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Feb 27, 2015
OIC Hearings Unit

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**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In Re:

OIC NO. 15-0019

ASSOCIATION OF WASHINGTON
BUSINESS, et al.,

MOTION TO DISMISS FOR LACK
OF THREATENED AGENCY
ACTION, AND LACK OF
STANDING

Respondents.

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I. INTRODUCTION

Pure speculation is insufficient to form the basis for a threatened act. Under RCW 48.04.010, the mere possibility that the Washington State Insurance Commissioner (Commissioner) might disapprove a rate filing cannot constitute a “threatened act” that serves as the basis for a third party to demand a hearing. The Association of Washington Businesses and the AWB HealthChoice Employee Benefits Trust (collectively “AWB”) have not asserted any reasonable basis for their allegation that the Commissioner has threatened disapproval of Premera Blue Cross’s (Premera’s) large group health plan filings. Therefore, the Commissioner requests that AWB’s hearing demand be dismissed for failure to allege a “threatened act” and lack of standing.

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II. FACTS

The Commissioner has the duty to enforce the Insurance Code, Title 48 RCW, a broad responsibility which governs “all insurance and insurance transactions in the state. . .and all persons having to do therewith. . .”. RCW 48.01.020. This broad authority includes the duty to review rate and form filings submitted by health plan issuers, such as Premera. RCW 48.44.020¹; WAC 284-43-920. All issuers who wish to sell plans in Washington are

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¹ RCW 48.44.020 is specific to health care service contractors (HCSCs). Other sections of the Insurance Code vest the Commissioner with the same authority to review health plans filings submitted by other types of authorized health plan issuers. However, because Premera is registered as an HCSC, this brief will primarily cite to the provisions applicable to Premera.

1 required to submit those plans to the Commissioner for review. WAC 284-43-920. For large
2 group health plans, issuers can submit plans to the Commissioner for review, up to 30 days
3 after the plan has been sold. WAC 284-43-920(2). However, the Commissioner retains the
4 authority and obligation to review large group health plan filings, and to disapprove them if
5 they do not comply with the requirements of the Insurance Code (Title 48 RCW), or applicable
6 federal laws, such as the Patient Protection and Affordable Care Act (Affordable Care Act).
7 RCW 48.44.020(2)-(3); WAC 284-43-125.

8 As part of the review process, the Commissioner's staff engage in a collaborative, self-
9 contained, multi-disciplinary review of the rates, the insurance contracts, and the proposed
10 network. All health insurance carriers, or issuers, must submit all health plans for review in
11 System for Electronic Rate and Form Filing (SERFF). WAC 284-44A-020 and 050. Prior to
12 disapproval, carriers receive objections detailing shortcoming in the filing, and are given an
13 opportunity to provide additional information and correct deficiencies. All questions and
14 concerns concerning the rate and form filing submitted by an issuer are communicated to the
15 issuers as "objections" in SERFF. WAC 284-44A-090. All responses to those objections must
16 be made through SERFF. *Id.* The SERFF review process includes threshold questions, such as
17 the appropriate market for the health plan that has been submitted, a compliance review of the
18 forms that have been filed, and a technical actuarial review of the rating methodology
19 submitted by the issuer. *See* WAC 284-44A-050; WAC 284-44A-010(1), (4), and (8).

20 The record of the Commissioner's review, his objections, carrier's responses, and
21 supporting documentation exchanged between the Commissioner and the carrier, are all
22 contained in the SERFF filing. While third parties may have an interest in discussing the filing
23 as it is being reviewed, the only discussions relevant to the filing are contained in SERFF, and
24 only the Commissioner and the carrier have access to that system. The basis for approval or
25 disapproval of the filing, are contained in SERFF. By having this robust and collaborative
26 process, carriers are able to fix errors, provide additional detail to support their filings, and
27 better understand the Commissioner's rationale for his decisions. As a result of this robust

1 review, carriers are generally able to assert the filed rate doctrine in defense to certain types of
2 claims. *See McCarthy Fin., Inc. v. Premera*, 182 Wn. App. 1, 11, 328 P.3d 940, *review*
3 *granted*, 337 P.3d 325 (Wash. 2014). The process concludes when the Commissioner issues
4 either an approval, or a disapproval of the health plan filing. If the Commissioner determines
5 that a health plan filing cannot be approved because it does not comply with the law, the
6 Commissioner will disapprove the plan, and provide the issuer with the basis for his decision.

