all Employees or all Employees of a class or classes determined by conditions pertaining to their employment must be eligible to participate in the particular Welfare Benefits selected by the Participating Employer. Eligibility requirements and other classifications need not be uniform among the various Participating Employers.

3.03 Information. Each Participating Employer agrees to provide such information, including payroll information and data, to the Trust regarding such Participating Employer’s Participants and Employees of any control group in which any Participating Employer may be a member, as shall be determined by the Trustees to be necessary for administration of the Trust and the Plans. Each Participating Employer shall provide such information at such times and in such manner as the Trustees or their designees may specify from time to time.

**ARTICLE IV.
BENEFITS AND CONTRIBUTIONS**

4.01 Welfare Benefits. Welfare Benefits shall be provided directly from the assets of the Trust or by the purchase of group policies of insurance in accordance with this Agreement. No Welfare Benefits will be paid directly by any Participating Employer, and no Participant shall be entitled to any benefits other than those provided by the Trust assets or the policies of group insurance. Participating Employers may adopt some or all of the Welfare Benefits, as evidenced in its Participation Agreement.

4.02 Payment of Contributions. Each Participating Employer shall pay to the Trust the amount of contributions required to maintain Welfare Benefits coverage for such Participating Employer's Participants in the amounts and at the times described in the Participation Agreement. Depending on the Plan, contributions may be made wholly by the Participating Employer, partially by the Participating Employer and partially by Participants, or wholly by the Participants.

**ARTICLE V.
SPONSOR**

5.01 Powers and Duties of the Aerospace Group as Sponsor. The Aerospace Group shall act as Sponsor of this Trust. Each Participating Employer by execution of the Participation Agreement does thereby delegate the powers and duties of the Sponsor to the Trustees, any of which may be delegated at the discretion of the Trustees to the Administrator and Named Fiduciary.

**ARTICLE VI.
TRUSTEES**

6.01 Number, Nomination, and Election. There shall be at least three (3) Trustees. Each Trustee must be a principal in a Participating Employer. The Trustees shall be elected by a majority of the Participating Employers. Candidates for election as Trustee may be nominated by the Administrator and Named Fiduciary; by a majority of the incumbent Trustees (excluding those in the last year of their term); or by written petition submitted to the Administrator and Named Fiduciary and signed by the lesser of 10% of the Participating Employers or ten (10) Participating Employers. Each Trustee shall acknowledge, in writing, his or her acceptance of appointment as a Trustee.

6.02 Terms of Trustees.

(a) The term of the Trustees shall be three (3) years. At the end of a Trustee's term the Trustee may be nominated to serve an additional term as set forth in Section 6.01, subject to election by a majority of the Participating Employers. The terms of the Trustees are, and shall continue to be, staggered so that their terms of appointment do not expire in the same year.

(b) If a Trustee is removed or resigns prior to the expiration of his or her term of appointment, a successor Trustee shall be nominated by the Administrator and Named

Fiduciary or by written petition submitted to the Administrator and Named Fiduciary and signed by the lesser of 10% of the Participating Employers or ten (10) Participating Employers, subject to confirmation by a majority vote of the Participating Employers, to serve out the remainder of the term of the Trustee who was removed or resigned; upon expiration of such term, the successor Trustee may be nominated as any candidate for election to serve an additional term, subject to election by a majority of the Participating Employers.

6.03 Resignation of a Trustee. A Trustee may resign at any time by giving thirty (30) days' notice in writing to the Administrator and Named Fiduciary and the Trustees, after which that Trustee's position shall become non-voting for the remainder of the thirty (30) days. The resigning Trustee and the other Trustees may, in a writing signed by or on behalf of both parties, waive the notice required by this provision. A successor shall be appointed as provided by Section 6.02(b).

6.04 Removal of a Trustee. The Administrator and Named Fiduciary shall remove a Trustee by delivery of a writing to the Trustees notifying them of both the proposed removal of the Trustee and a majority vote approving the Trustee removal by the Participating Employers. Alternatively, the Participating Employers shall remove a Trustee by delivery to the Administrator and Named Fiduciary and the Trustees of a writing signed by Participating Employers whose contributions during the preceding twelve (12) months totaled more than 50% of all contributions. The removal of any Trustee shall be effective thirty (30) days after receipt of the writing by the Trustees, after which that Trustee's position shall become non-voting for the remainder of the thirty (30) days. A Trustee may be removed for any reason, including but not limited to missing three consecutive Trustee meetings without an approved absence by the chair of the Trustees. A successor shall be appointed as provided by Section 6.02(b).

6.05 Use of Contributions. The Trustees shall have all necessary power to receive contributions hereunder to pay reasonable expenses of the Trust and to pay Welfare Benefits and premiums on the group insurance policies owned by the Trust. The contributions shall be deposited in one or more banks or similar financial institutions supervised by the United States or a state pending the allocation of monies for Welfare Benefits or otherwise permitted hereunder. The Trust shall not be required to pay interest on Participating Employer or Participant contributions to the Trust. In the event that any Participating Employer shall fail or refuse to pay the Participating Employer's or the Participants' contributions due to the Trust on a timely basis, the Trustees shall notify the Insurer(s) to cancel and terminate the coverages afforded the Participating Employer's Participants, and the Participating Employer shall be notified accordingly by the Insurer(s) and/or the Trustees.

6.06 Investment. From time to time funds held by the Trustees may exceed the immediate needs of the Trust. Additionally, dividends, returns of premium or other Welfare Benefits received from Insurers under the provisions of any contract of insurance shall become a part of the Trust assets and shall be subject to these provisions. Any excess funds held by the Trustees shall be used and controlled as follows:

(a) The Trustees may apply the same or any portion thereof to the payment of reasonable administration expenses and/or premiums on insurance policies held by the Trust in lieu of increasing required contributions hereunder; and

(b) The Trustees may invest any of such funds as provided by an investment policy adopted by the Trustees. Such investment policy shall generally favor, but not necessarily require, investments in obligations of the United States government, of any state or political subdivision thereof, obligations of solvent United States corporations, savings deposits or time certificates of deposit in any federally-insured bank (including a party in interest) and similar obligations, provided, however, that any such investment shall have a maturity date not exceeding three (3) years from the date of purchase.

6.07 Title. Title to all assets of the Trust shall be maintained in the name of the Trust, provided however, that for convenience in transferring negotiable securities, title may be held in the name of the Trust's custodian bank or nominee.

6.08 Record Keeping and Accounts. The Trustees or their delegates shall keep and maintain true and accurate books of account and records reflecting all sums received and all sums expended, together with all necessary and pertinent information connected with their administration of the Trust. Such books and records shall be subject to audit by the Administrator and Named Fiduciary as directed by the Trustees or, if required by law, to audit by an independent public accountant. Such books and records shall also be open to inspection by any Participating Employer upon demand at all reasonable times during business hours. Within ninety (90) days after the end of the Trust's year, the Trustees shall furnish to the Administrator and Named Fiduciary a written statement of account setting forth all receipts and disbursements.

6.09 Standard of Care. The Trustees shall discharge their duties with respect to the Trust solely in the interests of Participants and their beneficiaries, and

(a) For the exclusive purpose of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of the Trust;

(b) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims;

(c) To the extent the Trustees exercise their investment discretion pursuant to Section 6.06, by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) In accordance with the terms of this Trust to the extent such terms are consistent with the Employee Retirement Income Security Act of 1974, as amended.

6.10 Compensation of Trustees. The Trustees shall be reimbursed for all reasonable expenses incurred by them in the administration of the Trust, which shall be paid from the Trust.

6.11 Settlement of Account. Upon resignation or removal of a Trustee, such Trustee shall have the right to a settlement of the Trustee's account which, unless the parties are unable to agree, shall be accomplished by agreement between such Trustee and the Administrator and Named Fiduciary. Upon such settlement, all right, title and interest of the Trustee in the assets of the Trust and all rights and duties under this Agreement shall vest in the successor trustee, and thereupon all future liability of the Trustee shall terminate; provided however, that the Trustee

shall execute, acknowledge and deliver all documents and written instruments which are necessary to transfer and convey the right, title and interest in the Trust assets and all rights and privileges to the successor.

6.12 Powers and Duties of the Trustees. The Trustees shall have all powers that are necessary or desirable in administering the Trust and any Plan, including but not limited to the following:

- (a) Approve premium rates, select and change Insurers;
- (b) Select and retain consultants and advisors to assist in Welfare Benefit design and improvement;
- (c) Select and engage administrative assistance to maintain Plan records, collect and remit premiums, prepare and disseminate information and similar functions;
- (d) Select and engage all other service providers necessary or desirable for administration of the Trust, including without limitation third party administrators, custodians, actuaries, attorneys, accountants, consultants, advisors, investment managers and other service providers;
- (e) Establish procedures, requests for proposals, and criteria for selection and acceptance of service providers;
- (f) Enter into arrangements for the provision of services, including the execution of contracts and other documents and payment from the Trust of reasonable fees, expenses and compensation;
- (g) Establish and carry out a funding policy for the Trust. In establishing such policy, the short-term and long-term liquidity needs of the Trust shall be determined, to the extent possible, by considering among other factors the due date of premiums for insurance policies, Employee turnover, and contributions to be made by Participating Employees and Participants;
- (h) Engage an independent qualified public accountant and authorize such accountant to conduct an annual financial examination of the Trust. The costs of such financial examination shall be paid by the Trust;
- (i) Prepare and file with the Department of Labor the annual reports regarding the Trust, to the extent required by law. The costs of such audit and reports shall be paid by the Trust;
- (j) Audit the payroll books and records of a Participating Employer, either directly or through a qualified public accountant at the expense of the Trust;
- (k) Act upon any written letter, report, certificate or other document submitted by a Participating Employer or Participant, if such document appears to be genuine and to be

signed by the proper person or persons. The Trustees shall be under no duty to make any investigation or inquiry as to any statement contained in any such document;

(l) Prosecute and defend all legal actions, claims and proceedings initiated against the Trust or the Trustees relating to the Trust, and compromise, settle or release all such actions on such terms or conditions as the Trustees may determine;

(m) Select and engage other trustees and custodians, to safekeep assets and act in similar capacities, and pay reasonable fees and expenses from the Trust;

(n) Establish contribution levels required to maintain various coverages and a fair share of Trust expenses, and change the same from time to time in its discretion;

(o) Authorize disbursements from the Trust;

(p) Generally interpret the Trust and promulgate rules and regulations designed to result in consistent interpretation and administration; and

(q) Do all acts, take all actions and exercise all rights and privileges that it deems necessary to administer and carry out the purposes of this Trust.

Provided, however, that Participating Employers whose contributions during the preceding twelve (12) months totaled more than 50% of all contributions may direct the Trustees method and manner of conducting any particular action by written instruction delivered to the Trustees. Any such instruction shall provide a reasonable time for the Trustees to act, taking into account all facts and circumstances.

