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

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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

In the Matter of

**WASHINGTON TECHNOLOGY
INDUSTRY ASSOCIATION,**

Applicant.

Docket No. 15-0290

OIC RESPONSE IN OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT BY WTIA

The Insurance Commissioner for the state of Washington ("OIC"), by and through the undersigned Insurance Enforcement Specialist, his authorized designee, submits this Response in Opposition to the Motion for Summary Judgment by WTIA. Washington Technology Industry Association ("WTIA") is not an "arrangement," the statutory term for the self-funded version of a multiple employer welfare arrangement ("MEWA"). Accordingly, WTIA is not eligible to receive a certificate of authority under the plain language of Chapter 48.125 RCW. Even if it were eligible, WTIA's application would be time barred since WTIA failed to submit an application by the statutory cut-off date, April 1, 2005. Further, WTIA's own documentation demonstrates that it has not met the statutory surplus requirements. WTIA is not entitled to judgment as a matter of law, and the OIC respectfully requests that the chief presiding officer deny WTIA's motion for summary judgment.

BACKGROUND

This Response elaborates on the uncontested facts as set forth in the OIC's Motion for Summary Judgment, and the Declarations of Gayle Pasero and Steven E. Drutz previously filed in this matter, which are incorporated by reference herein. The Washington Legislature enacted Chapter 48.125 RCW in 2004, providing for the registration and regulation of self-funded

1 MEWAs.¹ After the statute was enacted, three domestic self-funded MEWAs, already in
2 operation, applied for and were granted a certificate of authority.² While other entities inquired
3 about obtaining a certificate of authority, those entities learned that they did not meet the
4 statutory requirements.³ The OIC has not granted any certificates of authority to any self-
5 funded MEWAs subsequent to the initial applications.⁴ All but one of the self-funded MEWAs
6 that had previously obtained a Washington certificate of authority experienced financial
7 difficulties and had to cease operations.⁵

8 At an early meeting, OIC representatives informed WTIA representatives that the OIC
9 had not granted a certificate of authority to operate a self-funded MEWA in at least seven or
10 eight years and shared the concern that Chapter 48.125 RCW “might have been intended only
11 for preexisting self-funded MEWAs.”⁶ Despite this, on March 27, 2015, WTIA submitted its
12 initial application for a certificate of authority.⁷ Later, the OIC requested WTIA’s position on
13 “why WTIA believes that it complies with RCW 48.125.020(3) and RCW 48.125.030(8).”⁸
14 The OIC informed WTIA that its application was not substantially complete, and requested
15 additional information and documentation.⁹ WTIA disputed the fact that its application was not
16 substantially complete, stating its position that the requirements cited by the OIC did not apply
17 to it, since it “provides fully insured health care benefits.”¹⁰ WTIA promised to comply with
18 the statutory requirements applicable to self-funded MEWAs “once our application is
19 approved.”¹¹ WTIA requested the OIC to issue a decision, based on WTIA’s application and the
20

21 ¹ Laws of 2004, ch. 260.

22 ² Declaration of Steven E. Drutz, page 3, para. 9.

23 ³ Declaration of Gayle Pasero, page 2, para. 7.

24 ⁴ *Id.*; Declaration of Steven E. Drutz, page 3, para. 9.

25 ⁵ Declaration of Steven E. Drutz, page 3, para. 9.

26 ⁶ Declaration of Michael Monroe in Support of Motion for Summary Judgment by WTIA (“Monroe
Declaration”), page 3, para. 9.

⁷ *Id.*, para. 10; Declaration of Gayle Pasero, page 2, para. 7.

⁸ Monroe Declaration, page 5, para. 16.

⁹ Declaration of Gayle Pasero, page 1, para. 4; *see, e.g.* Exhibit 10 to Monroe Declaration, page 3.

¹⁰ Exhibit 10 to Monroe Declaration, pages 1-2.