7 On January 13, 2015, AWB filed a letter demanding a hearing before this tribunal. At
8 that time, Premera Blue Cross (Premera), the carrier whose health plan filings are at issue, had
9 not even filed the large group health plans AWB alleges the Commissioner has threatened to
10 disapprove. Hearing Demand Letter dated January 13, 2015, (Hearing Demand) at 1
11 (“Premera Blue Cross (PBC) is expected to file AWB’s Health Choice insurance plan with the
12 Office of the Insurance Commissioner (“OIC”) on or around January 14, 2015.”). The “threat”
13 AWB seems to be alleging is actually a press release in which the Commissioner announced
14 the first approval of an association health plan for the 2014 plan year. OIC Press Release
15 No. 14-50, dated October 29, 2014². In that press release the Commissioner offers the general
16 explanation that he is reviewing all large group health plans filings that indicate they will be
17 sold to an association for 1) compliance with the definition of “employer” adopted from federal
18 law into state law, and 2) compliance with appropriate rating requirements. This is the only
19 alleged “threat” identified by AWB. *See* Hearing Demand at 1 (“In applying the referenced
20 “two part review,” the OIC has threatened to disapprove association health plans even though
21 they meet applicable laws under the facts and circumstances, which includes AWB.”).

22 The hearing demand does not identify any communications specific to Premera,
23 specific to Premera’s large group health plan filing, or specific to AWB, that otherwise
24 constitutes a “threat” to disapprove Premera’s AWB large group health plan filings for the
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27 ² At true and correct copy of this press release can be found at <http://insurance.wa.gov/about-oic/news-media/news-releases/2014/10-29-14.html>.

1 plans Premera has sold to AWB. To date, there have been no objections or determinations
2 made in Premera's SERFF filing.

3 III. ARGUMENT

4 The Commissioner must hold a hearing upon demand only if the entity demanding a
5 hearing is "aggrieved" by the Commissioner's "act, threatened act, or failure to act".
6 RCW 48.04.010(1)(b). First, AWB has wholly failed to allege facts sufficient to support its
7 claim that the Commissioner had "threatened" disapproval of Premera's large group health
8 plan filing at the time the hearing was requested. Moreover, as a matter of law,
9 RCW 48.44.020(2) only provides a hearing concerning the Commissioner's disapproval of a
10 rate and form filing *after* the filing has been disapproved. As a result, the Insurance Code does
11 not allow a pre-emptive stay of a final determination of a health plan filing submitted by an
12 HCSC. Granting an automatic stay to prevent a final determination in a health plan rate filing
13 creates absurd results that would prevent the Commissioner from fulfilling his statutory duties.

14 A. The Insurance Commissioner Has Not Threatened To Disapprove Premera's 15 AWB Rate Filing

16 As a general matter, the Commissioner is only required to hold a hearing if the entity
17 demanding a hearing is aggrieved by the Commissioner's act, threatened act, or failure to act.
18 RCW 48.04.010(1)(b). AWB claims standing on the grounds that the Commissioner has
19 threatened to disapprove Premera's health plan filing. The Hearing Demand fails to
20 demonstrate such a threat.

