

2015 MAY 26 10:29 AM
richbirmingham@dwt.com

Filed by email 5/20/15

May 20, 2015

Via U.S. mail and email: KellyC@oic.wa.gov

Judge George Finkle
c/o Kelly Cairns
PO Box 40255
Olympia WA 98504

Re: Associated Industries Management Services, Inc. and Moda; Status Conference

Dear Judge Finkle:

At the status conference, we will be representing Associated Industries Management Services and the Associated Health Plans. We do not represent Moda. With respect to tomorrow's status conference, we are requesting:

1. permission to engage in limited discovery, and
2. a dispositive motion schedule beginning in August or September to give the parties time to produce and review the discovery.

While we believe that the issues of ratings and ERISA 3(5) status will be decided on dispositive summary judgment motions, it is our desire to first engage in limited discovery through requests for admissions, interrogatories, and requests for production. Therefore, we request your permission to file the attached discovery requests. Similar requests have already been filed in related state and federal proceedings. Therefore, the productions and answers to the interrogatories should not be burdensome. We suggest that no dispositive motions be set before August, in order to allow time for the production and review of discovery documents.

With respect to dispositive motions, we do not believe that there is jurisdiction at the administrative level with respect to the ERISA 3(5) issue, as it is an issue of federal law and subject to exclusive federal jurisdiction. We do not intend to waive the jurisdictional argument and, therefore, intend to file a dispositive motion on this issue. Because we believe that the OIC has sought advice from the DOL on this issue, we also request that the briefing of this issue be delayed until August, after we have had a chance to review the discovery produced.

DWT 26849895v1 0097218-000005

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Judge George Finkle
May 20, 2015
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We also believe that the ratings issues will be resolved on summary judgment. However, discovery is necessary to identify the specific rating concerns and analysis utilized by the OIC. Pending motions before this tribunal involving other Association Health Plans, which will likely be decided in July, will also be relevant to the briefing and would also dictate an August or September date for dispositive motions.

We have matters pending in federal and state court that may affect the jurisdiction of this administrative tribunal. However, we believe that those issues will be decided by August, so we are not seeking a stay of the administrative proceedings at this time.

In summary, we are asking permission to serve the attached discovery requests and then to set a schedule for dispositive motions in August or September (due to vacation schedules), after we have had a chance to review the discovery produced.

Very truly yours

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'RJ Birmingham', written over a horizontal line.

Richard J. Birmingham

cc: Marta DeLeon: MartaD@atg.wa.gov
Maren Norton: maren.norton@stoel.com

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3 **BEFORE THE STATE OF WASHINGTON**
4 **OFFICE OF THE INSURANCE COMMISSIONER**

5 In the Matter of

6 **Associated Industries Management Services,
et al**

7 Aggrieved Parties

Docket No. 15-0064

8 **AGGRIEVED PARTIES' FIRST
INTERROGATORIES AND
REQUESTS FOR PRODUCTION**

9 TO: The State of Washington Office of the Insurance Commissioner

10 AND TO: Marta DeLeon

11 Pursuant to RCW 34.05.446 and Rules 26, 33, and 34 of the Superior Court Civil Rules,
12 the Aggrieved Parties, through their counsel, hereby request that the State of Washington Office of
13 the Insurance Commissioner answer the following interrogatories under oath and respond to the
14 following requests and produce the items specified herein for inspection and copying to
15 Richard J. Birmingham at the office of Davis Wright Tremaine LLP, 1201 Third Avenue,
16 Suite 2200, Seattle, WA 98101 within thirty (30) days after the service of these Requests, or at
17 such other time and place as may be agreed upon by counsel.
18

19 These requests for production are to be treated as continuing. If information is not
20 available within the time set out above, you must answer each request for production as fully as
21 possible within the time limit and furnish additional information when it becomes available. If
22 additional information is discovered between the time of making these answers and the time of
23 trial, supplemental answers must be provided within a reasonable time. If such information is
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25

26 **AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR**
27 **PRODUCTION**

(Docket No. 15-0064) - 1

DWT 26848491v1 0097218-000005

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1 not furnished, Plaintiffs will move at the time of trial to exclude from evidence any information
2 requested and not furnished or will move for such other sanctions as are appropriate.