¹¹ *Id.*

1 information provided thus far, by September 23, 2015.¹² Accordingly, the OIC denied WTIA's
2 initial application on September 23, 2015, as the applicable requirements of RCW 48.125.030
3 through 48.125.070 were not met.¹³ WTIA re-submitted its original application on or about
4 October 29, 2015.¹⁴ On November 18, 2015, the OIC denied WTIA's re-submitted
5 application.¹⁵

7 ARGUMENT

8 **A. Standard**

9 "A motion for summary judgment may be granted and an order issued if the written
10 record shows that there is no genuine issue as to any material fact and that the moving party is
11 entitled to judgment as a matter of law." WAC 10-08-135. "When considering a summary
12 judgment motion, the court must construe all facts and reasonable inferences in the light most
13 favorable to the nonmoving party." *Triplett v. Dep't of Soc. & Health Servs.*, 166 Wn. App.
14 423, 427 (2012) (citation omitted). For purposes of this motion, the facts of this matter should
15 be viewed in the light most favorable to the OIC, the non-moving party. *Id.* WTIA, the moving
16 party, is not entitled to judgment as a matter of law, and its motion for summary judgment
17 should be denied.

18 **B. WTIA's Motion Is Not Supported by the Plain Language of Chapter 48.125 RCW.**

19 The statutory language of Chapter 48.125 RCW, and the OIC's interpretation thereof, is
20 examined at greater length in the OIC's Motion for Summary Judgment, which is fully
21 incorporated by reference herein.¹⁶ WTIA's inconsistent usage of defined terms such as
22 "arrangement" and "MEWA" creates confusion and ambiguity where none was intended by the
23 Legislature. These terms are not interchangeable; each has a distinct meaning. If the specific

24 ¹² Monroe Declaration, page 8, para. 24.

25 ¹³ Exhibit 11 to Monroe Declaration, page 3.

26 ¹⁴ Declaration of Gayle Pasero, pages 2-3, para. 8.

¹⁵ Letter of Steven E. Drutz of November 18, 2015, attached to WTIA Demand for Hearing ("Drutz letter"), page 1.

¹⁶ OIC Motion for Summary Judgment, *esp.* pages 4-7.

1 definition given each term is used consistently, there is no confusion. Read properly, there is
2 no ambiguity in the statute, which compels the result that WTIA is not entitled to a certificate
3 of authority, and that its application was correctly denied.

4 **1. WTIA is not an “arrangement,” and for that reason, is not entitled to a certificate**
5 **of authority under Chapter 48.125 RCW.**

6 “Where a statute uses plain language and defines essential terms, the statute is not
7 ambiguous.” *Regence Blueshield v. Ins. Comm’r.* 131 Wn. App. 639, 646 (2006) (citing
8 *McFreeze Corp. v. Dep’t of Revenue*, 102 Wn. App. 196, 200 (2000)). “If a term is defined in
9 a statute, we must use that definition.” *Postema v. Postema Enters., Inc.*, 118 Wn. App. 185,
10 195 (2003), *rev. den.*, 151 Wn.2d 1011 (2004) (citations omitted). These rules of construction
11 and the plain language of Chapter 48.125 RCW demonstrate that WTIA is not entitled to a
12 certificate of authority.

13 In Chapter 48.125 RCW, there are two definitions that pertain directly to MEWAs.
14 First, “multiple employer welfare arrangement” (MEWA) “means a multiple employer welfare
15 arrangement as defined by 29 U.S.C. Sec. 1002.” RCW 48.125.010(5). This is the term that
16 refers to MEWAs in general, with a narrow exception for MEWAs comprised of federal or state
17 employers, or contractors with federal agencies. It is undisputed that WTIA fits this definition.