ARTICLE VII. OTHER ADMINISTRATION

7.01 Powers and Duties of Plan Administrator and Named Fiduciary. The Administrator and Named Fiduciary of each Plan under the Trust shall have the authority to control and manage the operation and administration of such Plan. Each Participating Employer shall by execution of the Participation Agreement delegate to the Trustees certain specific responsibilities and functions described in Articles V and VI. Any function or responsibility not specifically delegated or allocated to the Trustees with respect to the administration of any Plan under the Trust shall be retained by the Participating Employer and carried out by the Administrator and Named Fiduciary. Without limiting the generality of the foregoing, the Administrator and Named Fiduciary of each Plan shall have the following responsibility and authority with respect to such Plan:

(a) Determining all questions relating to eligibility of Participants;

(b) Identifying Participants and enrolling them in the Plan, and notifying the Trustees accordingly;

(c) Deleting Participants from the Plan's enrollment when they become ineligible;

- (d) Computing and certifying to the Trustees the contributions necessary to provide coverages elected;
- (e) Preparing and disseminating to all Participants plan documents, summary plan descriptions, summary annual reports, financial statements, administration and other reporting forms and disclosures in such form and within such time periods as is required by law, and filing such reports and returns as are required by law;
- (f) Distributing to all Participants certificates of insurance as required by law;
- (g) Initiating claim procedures, including notification to the Trustees and/or Insurers, and providing the necessary forms to the claimant, and assist in the completion of such forms and submitting them to the Insurers and/or Trustees;
- (h) Enrolling all eligible Participants and assisting in communicating Welfare Benefits and responding to Participant inquiries concerning claims and coverage;
- (i) Maintaining all necessary records for the administration of the Plan other than those which the Trustees or their delegates have specifically agreed to maintain; and
- (j) Interpreting of the provisions of the Plan and publication of such rules for regulation of the Plan as are deemed necessary and not inconsistent with the terms of this Agreement, the policies of insurance, or rules and regulations implemented by the Trustees.

7.02 Allocation and Delegation of Responsibility. The Administrator and Named Fiduciary of a Plan may delegate in writing to persons other than such Administrator and Named Fiduciary, the responsibility and authority to carry out fiduciary responsibilities of the Plan.

7.03 Bonding. Where required by law, the Administrator and Named Fiduciary of the Plan, and every person handling Plan funds, shall be bonded. It shall be the obligation of the Administrator and Named Fiduciary to insure compliance with the applicable bonding requirements. The Trustees shall not be responsible for ensuring that bonding requirements (other than those applicable to the Trustees) are complied with, and all of such responsibility is specifically allocated to the Administrator and Named Fiduciary of the Plan.

7.04 Claims Procedure. Procedures for claims review and appeal of denied claims under a Plan shall be as set forth in the applicable insurance contracts and summary plan descriptions for such Plan. There shall be no recourse to the Trust or the Trustees with respect to any such claims.

7.05 Funding Policy. The Administrator and Named Fiduciary shall establish and carry out a funding policy designed to assure the prompt payment of contributions to the Plan.

7.06 Standard of Care Imposed Upon Administrator and Named Fiduciary. The Administrator and Named Fiduciary for the Plan shall discharge its duties with respect to the Plan solely in the interest of the Participants and their beneficiaries, and

(a) For the exclusive purpose of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of the Plan;

(b) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; and

(c) In accordance with the Plan provisions to the extent such provisions are consistent with the Employee retirement Income Security Act of 1974, as amended.

ARTICLE VIII. MISCELLANEOUS

8.01 Amendment and Termination of Trust. This Trust may be amended or terminated by written resolution adopted by a majority of Trustees or by a writing delivered to the Trustees and signed by Participating Employers whose contributions during the preceding 12 months have totaled more than 50% of all contributions; provided, however, that no such resolution shall:

(a) Divert the Trust assets or any part thereof to a purpose other than as set forth in this Agreement;

(b) Relieve the Trustees from liability for acts in violation of the standard of care hereby imposed; or

(c) Modify Section 8.02 relating to Limitation of Rights to Trust fund.

Notice of any amendment or modification shall be promptly forwarded by the Trustees to the Administrator and Named Fiduciary, each Participating Employer and to any Insurer, and on request a copy shall be furnished to any such person.

8.02 Limitation of Rights to Trust Fund. Neither the Participating Employers, Participants, nor any other person shall have any right, title or interest in or to the Trust assets except as expressly provided herein; provided, however, that nothing herein contained shall impair or derogate from the right of any Participant or any person claiming by or through such Participant to the benefits provided by group policies purchased by the Trustees. No part of the assets or income of the Trust shall be used for or diverted to purposes other than for the exclusive benefit of Participants and their beneficiaries. No money, property or interest of any nature whatever in the Trust, the group insurance policies or any benefits or monies payable therefrom, shall be subject in any manner by any Participating Employer or Participant or beneficiary or person claiming through any of them to anticipation, garnishment, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void to the extent allowed by law.

8.03 Disposition of Assets upon Termination of Trust. Upon dissolution or termination of this Trust, all assets remaining in the Trust after payment of all expenses incidental to the dissolution or termination shall be used to provide benefits for which this Trust was established. This arrangement shall continue until all funds in the Trust are exhausted.

8.04 Withdrawal from Trust. Any Participating Employer may withdraw from participation in the Trust by giving thirty (30) days written notice of intent to withdraw to the Trustees. With respect to insured benefits such withdrawal shall be effective as of the day immediately preceding the premium due date under the group insurance policy or policies insuring such Participating Employer's Participants next following receipt of such notice by the Trustees. Upon withdrawal, the withdrawing Participating Employer and its Participants shall have no further rights whatsoever to the assets of the Trust or to any insurance provided thereunder, except as may otherwise be provided in the group insurance policy or policies which insured such Participants.

8.05 Termination of Participating Employer. The Trust shall be entitled to terminate, or decide not to renew, any Participating Employer from participation in the Trust upon the occurrence of any of the following events:

- (a) Nonpayment of contributions;
- (b) Fraud or other intentional misrepresentation of material fact by the Participating Employer;
- (c) Noncompliance with material provisions of the Trust;
- (d) The Trust ceases to offer any coverage in a geographic area; or,
- (e) There is no longer any individual enrolled through the Participating Employer who lives, resides, or works in the service area of a network plan offered by the Trust and the Trust applies this paragraph uniformly without regard to the claims experience of Participating Employer or any health status-related factor in relation to such individuals or their dependents;

provided, however, that the Participating Employer shall have received written notice of such event and failed to cure within ten (10) days after receipt of such notice.

8.06 Indemnity. Each Participating Employer, by execution of the Participation Agreement, does thereby indemnify and hold harmless the Trustees and the members of the Aerospace Group (the Indemnitees) from any and all loss, damages or liability incurred in the course and scope of their respective duties as described in this Agreement, except those resulting from the Indemnitees' gross negligence, willful misconduct or dishonesty. In the event that the Indemnitees are made a party to any legal proceeding of any kind or nature arising out of their respective duties hereunder, directly or indirectly, the Participating Employers jointly agree to indemnify and hold the Indemnitees harmless from any and all liability and expenses (including reasonable attorneys' fees) resulting therefrom. Any damages assessed or expenses required to be paid or incurred by reason of this indemnification shall be borne equally by the Participating Employers, unless it shall be determined that the damages, expenses or losses incurred result directly from the actions or inactions of a specific Participating Employer, its employees or agents. In such event, that specific Participating Employer shall be primarily responsible for payment, with other Participating Employers being responsible only in the event of the specific Participating Employer's inability by reason of financial insolvency to respond.

8.07 Fidelity Bond. The Trustees, the Administrator and Named Fiduciary shall, where required by law, be bonded by a duly licensed corporate surety covering all misappropriations of funds and other assets. Such bond shall be in the amount required by law, and the premiums on such bond shall be paid by the Trustees from the Trust.

8.08 Fiduciary Insurance. The Trustees, the Administrator and Named Fiduciary, and any other officers or employees exercising discretion in the management of the Plan or its assets shall be entitled to fiduciary insurance. The cost of such insurance shall be borne by the Trust, but such insurance shall permit recourse by the Insurer against the fiduciary. The cost of any nonrecourse endorsement shall not be borne by the Trust.

8.09 No Legal or Equitable Right. Neither the establishment of the Trust nor the payment of any Welfare Benefits shall be construed as giving to any Participant any legal or equitable right against the Participating Employers, the Trustees, the Administrator and Named Fiduciary, or any fiduciary, except as provided in this Agreement. The terms of employment of any Employee shall be in no way affected by this Trust, nor shall this Trust be construed to guarantee or extend the employment of any Employee.

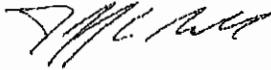
8.10 Severability; Construction. If any provision of this Trust is held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of this Trust, but this Agreement shall be construed and enforced as if such provisions had never been included. Whenever used in this Agreement, the masculine gender shall include other genders as well, and singular usage shall include plural usage, as the context may require. Headings and numbers in this Trust are included for convenience of reference only.

8.11 Governing Law. This Trust shall, to the extent applicable, be construed and enforced in accordance with the Employee Retirement Income Security Act of 1974, as amended, and the laws of the State of Washington.

8.12 Entire Agreement. This Agreement and the Participation Agreements constitute the entire agreement between the Participating Employers and the Trustees, and shall not be amended except in writing between the parties hereto.

EXECUTED this 17th day of December, 2013.

**AEROSPACE INDUSTRY GROUP
REPRESENTATIVE:**



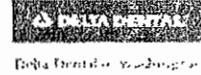
Print Name: Jeff Marcell

Exhibit A -- Participation Agreement

Exhibit B -- Industry Classifications

EXHIBIT A
PARTICIPATION AGREEMENT

Aerospace Industry Health Trust Group Master Application
January 2014 – December 2014 Plan Year



Company Information

Company Name (indicate dba if applicable):		Effective Date:	
Employer Tax ID (EIN)#:	<input type="checkbox"/> Corp. <input type="checkbox"/> Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Other	NAICS: _____	Endorsed Sponsor: _____
Group Benefits Administrator:		Billing Contact:	
Are you headquartered in Washington State? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please note the appropriate location: _____			
Phone: () - () -	Fax: () - () -	Phone: () - () -	Fax: () - () -
Street Address: _____	City _____ State _____ Zip _____	Billing Address: _____	City _____ State _____ Zip _____
Benefits Administrator Email:		Billing Representative Email:	

Base Product Selections

Medical, Basic Life/AD&D and EAP are compulsory lines of coverage.

Medical Plans Underwritten by Premera Blue Cross

- | | | | | |
|---------------------------------------|---------------------------------------|--|--|-----------------------------------|
| <input type="checkbox"/> Titanium 100 | <input type="checkbox"/> Titanium 500 | <input type="checkbox"/> Sterling 750 | <input type="checkbox"/> Sterling 2000 | <input type="checkbox"/> HSA 1500 |
| <input type="checkbox"/> Titanium 200 | <input type="checkbox"/> Sterling 250 | <input type="checkbox"/> Sterling 1000 | <input type="checkbox"/> Sterling 2500 | <input type="checkbox"/> HSA 2500 |
| <input type="checkbox"/> Titanium 350 | <input type="checkbox"/> Sterling 500 | <input type="checkbox"/> Sterling 1500 | <input type="checkbox"/> Sterling 3000 | <input type="checkbox"/> HSA 3500 |

Prescription Drug Benefits Underwritten by Premera Blue Cross

A prescription drug benefit is imbedded in each medical plan listed above.