3 If your answer to any request for production or sub-part thereof is "not applicable,"
4 describe in detail your reasons for making such reply.

5 **DEFINITIONS**

6 "Aggrieved Parties" refers collectively to Associated Industries Management Services
7 and/or the six (6) Association or Member Group-Governed Health Plans it administers: Health
8 Alliance (ALLtech) for Technology Health Trust, Greater Columbia Manufacturing Benefits
9 Trust, Columbia Retail Benefits Trust, Greater Northwest Health Industry Benefits Trust,
10 Pacific Business Resource Benefits Trust, and/or Associated Employers Trust – Commercial
11 Construction Health and Welfare Trust.

12 "OIC," "you," and "your" refer without limitation to Mike Kreidler, in his capacity as
13 Washington State Insurance Commissioner, his attorneys and agents, the State of Washington
14 Office of the Insurance Commissioner, and all persons acting on behalf of the State of
15 Washington Office of the Insurance Commissioner.

16 "Moda" refers to Moda Health Plan, Inc.

17 "2014 Insurance Contract" refers to the 2014 insurance contracts submitted by Moda on
18 behalf of the Aggrieved Parties.

19 "Person" means an individual, firm, partnership, corporation, proprietorship,
20 association, governmental body, or any other organization or entity.

21 "Document" means any writing or other tangible thing in the OIC's custody, possession
22 or control or known to the OIC, whether printed, recorded, electronic, or written or produced
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26 AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
27 PRODUCTION

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1 by hand. If any document is withheld under a claim of privilege, provide sufficient information
2 to determine the identity of the document and state the basis for any asserted claim of privilege
3 so the Court and the parties may determine the validity of the privilege claim.

4 "Communications" if referred to in this request are defined to include but not be limited
5 to meetings, personal conferences, telephone conferences, memoranda, notes, letters and other
6 written and oral communications.

7 "Refer to," "reflect" or "relate to" shall mean directly or indirectly, or in any way
8 alluding to, responding to, in connection with, commenting on, in response to, about, regarding,
9 announcing, explaining, discussing, showing, describing, studying, reflecting, analyzing,
10 comprising or constituting.

11 "Relevant period" shall mean the period from March 23, 2010, to the present date.
12 Unless otherwise provided, each interrogatory or request herein shall be read to include all
13 information which relates in whole or in part to the relevant period, or to events or
14 circumstances during such period, even though dated, prepared, generated, or received prior to
15 that period. Unless otherwise indicated, these requests are limited to the relevant period.
16

17 If the OIC objects to part of a document request and refuses to answer or produce
18 pursuant to that part, the OIC should state its objection and answer or produce pursuant to the
19 remainder of that document request. If the OIC objects to the scope or time period of a
20 document request and refuses to answer for that scope or time period, the OIC should state its
21 objection and answer the document request for the scope or time period it believes is
22 appropriate.
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26 AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
27 PRODUCTION

1 Each of the following interrogatories and document requests shall be deemed
2 continuing in the manner provided by law.

3 **INTERROGATORIES**

4 **INTERROGATORY NO. 1:** Is participation in the Aggrieved Parties limited to
5 Washington State employers within a specific industry and, if your answer is no, on what facts
6 do you base your answer?

7 **ANSWER:**

8
9
10 **INTERROGATORY NO. 2:** Is membership in the Aggrieved Parties solicited by the
11 insurance carrier and, if your answer is yes, on what facts do you base your answer?

12 **ANSWER:**

13
14 **INTERROGATORY NO. 3:** Is membership in the Aggrieved Parties voluntary and, if
15 your answer is no, on what facts do you base your answer?

16 **ANSWER:**

17
18
19 **INTERROGATORY NO. 4:** Do the sponsors of the Aggrieved Parties have a genuine
20 organizational relationship unrelated to health insurance and, if your answer is no, on what
21 facts do you base your answer?

22 **ANSWER:**

23
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25 **INTERROGATORY NO. 5:** Are the Aggrieved Parties controlled by the members

26 AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
27 PRODUCTION

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1 and, if your answer is no, on what facts do you base your answer?

2 **ANSWER:**

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4 **INTERROGATORY NO. 6:** Do the members of the Aggrieved Parties have rights
5 and privileges unrelated to insurance and, if your answer is no, on what facts do you base your
6 answer?