18 Second, the synonymous terms “self-funded multiple employer welfare arrangement”
19 and “arrangement” are defined as “a multiple employer welfare arrangement that does not
20 provide for payment of benefits under the arrangement solely through a policy or policies of
21 insurance issued by one or more insurance companies licensed under this title.” RCW
22 48.125.010(7). In other words, to meet the statutory definition of “arrangement,” a MEWA
23 must be self-funded.¹⁷ WTIA does not dispute that it does not meet this definition.¹⁸

24 Every provision that expressly provides for the grant of a certificate of authority uses
25 the defined term “arrangement.” RCW 48.125.020; RCW 48.125.30; RCW 48.125.080. In

26 ¹⁷ Declaration of Gayle Pasero, page 2, para. 5; Declaration of Steven E. Drutz, page 2, para. 5.

¹⁸ See Motion for Summary Judgment by WTIA, page 6.

1 Washington, “a person may not establish, operate, provide benefits, or maintain a self-funded
2 multiple employer welfare arrangement in this state unless the arrangement first obtains a
3 certificate of authority from the commissioner.” RCW 48.125.020(1) (emphasis added). The
4 “commissioner may not issue a certificate of authority to a self-funded multiple employer
5 welfare arrangement unless the arrangement establishes to the satisfaction of the commissioner
6 that the following requirements [of RCW 48.125.030] have been satisfied by the arrangement.”
7 RCW 48.125.030 (emphasis added). This includes the requirement that:

8 “[t]he arrangement has been in existence and operated actively for a continuous
9 period of not less than ten years as of December 31, 2003, except for an
10 arrangement that has been in existence and operated actively since December 31,
11 2000, and is sponsored by an association that has been in existence more than
12 twenty-five years.”

13 RCW 48.125.030(8) (emphasis added). Furthermore, the “commissioner shall grant the
14 application of an arrangement that satisfies the applicable requirements of RCW 48.125.030
15 through 48.125.070,” but the “commissioner shall deny the application of an arrangement that
16 does not satisfy the applicable requirements of RCW 48.125.030 through 48.125.070.” RCW
17 48.125.080(2)-(3) (emphasis added). Notably, every one of the statutory sections referenced in
18 RCW 48.125.080 refers specifically to “arrangements.” See RCW 48.125.030 through
19 48.125.070.

20 In contrast, there is no provision in Chapter 48.125 RCW that allows an entity that is
21 not already an “arrangement” to receive a certificate of authority. The Legislature enacted
22 separate definitions in the same section of the statute, demonstrating that it knew the distinction
23 between MEWAs in general, and self-funded MEWAs (“arrangements”) in particular. RCW
24 48.125.010(5); cf. RCW 48.125.010(7). If the Legislature had intended to make certificates of
25 authority available to MEWAs generally, it simply could have used the more general term,
26 “multiple employer welfare arrangement,” which it had defined earlier in the chapter. RCW
48.125.010(5). The fact that the Legislature used only the term “arrangement” in each provision

1 expressly providing for the grant of a certificate of authority demonstrates the intent to limit
2 that eligibility to “arrangements,” meaning MEWAs already operating on a self-funded basis.¹⁹
3 RCW 48.125.020; RCW 48.125.30; RCW 48.125.080.

4 WTIA argues that it is eligible for a certificate of authority, but that these criteria do not
5 apply to it, leading to absurd results. If WTIA’s argument is correct, the necessary conclusion
6 is that there are no criteria or qualifications for granting a fully-insured MEWA a certificate of
7 authority when it desires to change its form of operations. For example, the only seasoning
8 requirement in this chapter is RCW 48.125.030(8). If, as WTIA argues, this requirement does
9 not apply to WTIA, there is no seasoning requirement for a fully insured MEWA that wants to
10 become self-insured; but there is for a self-insured MEWA that wants to continue existing
11 operations. Similarly, under WTIA’s theory, since it is not an “arrangement,” there is no
12 provision in the statute that provides guidance for when the commissioner shall grant or deny
13 their application. *Cf.* RCW 48.125.080. This position is contrary to the plain language and
14 stated purposes of Chapter 48.125 RCW. *See* RCW 48.125.005(1)-(2).