21 At the time AWB demanded a hearing, Premera still had not filed the large group
22 health plan filing at issue in this case. Hearing Demand at 1. Even now, the Commissioner
23 has not issued a single objection to Premera concerning its large group health plan filing for the
24 plans it has sold to AWB. Therefore, at the time AWB filed this demand for hearing, the
25 Commissioner could not have "threatened" to disapprove Premera's filing. Further, the basis
26 for this alleged threat is a press release announcing the *approval* of an association health plan
27 filed by United Health Care. OIC Press Release NO. 14-50, Hearing Demand at 1. While the

1 press release does give a very generalized description to the public of the Commissioner's
2 review process, it does not constitute an evaluation, determination, or threat to disapprove of
3 any health plan filing. The Commissioner's press release about the approval of a plan issued
4 by a different carrier, to a different association, two and a half months before Premera's plans
5 were even filed, cannot constitute a "threat" to AWB, or Premera. There simply is no credible
6 basis in the Hearing Demand to support an allegation that the Commissioner has "threatened"
7 to disapprove Premera's plans.

8 **B. The Plain Language Of The Rate And Form Review Statutes and the OIC's**
9 **Hearing Statute Limit Hearings Challenging Those Decision To After A Decision**
10 **Has Been Made**

11 Even if the United Health Care press release somehow constituted a threat to
12 disapprove Premera's health plan filings, the Commissioner's rate and form filing review
13 cannot be challenged until after a disapproval is entered.

14 "Under the general-specific rule, a specific statute will prevail over a general statute."
15 *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*
16 *(EFSEC)*, 165 Wn.2d 275, 309, 197 P.3d 1153 (2008). Although the general hearing
17 provisions in RCW 48.04.010 allow an "aggrieved" party to cite a "threatened act" as the
18 basis for a hearing, RCW 48.44.020 is a more specific statute governing challenges to the
19 Commissioner's disapproval of rate and form filings. That statute limits an aggrieved party's
20 right to a hearing to after the disapproval is entered. RCW 48.44.020(2) provides that "The
21 commissioner may on examination, subject to the right of the health care service contractor to
22 demand and receive a hearing under RCW 48.04 and 34.05, disapprove any individual or
23 group contract..." For HCSCs, the Legislature recognized that first, the Commissioner must
24 review, or examine a health plan filing, and then, issue a decision, which may include a
25 disapproval. After that decision is issued, then parties can assert a challenge to the
26 Commissioner's determination, but not before. This language has been in place since 1969.
27 Laws of 1969, ch. 115, §1. After the Commissioner's decision has been made concerning the
underlying rate filing, an HCSC has the ability to request a hearing concerning that

1 determination. RCW 48.44.020(2). Until that decision is made, no party can assert standing
2 to challenge the Commissioner's determination.

3 Similarly, under RCW 48.04.010, AWB could not demonstrate that it is "aggrieved"
4 until the Commissioner acts on Premera's health plan filings. RCW 48.04.010 limits standing
5 to challenge the Commissioner's acts, or threatened acts, to those who are "aggrieved."
6 Although there are no precedential cases defining what it means to be "aggrieved under
7 RCW 48.04.010, the Administrative Procedures Act (APA) and its precedent are instructive.
8 To establish standing to challenge a decision by an agency under the APA, petitioners must
9 generally establish that they are "aggrieved" by demonstrating three conditions:

- 10 (1) The agency action has prejudiced or is likely to prejudice that person;
- 11 (2) That person's asserted interests are among those that the agency was required to
12 consider when it engaged in the agency action challenged; and
- 13 (3) A judgment in favor of that person would substantially eliminate or redress the
14 prejudice to that person caused or likely to be caused by the agency action.

15 RCW 34.05.530. The Washington State Supreme Court has explained that this requires
16 "injury-in-fact". *Allan v. Univ. of Wash.*, 140 Wn.2d 323, 327, 997 P.2d 360 (2000). To
17 satisfy the prejudice requirement:

18 "a person must allege facts demonstrating that he or she is 'specifically and
19 perceptibly harmed' by the agency decision. *Trepanier v. City of Everett*, 64
20 Wash.App. 380, 382-83, 824 P.2d 524 (1992) (quoting *Save a Valuable Env't v.*
21 *City of Bothell*, 89 Wash.2d 862, 866, 576 P.2d 401 (1978)). When a person
22 alleges a threatened injury, as opposed to an existing injury, the person must
23 demonstrate an "immediate, concrete, and specific injury to him or herself."
24 *Trepanier*, 64 Wash.App. at 383, 824 P.2d 524 (citing *Roshan v. Smith*, 615
25 F.Supp. 901, 905 (D.D.C.1985)). "If the injury is merely conjectural or
26 hypothetical, there can be no standing." *Trepanier*, 64 Wash.App. at 383, 824
27 P.2d 524 (citing *United States v. Students Challenging Regulatory Agency*
Procedures, 412 U.S. 669, 688-89, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973)).