7 **ANSWER:**

8
9
10 **INTERROGATORY NO. 7:** Identify all persons who assisted you in the
11 review of the 2014 Insurance Contracts filed by Moda on behalf of the Aggrieved Parties. For
12 each person identified, please set forth the date and substance of the communications and their
13 contact information.

14 **ANSWER:**

15
16
17 **INTERROGATORY NO. 8:** Identify all persons at the U.S. Department of Labor, or
18 any other federal agency, with whom you had communications that refer or relate to
19 associations, industry groups or city chambers and/or their group health plans during the
20 relevant period. For each person identified, please set forth the date and substance of the
21 communications and their contact information.

22 **ANSWER:**

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25 **INTERROGATORY NO. 9:** Identify all persons at the Washington State agency

26 AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
27 PRODUCTION

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1 level with whom you had communications that refer or relate to associations, industry groups
2 or city chambers and/or their group health plans during the relevant period. For each person
3 identified, please set forth the date and substance of the communications and their contact
4 information.

5 **ANSWER:**

6
7
8 **INTERROGATORY NO. 10:** Did you have communications with persons at the
9 Federal agency level or Washington State agency level that relate to the audit of any
10 associations, industry groups or city chambers and/or their group health plans during the
11 relevant period? For each person identified, please set forth the date and substance of the
12 communications and their contact information.

13 **ANSWER:**

14
15 **INTERROGATORY NO. 11:** Identify your rationale for disapproving the ERISA
16 Section 3(5) status of any of the Aggrieved Parties.

17 **ANSWER:**

18
19
20 **INTERROGATORY NO. 12:** Identify the specific authority on which Defendant
21 relies to look beyond the good faith determination of the carrier regarding an Aggrieved
22 Parties' ERISA Section 3(5) status.

23 **ANSWER:**

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26 AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
27 PRODUCTION

(Docket No. 15-0064) - 6

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1 **REQUEST FOR PRODUCTION NO. 2:** Produce all documents that relate to
2 communications between the Defendant and Moda concerning whether the Health Benefit
3 Trusts are sponsored by employers within the meaning of ERISA Section 3(5).

4 **RESPONSE:**

5
6 **REQUEST FOR PRODUCTION NO. 3:** Produce all documents submitted by Moda
7 concerning whether the Health Benefit Trusts are sponsored by employers within the meaning
8 of ERISA Section 3(5), including all responses to the Commissioner's objections.
9

10 **RESPONSE:**

11
12 **REQUEST FOR PRODUCTION NO. 4:** Produce all documents related to the
13 Defendant's review of any carrier's good faith efforts and determination that an association or
14 group is an ERISA Section 3(5) employer.

15 **RESPONSE:**

16
17
18 **REQUEST FOR PRODUCTION NO. 5:** Produce all SERFF filings, the Defendant's
19 objections, carriers' responses, and supplemental documentation that relate to whether an
20 association meets the definition of an ERISA Section 3(5) employer.

21 **RESPONSE:**

22
23
24 **REQUEST FOR PRODUCTION NO. 6:** Produce all documents that relate to the
25 Defendant's review of all insurance contracts for compliance with WAC 284-170-958.

26 AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
27 PRODUCTION

(Docket No. 15-0064) - 8

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1 **RESPONSE:**

2

3 **REQUEST FOR PRODUCTION NO. 7:** Produce all documents that relate to your
4 rationale for disapproving any rate filing applications on the ground that the sponsoring
5 association is not an ERISA Section 3(5) employer.

6 **RESPONSE:**

7

8

9 **REQUEST FOR PRODUCTION NO. 8:** Produce all documents that relate to
10 communications between the OIC and Moda concerning the rating methodology or rates used
11 for the Aggrieved Parties.

12 **RESPONSE:**

13

14 **REQUEST FOR PRODUCTION NO. 9:** Produce all SERFF filings, the OIC's
15 objections, carriers' responses, and supplemental documentation that relate to the rating
16 methodology or rates used in an insurance contract filed on behalf of any association.

17 **RESPONSE:**

18

19

20 **REQUEST FOR PRODUCTION NO. 10:** Produce all documents that relate to your
21 rationale for disapproving any insurance filing applications on the ground that the sponsoring
22 association is not an ERISA Section 3(5) employer.