15 Ultimately, under both the plain language and in the OIC’s interpretation, a MEWA
16 must have self-funded history in order to meet the statutory definition of “arrangement.”²⁰ *See*
17 *Seatoma*, 82 Wn. App. at 518. A certificate of authority is only available to an “arrangement.”²¹
18 RCW 48.125.020; RCW 48.125.30; RCW 48.125.080. WTIA is a fully-insured MEWA and
19 has “no history of self-funded operation,” as stated in the OIC’s letter denying WTIA’s
20 resubmitted application.²² RCW 48.125.030(8); RCW 48.125.010(7); *see* WAC 10-08-135.
21 Under both the plain language of these statutes and under the OIC’s interpretation of the same,
22 WTIA is not entitled to judgment as a matter of law. WAC 10-08-135; *Regence*, 131 Wn. App.
23 at 646; *Seatoma*, 82 Wn. App. at 518.

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25 ¹⁹ *See* Declaration of Gayle Pasero, page 2, para. 5; Declaration of Steven E. Drutz, page 2, para. 5.

26 ²⁰ *Id.*

²¹ *Id.*

²² Drutz letter, page 1; *see also* Monroe Declaration pages 1-2, para. 3; *see also* Motion for Summary Judgment by WTIA, page 6.

1 **2. If WTIA were eligible for a certificate of authority under Chapter 48.125 RCW,**
2 **WTIA's application would be untimely under RCW 48.125.020.**

3 WTIA misunderstands OIC's position when it focuses on the interpretation of RCW
4 48.125.020(3). As pointed out above, only an "arrangement" may receive a certificate of
5 authority. RCW 48.125.030; RCW 48.125.080; RCW 48.125.010(7). WTIA is not eligible,
6 because it is not an "arrangement" due to its lack of self-funded history.²³ RCW 48.125.030;
7 RCW 48.125.080; RCW 48.125.010(7).

8 However, if WTIA is sufficiently an "arrangement" to be eligible for a certificate of
9 authority at all, then it was sufficiently an "arrangement" prior to December 31, 2003, to trigger
10 the operation of RCW 48.125.020(3). WTIA's eligibility under the statute is the same as it has
11 been since 2000: it is a fully insured MEWA with no history of self-funded operation.²⁴ With
12 respect to MEWA status, only WTIA's desire to apply for a certificate of authority has
13 changed.²⁵ Under those circumstances, WTIA would be time-barred from applying now, since
14 "[a]n arrangement established, operated, providing benefits, or maintained in this state prior to
15 December 31, 2003, has until April 1, 2005, to file a substantially complete application for a
16 certificate of authority." RCW 48.125.020(3).

17 WTIA's claim that it is eligible for a certificate of authority, but not subject to the
18 deadline in RCW 48.125.020(3), makes little sense. Under this interpretation, a fully-insured
19 MEWA would never be subject to a statutory deadline to apply, whereas a self-funded MEWA
20 would. Such a distinction would favor fully-insured MEWAs over self-funded MEWAs,
21 contrary to the statutory purpose of providing "for the authorization and registration of self-
22 funded multiple employer welfare arrangements." RCW 48.125.005(1) (emphasis added).
23 WTIA cannot both be eligible for a certificate of authority *and* not subject to the deadline.

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26 ²³ Declaration of Gayle Pasero, page 2, para. 5; Declaration of Steven E. Drutz, page 2, para. 5; *see*
Exhibit 10 to Monroe Declaration, pages 1-2.

²⁴ Monroe Declaration, pages 1-2, para. 3; Declaration of Gayle Pasero, page 2, para. 5.

²⁵ Monroe Declaration, page 2, para. 6.