Patterson v. Segale, 171 Wn. App. 251, 259, 289 P.3d 657, 660-61 (2012). The person
challenging an administrative decision bears the burden of establishing his or her standing to
contest the decision. *Id.*

Here, AWB cannot satisfy the prejudice requirement because it is entirely speculation
that the Commissioner, who has only just begun his review of Premera's filings, will actually

1 disapprove those filings. In fact, until the Commissioner's decision is made, AWB has no
2 interest in preventing the Commissioner's review. It is only *if* the Commissioner disapproves
3 the Premera filing that AWB has demanded a hearing. *Hearing Demand* at 2 ("If denial
4 occurs, this letter constitutes AWB's demand for a hearing and for an automatic stay..."). If
5 the Commissioner approves the Premera filing, AWB apparently has no interest in preventing
6 the Commissioner's review. AWB cannot claim to be "aggrieved" if the only basis for harm
7 may not ever happen. The hearing demand cannot be read to assert an "immediate, concrete,
8 and specific injury," based on the speculative possibility that the Commissioner may
9 disapprove a health plan filing.

10 Further, the harm AWB cites is speculative. AWB claims its members will lose their
11 current health insurance coverage if a disapproval is issued. *Hearing Demand* at 2. But it is
12 possible that review of Premera's filing will last until the end of the year, as it has with other
13 large group health plan filings. It is also possible that any transition plan would effectively
14 keep enrollees on Premera's current plan until the end of the plan year. It is possible that the
15 Commissioner will approve Premera's health plan filing. It is even possible that if AWB
16 members are required to transition to other health plans, they may find less expensive plans,
17 with richer benefits in the small group market. Any of these possible outcomes would
18 eliminate the speculative harm identified by AWB. *See Hearing Demand* at 2. Until the
19 Commissioner concludes his review, any harm alleged by AWB is entirely speculative, and
20 hypothetical.

21 Further, even if AWB's hearing demand could be read to demand a declaratory
22 decision that the OIC's legal theories concerning association health plans are wrong, AWB still
23 would not be able to establish standing until the OIC issues a decision on Premera's health plan
24 filing. In the context of issuing declaratory judgments, the courts have "steadfastly adhered to
25 the virtually universal rule that, before the jurisdiction of a court may be invoked under the act,
26 there must be a justiciable controversy." *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411,
27 27 P.3d 1149, 1153 (2001). The Courts define a justiciable controversy as:

1 “(1) ... an actual, present and existing dispute, or the mature seeds of one, as
2 distinguished from a possible, dormant, hypothetical, speculative, or moot
3 disagreement, (2) between parties having genuine and opposing interests, (3)
4 which involves interests that must be direct and substantial, rather than
5 potential, theoretical, abstract or academic, and (4) a judicial determination of
6 which will be final and conclusive.” *Diversified Indus. Dev. Corp.*, 82 Wash.2d
at 815, 514 P.2d 137; *see also Wash. Beauty Coll., Inc. v. Huse*, 195 Wash. 160,
164-65, 80 P.2d 403 (1938). Inherent in these four requirements are the
traditional limiting doctrines of standing, mootness, and ripeness, as well as the
federal case-or-controversy requirement.

7 *Id.*

8 Here, there is at best, a possible, speculative disagreement between the Commissioner
9 and AWB, based on the possibility that the Commissioner might disapprove Premera’s health
10 plan filings. Until the Commissioner’s review is complete, and his decision is made, there is
11 no actual, present, or existing dispute.