Medical Plans Underwritten by Group Health Options Inc.

- Alliant Plus 200 Balance Plan Alliant Plus 500 Mid Plan Alliant Plus 1000 Balance Plan

Employee Benefit Plan

- Wellspring EAP

Buy-Up Product Selections

Life and AD&D Benefits Decline

Underwritten by LifeMap

- Plan A: 15,000 Life/AD&D *included with all medical plans.*
 Plan B: 50,000 Life/AD&D (5 + Employees)
 Plan C: 1 x Annual Salary (maximum 100,000) (5 + Employees)
 Plan D: 2 x Annual Salary (maximum 200,000) (5 + Employees)
 Supplemental Life (Grandfathered)

Long-Term Disability Options (Requires 5+ Enrolled Emps) Decline

Underwritten by LifeMap

- Plan A Plan B Plan C Plan D Plan GF1
 Plan GF2

Voluntary Life Option – Payroll Deducted

- (Requires 5+ Eligible Emps)
 Yes No

Dental Plans Underwritten by Delta Dental of Washington (2 + Employees) Decline

- | | | |
|---|--|--|
| <input type="checkbox"/> Plan A Premier Incentive \$50 2500 | <input type="checkbox"/> Plan AA PPO Incentive \$50 2500 | <input type="checkbox"/> Orthodontia Family Rider Option |
| <input type="checkbox"/> Plan C Preferred PPO \$0 2000 | <input type="checkbox"/> Plan F Preferred PPO \$50 1000 | <input type="checkbox"/> Orthodontia Dependent Children Rider Option |
| <input type="checkbox"/> Plan GG Preferred PPO \$50 2000 | <input type="checkbox"/> Plan H Premier \$0 1500 | |
| <input type="checkbox"/> Plan J Preferred PPO \$50 1000 | | |

Dental Plans Underwritten by Dental Health Services Inc (1 + Employee) Decline SmartSmile Super SmartSmile w/ Specialty

Vision Plan Underwritten by Vision Service Plan (2+ Employees) Decline

- Signature Plan B Choice Plan A

Group Legal Plan: Decline

- 21st Century Legal Grandfathered Caldwell Legal

Voluntary Personal Accident Underwritten by Chartis Property Casualty Company (Payroll Deducted): Yes No

Eligibility and Participation Requirements

Definition of Eligible Employee:

Eligible Employees must be regular (not seasonal, temporary or 1099 contractors) active employees on company payroll working a minimum of 20 hours per week to be eligible for medical, dental & vision coverage. Minimum 30 hours per week for LTD coverage.

All full-time Employees working a minimum of _____ hours per week (not less than 20)

Probationary Period Information:

Coverage for newly hired/eligible employees will become effective the first of the month following/colociding with the completion of the probationary period. Date of Hire 30 days 60 days

New Groups Only:

The probationary period specified in the category above applies to (Check one box):

Current and Future Eligible Employees Future Eligible Employees Only

Waive Probationary Period:

For employees transferring from part-time to full-time status, the probationary period above should apply

Retroactive to the original date of hire Beginning at the date of transfer

Employer Contribution and Employee Participation Requirements: The employer must contribute the minimum percentages shown below toward the cost of coverage and must meet the minimum participation requirements. Minimum Contribution/Participation Requirements:

Medical/Dental -75% Employer Contribution = 75% Employee Participation or 100% Employer Contribution = 100% Employee Participation

Class Description (must not be discriminatory)

Class 1: _____

Employee: Medical _____% Employee: Dental _____%
 Dependent: _____% Dependent: _____%

Class Description (must not be discriminatory)

Class 2: _____

Employee: Medical _____% Employee: Dental _____%
 Dependent: _____% Dependent: _____%

Employee Enrollment

Total number of employees: _____ Number of eligible employees: _____ Number of covered employees: _____

Current Medical Plan Information (FOR NEW GROUP SUBMISSIONS ONLY)

If yes, complete the following:

Name of prior medical carrier _____ Original Effective Date: _____ Term Date: _____

Name of prior dental carrier _____ Original Effective Date: _____ Term Date: _____

Premiera Blue Cross and Group Health Options are the only medical carriers offered. No other group medical coverage is allowed.

TEFRA/OBRA/FMLA Designation

Affordable Care Act
Required Information

Please enter the average number of employees that were employed by your company during the prior calendar year (January – December). This count should include: full-time, part-time, seasonal, and union employees that work inside or outside the state of Washington and employees in any state from any affiliated company. Remember to include business owners, corporate officers, and partners if they are also employees.

We strongly urge you to consult with legal counsel in answering the following questions. The summaries below are not intended to be or to replace legal advice on your particular group. It is the group's responsibility to inform the carrier immediately if facts change which would cause the group's answers below to change.

FMLA Employer? Yes No

Helpful Hint: Generally, these laws apply to any employer that employed at least 50 employees on 50% or more of its working days in the preceding calendar year.

TEFRA/OBRA Employer? Yes No

Helpful Hint: Generally, these laws apply to any employer that employed at least 100 employees on 50% or more of its working days in the preceding calendar year.

Rates - Please do not add lines of coverage together

	Employee:	EE/Sp:	EE/Sp/Child(ren):	EE/Child(ren):
Medical Plan 1:	\$	\$	\$	\$
Medical Plan 2:	\$	\$	\$	\$
Dental Plan:	\$	\$	\$	\$
Ortho Plan:	\$	\$	\$	\$
Vision Plan:	\$	\$	\$	\$
Basic Life/AD&D	\$	\$	N/A	N/A
Supplemental Life/AD&D	Age Rated	N/A	N/A	N/A
Voluntary Life	Age Rated	N/A	N/A	N/A
Other:	\$	\$	\$	\$

Adoption of Trust Agreement, Appointment of Trustee & Understanding of the Terms of Selection and Participation

Understanding of the Terms & Provisions of Participation

The undersigned Employer agrees to adhere to the terms, conditions and limitations of coverage as set forth in the health service contracts, Insurance

policies, service contracts, benefit booklets and certificates of insurance issued by each of the respective carriers that are contracted with the Trust. The employer does hereby adopt the Trust Agreement, agrees to abide by its terms, and designates and appoints the undersigned Group Representative as a Trustee of the Trust. The employer understands that information collected in connection with administration of this benefit plan may be used to bring to attention health products or services that might be valuable to all qualified employees. The employer recognizes the employee's authorization to deduct from their earnings the amount, if any, for the coverage selected.

Plan Administrator The undersigned Employer agrees that Business Health Trust shall act as a plan administrator for the Trust and/or the Plans, and that it may provide or select service providers to provide any of the duties in Sections 6.12 or 7.01 of the Trust Agreement.

Administrator and Named Fiduciary The undersigned Employer agrees that the Administrator and Named Fiduciary of the Plans provided through the Trust shall be Trustees and the Administrator and Named Fiduciary shall have the authority to control and manage the operation and administration of the Plans as described in the trust agreement.

Premium The undersigned Employer acknowledges and agrees that full payment of premium to the Trust is due on the first day of the month for which coverage is purchased, that any payment of premium received by the Trust after the tenth day of the month is late as established in the Group Administrative Guide and subject to a late fee. Any premium received by the Trust more than 30 days after the due date will be returned to the undersigned Employer and the Employer's group life insurance and health coverage through the Trust will be terminated as of the last day of the last month for which full payment was timely received. Participation in the Trust may be limited to employer's that participate in certain associations. Those associations may charge a service fee to the Employer as a condition to participating in the benefits offered through the Trust which shall not be paid out of plan assets but shall be paid solely by the participating Employer.

Rescission The undersigned Employer acknowledges and agrees that once its application has been approved and accepted by the Trust, any request to rescind its application must be made in writing and must be received by the Trust not later than the close of business on the last business day at least 48 hours before the effective date of coverage under the Trust. If a proper request to rescind is not received timely, the Trust will not refund any premiums or deposits and the coverage will be in effect as approved and accepted by the Trust.

Termination This Adoption Agreement may be terminated by the undersigned Employer, which may withdraw from participation in the Trust by giving thirty (30) days written notice of intent to withdraw to the Trustees in accordance with Section 8.04 of the Trust Agreement. Such Employer shall have the rights and duties specified therein. This Agreement may be terminated by the Trust, in the event that The undersigned Employer (a) shall fail or refuse to pay contributions due to the Trust in accordance with Section 8.05 of the Trust Agreement, or (b) shall be in breach of any of its other obligations under the Trust Agreement or this Adoption Agreement, which breach shall not have been cured within ten (10) days after The undersigned Employer receipt of written notice thereof.

Indemnity The undersigned Employer does hereby indemnify and hold harmless the Trustees, Sponsor, and the Administrator and Named Fiduciary from any and all loss, damages or liability incurred in the course and scope of their respective duties as described in this Agreement, except those resulting from their gross negligence, willful misconduct or dishonesty. In the event that the Trustees, Sponsor or the Administrator and Named Fiduciary are made a party to any legal proceeding of any kind or nature arising out of their respective duties hereunder, directly or indirectly, the undersigned Employer agrees to indemnify and hold them harmless from any and all liability and expenses (including reasonable attorneys' fees) resulting there from. Any damages assessed or expenses required to be paid or incurred by reason of this indemnification shall be borne equally by all Employers, unless it shall be determined that the damages, expenses or losses incurred result directly from the actions or inactions of a specific Employer, its employees or producer. In such event, that specific Employer shall be primarily responsible for payment, with other Employer being responsible only in the event of the specific Employer's inability by reason of financial insolvency to respond.

Governing Law This Agreement shall be construed and enforced in accordance with ERISA and, to the extent applicable, the laws of the State of Washington.

Signature Section

Producer Agreement to Contract: You, the producer attest that you have met with the group submitting this agreement and that you have fully explained its contents. You have discussed coverage, eligibility, the effect of misrepresentations, termination provisions and subscription charge billing administration.

Producer Signature	Date	Phone Number
Producer of Record (Print Name)	Name of Agency	
Producer E-mail Address	Agency Tax-ID # (REQUIRED FOR COMMISSION PAYMENT)	

I have provided these answers as part of the application procedure required by the insurer to enroll in coverage and I agree, acknowledge, and attest that all information completed on this form is true, correct, and complete. I understand that the insurer will rely on each answer in making coverage and rating determinations. If the insurer continues the Contract with the Group after untrue, incorrect, or incomplete information is found to have been provided, and if as a result of correcting false information the Group no longer qualifies for the Rate quoted, I understand that the insurer, will have the right to adjust the rates to the appropriate level retroactive to the date the misrepresentation occurred, and the Group will be required to pay the Rate adjustment within 30 days of the date of notice by the insurer. It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits. In addition, the insurer will have the right to collect any claims payments or other damages.

