



Suite 2200
1201 3rd Avenue
Seattle, WA 98101-3045

FILED

Richard J. Birmingham
206-757-8145 tel
206-757-7145 fax

richbirmingham@dwt.com

2015 JUL -1 A 11: 04

July 1, 2015

SENT VIA EMAIL DELIVERY

Office of Insurance Commissioner
Attention: Kelly Cairns, Administrative Hearings Unit
P.O. Box 40255
Olympia WA 98504-0255

Re: In the Matter of Business Health Trust, Docket No. 14-0246

Dear Ms. Cairns:

Attached please find Business Health Trust's ("BHT's") Motion to Stay (the "Motion") in the above-referenced matter. Due to the abbreviated schedule for such motion under the King County Superior Court Rules, we propose the following schedule:

The Office of the Insurance Commissioner's ("OIC's") Opposition brief to be filed by **July 15, 2015**; and

BHT's Reply Brief to be filed by **July 24, 2015**.

The hearing on this Motion is to be noted for **July 24, 2015**, without oral argument, unless oral argument is requested by Judge Finkle. We assume that the above referenced schedule will be acceptable to the OIC. If they wish to propose an alternative briefing schedule, we ask that they please contact us and you immediately, in writing.

Very truly yours,

Davis Wright Tremaine LLP

Richard Birmingham/sb
Richard J. Birmingham

cc: Christine Hawkins, Davis Wright Tremaine (via email)
Marta DeLeon, Office of Insurance Commissioner (via email)
Gwendolyn Payton, Lane Powell (via email)

DWT 27235185v1 0083762-000003

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BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

Business Health Trust ("BHT"),

Aggrieved Party

Docket No. 14-0246

AGGRIEVED PARTY'S MOTION TO
STAY IN-PART, I.E. THE ERISA 3(5)
DETERMINATION, FOR LACK OF
SUBJECT MATTER JURISDICTION

I. INTRODUCTION

The determination of an employer's status as an employer defined by Section 3(5) of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") is a federal question outside the jurisdiction of this state agency. The Aggrieved Parties have properly brought an action concerning this issue before the Western District of Washington and their Motion for Summary Judgment is pending before such court. It would be an error for this Tribunal to assume subject matter jurisdiction over this federal question and usurp the federal court's exclusive jurisdiction over this matter. Such a decision would not be in the best interest of this Tribunal, the state or any party as the federal court action is properly briefed and the federal judge has the requisite expertise to apply and interpret federal law.

The decision as to whether the sponsor of a Health Trust is an ERISA Section 3(5) employer is ultimately for the federal court, not the OIC administrative law judge. This Tribunal should, therefore, stay the Aggrieved Parties' hearing as it relates to ERISA Section 3(5) and allow this federal question to be resolved in the proper forum.¹

¹ A stay will enable the Administrative Tribunal to apply the federal ruling to the outstanding Premera Blue Cross Policy.

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II. STANDARD

Rule 12(b)(1) permits the defense of “lack of subject-matter jurisdiction” to be asserted by motion.

“A tribunal lacks subject matter jurisdiction: when it attempts to decide a type of controversy over which it has no authority to adjudicate.” *See, Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533,539, 886 P.2d 189 (1994); *Shoop v. Kittitas County*, 108 Wn.App. 388, 393, 30 P.3d 529 (2001). As stated in *Inland Foundry Co. v. Spokane County Air Pollution Control Auth.*, 98 Wn.App. 121, 124, 989 P.2d 102 (1999): A tribunal’s lack of subject matter jurisdiction may be raised by a party or the court at any time in a legal proceeding. RAP 2.5(a)(1); *Okanogan Wilderness League, Inc. v. Town of Twisp*, 133 Wn.2d 769, 788, 947 P.2d 732 (1997). Even if this Tribunal were to find concurrent jurisdiction, the hearing must be stayed with respect to the ERISA Section 3(5) issue in deference to the previously filed federal action.