12 **C. Only Threatened Enforcement Action Is Properly Subject To The Automatic Stay
13 Found In RCW 48.04.020**

14 Because AWB has failed to establish standing under RCW 48.44.020, or
15 RCW 48.04.010, it is not entitled to an automatic stay under RCW 48.04.020(1). Further, the
16 regulatory functions of the Insurance Commissioner should not be allowed to form the basis of
17 a threatened act, and therefore should not be subject to an automatic stay.

18 As noted above, the Commissioner’s authority to administer the Insurance Code is
19 broad, and the duties, powers and remedies conferred on the Commissioner are
20 correspondingly broad. These activities include distinct regulatory and enforcement activities.

21 The Commissioner *regulates* the insurance industry through examinations, licensing
22 authority, and review of plans. Individuals who wish to sell or market insurance in
23 Washington, including issuers and producers, are required by statute to submit to the
24 Commissioner’s proactive review of their business and their products. For example, the
25 Commissioner examines insurers prior to issuing certificates of authority to ensure the
26 company has the ability to carry out the business of insurance. RCW 48.05.110. He regularly
27 reviews and examines financial information submitted by admitted insurance companies and

1 other regulated entities, such as HCSCs, to ensure they remain financially solvent and able to
2 pay claims. RCW 48.03.005. These examinations are designed to ensure that consumers will
3 receive the benefits they are entitled to by law, and by the contracts they have purchased.
4 Similarly, the Commissioner reviews insurance rates and forms submitted to his office, to
5 ensure compliance with the law. RCW 48.44.020.

6 Where the Commissioner's review is mandated by law, issuing an ultimate decision
7 concerning that review cannot be "threatened" action. It is a necessary part of the
8 Commissioner's obligation to fulfill his statutorily assigned duties to review and examine the
9 players in the insurance market, and the products that they sell. The reviews and examinations
10 mandated in the Insurance Code are not "threatened"; they are promised. Review of health
11 plan rate and form filings is clearly a proactive, regulatory activity. For issuers who must
12 submit their products for review, this review is a necessary requirement as part of the privilege
13 of participating in the highly regulated Washington insurance market.

14 In contrast, the Commissioner also *enforces* the Insurance Code by levying penalties
15 and fines, bringing actions in any court of competent jurisdiction (RCW 48.02.060), revoking
16 licenses, and imposing other sanctions as allowed under the Insurance Code. Typically, the
17 Commissioner's enforcement activity follows a decision based on his regulatory review. For
18 example, after reviewing a carrier's financial statements, and finding that the carrier's financial
19 health is at risk, the Commissioner may order, or threaten to order, increased monitoring,
20 administrative oversight, or even receivership of a company. (*See* Chapter 48.31 RCW).
21 These types of discretionary decisions, that impose individualized requirements on licensees
22 and issuers, are the kinds of action that can be threatened.

23 Clearly, review of a health plan rate and form filing is a regulatory function, required
24 by the Insurance Code. RCW 48.44.020(2) recognizes the distinction between the regulatory
25 function of the Commissioner's review process, and the enforcement nature of any subsequent
26 enforcement order. Similarly, in RCW 48.19.100, the Insurance Code recognizes that after the
27 Commissioner examines a filing submitted for his review, he then issues a decision concerning

1 that filing. Similarly, for special filings, the Commissioner reviews the filing and issues a
2 decision. RCW 48.19.110. After that decision is issued, the entity that submitted the filing is
3 free to request a hearing. But until that decision is made, there is no hearing to be had based
4 solely on the fact that the Commissioner will carry out his statutory duty. Without a right to
5 hearing, there is no right to an automatic stay.

6 In addition, there is no practical need for an automatic stay of a filing determination.
7 Unlike an enforcement action, which may result in an order from the Commissioner that takes
8 immediate effect, a disapproval provides a period of planning and transition before any
9 discontinuation notices are sent to consumers. Practically, this means that there is ample time
10 to request a hearing and seek a stay pursuant to RCW 48.04.020(2) before a carrier is required
11 to take specific action.