Group Representative's Signature	Date	Phone Number
Group Representative (Print Name)	Title	

<p>Mail New Business to: Wells Fargo Insurance Services Attn: BHT Team 601 Union St., Suite 1300 Seattle, WA 98101</p> <p>Email: bht.ins@wellsfargo.com Fax: 866.972.2881 Producer line: 206.892.9574</p>	<p>New Group Checklist:</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1st Month Premium Check - Payable to: BHT <input type="checkbox"/> Group Master Application <input type="checkbox"/> Employee Enrollment / Waiver Forms <input type="checkbox"/> Association Membership Application and Payment (if not a member) <input type="checkbox"/> Tax Documentation (if applicable) <p>Renewal Case Submission Checklist:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Group Master Application <input type="checkbox"/> Submit by 15th of month
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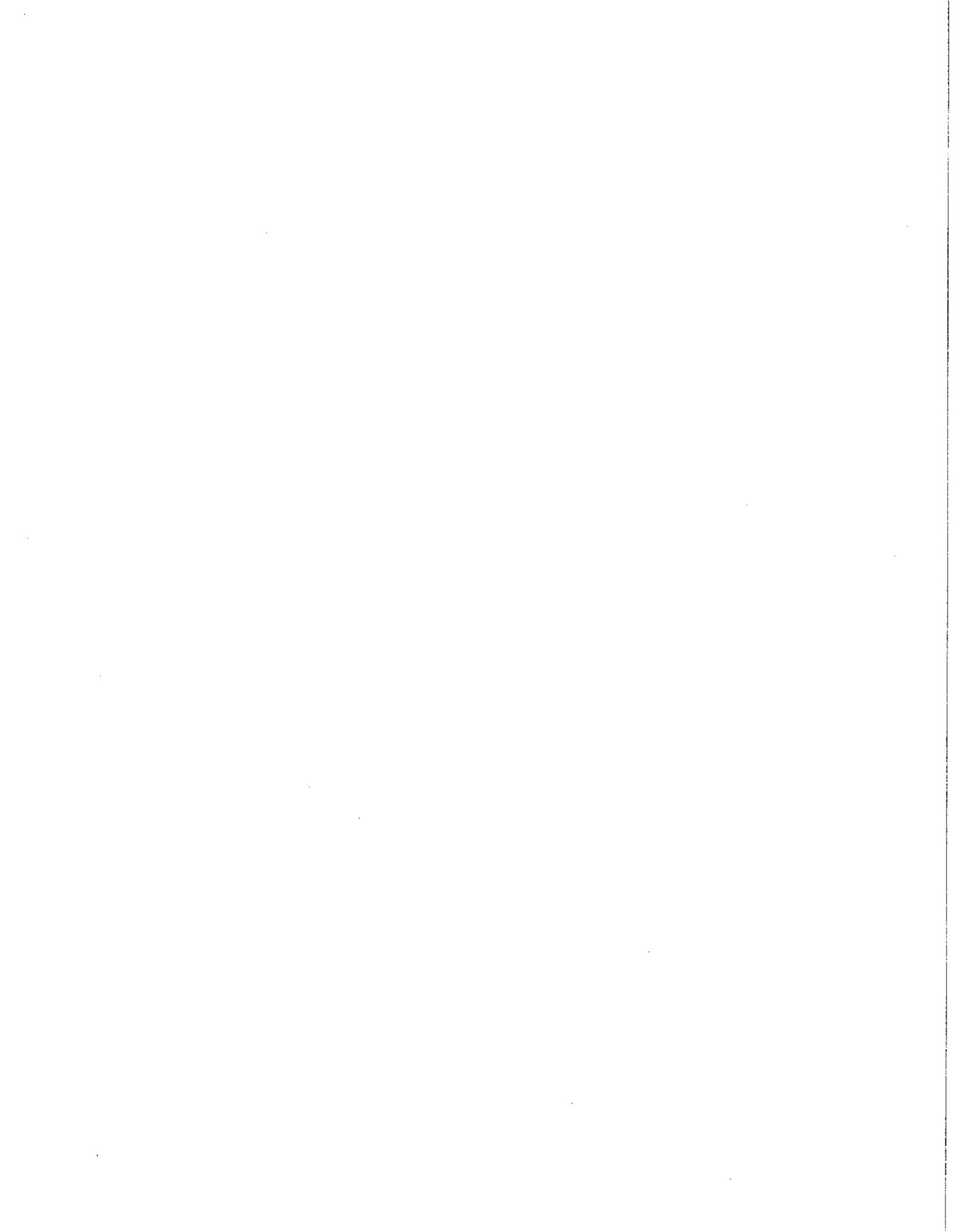
Endorsed Carrier Contact Information

 7001 220 th St SW Mountlake Terrace, WA 98043 C.S. 800.722.1471	 GroupHealth. 320 Westlake Avenue, Ste 100 Seattle, WA 98109 C.S. 888.901.4636	 100 SW Market St. Portland, OR 97201-5702 C.S. 800.794.5390	 9706 4 th Avenue NE Seattle, WA 98115 C.S. 800.554.1907
 2704 Commerce Drive Suite B Harrisburg, PA 17110 C.S. 877.867.3783	 3333 Quality Drive Rancho Cordova, CA 95670 C.S. 800.877.7195	 1900 Rainier Ave S. Seattle, WA 98144 C.S. 800.553.7798	 Dental Health Services 936 N 34 th Street, Ste 208 Seattle, WA 98103 C.S. 800.248.8108

EXHIBIT B

AEROSPACE INDUSTRY CLASSIFICATIONS

Aerodynamic Prototype Modeling & Simulation
Aircraft parts, engines & supplies
Aircraft Parts & Supplies – electronic
Aircraft Parts & Supplies – metal & tooling
Aircraft Parts & Supplies – simulation
Aircraft Parts & Supplies – equipment services
Aircraft Parts & Supplies – labor services
Aircraft Parts & Supplies – engineering
Aircraft Parts & Supplies – consulting
Aerospace business organization





OFFICE OF
INSURANCE COMMISSIONER

March 26, 2013

Jeff Marcell
President & CEO
enterprise Seattle
1301 5th Avenue Ste 2500
Seattle, WA 98101

RECEIVED
MAR 27 2013
Jason Froggatt

In Re: Aerospace Industry Health Trust

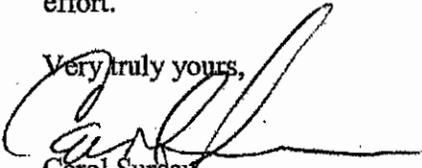
Dear Mr. Marcell:

First, I'd like to thank you for your assistance in the effort we've made to analyze your association membership in the context of your insurance benefits vehicle to determine whether the membership constitutes an "employer" under 29 USCS 1002 (5).

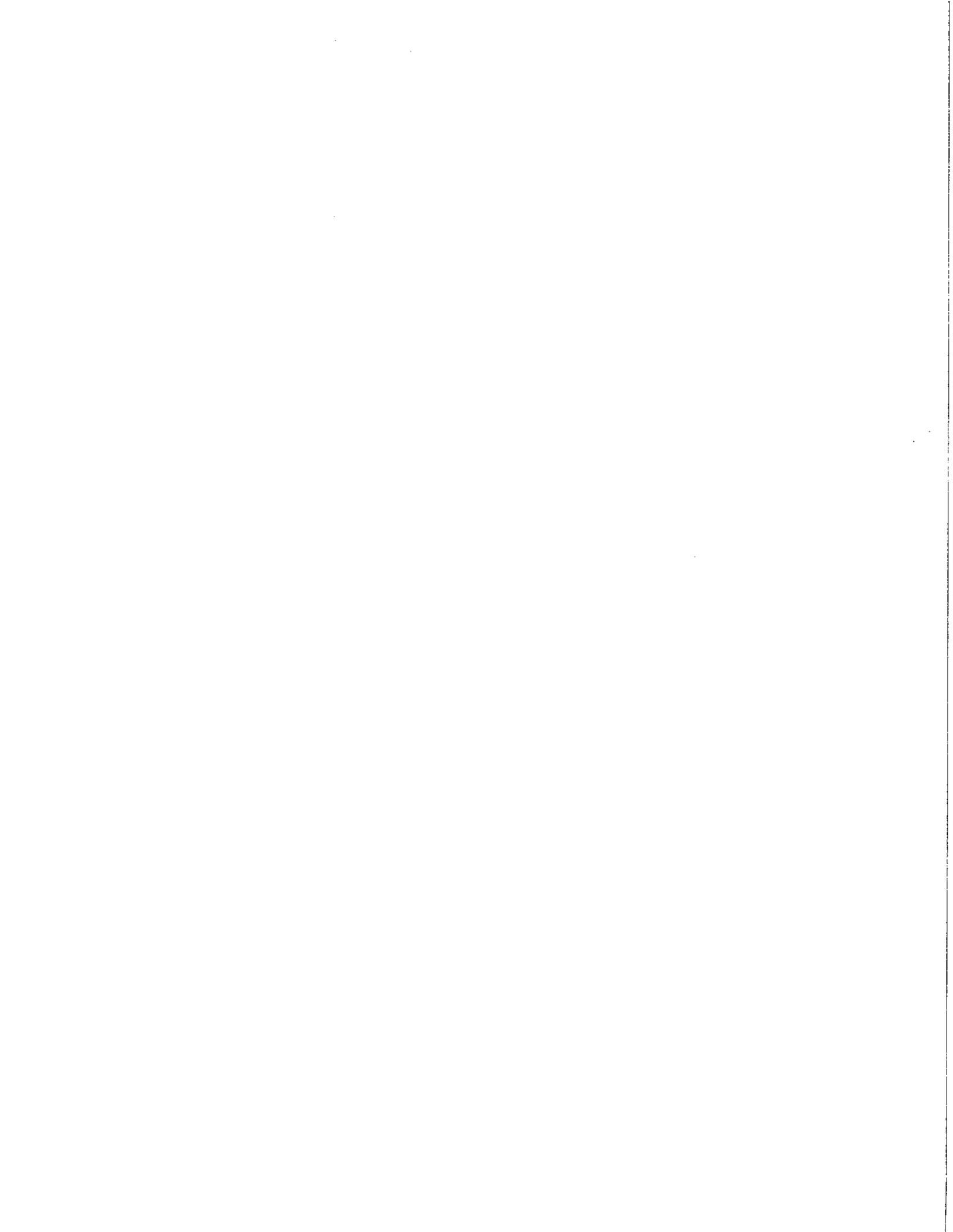
Attached is a copy of the list of occupational categories we have agreed constitute a single industry. Also attached is a copy of the Trust Agreement governing the insurance vehicle which we have agreed provides for the employer members included in the occupational categories list to control the insurance vehicle. These documents should be provided to your carrier, as they will be needed for your plan filings.

If you have any questions, please let me know. Thank you again for your cooperation in this effort.

Very truly yours,


Carol Sureau
Deputy Commissioner, Legal Affairs
Enclosures

cc: Beth Berendt, Deputy Commissioner, Rates & Forms
Charles Brown, Senior Staff Attorney
Marta DeLeon, Assistant Attorney General
Brendan Williams, Deputy Commissioner, Policy
Jason Froggatt, Davis Wright Tremaine
Keith VanderZanden, Wells Fargo Insurance Services



MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

Phone: (360) 725-7000
www.insurance.wa.gov



OFFICE OF
INSURANCE COMMISSIONER

May 7, 2013

Jason Froggatt, Attorney at Law
1201 third Avenue, Suite 2200
Seattle, WA 98101-3045

Re: Agriculture Industry Health Trust Agreement

Dear Jason:

Thank you for the opportunity to review the above-referenced agreement and list of eligible business classifications, copies of which are attached.