1 RCW 48.125.020(1) does not support WTIA's position, because it only authorizes self-
2 funded MEWA operations if "the arrangement first obtains a certificate of authority," further
3 confirming that a MEWA must have self-funded history to be eligible. See RCW
4 48.125.030(8). RCW 48.125.020(1) can also be read to authorize the establishment of self-
5 funded MEWAs, after the deadline, that gained the requisite self-funded experience in a
6 different state. This interpretation would preserve the distinct meaning of the term the
7 legislature selected, "arrangement," and harmonizes RCW 48.125.020(1) with the statutory
8 "seasoning" requirement of RCW 48.125.030(8). In contrast, WTIA's interpretation conflates
9 "arrangement" with the distinct "multiple employer welfare arrangement," creating ambiguity
10 and conflict where none was intended, and thus should be rejected. RCW 48.125.010(7); RCW
11 48.125.010(5).

12 **3. The Legislative history does not support WTIA's position.**

13 WTIA seeks to support its position through legislative history, particularly relying on
14 some of the language of the original bill, referring to "self-funded multiple welfare
15 arrangements formed after October 1, 2004."²⁶ The language was removed in later drafts and
16 is not part of the final bill nor the enacted statute.²⁷ See RCW 48.125.040. This argument
17 overlooks the more relevant rules of statutory interpretation.

18 "Moreover, if the statutory language is clear, the court may not look beyond that
19 language or consider legislative history but should glean the legislative intent through the
20 statutory language." *Regence*, 131 Wn. App. at 646-647 (citation omitted). "Substantial weight
21 and deference should be given to an agency's interpretation of the statutes and regulations it
22 administers." *Seatoma Convalescent Ctr. v. DSHS*, 82 Wn. App. 495, 518 (1996) (citations
23 omitted). "The agency's interpretation should be upheld if it reflects a plausible construction of
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25 ²⁶ See Exhibits 5 and 6 to Declaration of Kiran H. Griffith in Support of Motion for Summary Judgment
by WTIA.

26 ²⁷ E.S.S.B. 6112, 58th Leg., 2004 Reg. Sess. (Mar.31, 2004), available at
<http://lawfilesexternal.wa.gov/biennium/2003-04/Pdf/Bills/Session%20Laws/Senate/6112-S.sl.pdf>;
see also Laws of 2004, ch. 260, § 6.

1 the language of the statute and is not contrary to the legislative intent.” *Id.* The plain language
2 of Chapter 48.125 RCW and the OIC’s interpretation thereof fully resolve all questions of
3 statutory interpretation here, as set forth above and in the OIC’s Motion for Summary Judgment.

4 Even if legislative history is considered, however, it does not support WTIA’s position.
5 Under the rule of construction for sequential drafts, the “last draft is interpreted in view of the
6 language contained in prior drafts, with the result that the greatest and, indeed, absolute or
7 conclusive weight is given to the last draft and any additions contained therein.” *Hama Hama*
8 *Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 449 (1975). This rule of construction has
9 significant limitations, though it is useful to reach “some conclusions, principally negative
10 ones” about statutory intent. *Id.* at 450 (quoting Radin, *Statutory Construction*, 43 Harv. L.
11 Rev. 863, 873 (1930)). The Legislature removed the language WTIA relies on from the final
12 draft and from the enacted version of the statute.²⁸ See RCW 48.125.040. Under this rule, the
13 only reasonable conclusion to draw is the negative inference: the Legislature did not intend for
14 “self-funded multiple employer welfare arrangements” to be “formed after October 1, 2004” in
15 Washington; otherwise, it would not have removed the language. See *Gorre v. City of Tacoma*,
16 184 Wn.2d 30, 44 (2015) (successive drafts indicated legislative intent to narrow, not expand,
17 scope of bill).

18 Moreover, that the bill reports do not discuss the changes indicates that a better approach
19 would be to follow the agency interpretation of the statutory scheme. “In any event, in the
20 absence of any explanation for the changes ... we are on much safer and more reliable ground
21 if we give greater credence to the administrative interpretation of this rather complex statute.”
22 *Hama Hama*, 85 Wn.2d at 451. To the extent there is any confusion regarding the legislative
23 history, the OIC’s interpretation of these statutes should resolve the issue.²⁹ *Id.*; see also
24 *Seatoma*, 82 Wn. App. at 518. WTIA is not entitled to judgment as a matter of law on this
25 issue.