12 **D. The Commissioner's Hearing and Stay Statutes Cannot Be Given An Absurd
13 Interpretation That Strips The Commissioner Of His Legislatively Delegated
14 Authority**

14 The insurance hearing and stay statutes must be interpreted in a way that does not
15 interfere with the Commissioner's statutory duty to review large group health plan rates, and
16 issue a decision based on his review. Because the term "threatened act" is not defined in
17 statute, and is susceptible to more than one meaning, it is necessary to interpret this statute.
18 The Courts have found, that "to ensure proper construction, we should consider and harmonize
19 the statutory provisions in relation to each other." *King County v. Cent. Puget Sound Growth*
20 *Mgmt. Hearings Bd.*, 142 Wn.2d 543, 560, 14 P.3d 133 (2000). In addition, the courts will
21 "avoid readings of statutes that result in unlikely, absurd, or strained consequences." *Glaubach*
22 *v. Regence BlueShield*, 149 Wn.2d 827, 833, 74 P.3d 115 (2003). Further, the courts "favor
23 interpretation that is consistent with the spirit or purpose of the enactment rather than a literal
24 reading that renders the statute ineffective." *Blueshield v. State Office of Ins. Com'r*, 131 Wn.
25 App. 639, 648, 128 P.3d 640 (2006) (citing *Glaubach*, 149 Wash.2d at 833). Therefore, when
26 reviewing the hearing and automatic stay provisions of chapter 48.04 RCW, the Commissioner
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1 must consider the Insurance Code (Title 48 RCW), and his legislative mandate to carry out the
2 duties he has been delegated under the Insurance Code, as well.

3 The Commissioner's ability to issue a final determination on a health plan filing is
4 important to prevent potential harm to issuers, and disruption of the market. In the large group
5 context, health plans can be sold before they are filed with the Commissioner. Therefore,
6 consumers may be completely unaware that they are purchasing a plan that does not comply
7 with the law. In addition, an issuer may not be on notice that its plan violates the law, and
8 should not be sold, until it is disapproved. However, an issuer can be subject to penalties for
9 any sale of a product that does not comply with the law, from the date of the sale, regardless of
10 the lack of a final decision from the Commissioner. Particularly in instances like this, where a
11 product has been sold in the market place, allowing third parties to delay the Commissioner's
12 final decision can be detrimental to the very entities requesting the review, and entitled to a
13 complete determination under the Insurance Code.

14 The predictable result of allowing a stay before the Commissioner's review is
15 concluded is that anyone could stay any regulatory review by the Commissioner that might
16 result in a disapproval, even if they know that a health plan filing contains provisions that
17 violate the law. Particularly for large group plans, which can be sold before they are filed and
18 reviewed, carriers could file plans they know are deficient, request a stay because the
19 Commissioner has "threatened" to review and issue a determination concerning their plans,
20 and continue to sell that product, free of any regulation, and in blatant violation of the law.

21 Further, if merely issuing a final decision on a rate filing is considered threatened act
22 any third party could have the power to automatically stay any determination by the
23 Commissioner. This could have disastrous result in the individual and small group markets. In
24 the individual and small group markets, there are strenuous timelines imposed by federal law
25 for the review of health plans. If a final decision on a rate filing constitutes "threatened agency
26 action", politically motivated groups objecting to, or insisting on coverage for various health
27 services (such as abortion or transgender services) could demand a hearing on the eve of the

1 deadline for approving health plans, due to a moral objection to the way a plan covers those
2 types of services.

3 Even if the Commissioner found a plan to be blatantly illegal, he would be barred from
4 issuing any decision on that plan, and from taking any enforcement action concerning those
5 violations until a hearing is completed. In order to be able to defend against a specious hearing
6 demand involving clearly improper insurance products, the Commissioner may well be forced
7 to give priority to the review of a particular filing, to the detriment of other health plan filings
8 that face tight time constraints, such as individual and small group health plans that must be
9 reviewed in time for the Health Benefit Exchange to enter those plans into their system for the
10 beginning of open enrollment. The Commissioner may be unable to grant extensions to the
11 carriers submitting complex plans, due to the need to mitigate the risk of potential litigation
12 posed by third parties. Allowing third parties to hijack the health plan review process would
13 significantly hamper the effective regulation of the insurance industry, an outcome contrary to
14 the core objectives of the Insurance Code.