Based upon my review of the attached documents, I am advising our Rates and Forms Division of my view that this trust may be considered an "employer" under 29 USCS 1002(5) for purposes of the OIC's review of health carrier filings pertaining to the trust.

Very truly yours,

A handwritten signature in cursive script that reads "Charles Brown".

Charles Brown
Acting Deputy Legal Affairs

Enclosures

Cc: Beth Berendt

AGRICULTURE INDUSTRY HEALTH TRUST AGREEMENT

THIS AGRICULTURE INDUSTRY HEALTH TRUST AGREEMENT (this "Agreement") is entered into by and among the initial Participating Employers (the "Agriculture Group") as the Sponsor, and the undersigned Trustees.

ARTICLE I.

DECLARATION OF TRUST

1.01 Purpose. The purpose of this Agreement is to provide a trust under which the Eligible Employers may make certain Welfare Benefits available for their Participants, through group insurance or otherwise.

1.02 Establishment of Trust. The Agriculture Group establishes this trust as of October 1, 2014, to be known as the Agriculture Industry Health Trust (the "Trust"), which is intended to be a tax-exempt trust under Internal Revenue Code section 501(c)(9). The Trustees, who have signed this Agreement, hereby accept the appointment as Trustees for the Trust and agree to be bound by the terms and conditions of this Trust Agreement and the Participation Agreements attached hereto as Exhibit A and incorporated by reference herein.

1.03 Term. This Trust Agreement shall be effective as of October 1, 2014, and shall continue indefinitely, unless terminated in accordance with Section 8.01.

ARTICLE II.

DEFINITIONS

2.01 "Administrator and Named Fiduciary" of any Plan provided under the Trust means that person or persons selected by the Participating Employer in the Participation Agreement to exercise the authority granted pursuant to Article VII, unless otherwise indicated by the Participating Employer.

2.02 "Eligible Employer" means employers in Washington State, provided such employer has as its principal business purpose engaging in the agriculture industry and is included in the industry classifications described in Exhibit B, attached hereto and incorporated by reference herein.

2.03 "Employee" means any individual employed by an Eligible Employer (or who was so employed, but who is subsequently laid off, is terminated or retires).

2.04 "Insurer(s)" means the insurance carrier or carriers selected by the Trustees to issue policies to the Trust to insure benefits provided under a Plan.

2.05 "Participant(s)" means Employees, their dependents and retirees who are specified as eligible for Welfare Benefits by a Participating Employer, pursuant to Article III.

2.06 "Participation Agreement" means the Participation Agreement between any Eligible Employer and the Trust substantially in the form of Exhibit A attached hereto and incorporated by reference.

2.07 "Participating Employer" means any Eligible Employer that is an employer of common-law employees and has executed a Participation Agreement.

2.08 "Plan" means any employee welfare benefits plan created and administered for the benefit of Participants which provides Welfare Benefits covered by this Trust.

2.09 "Sponsor" means the Agriculture Group.

2.10 "Trustee(s)" means those persons appointed in accordance with Article VI, and their duly appointed or elected successors.

2.11 "Welfare Benefits" means the employee welfare benefits specified by the Trustees from time to time, including but not limited to medical, dental, surgical or hospital care or benefits in the event of sickness, accident, disability, death or unemployment. Such Welfare Benefits shall be evidenced either by contracts of insurance or, with respect to uninsured plans, if any, by plan documents.

ARTICLE III.

PARTICIPATING EMPLOYERS AND PARTICIPANTS

3.01 Eligible Employers. Any Eligible Employer that is an employer of common-law employees may elect to become a Participating Employer hereunder by executing a Participation Agreement. In such Participation Agreement, the Eligible Employer will agree to be bound by the terms and conditions of this Agreement, to make contributions to pay for Welfare Benefits to be provided for its Participants, and to adopt such Welfare Benefits. The Welfare Benefits to be provided and the persons entitled to them shall be as selected by the Participating Employer in its Participation Agreement, and subject to its terms.

3.02 Participants. Subject to applicable insurance laws and regulations and the rules of the Trust, each Participating Employer shall select those of its Employees, dependents and/or retirees who shall be eligible for Welfare Benefits. Generally, all Employees or all Employees of a class or classes determined by conditions pertaining to their employment must be eligible to participate in the particular Welfare Benefits selected by the Participating Employer. Eligibility requirements and other classifications need not be uniform among the various Participating Employers.

3.03 Information. Each Participating Employer agrees to provide such information, including payroll information and data, to the Trust regarding such Participating Employer's Participants and Employees of any control group in which any Participating Employer may be a member, as shall be determined by the Trustees to be necessary for administration of the Trust and the Plans. Each Participating Employer shall provide such information at such times and in such manner as the Trustees or their designees may specify from time to time.

ARTICLE IV.

BENEFITS AND CONTRIBUTIONS

4.01 Welfare Benefits. Welfare Benefits shall be provided directly from the assets of the Trust or by the purchase of group policies of insurance in accordance with this Agreement. No Welfare Benefits will be paid directly by any Participating Employer, and no Participant shall be entitled to any benefits other than those provided by the Trust assets or the policies of group insurance. Participating Employers may adopt some or all of the Welfare Benefits, as evidenced in its Participation Agreement.

4.02 Payment of Contributions. Each Participating Employer shall pay to the Trust the amount of contributions required to maintain Welfare Benefits coverage for such Participating Employer's Participants in the amounts and at the times described in the Participation Agreement. Depending on the Plan, contributions may be made wholly by the Participating Employer, partially by the Participating Employer and partially by Participants, or wholly by the Participants.

ARTICLE V.

SPONSOR

5.01 Powers and Duties of the Agriculture Group as Sponsor. The Agriculture Group shall act as Sponsor of this Trust. Each Participating Employer by execution of the Participation Agreement does thereby delegate the powers and duties of the Sponsor to the Trustees, any of which may be delegated at the discretion of the Trustees to the Administrator and Named Fiduciary.

ARTICLE VI.

TRUSTEES

6.01 Number, Nomination, and Election. There shall be three (3) Trustees. Each Trustee must be a principal in a Participating Employer. The Trustees shall be elected by a majority of the Participating Employers. Candidates for election as Trustee may be nominated by the Administrator and Named Fiduciary; by a majority of the incumbent Trustees (excluding those in the last year of their term); or by written petition submitted to the Administrator and Named Fiduciary and signed by the lesser of 10% of the Participating Employers or ten (10) Participating Employers. Each Trustee shall acknowledge, in writing, his or her acceptance of appointment as a Trustee.

6.02 Terms of Trustees.

(a) The term of the Trustees shall be three (3) years. At the end of a Trustee's term the Trustee may be nominated to serve an additional term as set forth in Section 6.01, subject to election by a majority of the Participating Employers. The terms of the Trustees are, and shall continue to be, staggered so that their terms of appointment do not expire in the same year.

(b) If a Trustee is removed or resigns prior to the expiration of his or her term of appointment, a successor Trustee shall be nominated by the Administrator and Named Fiduciary or by written petition submitted to the Administrator and Named Fiduciary and signed by the lesser of 10% of the Participating Employers or ten (10) Participating Employers, subject to confirmation by a majority vote of the Participating Employers, to serve out the remainder of the term of the Trustee who was removed or resigned; upon expiration of such term, the successor Trustee may be nominated as any candidate for election to serve an additional term, subject to election by a majority of the Participating Employers.

6.03 Resignation of a Trustee. A Trustee may resign at any time by giving thirty (30) days' notice in writing to the Administrator and Named Fiduciary and the Trustees, after which that Trustee's position shall become non-voting for the remainder of the thirty (30) days. The resigning Trustee and the other Trustees may, in a writing signed by or on behalf of both parties, waive the notice required by this provision. A successor shall be appointed as provided by Section 6.02(b).

6.04 Removal of a Trustee. The Administrator and Named Fiduciary shall remove a Trustee by delivery of a writing to the Trustees notifying them of both the proposed removal of the Trustee and a majority vote approving the Trustee removal by the Participating Employers. Alternatively, the Participating Employers shall remove a Trustee by delivery to the Administrator and Named Fiduciary and the Trustees of a writing signed by Participating Employers whose contributions during the preceding twelve (12) months totaled more than 50% of all contributions. The removal of any Trustee shall be effective thirty (30) days after receipt of the writing by the Trustees, after which that Trustee's position shall become non-voting for the remainder of the thirty (30) days. A Trustee may be removed for any reason, including but not limited to missing three consecutive Trustee meetings without an approved absence by the chair of the Trustees. A successor shall be appointed as provided by Section 6.02(b).

6.05 Use of Contributions. The Trustees shall have all necessary power to receive contributions hereunder to pay reasonable expenses of the Trust and to pay Welfare Benefits and premiums on the group insurance policies owned by the Trust. The contributions shall be deposited in one or more banks or similar financial institutions supervised by the United States or a state pending the allocation of monies for Welfare Benefits or otherwise permitted hereunder. The Trust shall not be required to pay interest on Participating Employer or Participant contributions to the Trust. In the event that any Participating Employer shall fail or refuse to pay the Participating Employer's or the Participants' contributions due to the Trust on a timely basis, the Trustees shall notify the Insurer(s) to cancel and terminate the coverages afforded the Participating Employer's Participants, and the Participating Employer shall be notified accordingly by the Insurer(s) and/or the Trustees.

6.06 Investment. From time to time funds held by the Trustees may exceed the immediate needs of the Trust. Additionally, dividends, returns of premium or other Welfare Benefits received from Insurers under the provisions of any contract of insurance shall become a part of the Trust assets and shall be subject to these provisions. Any excess funds held by the Trustees shall be used and controlled as follows:

(a) The Trustees may apply the same or any portion thereof to the payment of reasonable administration expenses and/or premiums on insurance policies held by the Trust in lieu of increasing required contributions hereunder; and

(b) The Trustees may invest any of such funds as provided by an investment policy adopted by the Trustees. Such investment policy shall generally favor, but not necessarily require, investments in obligations of the United States government, of any state or political subdivision thereof, obligations of solvent United States corporations, savings deposits or time certificates of deposit in any federally-insured bank (including a party in interest) and similar obligations, provided, however, that any such investment shall have a maturity date not exceeding three (3) years from the date of purchase.

6.07 Title. Title to all assets of the Trust shall be maintained in the name of the Trust, provided however, that for convenience in transferring negotiable securities, title may be held in the name of the Trust's custodian bank or nominee.

6.08 Record Keeping and Accounts. The Trustees or their delegates shall keep and maintain true and accurate books of account and records reflecting all sums received and all sums expended, together with all necessary and pertinent information connected with their administration of the Trust. Such books and records shall be subject to audit by the Administrator and Named Fiduciary as directed by the Trustees or, if required by law, to audit by an independent public accountant. Such books and records shall also be open to inspection by any Participating Employer upon demand at all reasonable times during business hours. Within ninety (90) days after the end of the Trust's year, the Trustees shall furnish to the Administrator and Named Fiduciary a written statement of account setting forth all receipts and disbursements.