23 **RESPONSE:**

24

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26 AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
27 PRODUCTION

(Docket No. 15-0064) - 9

1 **REQUEST FOR PRODUCTION NO. 11:** Produce all documents that relate to your
2 rationale for disapproving any rate filing applications of Moda based on rating methodology.

3 **RESPONSE:**

4
5 **REQUEST FOR PRODUCTION NO. 12:** Produce all documents and
6 communications between current and former OIC employees and any other individual or
7 agency that relate to the status of an association as an ERISA Section 3(5) employer.

8 **RESPONSE:**

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10
11 **REQUEST FOR PRODUCTION NO. 13:** Produce all documents and
12 communications between current and former OIC employees and any other individual or
13 agency that relate to the rating methodology or rates used by a health plan offered to an
14 association.

15 **RESPONSE:**

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17
18 **REQUEST FOR PRODUCTION NO. 14:** Produce all documents that refer to
19 Technical Assistance Advisory 06-07.

20 **RESPONSE:**

21
22 **REQUEST FOR PRODUCTION NO. 15:** Produce all documents that refer to or are
23 related to the Superior Court of Washington for Spokane County's determination in *Associated*
24

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26 AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
27 PRODUCTION

(Docket No. 15-0064) - 10

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1 *Industries of the Inland Northwest, et. al. v. State of Washington Office of the Insurance*
2 *Commissioner, Mike Kreidler, No. 2007-02-00592-1.*

3 **RESPONSE:**

4
5 **REQUEST FOR PRODUCTION NO. 16:** Produce all training materials and
6 guidance, including but not limited to rating guidance, issued by the OIC to carriers concerning
7 large group health plans offered to associations or ERISA Section 3(5) status.

8
9 **RESPONSE:**

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11 **REQUEST FOR PRODUCTION NO. 17:** Produce all documents related to your
12 Answer to Interrogatory No. 11.

13 **RESPONSE:**

14
15 **REQUEST FOR PRODUCTION NO. 18:** Produce all documents related to your
16 Answer to Interrogatory No. 12.

17 **RESPONSE:**

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20 **REQUEST FOR PRODUCTION NO. 19:** Produce all documents related to your
21 Answer to Interrogatory No. 13.

22 **RESPONSE:**

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26 AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
27 PRODUCTION

(Docket No. 15-0064) - 11

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1 **REQUEST FOR PRODUCTION NO. 20:** Produce all documents related to your
2 Answer to Interrogatory No. 15.

3 **RESPONSE:**

4
5 **REQUEST FOR PRODUCTION NO. 21:** Produce all documents and electronically
6 stored information relating to Jim Keogh's analysis of health plans sold to the small group
7 market compared to health plans sold to small employers through association health plans, such
8 analysis related to his Declaration, dated April 27, 2015.

9
10 **RESPONSE:**

11
12 **REQUEST FOR PRODUCTION NO. 22:** Produce all documents and data relied on
13 to produce Exhibit A, Charts 1-7, to Jim Keogh's Declaration, dated April 27, 2015.

14 **RESPONSE:**

15
16
17 **REQUEST FOR PRODUCTION NO. 23:** Produce any data that compares the dollar
18 premiums that males age 40-50 pay in small group plans with the dollar premiums that males
19 age 40-50 pay in association health plans or large group health plans.

20 **RESPONSE:**

21
22 **REQUEST FOR PRODUCTION NO. 24:** Produce any data that compares the dollar
23 premiums that women in child bearing years pay in small group plans with the dollar premiums
24 paid by women in child bearing years in association health plans or large group health plans.

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26 AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
27 PRODUCTION

(Docket No. 15-0064) - 12

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By /s/ Christine Hawkins

Christine Hawkins, WSBA #44972

Suite 2300

777 108th Avenue NE

Bellevue, WA 98004-5149

Telephone: 425-646-6100

Fax: 425-646-6199

E-mail: christinehawkins@dwt.com

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AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR
PRODUCTION

(Docket No. 15-0064) - 14

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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
P.O. 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 ____ day of May, 2015, at Bellevue, Washington.

