

1. This case comes before me on the Aggrieved Party's Motion to Stay In-Part, i.e., the ERISA 3(5) Determination, for Lack of Subject Matter Jurisdiction, filed by Business Health Trust, et al ("BHT") on July 1, 2015. I have considered BHT's Motion, the OIC's Response, filed August 14, 2015, BHT's Reply, filed August 27, 2015, Premera's Joinder in BHT's Reply, filed August 28, 2015, and the attachments to such submissions.

2. In December 2014, BHT filed an action in the U.S. District Court for the Western District of Washington seeking a declaratory judgment that the Health Trusts at issue are sponsored by bona fide ERISA Section 3(5) employers ("federal declaratory action").

3. In the present matter, OIC contests the Health Trusts' status as bona fide ERISA Section 3(5) employers, which is the issue pending in federal court.

4. *International Association of Entrepreneurs of America v. Angoff*, 58 F.3d 1266, 1269 (8th Cir. 1995), states: "ERISA nowhere makes federal courts the exclusive forum for deciding the ERISA status *vel non* of a plan or fiduciary. Unless instructed otherwise by Congress, state and federal courts have equal power to decide federal questions. Because ERISA is silent on the matter of the power to declare ERISA status, we conclude that the question of [an association's] ERISA status falls under the usual concurrent state and federal jurisdiction." (Internal citations omitted.)

5. I assume, without deciding, that under *Angoff*, the commissioner has concurrent jurisdiction with the federal court to decide the threshold question under federal law of whether the Health Trusts at issue are sponsored by ERISA Section 3(5) employers. *See also, American Family Mutual Ins. Co. v. Hollander*, 705 F.3d 339, 367; fn. 8 (8th Cir. 2013). However, even assuming concurrent jurisdiction, this matter should be stayed, for three reasons:

ORDER ON MOTION TO STAY

15-0133

Page - 3

6. *First.* As noted above, BHT filed the pending federal declaratory action on December 2014. Discovery has been conducted. A motion for summary judgment was noted for June 2015 and is fully briefed and ripe for ruling. Trial is set for November 2015. Proceeding with the present matter would risk duplication, delay, and confusion.

7. *Second.* The OIC did not seek dismissal or stay of the federal action under the *Younger* and *Pullman* doctrine, or on other grounds. The principal of comity requires that the present matter abide the result of the federal action. *See, Florida Crushed Stone Co. v. Travelers Indem. Co.*, 632 So.2d 217, 220 (Fla. 5th DCA 1994) (abuse of discretion to refuse to stay subsequently filed state court action in favor of previously filed federal action involving same parties and same or substantially similar issues).

8. *Third.* The federal court has the requisite expertise, and is best suited, to decide the decisive issue of federal law-- whether the Health Trusts at issue are sponsored by ERISA Section 3(5) employers -- in light of the pertinent facts, as developed in discovery and may be presented in trial.

9. The present Order would appear to be mooted, if the OIC approves the plans at issue.

Order.

The present matter is stayed pending the result of the federal declaratory action.

Dated: September 2, 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 Payton, Mike Kreidler, James T. Odiorne, J.D., CPA, Molly Nollette, and AnnaLisa Gellermann.

DATED this 2nd day of September, 2015.



KELLY A. CAIRNS