6.09 Standard of Care. The Trustees shall discharge their duties with respect to the Trust solely in the interests of Participants and their beneficiaries, and

(a) For the exclusive purpose of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of the Trust;

(b) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims;

(c) To the extent the Trustees exercise their investment discretion pursuant to Section 6.06, by diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(d) In accordance with the terms of this Trust to the extent such terms are consistent with the Employee Retirement Income Security Act of 1974, as amended.

6.10 Compensation of Trustees. The Trustees shall be reimbursed for all reasonable expenses incurred by them in the administration of the Trust, which shall be paid from the Trust.

6.11 Settlement of Account. Upon resignation or removal of a Trustee, such Trustee shall have the right to a settlement of the Trustee's account which, unless the parties are unable.

to agree, shall be accomplished by agreement between such Trustee and the Administrator and Named Fiduciary. Upon such settlement, all right, title and interest of the Trustee in the assets of the Trust and all rights and duties under this Agreement shall vest in the successor trustee, and thereupon all future liability of the Trustee shall terminate; provided however, that the Trustee shall execute, acknowledge and deliver all documents and written instruments which are necessary to transfer and convey the right, title and interest in the Trust assets and all rights and privileges to the successor.

6.12 Powers and Duties of the Trustees. The Trustees shall have all powers that are necessary or desirable in administering the Trust and any Plan, including but not limited to the following:

- (a) Approve premium rates, select and change Insurers;
- (b) Select and retain consultants and advisors to assist in Welfare Benefit design and improvement;
- (c) Select and engage administrative assistance to maintain Plan records, collect and remit premiums, prepare and disseminate information and similar functions;
- (d) Select and engage all other service providers necessary or desirable for administration of the Trust, including without limitation third party administrators, custodians, actuaries, attorneys, accountants, consultants, advisors, investment managers and other service providers;
- (e) Establish procedures, requests for proposals, and criteria for selection and acceptance of service providers;
- (f) Enter into arrangements for the provision of services, including the execution of contracts and other documents and payment from the Trust of reasonable fees, expenses and compensation;
- (g) Establish and carry out a funding policy for the Trust. In establishing such policy, the short-term and long-term liquidity needs of the Trust shall be determined, to the extent possible, by considering among other factors the due date of premiums for insurance policies, Employee turnover, and contributions to be made by Participating Employees and Participants;
- (h) Engage an independent qualified public accountant and authorize such accountant to conduct an annual financial examination of the Trust. The costs of such financial examination shall be paid by the Trust;
- (i) Prepare and file with the Department of Labor the annual reports regarding the Trust, to the extent required by law. The costs of such audit and reports shall be paid by the Trust;
- (j) Audit the payroll books and records of a Participating Employer, either directly or through a qualified public accountant at the expense of the Trust;

(k) Act upon any written letter, report, certificate or other document submitted by a Participating Employer or Participant, if such document appears to be genuine and to be signed by the proper person or persons. The Trustees shall be under no duty to make any investigation or inquiry as to any statement contained in any such document;

(l) Prosecute and defend all legal actions, claims and proceedings initiated against the Trust or the Trustees relating to the Trust, and compromise, settle or release all such actions on such terms or conditions as the Trustees may determine;

(m) Select and engage other trustees and custodians, to safekeep assets and act in similar capacities, and pay reasonable fees and expenses from the Trust;

(n) Establish contribution levels required to maintain various coverages and a fair share of Trust expenses, and change the same from time to time in its discretion;

(o) Authorize disbursements from the Trust;

(p) Generally interpret the Trust and promulgate rules and regulations designed to result in consistent interpretation and administration; and

(q) Do all acts, take all actions and exercise all rights and privileges that it deems necessary to administer and carry out the purposes of this Trust.

Provided, however, that Participating Employers whose contributions during the preceding twelve (12) months totaled more than 50% of all contributions may direct the Trustees method and manner of conducting any particular action by written instruction delivered to the Trustees. Any such instruction shall provide a reasonable time for the Trustees to act, taking into account all facts and circumstances.

ARTICLE VII.

OTHER ADMINISTRATION

7.01 Powers and Duties of Plan Administrator and Named Fiduciary. The Administrator and Named Fiduciary of each Plan under the Trust shall have the authority to control and manage the operation and administration of such Plan. Each Participating Employer shall by execution of the Participation Agreement delegate to the Trustees certain specific responsibilities and functions described in Articles V and VI. Any function or responsibility not specifically delegated or allocated to the Trustees with respect to the administration of any Plan under the Trust shall be retained by the Participating Employer and carried out by the Administrator and Named Fiduciary. Without limiting the generality of the foregoing, the Administrator and Named Fiduciary of each Plan shall have the following responsibility and authority with respect to such Plan:

(a) Determining all questions relating to eligibility of Participants;

(b) Identifying Participants and enrolling them in the Plan, and notifying the Trustees accordingly;

- (c) Deleting Participants from the Plan's enrollment when they become ineligible;
- (d) Computing and certifying to the Trustees the contributions necessary to provide coverages elected;
- (e) Preparing and disseminating to all Participants plan documents, summary plan descriptions, summary annual reports, financial statements, administration and other reporting forms and disclosures in such form and within such time periods as is required by law, and filing such reports and returns as are required by law;
- (f) Distributing to all Participants certificates of insurance as required by law;
- (g) Initiating claim procedures, including notification to the Trustees and/or Insurers, and providing the necessary forms to the claimant, and assist in the completion of such forms and submitting them to the Insurers and/or Trustees;
- (h) Enrolling all eligible Participants and assisting in communicating Welfare Benefits and responding to Participant inquiries concerning claims and coverage;
- (i) Maintaining all necessary records for the administration of the Plan other than those which the Trustees or their delegates have specifically agreed to maintain; and
- (j) Interpreting of the provisions of the Plan and publication of such rules for regulation of the Plan as are deemed necessary and not inconsistent with the terms of this Agreement, the policies of insurance, or rules and regulations implemented by the Trustees.

7.02 Allocation and Delegation of Responsibility. The Administrator and Named Fiduciary of a Plan may delegate in writing to persons other than such Administrator and Named Fiduciary, the responsibility and authority to carry out fiduciary responsibilities of the Plan.

7.03 Bonding. Where required by law, the Administrator and Named Fiduciary of the Plan, and every person handling Plan funds, shall be bonded. It shall be the obligation of the Administrator and Named Fiduciary to insure compliance with the applicable bonding requirements. The Trustees shall not be responsible for ensuring that bonding requirements (other than those applicable to the Trustees) are complied with, and all of such responsibility is specifically allocated to the Administrator and Named Fiduciary of the Plan.

7.04 Claims Procedure. Procedures for claims review and appeal of denied claims under a Plan shall be as set forth in the applicable insurance contracts and summary plan descriptions for such Plan. There shall be no recourse to the Trust or the Trustees with respect to any such claims.

7.05 Funding Policy. The Administrator and Named Fiduciary shall establish and carry out a funding policy designed to assure the prompt payment of contributions to the Plan.

7.06 Standard of Care Imposed Upon Administrator and Named Fiduciary. The Administrator and Named Fiduciary for the Plan shall discharge its duties with respect to the Plan solely in the interest of the Participants and their beneficiaries, and

(a) For the exclusive purpose of providing benefits to Participants and their beneficiaries and defraying reasonable expenses of the Plan;

(b) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; and

(c) In accordance with the Plan provisions to the extent such provisions are consistent with the Employee retirement Income Security Act of 1974, as amended.

ARTICLE VIII.

MISCELLANEOUS

8.01 Amendment and Termination of Trust. This Trust may be amended or terminated by written resolution adopted by a majority of Trustees or by a writing delivered to the Trustees and signed by Participating Employers whose contributions during the preceding 12 months have totaled more than 50% of all contributions; provided, however, that no such resolution shall:

(a) Divert the Trust assets or any part thereof to a purpose other than as set forth in this Agreement;

(b) Relieve the Trustees from liability for acts in violation of the standard of care hereby imposed; or

(c) Modify Section 8.02 relating to Limitation of Rights to Trust fund.

Notice of any amendment or modification shall be promptly forwarded by the Trustees to the Administrator and Named Fiduciary, each Participating Employer and to any Insurer, and on request a copy shall be furnished to any such person.

8.02 Limitation of Rights to Trust Fund. Neither the Participating Employers, Participants, nor any other person shall have any right, title or interest in or to the Trust assets except as expressly provided herein; provided, however, that nothing herein contained shall impair or derogate from the right of any Participant or any person claiming by or through such Participant to the benefits provided by group policies purchased by the Trustees. No part of the assets or income of the Trust shall be used for or diverted to purposes other than for the exclusive benefit of Participants and their beneficiaries. No money, property or interest of any nature whatever in the Trust, the group insurance policies or any benefits or monies payable therefrom, shall be subject in any manner by any Participating Employer or Participant or beneficiary or person claiming through any of them to anticipation, garnishment, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void to the extent allowed by law.

8.03 Disposition of Assets upon Termination of Trust. Upon dissolution or termination of this Trust, all assets remaining in the Trust after payment of all expenses incidental to the dissolution or termination shall be used to provide benefits for which this Trust was established. This arrangement shall continue until all funds in the Trust are exhausted.

8.04 Withdrawal from Trust. Any Participating Employer may withdraw from participation in the Trust by giving thirty (30) days written notice of intent to withdraw to the Trustees. With respect to insured benefits such withdrawal shall be effective as of the day immediately preceding the premium due date under the group insurance policy or policies insuring such Participating Employer's Participants next following receipt of such notice by the Trustees. Upon withdrawal, the withdrawing Participating Employer and its Participants shall have no further rights whatever to the assets of the Trust or to any insurance provided thereunder, except as may otherwise be provided in the group insurance policy or policies which insured such Participants.

8.05 Termination of Participating Employer. The Trust shall be entitled to terminate, or decide not to renew, any Participating Employer from participation in the Trust upon the occurrence of any of the following events:

- (a) Nonpayment of contributions;
- (b) Fraud or other intentional misrepresentation of material fact by the Participating Employer;
- (c) Noncompliance with material provisions of the Trust;
- (d) The Trust ceases to offer any coverage in a geographic area; or,
- (e) There is no longer any individual enrolled through the Participating Employer who lives, resides, or works in the service area of a network plan offered by the Trust and the Trust applies this paragraph uniformly without regard to the claims experience of Participating Employer or any health status-related factor in relation to such individuals or their dependents;

provided, however, that the Participating Employer shall have received written notice of such event and failed to cure within ten (10) days after receipt of such notice.