III. FACTUAL BACKGROUND

15 On December 17, 2014, BHT² and the Health Trusts filed a declaratory action in federal
16 court related solely to the issue as to whether the Health Trusts are sponsored by employers as
17 defined by ERISA Section 3(5), a question of federal law. On January 14, 2015, BHT filed a
18 motion for preliminary injunction and declaratory action relating to exclusive jurisdiction of the
19 federal courts. Such motion is still pending.

20 Two months after the declaratory action was filed, on February 17, 2015, the OIC
21 disapproved Premera Blue Cross’s (“Premera’s”) large group insurance contract. One basis for
22 the denial was that the OIC could not make a factual determination as to each industry group’s
23 status as an ERISA Section 3(5) employer due to the Department of Labor’s Advisory Opinion
24 No. 2008-07A, relating to the Bend, Oregon Chamber of Commerce.

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² BHT is merely being used as a short-hand approach to refer to all the parties to this action which include BHT, the 13 Health Trusts, the 661 employers that form the associations and the approximately 14,000 participants.

1 On May 14, 2015, in the pending federal action, BHT and the Health Trusts filed a
2 motion for summary judgment seeking a declaration that the Health Trusts are sponsored by
3 employers within the meaning of Section 3(5) of ERISA. As of June 12, 2015, the summary
4 judgment motion had been fully briefed and is pending before the federal court.

5 On April 15, 2015, Premera requested an administrative hearing. On May 11, 2015,
6 BHT and the Health Trusts, participating employers and participants requested an
7 administrative hearing, but indicated that they did not believe that the Administrative Tribunal
8 had jurisdiction over the ERISA Section 3(5) issue. Demand for Hearing and Stay of Actions
9 at 2. At a status conference before this Tribunal, both Premera and BHT indicated that the
10 ERISA Section 3(5) employer issues were federal in nature, pending before a federal court, and
11 should be resolved by a federal judge.

12 On June 22, 2015, approximately six months after the declaratory federal action was
13 filed in federal court, this Tribunal indicated that it would hear the ERISA Section 3(5) issue,
14 but indicated that BHT could challenge the jurisdiction of this Tribunal.

15 BHT now challenges the jurisdiction of this Tribunal to hear the ERISA Section 3(5)
16 matter. For the reasons outlined below, this Tribunal should stay the ERISA Section 3(5) issue,
17 pending a decision by the federal court.

18 **IV. LEGAL ARGUMENT**

19 **A. Jurisdiction Is Exclusively Federal.**

20 The action involves a question under ERISA – whether each group Health Trust is
21 sponsored by an employer within the meaning of ERISA Section 3(5). Moreover, a state court
22 does not have concurrent jurisdiction over this issue. Under ERISA Section 502(e)(1),
23 concurrent jurisdiction exists only with respect to a participant’s claim for benefits under the
24 Plan. *See, American Family Mutual Ins. Co. v. Hollander*, 705 F.3d 339, fn. 8 (8th Cir. 2013)
25 (“Benefits – due” actions under ERISA have concurrent jurisdiction, others are exclusively
26 federal). This action has nothing to do with a claim by a participant. Rather, the sole issue is
27 whether the sponsors of the Health Trusts are employers within the meaning of ERISA

1 Section 3(5). As such, any state court or state administrative tribunal lacks jurisdiction to hear
2 the issue, as jurisdiction over this issue is exclusively with the federal courts. It necessarily
3 follows that this Tribunal cannot provide an effective remedy, as it does not have jurisdiction
4 over the ERISA issue. *See, E-Systems Inc. v. A.W. Pogue*, 929 F.2d 1100, 1102-03 (5th Cir.
5 1991) (action seeking declaration that Texas Admin. Services Tax Act was preempted by
6 ERISA is exclusively federal); *NGS American, Inc. v. Barnes*, 805 F. Supp. 462, 467 (W.D.
7 Tex. 1992), affirmed, 998 F.2d 296 (5th Cir. 1993) (injunctive relief from state insurance
8 regulator under ERISA is exclusively federal in nature); *America's Health Ins. Plans v.*
9 *Hudgens*, 742 F.3d 1319, 1329 (11th Cir. 2014) (ERISA declaratory action against Georgia
10 Insurance Commissioner is federal in nature); *Sherfel v. Gassman*, 899 F. Supp. 2d 676, 693
11 (S.D. Ohio 2012) (trustees' declaratory action against state officials under ERISA is federal in
12 nature).