26 ²⁸ *Id.*

²⁹ Declaration of Gayle Pasero, page 2, para. 5; Declaration of Steven E. Drutz, page 2, para. 5

1 **4. WTIA has not met the statutory surplus requirement.**

2 In order to be eligible for a certificate of authority as a self-funded MEWA, an
3 arrangement must continuously maintain “a surplus equal to at least ten percent of the next
4 twelve months projected incurred claims or two million dollars, whichever is greater.” RCW
5 48.125.060. WTIA’s own documents demonstrate that the amount required to operate WTIA
6 as a self-funded MEWA is nearly \$6 million, whereas WTIA has only set aside slightly more
7 than \$2 million.³⁰ WTIA promises to set aside the rest of the required amount in the future,
8 apparently sometime after its application is granted.³¹ By doing so, WTIA acknowledges that
9 it will be subject to RCW 48.125.060 surplus requirement at some point.³² Conceding that it is
10 not currently an “arrangement,” WTIA claims that it does not have to provide the money now,
11 because such requirements do not apply to fully insured MEWAs like itself.³³

12 Since every statutory requirement providing guidance on whether to issue a certificate
13 of authority applies to an “arrangement,” WTIA’s argument necessarily implies that a fully-
14 insured MEWA is not subject to any statutory criteria for issuance of a certificate of authority.
15 See RCW 48.125.030 through 48.125.070. Given the statutory purpose that the OIC “[r]egulate
16 self-funded multiple employer welfare arrangements in order to ensure the financial integrity
17 of the arrangements,” that interpretation would lead to an absurd result. RCW 48.125.005(2).
18 In reality, RCW 48.125.060 is a requirement that must be satisfied before granting a certificate
19 of authority. RCW 48.125.080(2). This is particularly important because even authorized self-
20 funded MEWAs that have met this surplus requirement have had significant difficulties
21 remaining solvent.³⁴ Assuming WTIA is even eligible for a certificate of authority at all, it is
22 not entitled to one here because it has failed to meet the statutory surplus requirement. RCW
23 48.125.080.

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25 ³⁰ Exhibit 10 to Monroe Declaration, page 1.

26 ³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Declaration of Steven E. Drutz, page 3, para. 9.

1 **C. The Equities Do Not Support WTIA's Case, nor Provide Any Basis for Relief.**

2 Finally, WTIA seems to argue for equitable relief from the plain language of Chapter
3 48.125 RCW. WTIA does not cite any legal authority for its position, nor specifically reference
4 any equitable theory. WTIA apparently asserts that the OIC did not provide its formal legal
5 opinion or guidance to WTIA's desired timing or satisfaction. These claims are contradicted
6 by WTIA's own factual submissions, and the relevant authority does not support WTIA.

7 "Equitable estoppel against the government is not favored." *In re Transfer of Territory*,
8 130 Wn. App. 806, 813 (2005) (citation omitted). One of the five elements, each of which a
9 party must prove by clear, cogent, and convincing evidence, is "a statement, admission, or act
10 by the government that is inconsistent with its later claims." *Johnson v. Dep't of Fish &*
11 *Wildlife*, 175 Wn. App. 765, 778 (2013), *rev. den.*, 179 Wn.2d 1006 (2013). "Where the
12 representations allegedly relied upon are matters of law, rather than fact, equitable estoppel will
13 not be applied." *Transfer of Territory*, 130 Wn. App. at 813 (citations omitted). "Inaction alone
14 does not constitute an inconsistent statement, admission, or act." *Johnson*, 175 Wn. App. at
15 778 (citing *Pioneer Nat'l Title Ins. Co. v. State*, 39 Wn. App. 758, 761 (1985)).