8.06 Indemnity. Each Participating Employer, by execution of the Participation Agreement, does thereby indemnify and hold harmless the Trustees and the members of the Agriculture Group (the Indemnitees) from any and all loss, damages or liability incurred in the course and scope of their respective duties as described in this Agreement, except those resulting from the Indemnitees' gross negligence, willful misconduct or dishonesty. In the event that the Indemnitees are made a party to any legal proceeding of any kind or nature arising out of their respective duties hereunder, directly or indirectly, the Participating Employers jointly agree to indemnify and hold the Indemnitees harmless from any and all liability and expenses (including reasonable attorneys' fees) resulting therefrom. Any damages assessed or expenses required to be paid or incurred by reason of this indemnification shall be borne equally by the Participating Employers, unless it shall be determined that the damages, expenses or losses incurred result

directly from the actions or inactions of a specific Participating Employer, its employees or agents. In such event, that specific Participating Employer shall be primarily responsible for payment, with other Participating Employers being responsible only in the event of the specific Participating Employer's inability by reason of financial insolvency to respond.

8.07 Fidelity Bond. The Trustees, the Administrator and Named Fiduciary shall, where required by law, be bonded by a duly licensed corporate surety covering all misappropriations of funds and other assets. Such bond shall be in the amount required by law, and the premiums on such bond shall be paid by the Trustees from the Trust.

8.08 Fiduciary Insurance. The Trustees, the Administrator and Named Fiduciary, and any other officers or employees exercising discretion in the management of the Plan or its assets shall be entitled to fiduciary insurance. The cost of such insurance shall be borne by the Trust, but such insurance shall permit recourse by the Insurer against the fiduciary. The cost of any nonrecourse endorsement shall not be borne by the Trust.

8.09 No Legal or Equitable Right. Neither the establishment of the Trust nor the payment of any Welfare Benefits shall be construed as giving to any Participant any legal or equitable right against the Participating Employers, the Trustees, the Administrator and Named Fiduciary, or any fiduciary, except as provided in this Agreement. The terms of employment of any Employee shall be in no way affected by this Trust, nor shall this Trust be construed to guarantee or extend the employment of any Employee.

8.10 Severability; Construction. If any provision of this Trust is held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of this Trust, but this Agreement shall be construed and enforced as if such provisions had never been included. Whenever used in this Agreement, the masculine gender shall include other genders as well, and singular usage shall include plural usage, as the context may require. Headings and numbers in this Trust are included for convenience of reference only.

8.11 Governing Law. This Trust shall, to the extent applicable, be construed and enforced in accordance with the Employee Retirement Income Security Act of 1974, as amended, and the laws of the State of Washington.

8.12 Entire Agreement. This Agreement and the Participation Agreements constitute the entire agreement between the Participating Employers and the Trustees, and shall not be amended except in writing between the parties hereto.

EXECUTED this _____ day of _____, 2014.

TRUSTEES:

Exhibit A – Participation Agreement

Exhibit B – Industry Classifications

EXHIBIT A
PARTICIPATION AGREEMENT

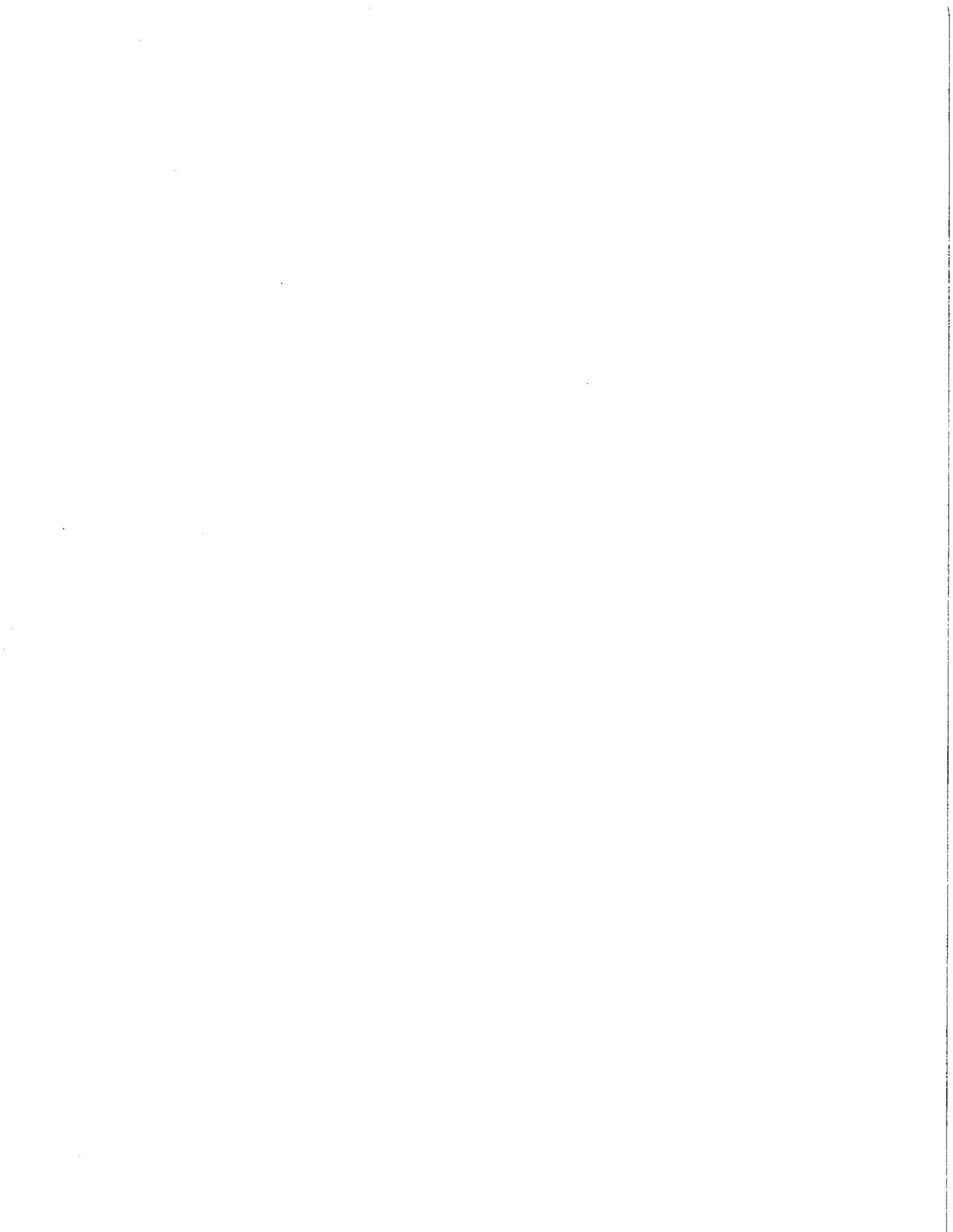
EXHIBIT B
INDUSTRY CLASSIFICATIONS

EXHIBIT B

AGRICULTURE INDUSTRY CLASSIFICATIONS

Shellfish Farming
Other Fish Farming
Beans and Legume Farming
Oilseed Farming
Pea Farming
Wheat, Grain, Rice, Corn Farming
Vegetable Farming
Fruit farming
Grape growing
Berry farming
Nut farming
Mushroom farming
Other food crop farming
Nursery and Tree Production
Floriculture Production
Tobacco Farming
Cotton Farming
Sugarcane Farming
Hay Farming
Sugar Beet Farming
Beef Cattle Ranching and Farming
Cattle Feedlots

Dairy Cattle and Milk Production
Hog and Pig Farming
Poultry farming
Sheep farming
Goat farming
Hatcheries
Apiculture
Animal raising and production
Timber
Soil preparation
Crop harvesting
Planting
Cultivating
Farm Labor
Brew production
Wine production
Whiskey distilleries
Sawmills
Preservation
Regulation of farming
Packaging
Loading



MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

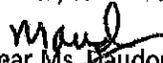


Phone: (360) 726-7000
www.insurance.wa.gov

OFFICE OF
INSURANCE COMMISSIONER

October 28, 2014

Maud Daudon, President & CEO
Seattle Metropolitan Chamber of Commerce
1301 Fifth Avenue, Suite 1500
Seattle, WA 98101-2632


Dear Ms. Daudon and colleagues:

Thank you for your October 8, 2014 letter, sharing with me the important work the Seattle Metropolitan Chamber members have done for the community and for Washington state. I appreciate the value that organizations such as yours provide to employers in addition to offering health plans, including education, leadership and networking opportunities.

I also understand your concerns about the impact of federal health care reform on the Seattle Chamber's ability to provide large-group coverage to member-employers, regardless of size. As you know, in 2011, I began working to provide clear direction to insurance carriers and their clients on the upcoming changes in federal law. That included providing guidance to associations like the Chamber that wished to pursue the ERISA exemption.

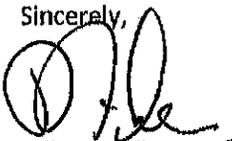
Your organization in particular has made substantial structural changes to satisfy the ERISA standards. My office has been working closely with the Chamber since 2012 on issues including industry code groupings and trust documents. However, even then we understood that the central issue was whether the reorganization of the Chamber into several separate industry groups with dedicated trusts would overcome the Bend Chamber of Commerce decision. As I shared with you in an email dated July 31, 2012, the U.S. Department of Labor's Susan Rees shared that she did not believe the Seattle Chamber was capable of satisfying ERISA's definition of "employer" even with the proposed structural changes.

We have continued to seek a more formal written response from the U.S. Department of Labor. Unfortunately, it has not yet been provided.

I hope our recent meeting on October 1 was useful to you in clarifying the information we need to complete our review of your association status. My staff continues to review the documentation you provided, and decisions will be communicated regarding the plans in the next few weeks.

Thank you again for your concern and interest.