13 **B. State Tribunal Cannot Grant Relief Requested.**

14 As previously indicated, BHT and the Health Trusts have a federal lawsuit pending that
15 pre-dates any agency action. In this agency action, the OIC has consistently maintained that
16 BHT and the Health Trusts lack standing, as the administrative hearing is only concerned with
17 Premera's filing. As no party has asserted that this Tribunal has jurisdiction over the ERISA
18 Section 3(5) issue and this matter is pending in a federal court with proper jurisdiction, these
19 facts alone should be sufficient to stay the administrative action.

20 Moreover, state law does not give the OIC the power to make an ERISA Section 3(5)
21 determination in the first instance. Rather, WAC 284-170-958 states that the insurer, not the
22 OIC, must make a good faith determination as to an employer's status pursuant to ERISA
23 Section 3(5). In addition, the regulation requires that the insurer maintain the supporting
24 documentation with respect to its good faith determination and provide such documents to the
25 Commissioner upon request. *Id.* Therefore, the Commissioner's review, under state law, is
26 limited to whether Premera made a good faith determination that the large group policy is being
27 sponsored by an ERISA Section 3(5) employer. Any hearing would, therefore, be limited to

1 the good faith determination by Premera with respect to its 2014 filing. The hearing would
2 relate only to the 2014 policy and that policy is no longer being sold and no one is currently
3 covered by the policy.

4 In contrast, BHT and the Health Trusts are not concerned with the Premera 2014
5 insurance policy or the “good faith” determination made by Premera. The Health Trusts are
6 concerned with their 2015 policy and their ability to change carriers if they desire. Therefore,
7 the Health Trusts are not seeking a determination of whether Premera’s ERISA Section 3(5),
8 2014 determination was made in good faith. Rather, they are seeking a declaratory judgment
9 that they are in fact sponsored by an ERISA Section 3(5) employer. This is a matter of
10 exclusive federal jurisdiction and is currently pending in federal court.

11 The OIC has indicated that a disapproval ruling on a Premera Policy does not mean that
12 the Health Trusts are not sponsored by ERISA Section 3(5) employers, only that Premera has
13 not submitted enough evidence to convince the Commissioner of its ERISA 3(5) status. *See,*
14 *Business Health Trust, et. al. v. Mike Kreidler*, No. 2:14-CV-01918-RSL, Dkt. # 16,
15 Defendant’s Response in Opposition to Plaintiff’s Motion for Temporary Restraining Order at
16 14-15, dated Jan. 13, 2015. The Commissioner indicated that the Health Trusts are free to seek
17 approval of the ERISA status of their sponsors in subsequent years. *Id.* However, a
18 disapproval notice from the Commissioner will make it difficult, if not impossible, for another
19 carrier to make a “good faith” determination of each industry group’s ERISA Section 3(5)
20 status. Also, the Health Trusts and their sponsoring employers need certainty with respect to
21 their status. The lack of certainty will damage their market share. The relief requested in
22 federal court will resolve this issue for Premera, the Health Trusts and all other carriers once
23 and for all. Such relief simply cannot be granted by this Tribunal with respect to Premera’s
24 2014 insurance filing and, therefore, this Tribunal should defer to the federal proceeding.