Davis Wright Tremaine LLP
Attorneys for Plaintiffs

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

AGGRIEVED PARTIES' FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION

(Docket No. 15-0064) - 15

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3 **BEFORE THE STATE OF WASHINGTON**
4 **OFFICE OF THE INSURANCE COMMISSIONER**

5 In the Matter of

6 **Associated Industries Management Services,**
7 **et al**

8 Aggrieved Parties

Docket No. 15-0064

9
10 **AGGRIEVED PARTIES' FIRST**
11 **REQUESTS FOR ADMISSION**

12 TO: The State of Washington Office of the Insurance Commissioner

13 AND TO: Marta DeLeon

14 Pursuant to RCW 34.05.446 and Rule 36 of the Superior Court Civil Rules, the Aggrieved
15 Parties, through their counsel, hereby request that the State of Washington Office of the Insurance
16 Commissioner respond to Aggrieved Parties' First Requests for Admission within thirty (30) days
17 after service of this Request to Richard J. Birmingham at the office of Davis Wright Tremaine
18 LLP, 1201 Third Avenue, Suite 2200, Seattle, WA 98101, or at such location as is mutually
19 agreed upon by counsel.

20 **DEFINITIONS**

21 "Aggrieved Parties" refers collectively to Associated Industries Management Services
22 and/or the six (6) Association or Member Group-Governed Health Plans it administers: Health
23 Alliance (ALLtech) for Technology Health Trust, Greater Columbia Manufacturing Benefits
24 Trust, Columbia Retail Benefits Trust, Greater Northwest Health Industry Benefits Trust,
25 Pacific Business Resource Benefits Trust, and/or Associated Employers Trust – Commercial
26 Construction Health and Welfare Trust.

27 **AGGRIEVED PARTIES' FIRST REQUESTS FOR ADMISSION**

(Docket No. 15-0064) - 1

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1 plans where the premium for each respective participating employer has been calculated
2 without utilizing small group rating methodology.

3 **RESPONSE:**

4
5 **REQUEST FOR ADMISSION NO. 2:** Admit that in 2006, the OIC issued Technical
6 Assistance Advisory (TAA) 06:07, which purported to change the exemption carved out in
7 RCW 48.44.024 by requiring associations to rate the entire membership as one group.

8
9 **RESPONSE:**

10
11 **REQUEST FOR ADMISSION NO. 3:** Admit that the Superior Court of the State of
12 Washington for Spokane County determined that the OIC violated the Washington State
13 constitution by changing the rating structure set forth in RCW 48.44.024 without legislative
14 authority to do so in *Associated Industries of the Inland Northwest, et. al. v. State of*
15 *Washington Office of the Insurance Commissioner, Mike Kreidler*, No. 2007-02-00592-1.

16
17 **RESPONSE:**

18
19 **REQUEST FOR ADMISSION NO. 4:** Admit that the OIC applied the rating
20 methodology issued in TA 06:07 in its disapprovals of the 2014 Insurance Contracts marketed
21 to and sold by the Aggrieved Parties.

22
23 **RESPONSE:**

24
25 **REQUEST FOR ADMISSION NO. 5:** Admit that the rating methodology used in
26 the disapproved 2014 Insurance Contracts satisfies RCW 48.44.020(3) and WAC 284-43-

27 AGGRIEVED PARTIES' FIRST REQUESTS FOR ADMISSION

(Docket No. 15-0064) - 3

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1 915(2).

2 **RESPONSE:**

3
4 **REQUEST FOR ADMISSION NO. 6:** Admit that the OIC's enactment of WAC 284-
5 170-958 is purportedly in response to and under the authority of the Affordable Care Act.

6 **RESPONSE:**

7
8 **REQUEST FOR ADMISSION NO. 7:** Admit that no provision of the Affordable
9 Care Act rating rules apply to large-group coverage unless such coverage is offered through the
10 Washington State exchange.

11 **RESPONSE:**

12
13 **REQUEST FOR ADMISSION NO. 8:** Admit that nothing in federal law requires the
14 Aggrieved Parties to change their historic rating methodology.

15 **RESPONSE:**

16
17 **REQUEST FOR ADMISSION NO. 9:** Admit that WAC 284-170-958(2) requires a
18 carrier to make a good faith effort to determine whether the association or member-group is
19 sponsored by an ERISA Section 3(5) employer.

