

June 19, 2015

Judge George Finkle, Ret.
Hearings Unit
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

Re: ***Business Health Trust, et al.***
OIC Matter No. 15-0133

Dear Judge Finkle:

There are two separate issues with respect to Business Health Trust (“BHT”) – (1) ERISA 3(5) status, and (2) rating issues. These issues will be addressed separately.

ERISA 3(5) Issue

It is our opinion that the ERISA 3(5) issue is a matter of exclusive federal jurisdiction. In this regard, this issue has been pending in the Western District of Washington since December of 2014. We have filed a motion for summary judgment that was fully briefed as of June 12, 2015. We expect a ruling on this motion before the end of July. The matter is also scheduled for trial on November 2, 2015.

We have the same ERISA 3(5) issue in the Moda case. We propose that this issue be scheduled two weeks off the current Moda schedule: opening briefs October 23; responses November 6; replies November 20. The Moda schedule was previously agreed to by the OIC. If the federal case is dismissed, then the OIC has an administrative schedule, to which it previously agreed, to fall back on. However, we believe that the Federal Court will decide this matter, one way or the other, long before October of 2015.

At this point, we feel that it is a waste of judicial resources to file essentially the same arguments that are pending before the Federal Court, at the administrative level. Should you nevertheless decide to the contrary, any scheduling order should first schedule a motion about this Administrative Court’s jurisdiction to hear this matter, especially in light of the pending federal motions.

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I believe that Premera is in agreement with the October 23 schedule set forth above. I believe that they will agree to move their 3(5) argument to the October 23 schedule. In return, BHT will move its rating argument to the Premera schedule, as discussed below.

Ratings

We first ask that any discussion on the ratings issues be stayed pending the resolution of two cases filed in Superior Court in Spokane – *Associated Industries of the Inland Northwest v. Kreidler*, 15-2-01091-8; *Associated Industries of the Inland Northwest and the Association of Washington Business v. OIC*, 07-2-00592-1. These cases essentially allege that the OIC's current rating methodology is the same as the rating methodology previously referenced in TAA 06-07, which was declared an unconstitutional exercise of legislative powers. The Spokane Superior Court decided that issue in 2007.

If a stay is not granted, we agree to consolidate our rating issue with the rating schedule of Premera, which we believe is 30 days after you issue a ruling on the summary judgment motions pending in WCIF and Master Builders.

Thank you for considering our position, as we have worked hard to coordinate the positions of the various parties. Again, on the ratings issue, if a stay is not granted, we agree to consolidate with Premera. On the ERISA 3(5) issue, BHT, and I believe Premera, will agree to consolidate on a schedule that is two weeks off the Moda schedule, as the Moda hearings raise the same issue. We, however, expect that a Federal Court will resolve the issue before then.

Very truly yours,

Davis Wright Tremaine LLP



Richard J. Birmingham

cc: Gwendolyn Payton
Marta DeLeon