1 **C. It Is an Abuse of Discretion for an Administrative Tribunal Not to Defer to**
2 **the Federal Suit Filed Prior to Agency Action.**

3 Although state courts and administrative tribunals are granted wide discretion, it is
4 nonetheless hornbook law that it is an abuse of discretion to refuse to stay a subsequently filed
5 state action in favor of a previously filed federal action that involves the same parties and the
6 same or substantially similar issues. This rule is based on simple principles of comity. *See,*
7 *Florida Crushed Stone Company v. Travelers Indemnity Company*, 632 So. 2d 217, 220 (Fla.
8 5th DCA 1994). In the instant case, the federal action was filed on December 17, 2014, and
9 was fully briefed with a decision pending prior to the status conference in this matter.
10 Moreover, the federal action will give the complete relief that this Tribunal cannot provide.
11 Therefore, this hearing must be stayed pending the federal decision. To hold otherwise would
12 be an abuse of discretion.

13 **D. A Hearing by This Tribunal Will Likely Lead to Inconsistent Results.**

14 The issue before this Tribunal is one of federal law – each sponsor’s status as an
15 employer pursuant to ERISA Section 3(5). The OIC has indicated that, based on the
16 Department of Labor’s Advisory Opinion related to the City of Bend, Adv. Opin. 2008-07A, it
17 cannot make a determination because the “Chamber’s membership is so broad, membership in
18 the Chamber would be insufficiently limited to constitute a commonality of interest.” *See*
19 *Business Health Trust, et. al. v. Mike Kreidler*, No. 2:14-CV-01918-RSL, Dkt. #52,
20 Defendant’s Response in Opposition to Plaintiffs’ Motion for Summary Judgment, at 20:12-15,
21 filed June 1, 2015. However, the Bend Chamber has changed its structure, in a manner similar
22 to BHT and the Health Trusts, and the revised structure has now been approved by the Oregon
23 State Insurance Commissioner. *See* Declaration of Richard J. Birmingham, ¶ 2, Exs. A-B.

24 Carriers such as MODA or Premera often operate in multiple states. Groups similar to
25 BHT and the Health Trusts have been approved in Oregon and Alaska as ERISA Section 3(5)
26 employers and denied such status in Washington State, based on the same principles of federal
27 law. To avoid these inconsistent results, the issues must be resolved by the federal courts

1 applying applicable federal law. Adjudication at the state level risks inconsistent results on a
2 matter that is a federal question – an employer’s status under Section 3(5) of ERISA.

3 **E. The Issue Is Federal and There Are No Issues of State Concern or**
4 **Expertise.**

5 The DOL, in Advisory Opinion 2007-05A, firmly held that the issue of ERISA
6 Section 3(5) status is a matter of federal law and state law is of no importance. Similarly, the
7 OIC’s disapproval was based solely on federal law—“based upon the materials submitted, the
8 association does not meet the criteria set forth in federal law to be designated an “employer”
9 under ERISA.” Thus, any decision by this Tribunal must be based solely on federal law with
10 no deference to the agency. Moreover, there is a need to ensure that federal law is consistently
11 applied among the carriers and by the states.

12 In the instant case, there is a pending and fully briefed federal lawsuit that pre-dates any
13 agency action. Jurisdiction over this action is exclusively federal in nature. There is no state
14 law provision that governs an employer’s ERISA 3(5) status. This matter should, therefore, be
15 stayed pending the federal decision.

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V. CONCLUSION

For the foregoing reasons, this Tribunal should stay the Aggrieved Parties' demand for hearing, in part, as the determination of ERISA Section 3(5) is properly pending in federal court, which has exclusive jurisdiction over this issue.

RESPECTFULLY SUBMITTED this 1st day of July, 2015.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Plaintiffs

By /s/ Richard J. Birmingham
Richard J. Birmingham, WSBA #8685
Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
Telephone: 206-622-3150
Fax: 206-757-7700
E-mail: richbirmingham@dwt.com

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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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:

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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

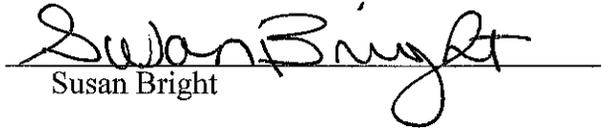
Attorney for the Washington State Office of the Insurance Commissioner

Gwendolyn Payton
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, WA 98111-9402
PaytonG@lanepowell.com

Attorney for Premera Blue Cross

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

DATED this 1st day of July, 2015, at Bellevue, Washington.