20 **RESPONSE:**

21
22 **REQUEST FOR ADMISSION NO. 10:** Admit that the OIC's own filing instructions
23 indicate that, in the absence of an opinion from the U.S. Department of Labor, a carrier may
24

25 AGGRIEVED PARTIES' FIRST REQUESTS FOR ADMISSION

26 (Docket No. 15-0064) - 4

27 DWT 26846989v1 0097218-000005

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1 reasonably rely on the opinion of legal counsel as to an employer's ERISA Section 3(5) status.

2 **RESPONSE:**

3
4 **REQUEST FOR ADMISSION NO. 11:** Admit that WAC 284-170-958 limits the
5 OIC's review to whether the carrier's effort and determination of ERISA Section 3(5) status
6 were reasonable and made in good faith.

7 **RESPONSE:**

8
9
10 **REQUEST FOR ADMISSION NO. 12:** Admit that on or about March 26, 2013,
11 Ms. Carol Sureau, Deputy Commissioner, Legal Affairs, sent a letter to Ms. Deb Brady,
12 attaching a list of occupational categories the OIC agreed constitute a single industry and a
13 copy of the Trust Agreement governing the Associated Employers Health and Welfare Trust
14 Agreement, which the OIC agreed provides for the employer members to control the insurance
15 vehicle.

16 **RESPONSE:**

17
18
19 **REQUEST FOR ADMISSION NO. 13:** Admit that on or about May 16, 2013, Mr.
20 Charles Brown, Acting Deputy Commissioner, Legal Affairs, sent a letter to Ms. Deb Brady,
21 attaching the correct list of occupational categories that the OIC agreed constitute a single
22 industry.

23 **RESPONSE:**

24
25
26 **REQUEST FOR ADMISSION NO. 14:** Admit that Moda submitted sufficient

27 AGGRIEVED PARTIES' FIRST REQUESTS FOR ADMISSION

(Docket No. 15-0064) - 5

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1 information with the 2014 Insurance Contracts to show that participation in the associations
2 that sponsor the Aggrieved Parties is limited to Washington State employers with a specific
3 primary business purpose.

4 **RESPONSE:**

5
6 **REQUEST FOR ADMISSION NO. 15:** Admit that Moda submitted sufficient
7 information with the 2014 Insurance Contracts to show that member-employers and their
8 employees are not solicited to participate in the Aggrieved Parties by Moda based on any
9 perceived insurance risk and that participation in any of the Aggrieved Parties is voluntary.

10
11 **RESPONSE:**

12
13 **REQUEST FOR ADMISSION NO. 16:** Admit that Moda submitted sufficient
14 information with the 2014 Insurance Contracts to show the member-employers of each
15 association maintain a genuine organizational relationship unrelated to the provision of
16 benefits.

17
18 **RESPONSE:**

19
20 **REQUEST FOR ADMISSION NO. 17:** Admit that Moda submitted sufficient
21 information with the 2014 Insurance Contracts to show the member-employers of each
22 association exercise control over and direct the activities of the Aggrieved Parties.

23
24 **RESPONSE:**

25
26
27 AGGRIEVED PARTIES' FIRST REQUESTS FOR ADMISSION

(Docket No. 15-0064) - 6

DWT 26846989v1 0097218-000005

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1 **REQUEST FOR ADMISSION NO. 18:** Admit that Moda submitted sufficient
2 information with the 2014 Insurance Contracts to show the member-employers of each
3 association are bestowed rights and privileges as a result of their association membership.

4 **RESPONSE:**

5
6 **REQUEST FOR ADMISSION NO. 19:** Admit that the documents maintained and
7 submitted to the OIC by Moda for the 2014 Insurance Contracts indicate that Moda made a
8 good faith effort and reasonable interpretation of ERISA Section 3(5) status.
9

10 **RESPONSE:**

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12 **REQUEST FOR ADMISSION NO. 20:** Admit that the OIC conducted a *de novo*
13 review of the Aggrieved Parties' ERISA Section 3(5) status rather than relying on the carriers'
14 good faith effort and reasonable interpretation.
15

16 **RESPONSE:**

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18 **REQUEST FOR ADMISSION NO. 21:** Admit that the OIC has not made any formal
19 determination about the status of the associations that sponsor the Aggrieved Parties as ERISA
20 Section 3(5) employers other than stating that Moda did not include sufficient information in its
21 rate filing applications regarding the factors set forth by the U.S. Department of Labor.
22

23 **RESPONSE:**

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25 **REQUEST FOR ADMISSION NO. 22:** Admit that the OIC's disapproval of the
26 2014 Insurance Contracts has no impact on coverage offered to employees and dependents for
27

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1 2014 because the 2014 Insurance Contracts have expired and no one is currently covered by
2 such policies.