15 Another absurd result from allowing third parties to interrupt, delay, and frustrate the
16 Commissioner's health plan filing review duties will be to bar carriers from asserting the filed
17 rate doctrine with respect to their large group health insurance rates. *See McCarthy Fin., Inc.*
18 *v. Premera*, 182 Wn. App. 1 (2014) *review granted*, 337 P.3d 325 (Wash. 2014) (approving the
19 filed rate doctrine that advances policies of "(1) reinforcing the agency's authority to determine
20 the reasonableness of rates, (2) deferring to the agency's expertise in a particular industry, (3)
21 recognizing and preserving the legislature's determinations as to the regulatory scheme by
22 allowing for enforcement by statutorily designated state officers, and (4) preventing lawsuits
23 from disrupting the statutory and regulatory scheme for uniformity of rates.") Premera itself is
24 currently before the Washington State Supreme court urging the Court to affirm that the filed
25 rate doctrine can and does apply to all health plans, including large group health plans, because
26 of the Commissioner's robust review of health plan filings. The Court of Appeals has
27 approved of the application of the filed rate doctrine for all types of health plans because,

1 "Health insurance is more comprehensively regulated than title insurance. Given the extensive
2 legislative and regulatory framework applicable to health insurance rates, the filed rate doctrine
3 applies to health insurance." *McCarthy*, 182 Wn. App. at 13. If AWB and others are allowed
4 to interrupt the rate review process, and then prevent that process from ever being completed,
5 Premera itself may lose the ability to assert the filed rate doctrine for health plans filed with the
6 Commissioner.

7 These absurd results are inconsistent with the Legislature's clear intent that all health
8 plans receive a complete review by the Commissioner. RCW 48.44.020. Permitting a hearing
9 and automatic stay to be based on nothing more than the fact that the Commissioner will fulfill
10 his statutory obligation to review and issue a decision based on his review, would be a
11 significant deprivation of the Insurance Commissioner's regulatory authority and oversight.
12 The result would be increased consumer harm from the marketing of non-compliant plans.
13 And if a hearing and automatic stay can be requested by a party other than the filing issuer, it
14 can lead to serious market disruption and financial harm to issuers and consumers.

15 By simply limiting threatened act to threatened enforcement actions, and protecting the
16 Commissioner's and carrier's rights to a robust, collaborative, and complete filing review
17 process, these absurd results are eliminated, and aggrieved parties are still able to request a
18 hearing, and a stay, under RCW 48.04.010, and 48.04.020(2), after the Commissioner's review
19 is complete, and before any enforcement action is initiated.

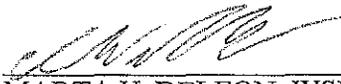
20 The Commissioner's concerns are not merely a speculative parade of horrors.
21 AWB's hearing demand is explicitly seeking a stay of the Commissioner final decision on
22 Premera's rate filing only if the Commissioner makes a determination that AWB disagrees
23 with. AWB's complaint is not with the Commissioner's process, or the validity of the laws the
24 Commissioner will apply. Rather, this hearing demand is precisely designed to interfere with
25 the Commissioner's statutorily assigned, regulatory responsibilities. Whatever AWB's true
26 interests may be, they should not be permitted to trump the efficient regulation of insurance.
27

IV. CONCLUSION

1 AWB has failed to allege any conduct by the Commissioner that is appropriately
2 considered a "threatened act" under the Insurance Code. The effective regulation of the large
3 group market depends on the Commissioner's ability to issue final determinations following
4 his review of health plan filings. For these reasons, this tribunal should dismiss AWB's
5 hearing demand for failure to assert any threatened agency action, and lack of standing.
6

7 RESPECTFULLY SUBMITTED this 27th day of February, 2015.

8 ROBERT W. FERGUSON
9 Attorney General

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12 Assistant Attorney General
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 27th day of February, 2015, at Olympia, Washington.


DARLA AUMILLER
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