

FILED

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

2015 JUN 22 A 11: 44

In the Matter of)
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BUSINESS HEALTH TRUST, et al.) **Docket No. 15-0133**
) **SECOND SCHEDULING ORDER**
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TO: Richard J. Birmingham
Christine Hawkins
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Attorneys for Business Health Trust

Marta DeLeon, AAG
Attorney General of Washington
1125 Washington St. SE
P.O. Box 40100
Olympia, WA 98504-0100
Attorney for Office of Insurance Commissioner

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Molly Nollette, Deputy Commissioner, Rates and Forms Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Gwendolyn C. Payton
Lane Powell PC
1420 Fifth Avenue, Suite 4200
Seattle, WA 98111-9402
Attorney for Premera Blue Cross

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Business Health Trust, a third party administrator of 13 industry specific Health Benefit Trusts ("Trusts"); each of the 13 industry specific Health Benefits Trusts and their associations: Aerospace Industry Health Trust, Agriculture Industry Health Trust, Business Services Industry health Trust, Community Service Organization Industry Health Trust, Healthcare Industry Health Trust, Information Technology Industry Health Trust, End-Line Manufacturing Industry Health Trust, Media Industry Health Trust, Retail Industry Health Trust, Tourism Industry Health Trust, Transportation Industry Health Trust, and Wholesaling Industry Health Trust; each of the sponsoring employers (approximately 661 employers as of January 1, 2015) solely with respect to the insurance coverage provided by such Trusts, with the Seattle Metropolitan Chamber of Commerce serving as a representative for such employers; and the individual participants of such Trusts (approximately 14, 892 insureds as of January 1, 2015), with Emmy Jordan serving as a representative for such participants (collectively "BHT") submitted a Demand for Hearing, dated and filed May 11, 2015, demanding a hearing to challenge the Office of the Insurance Commissioner's (OIC's) February 15, 2015, disapproval of the 2014 rate and form filings for the Trusts filed by Premera Blue Cross ("Premera").

On June 11, 2015, I held a first prehearing conference. The OIC was represented by Marta DeLeon, Attorney at Law, Assistant Attorney General. Richard J. Birmingham and Christine Hawkins, Attorneys at Law, of Davis Wright Tremaine, represented BHT. John Pierce, Attorney at Law, Premera Vice President and General Counsel, also attended.

On June 15, 2015, I issued a Scheduling Order directing the parties and Premera to meet and confer to discuss 1) possible consolidation of this matter with other Association Health Plan matters in which Premera is a party; and 2) a briefing schedule. Consistent with the Scheduling Order, on June 19, 2015, the OIC, BHT, and Premera served and filed letters stating their views.

The parties agree that two central issues are presented in this matter: 1) Do the Petitioners constitute a single "employer" under the definition incorporated into state law from ERISA (the ERISA 3(5) issue)? 2) Do association health plans that qualify as a single large employer have to structure their rates at the association employer level, or can each individual member employer be rated differently within an association (the rating issue)?

BHT and Premera view the ERISA 3(5) issue as a matter of exclusive federal jurisdiction, which is the subject of a fully-briefed motion for summary judgment pending in the Western District of Washington likely to be decided before the end of July. BHT asks that any discussion on the ratings issues be stayed pending resolution of two cases filed in Spokane Superior Court – *Associated Industries of the Inland Northwest v. Kreidler*, No. 15-2-0191-8; and *Associated Industries of the Inland Northwest and the Association of Washington Business v. OIC*, No. 07-2-00592-1. The OIC disagrees that the courts are likely to decide the issues promptly -- or even that the courts will ultimately decide the merits of such issues -- and seeks a prompt decision from this tribunal.

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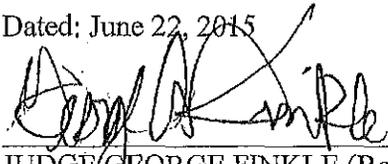
I believe the greatest practical consolidation of the issues in pending Association Health Plan matters is desirable, to achieve the maximum possible procedural efficiency, as well as clarity and consistency of rulings.

This Matter is consolidated with Premera Blue Cross, Docket No.15-0113, at least for purposes of dispositive Motions.

The parties shall serve and file dispositive Motions on the ERISA 3(5) and rating issues not later than 30 days after I issue my ruling on the summary judgment motions pending in Washington Counties Insurance Fund, No. 15-0034, and Master Builders Association, et al, Docket Nos. 15-0062, 15-0071, 15-0075, 15-0078, 15-0079, and 15-0084. The parties shall serve and file Responses to such Motions not later than three weeks after the last date on which such Motions are filed. The parties shall serve and file Replies to such Responses no later than two weeks after such Responses are filed. Oral argument will be set for the earliest reasonably convenient date after Replies are filed. If my rulings do not dispose of this matter, a schedule may be established for briefing on other Motions and for an evidentiary hearing, if such hearing is appropriate.

This schedule is without prejudice to BHT bringing a Motion challenging this tribunal's jurisdiction to consider the ERISA 3(5) issue in light of pending federal litigation or on other grounds.

Dated: June 22, 2015



JUDGE GEORGE FINKLE (Ret.)
Presiding Officer

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Richard J. Birmingham and Christine Hawkins, Marta DeLeon, Gwendolyn C. Payton, Mike Kreidler, James T. Odiorne, J.D., CPA, Molly Nollette, and AnnaLisa Gellermann.

DATED this 22nd day of June, 2015.


KELLY A. CAIRNS