Susan Bright

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

In the Matter of

Business Health Trust ("BHT"),
Aggrieved Party

Docket No. 14-0246

DECLARATION OF RICHARD J.
BIRMINGHAM IN SUPPORT OF
AGGRIEVED PARTY'S MOTION TO
STAY IN-PART

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 Plaintiffs, Business Health Trust and The Association or Member Group-Governed Plans. I make this declaration based on personal knowledge and am competent to testify as to the matters set forth herein.

2. The Oregon Insurance Commissioner approved the Bend Chamber of Commerce to do business as an ERISA Section 3(5) employer in the State of Oregon. Attached as Exhibit A is a true and correct copy of the Oregon Insurance Commissioner approval notice for the Bend Chamber of Commerce Real Estate Trust—a representative sample of the approval notices issued to each Bend Chamber of Commerce Trust, posted on the SERFF system. Attached as Exhibit B is a true and correct copy of the opinion from legal counsel regarding the "bona fide status" of the Bend Chamber of Commerce Real Estate Trust. Such documents were obtained from the public filing records.

BIRMINGHAM DECLARATION ISO AGGRIEVED
PARTY'S MOTION TO STAY
(Docket No. 14-0246) - 1
DWT 27237793v1 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 I declare under penalty of perjury under the laws of the United States that the foregoing
2 is true and correct.

3 Executed this 1st day of July, 2015, at Seattle, Washington.

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5 /s/ Richard J. Birmingham
6 Richard J. Birmingham
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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

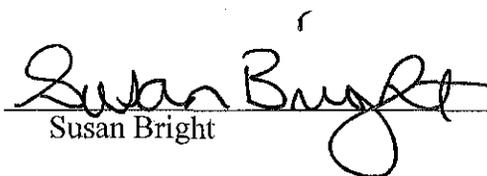
Attorney for the Washington State Office of the Insurance Commissioner

Gwendolyn Payton
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, WA 98111-9402
PaytonG@lanepowell.com

Attorney for Premera Blue Cross

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

DATED this 1st day of July, 2015, at Bellevue, Washington.



Susan Bright

EXHIBIT A

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Filing Summary

Filing Information

Product Name:

BCOC Real Estate Trust

Type Of Insurance:

H16G Group Health - Major Medical

Sub Type Of Insurance:

H16G.002A Large Group Only - PPO

Filing Type:

Form

SERFF Tracking Number:

PCSR-129436786

Submission Date:

3/4/14

Filing Status:

Closed - Approved

Filing Outcome

SERFF Status:

Closed

Disposition Date:

04/01/2014

Disposition Status:

Approved

State Status:

Review completed

State Status Last Changed:

4/1/14

Company Information

Company Name	Company Code	Address	Telephone Number
PacificSource Health Plans Eugene, Oregon 97401-0068	54976	P.O. Box 7068 (800)624-6052	

Attachments

Forms

None Available

Rate/Rule

None Available

Supporting Documentation

Document Name

Attachments

Cover Letter or Explanatory Memorandum

 [Cover Letter BCOC Real Estate.pdf](#)

3894 Certification of Compliance

 [Cert of Compliance Real Estate.pdf](#)

2441; 2441A; 2441D Standards for Associations, Trusts, or Discretionary Groups

 [2441a for BCOC Real Estate.pdf](#)

 [List of plan forms Real Estate.pdf](#)

BCOC Real Estate Trust documents

 [BCOC Real Estate Trust.pdf](#)

 [Attorney Letter Real Estate.pdf](#)

