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December 17, 2014

Via U.S. Mail and email
hearings@oic.wa.gov

Office of Insurance Commissioner
Attention: Administrative Hearings Unit
PO Box 40255
Olympia WA 98504-0255

Re: Business Health Trust; Demand for Hearing and Stay of Hearing Pending
Federal Action

To Whom It May Concern:

Our office represents the Business Health Trust (“BHT”), a third party administrator of thirteen (13) industry-specific Health Benefit Trusts (“Trusts”), each sponsored by an ERISA Section 3(5) Employer. The Trusts received a letter dated October 28, 2014, in which the Office of Insurance Commissioner (the “OIC”) indicated that, based on advice received from the U.S. Department of Labor, the associations sponsoring the Trusts would not satisfy the ERISA definition of employer in order to qualify for large-group coverage under Washington state law. This letter also threatened action by the OIC to reject the rate filing by Premera Blue Cross (“Premera”) for the issuance of health care coverage to the Trusts at large group rates. A copy of this letter is attached.

On December 15, 2014, representatives of the Trusts and the ERISA Section 3(5) Employers met with Commissioner Kreidler to discuss this issue. The Commissioner again expressed doubt that the Trusts are sponsored by ERISA Section 3(5) Employers, a federal question subject to the exclusive jurisdiction of the federal court. The OIC again threatened to reject the rate filing by Premera.

On behalf of the Trusts, we hereby demand a hearing before an administrative law judge pursuant to RCW 48.04.010 et seq. to challenge the threatened action by the OIC on the grounds set forth below. However, it is also our demand that any such hearing be stayed pending the determination of the federal question – whether each of the Trusts is sponsored by an ERISA Section 3(5) Employer. As this issue is one involving the exclusive jurisdiction of the federal courts pursuant to ERISA Section 502(e)(1), we have, as of this date, filed a lawsuit in federal court (Western District of Washington) to resolve this issue and this issue is

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now pending before a federal judge. The federal lawsuit also seeks an injunction of all state proceedings and actions by the OIC.

It is our understanding that by virtue of this request and pursuant to RCW 48.094.020(1), the OIC's threatened action is automatically stayed pending the outcome of the requested hearing and the federal action. In the event that the OIC disagrees with our understanding that the applicable law provides for an automatic stay of the OIC's threatened action, the Trusts hereby request, pursuant to RCW 48.04.020(2), that the OIC grant a stay pending the resolution of the federal action, and any appeal, as well as any subsequent administrative action.

The OIC's threatened action is improper because it misconstrues applicable Washington state law to give the OIC authority to determine whether each of the Trusts is sponsored by an association or group of employers that meets the definition of "employer" for purposes of Section 3(5) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). WAC 284-170-958 provides that an issuer may not offer or issue an association health plan as a large group insurance contract unless, among other things, the association or member-governed group to whom the insurance is issued constitutes an employer under ERISA Section 3(5). The insurer must also make a good faith effort to ensure that the association that sponsors an insured product meets the applicable requirements. The OIC's threatened action, however misinterprets this provision to give it, rather than the insurer, the responsibility to make the determination of whether each of the Trusts is sponsored by an employer under ERISA 3(5). Furthermore, the OIC's threatened action indicates that it has taken upon itself to make a determination on an issue that is solely a federal question, and a matter that is not within the jurisdiction of the OIC.

If the OIC takes its threatened course of action, the rights of the Sponsor's employees to current coverage under the policies issued by Premera are adversely affected. Premera will not renew any insurance contract issued to the Health Benefit Trusts, sponsored by the Association, at the conclusion of the current policy term. Thus, the insurance coverage of employees and families of the Trusts' employer-members will be disrupted. The Trusts' member employers face increased cost as a result of the OIC's threatened action because any new coverage that may be obtained by the employers for their employees, or coverage issued under small group or individual policies, will likely come at increased cost to the employers or their employees.

As previously indicated, the Trusts request a stay of: (i) the requested hearing, and (ii) any further OIC action pending the resolution of the action filed against the OIC in the federal district court for the Western District of Washington on December 17, 2014. As discussed above, federal court is the proper venue for the determination of whether the Trusts' sponsoring member employers constitute an employer within the meaning of ERISA Section

3(5), a question of federal law. As discussed above, the federal action also enjoins and state administrative proceeding as well as any actions by the OIC.

Upon receipt of this letter, please contact me within three business days and indicate whether you agree to stay any action by the OIC as well as any administrative hearing, pending the resolution of the referenced federal proceeding, and any appeal thereof.

Yours truly,

Davis Wright Tremaine LLP



Richard J. Birmingham

cc: via US mail - Commissioner Mike Kreidler
via US mail - Maud Daudon, President & CEO, Seattle Metropolitan Chamber of
Commerce
AnnaLisa Gellerman, OIC Department of Legal Affairs annalisag@oic.wa.gov

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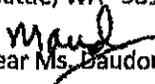
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OFFICE OF
INSURANCE COMMISSIONER

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

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