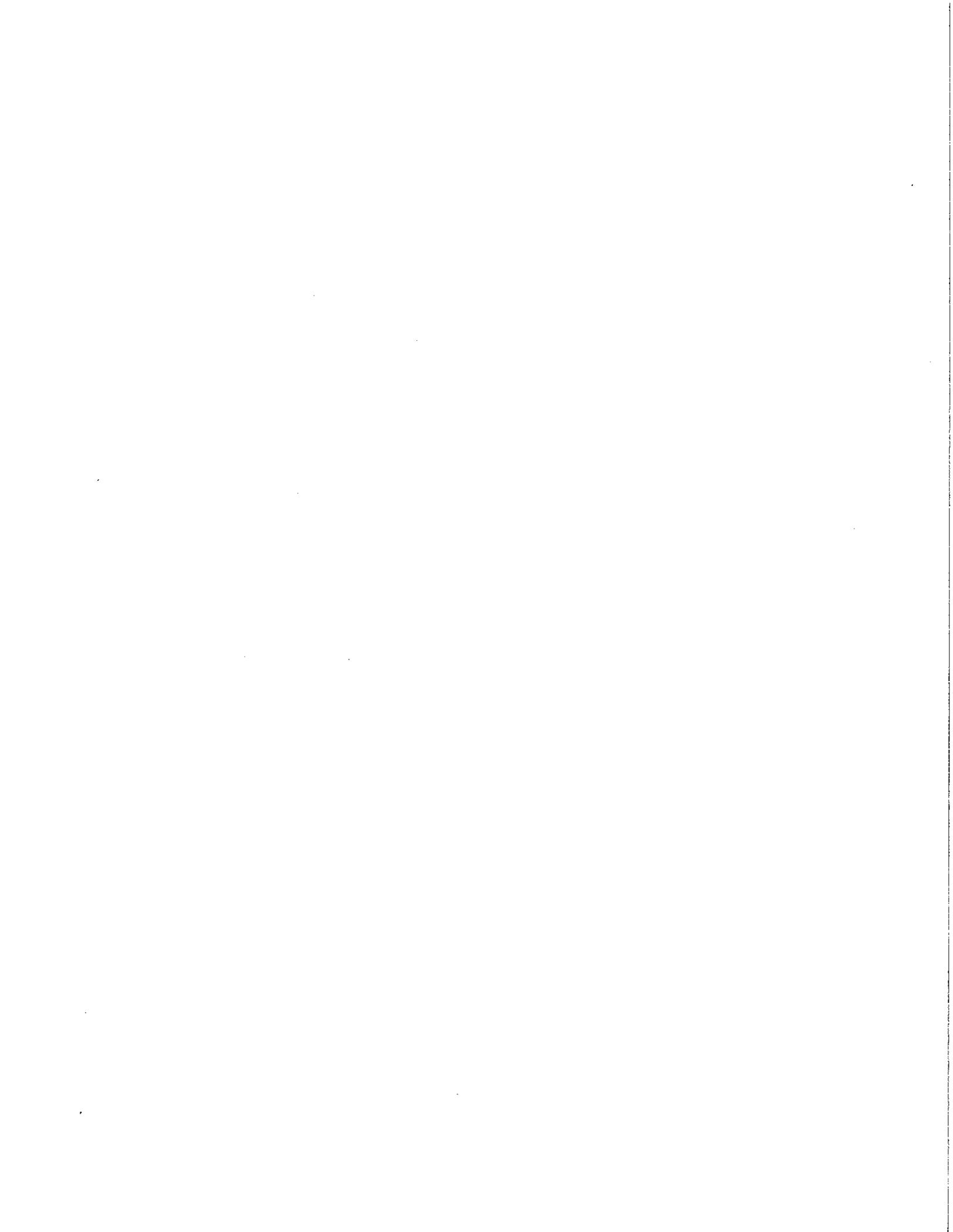
Sincerely,

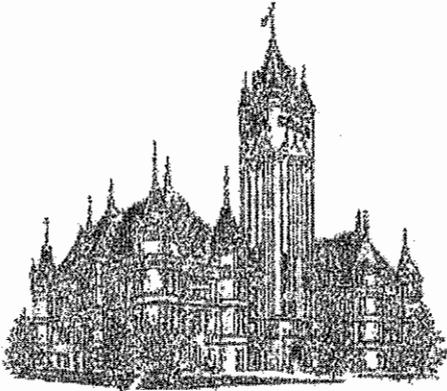


Mike Kreidler
Insurance Commissioner

Mailing Address: P. O. Box 40255 • Olympia, WA 98504-0255
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501







SPOKANE COUNTY COURT HOUSE

Superior Court of the State of Washington
for the County of Spokane

Department No. 4

Kathleen M. O'Connor

Judge

Ashley Koedding
Judicial Assistant

Mark Sanchez
Court Reporter

1118 W. BROADWAY AVE, SPOKANE, WA 99260-0350
(509) 477-4707 • FAX: (509) 477-5714
dept4@spokanecounty.org

August 27, 2007

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ASSOC INDUSTRIES VS STATE OF WA OFC OF INS COMMISSIONER ETAL
No. 2007-02-00592-1

Dear Counsel:

Please find the enclosed Memorandum Decision on Plaintiffs' Motion for Summary Judgment and the Defendants' Cross-Motion for Summary Judgment. I have emailed a courtesy copy to each of you and the decision will be filed for record today.

Please don't hesitate to contact me if I can be of any further assistance.

Sincerely,

Ashley Koedding, Judicial Assistant to
Kathleen M. O'Connor
Superior Court Judge

ak
Enclosure
Cc: legal file

RECEIVED

AUG 29 2007

ASSOC. IND.

COPY

ORIGINAL FILED

AUG 27 2007

THOMAS R. FALLOQUIST
SPOKANE COUNTY CLERK

1
2 SUPERIOR COURT OF WASHINGTON
FOR SPOKANE COUNTY

3 ASSOCIATED INDUSTRIES OF THE INLAND
4 NORTHWEST, a Washington Non-Profit Corporation;
5 THE ASSOCIATION OF WASHINGTON
BUSINESSES, a Washington Corporation,

6
7 Plaintiffs,

8 vs.

9 STATE OF WASHINGTON OFFICE OF THE
10 INSURANCE COMMISSIONER; MIKE KREIDLER,
Washington State Insurance Commissioner,
11 Defendants.

NO. 2007-02-00592-1

MEMORANDUM DECISION

12
13
14 This matter came before the court for oral argument on June 8, 2007, on the Plaintiffs'
15 Motion for Summary Judgment and the Defendants' Cross-Motion for Summary Judgment.
16 Both sides are asking the court for a ruling regarding the validity of Technical Assistance
17 Advisory T06-07 (TAA 06-07) issued by the Office of the Insurance Commissioner (OIC) on
18 December 15, 2006.

19
20 Both sides agree that this court has jurisdiction to decide the issue either under the
21 Uniform Declaratory Judgment Act, RCW 7.24, or the Administrative Procedure Act, RCW
22

23 RECEIVED

24 AUG 29 2007

25 ASSOC. IND.
26

1 34.05. Both sides also agree that summary judgment is the proper procedure to determine the
2 validity of TAA 06-07.
3

4 Prior to oral argument the Plaintiffs' Motion to Strike a Thurston County Superior Court
5 decision was granted as it constituted an "unpublished" decision.
6

7 FACTS

8 The facts are not in dispute. Plaintiffs are independent business associations
9 which serve employer members. They make health insurance plans available to their small
10 employer members. They are not insurance companies but the health plans they offer to their
11 members are subject to OIC approval.
12

13 In 1995 the legislature enacted RCW 48.44.023(3) and RCW 48.44.024(2). RCW
14 48.44.024(2) is a statutory exception to RCW 48.44.023(3). Since that time Plaintiffs have
15 offered insurance plans to their small employer members where the premium for individual
16 employer members has been calculated using "experience rating". That is, the premium takes
17 into consideration each employer's claims experience and aggregated health history. This
18 method is an exception to the community rating pooling requirements of RCW 48.44.023(3).
19

20 On December 15, 2006, the Office of the Insurance Commissioner issued TAA 06-07.
21 This advisory indicated it was the OIC position that "(A)ny rating based on the health
22 information of an individual member employee was prohibited."
23

24 STATUTES/TAA 06-07

25 RCW 48.44.023(3):

26 (3) Premium rates for health benefit plans for small employers a defined in this section shall be
27 subject to the following provisions:

28 (a) The contractor shall develop its rates based on an adjusted community rate and may
29 only vary the adjusted community rated for:

- 1
2
3
4
- (i) Geographic area;
 - (ii) Family size;
 - (iii) Age; and
 - (iv) Wellness activities.

5 (i) Adjusted community rates established under this section shall pool the medical
6 experience of all groups purchasing coverage.

7 RCW 48.44.024(2):

8 (2) Employers purchasing health plans provided through associations . . . are not small
9 employers and the plans are not subject to RCW 48.44.023(3).

10 Technical Assistance Advisory T 06-07:

11 The Office of Insurance Commissioner (OIC) is issuing **Technical Assistance Advisory (TAA)**
12 **T - 06-07** to offer guidance on the nondiscrimination requirements that health insurance carriers
13 must follow when rating member employers of association health plans (AHPs). The TAA
14 applies to all AHP contracts issued or renewed on or after January 1, 2008.

15 Association health plans provide an important alternative for obtaining employer sponsored
16 health insurance. Some plans, however, unlawfully discriminate against their members based on
17 their health. Approximately 7 percent of association plans are in violation of the law by using
18 health information to set rates for individual member employers. Rates must be based on the
19 health of the *entire association group*. Any rating based on the health information of an
20 individual member employer is prohibited. (emphasis in original)

18 ISSUES

- 19
20
21
1. Did the issuance of TA 06-07 violate APA rulemaking requirements?
 2. Did the OIC violate the Washington State Constitution when it issued TA 06-06?

22 1. Did the issuance of TA 06-07 violate APA Rulemaking Requirements?

23 TA 06-07 is not a rule. In oral argument defense counsel conceded that it could not be
24 enforced as a rule. TA 06-07 was issued under RCW 34.05.230(1). The statute permits a state
25 agency to "advise the public of current opinions, approaches and likely courses of action" the
26 agency may take in the future. It is advisory only. It is not subject to the rulemaking
27 requirements of the APA.
28
29

1 2. Did the OIC violate the Washington State Constitution when it issued TA 06-06?

2
3 The basis for this claim by the Plaintiffs is their view that the OIC has violated the
4 separation of powers doctrine by promulgating TA 06-07. In substance TA 06-07 treats the
5 entire association as the group. Interestingly, both sides believe the language of RCW
6 48.44.023(3) and 48.44.024(2) is unambiguous and supports their diametrically opposing views.

7
8 The Plaintiffs approach the issue by emphasizing the fact that the legislature passed a
9 specific exemption to RCW 48.44.023(3). From the Plaintiffs' perspective, TA 06-07, in effect,
10 eviscerates the exception and now makes their plans subject to RCW 48.44.023(3). In their view
11 this violates the separation of powers because the OIC, as an executive agency, does not have the
12 power to enact legislation. Also, this particular legislation does not have a grant of authority
13 from the legislature to the agency to make changes.

14
15 The Defendants argue that their approach is supported by Federal law which defines
16 employer as "group or association of employers". CFR §144.103. How "group" is defined is
17 key to Defendants argument. Use of individual employer's rating as the "group" is
18 discriminatory and, arguably, a violation of Federal law. In addition, RCW 48.44.024, while
19 providing an exemption, does not address how the association plan should be rated,

20
21 Defendants suggest that if there was no exemption the small employers would be in the
22 small group rating pool, which is subject to community rating, instead of being pooled with their
23 association(s). Thus under the exemption the rate calculation would be based upon the
24 association's experience.

25
26 Both sides have asked the court to decide which interpretation of the statutes is correct.
27 What information I have on legislative intent as well as the statutes themselves indicates that the
28 legislature intended to exempt plaintiffs from RCW 48.44.023(3). The plaintiffs have been
29

1 operating under that understanding for over 12 years and have "experience rated" employer
2 members. The OIC did not officially disagree with plaintiff's interpretation until the
3 promulgation of TA 06-07 in December 2006.
4

5 This court's view is that the plaintiffs had a right to proceed on the statutory exemption.
6 Their interpretation of that exemption remained unchallenged for over a decade. While OIC can
7 issue technical advisories, they are not rules and are not enforceable. TA 06-07 amounts to a
8 major policy shift from the plaintiff's perspective. Policy is made by the legislature. The
9 legislature should make the decision. More than a decade has past since the legislation was
10 enacted, if the legislature believes it is time for a change they will act.
11

12 The Plaintiff's Motion For Summary Judgment is Granted.
13

14
15 Dated: August 27, 2007

16 
17 KATHLEEN M. O'CONNOR
18 SUPERIOR COURT JUDGE
19
20
21
22
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29