 [Signed M-1 for Real Estate Employers.pdf](#)

Previous Version

2441; 2441A; 2441D Standards for Associations, Trusts, or Discretionary Groups

- [2441a for BCOC Real Estate.pdf](#)
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Correspondence

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Fax: (816) 783-8175
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EXHIBIT B



WALTER W. MILLER
Admitted in Oregon
Direct Line: 541-686-3299
E-Mail: wmliller@schwabe.com

February 27, 2014

VIA E-MAIL

Sandy Stephenson
Chief Financial Officer
Bend Chamber of Commerce
777 NW Wall Street
Bend, OR 97701

Re: Bona Fide Status of Plan - Real Estate Employers

Dear Sandy:

We have been asked to provide our view as to whether the Bend Chamber of Commerce Employee Benefit Plan and Trust for Real Estate Employers to be established for a group of employers that are members of the Bend Chamber of Commerce (the "Plan") will constitute a "bona fide" group employee welfare benefit plan. Stated another way, the question is whether the Plan will be a single plan covering the employees of the participating employers, in contrast to a collection of plans that each employer is deemed to maintain separately for its own employees.

The distinction is important because the federal Affordable Care Act ("ACA") imposes various restrictions on group health plans having fewer than 50 eligible employees. These mandates include new community rating restrictions and rate review requirements. In contrast, insurance coverage under a large employer plan (i.e., a plan with 50 or more eligible employees) is exempt from these restrictions.

Summary and Conclusion

Bona fide group employee welfare benefit plan status under the ACA is to be determined under Employee Retirement Income Security Act ("ERISA") standards developed by the federal courts, and by the U.S. Department of Labor. Under these principles, a benefit program covering the employees of multiple employers may qualify as an employee benefit welfare plan if the employers that participate in the plan (i) have a common economic or representation interest unrelated to the provision of benefits, and (ii) directly or indirectly exercise control over the plan.

Based on the facts and legal analysis set forth below, it is our view that the Plan would qualify as a large employer plan for purposes of the applicable provisions of the ACA.

Facts

The pertinent facts as set forth in the Plan document, or as otherwise represented to me, are set forth below.

1. The Plan will be established and maintained for the purpose of providing health insurance benefits for the employees of participating employers.
2. Participation in the Plan will be restricted to Oregon-based employers that are in the same line of business.
3. An employer must satisfy the conditions below in order to become and remain a participating employer under the Plan.
 - a. The employer must have a physical presence in Oregon.
 - b. The employer must have at least one common-law employee enrolled in the Plan.
4. The Plan will be controlled by a "Board of Trustees," the members of which are elected by the participating employers of the Plan.
5. The Board of Trustees will have the power and authority to amend or terminate the Plan at any time. The Plan can also be amended or terminated at any time by a majority vote of the participating employers.
6. The Plan will not be offered to individuals, or to sole proprietors or partnerships that do not have any common-law employees covered under the Plan.

Bona Fide Group of Employers Standard

The Department of Labor and federal courts have developed a principle, known as the "bona fide group of employers" standard, that is applied to establish whether a plan covering the employees of more than one employer may qualify as a single employee welfare benefit plan for purposes of ERISA. In order to achieve this status, the three conditions below must be satisfied.

1. The employers to which the plan is offered must be bound together by a common economic or representation interest unrelated to the provision of benefits.
2. The participating employers with respect to the plan must directly or indirectly exercise control over the plan.
3. The participating employers that participate in the plan must all be "employers."

Each of these elements as applicable to the Plan is discussed below.

A. Commonality of Interest Standard

A plan covering the employees of multiple employers may qualify as a single employee welfare benefit plan if the group of employers for whom the plan is established and maintained, and the individuals who benefit from such plan, are tied by a common economic or representation interest, unrelated to the provision of benefits. *Wisconsin Educ. Ass'n Trust v. Iowa State Bd.*, 804 F.2d 1059 (8th Cir.1986)¹. Employers in the same line of business and located in the same geographic area will typically be held to satisfy the commonality of interest requirement. ERISA Advisory Opinion 2008-07A. See also ERISA Advisory Opinions 2005-24A and 2005-25A (schools had the requisite commonality of interest because they were members of an association with a history of organized cooperation and administration).