3 **RESPONSE:**

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5 **REQUEST FOR ADMISSION NO. 23:** Admit that the OIC's disapproval of the
6 2014 Insurance Contracts has no impact on the Aggrieved Parties' ability to legally market and
7 cover employees and dependents under the 2015 insurance policies.

8
9 **RESPONSE:**

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11 **REQUEST FOR ADMISSION NO. 24:** Admit that the OIC issued the following
12 advice at its webinar on September 26, 2012:

13 Although true employer health and welfare benefit plans will still be able to file
14 and market as large group if over 50 lives – the rates must be based on the overall
15 experience of the group and health status may not be used to set rates.

16 **RESPONSE:**

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18 **REQUEST FOR ADMISSION NO. 25:** Admit that the advice issued at the OIC's
19 September 26, 2012, webinar is not a rule or a regulation issued or enforced by the OIC.

20 **RESPONSE:**

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22 **REQUEST FOR ADMISSION NO. 26:** Admit that the advice issued at the OIC's
23 September 26, 2012, is substantially the same as the following advice set forth in TAA 06-07:

24 Rates must be based on the health of the entire association group. Any rating
25 based on the health information of any individual member employer is prohibited.

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1 **RESPONSE:**

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3 **REQUEST FOR ADMISSION NO. 27:** Admit that when issuing and enforcing TAA
4 06-07, the OIC argued that the entire association should be treated as a single group.

5 **RESPONSE:**

6
7 **REQUEST FOR ADMISSION NO. 28:** Admit that when issuing and enforcing TAA
8 06-07, the OIC argued that the rating of purchasing employers differently than the association
9 as a group would violate the Health Insurance Portability and Accountability Act of 1996
10 (“HIPAA”).

11 **RESPONSE:**

12 **REQUEST FOR ADMISSION NO. 29:** Admit that the legislature has not changed
13 RCW 48.44.024(3) since its enactment.

14 **RESPONSE:**

15 **REQUEST FOR ADMISSION NO. 30:** Admit that the Superior Court of the State of
16 Washington for Spokane County found that the OIC’s interpretation of RCW 48.44.024(2) and
17 RCW 48.44.024(3) as set forth in TAA 06-7 was an exercise of legislative power by the OIC
18 and that the OIC did not have the constitutional authority to enact legislation.

19 **RESPONSE:**

20 **REQUEST FOR ADMISSION NO. 31:** Admit that no federal statute specifically
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27 AGGRIEVED PARTIES’ FIRST REQUESTS FOR ADMISSION

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1 preempts RCW 48.44.024(2) or RCW 48.44.024(3).

2 **RESPONSE:**

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4 **REQUEST FOR ADMISSION NO. 32:** Admit that under RCW 48.44.024(2) and
5 Washington State law, an association is permitted to establish rates at the employer purchasing
6 level.

7 **RESPONSE:**

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9
10 **REQUEST FOR ADMISSION NO. 33:** Admit that the OIC and its employee, Jim
11 Keogh, have stated that association health plans have maintained lower premiums than both
12 small group health plans and other large group health plans.

13 **RESPONSE:**

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15
16 **REQUEST FOR ADMISSION NO. 34:** Admit that the OIC's change in rating
17 methodology is expected to result in the premiums for association health plans to increase and
18 move closer to the premiums charged by small group health plans and other large group health
19 plans.

20 **RESPONSE:**

21
22 RESPECTFULLY SUBMITTED this ____ day of May, 2015.

23
24 DAVIS WRIGHT TREMAINE LLP
25 Attorneys for Aggrieved Parties

26
27 AGGRIEVED PARTIES' FIRST REQUESTS FOR ADMISSION

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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

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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 ____ day of May, 2015, at Bellevue, Washington.

Davis Wright Tremaine LLP
Attorneys for Plaintiffs

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