16 The facts do not demonstrate any inconsistencies on the OIC's part. The OIC raised the
17 issue of WTIA's possible total ineligibility under the statutory scheme early on in the process.³⁵
18 Later, the OIC requested WTIA's position on "why WTIA believes that it complies with RCW
19 48.125.020(3) and RCW 48.125.030(8)," making it clear that this issue was still a concern.³⁶
20 Even after WTIA provided its legal position on why it should be eligible, the OIC noted it had
21 still not determined whether there was authority to issue a certificate of authority to WTIA,
22 indicating that the OIC had not accepted WTIA's position at that point.³⁷ It should not have
23 surprised WTIA that OIC ultimately determined that WTIA was ineligible.³⁸

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25 ³⁵ Monroe Declaration, page 3, para. 10.

³⁶ *Id.*, page 5, para. 16.

³⁷ Exhibit 10 to Monroe Declaration, page 3.

³⁸ See Drutz letter, page 1.

1 Moreover, the OIC is given one hundred eighty days to evaluate a completed application
2 under this chapter. RCW 48.125.080. As discussed elsewhere, WTIA's application was never
3 complete.³⁹ However, even if it were applicable, WTIA concedes that the OIC denied its
4 application within the one hundred eighty day period provided by statute.⁴⁰ There is no
5 obligation that the OIC discuss its legal position at any time before the deadline, yet the OIC
6 did more than was necessary and shared its concerns ahead of time.⁴¹ Ultimately, WTIA's
7 claim in this respect is at best irrelevant, since whether WTIA is potentially eligible for a
8 certificate of authority is a question of law, and since any complaint by WTIA involves, at
9 worst, inaction by the OIC, neither of which can give rise to equitable relief. *Transfer of*
10 *Territory*, 130 Wn. App. at 813; *Johnson*, 175 Wn. App. at 778. WTIA is not entitled to
11 judgment as a matter of law on any equitable ground under the above facts and case law.

12 13 CONCLUSION

14 The plain language of Chapter 48.125 RCW indicates that a MEWA must have an
15 extensive history of self-funded operations in order to be eligible for a certificate of authority
16 under this chapter. The OIC's interpretation finds the same meaning in the statutory language.
17 WTIA, which has always been fully insured, cannot meet this requirement. Moreover, WTIA
18 was in existence in its current form prior to December 31, 2003. If WTIA qualifies to apply
19 now, it did so at that time as well, and is therefore time-barred since it failed to make its
20 application by the April 1, 2005 deadline. Finally, WTIA has not met the additional statutory
21 requirement of sufficient minimum surplus, which it would need to meet if it were otherwise
22 eligible to apply. The OIC shared its concerns with WTIA ahead of time, applied the proper
23 statutory factors, and made its decision within the appropriate statutory time frame, and therefore
24 there is no basis for equitable relief. WTIA was properly denied a certificate of authority, and
25

26 ³⁹ See Declaration of Gayle Pasero, pages 2-3, paras. 6-12; Drutz letter, page 1.

⁴⁰ Monroe Declaration, page 8, paras. 24-5.

⁴¹ See *id.*, page 3, para. 10; *Id.*, page 5, para. 16.

1 is not entitled to judgment as a matter of law. The chief presiding officer should deny WTIA's
2 motion for summary judgment.

3
4 RESPECTFULLY SUBMITTED this SM day of February, 2016.

5
6 

7 MIKE KREIDLER
8 Insurance Commissioner

9
10 By and through his designee

11 

12 Darryl E. Colman
13 Insurance Enforcement Specialist
14 Legal Affairs Division

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing OIC RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY WTIA on the following individuals by hand delivery, email and by placing same in the U.S. mail, via state Consolidated Mail Services, at the below indicated addresses:

Via Hand Delivery

William Pardee, Presiding Hearings Officer
Washington State Insurance Commissioner
5000 Capitol Blvd
Tumwater, WA 98501

Via US Mail and Email

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SIGNED this 5th day of February, 2016, at Tumwater, Washington.



RENEE MOLNES
Paralegal, Legal Affairs