B. Exercise of Control Standard

As a condition to bona fide, single employee benefit welfare plan status, the employers whose employees are covered under the plan must exercise control, either directly or indirectly, both in form and in substance, over the activities and operations of the plan. The authority of the participating employers to elect and remove the members of a plan's governing board, and to amend or terminate the plan, constitutes in form the power to control and direct the activities and operations of the plan. See ERISA Advisory Opinion 2003-13A.

C. Employer-Only Participation

In order to qualify as an employee welfare benefit plan, a plan must be maintained by or on behalf of an employer for the benefit of "employees." A plan that allows membership by individuals, or by sole proprietors or partnerships that do not have common law employees eligible for coverage under the plan, does not qualify as an employee welfare benefit plan. *Marcella v. Capital Dist. Physicians' Health Plan, Inc.*, 293 F.3d 42 (2d Cir. 2002); ERISA Advisory Opinions 98-08A, 95-01A, and 94-07A.

Conclusion

The participating employers with respect to the Plan are all engaged in the same line of business in the same geographical locale, and are bound together with a common economic interest. The participating employers possess a genuine organizational relationship unrelated to the provision of benefits. The commonality of interest of the participating employers for the Plan establishes their status as a bona fide group of employers.

The members of the Plan's Board of Trustees are directly elected by participating employers for the Plan. The Board of Trustees has the power and authority to amend and terminate the Plan. Therefore, control of the Plan is vested solely in employers that participate in the Plan.

¹ See also *Moideen v. Gillespie*, 55 F.3d 1478, 1481 (9th Cir.1995); *MDPhysicians*, 957 F.2d at 185-86; *Credit Managers Ass'n v. Kennesaw Life & Accident Ins. Co.*, 809 F.2d 617, 625 (9th Cir.1987).

Lastly, membership in the Plan is limited to "employers."

In light of all the foregoing facts and circumstances, it is our view that the Plan constitutes a large employer plan for purposes of the applicable provisions of the ACA.

ORS 743.522(1)(c) Standards

In addition to satisfying the federal bona fide plan standards, the Plan will also qualify as "group health insurance" under ORS 743.522(1)(c). This provision of the Oregon Insurance Code is transcribed below.

743.522 "Group health insurance" described. (1) "Group health insurance" means that form of health insurance covering groups of persons described in this section, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons, and issued upon one of the following bases:

* * *

(c) Under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as described in paragraph (b) of this subsection, insuring employees of the employers or members of the unions or of such association, or employees of members of such association for the benefit of persons other than the employers or the unions or such association. As used in this paragraph, "employees" may include the officers, managers and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The policy may provide that the term "employees" includes the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

This statutory provision consists of a number of independent clauses separated by the correlative conjunction "or." If we remove certain of the independent clauses, we are left with the following:

(c) Under a policy issued to the trustees of a fund established [or maintained] by two or more employers in the same or related industry, insuring employees of the employers for the benefit of persons other than the employers.

The Plan will be maintained and controlled by two or more participating employers, all of which are in the same or related industry, and insure employees for the benefit of persons other than the participating employers. The policy will be issued to the Board of Trustees of the Plan. Therefore, the policy will qualify as group health insurance under ORS 743.522.

Sandy Stephenson
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February 27, 2014
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Scope and Use of Letter

The views expressed in this letter are solely for the benefit of the addressees of this letter. This letter is provided to you as our views only, and not as a guaranty or warranty of the matters discussed in this letter. Our views are limited to the matters expressly stated in this letter, and no other views or opinions may be implied or inferred.

Very truly yours,



Walter W. Miller

WWM: keo

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