

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

FILED

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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

In the Matter of:

**WASHINGTON TECHNOLOGY
INDUSTRY ASSOCIATION,**

Applicant.

Docket No. 15-0290

**ORDER DENYING MOTION FOR
RECONSIDERATION**

TO: Maren R. Norton
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Darryl Colman, Insurance Enforcement Specialist, Legal Affairs Division
Chuck Brown, Sr. Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
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Background.

On February 25, 2016, I granted the Office of Insurance Commissioner's ("OIC's") Motion for Summary Judgment in this matter, and issued an Order on Cross Motions for Summary Judgment ("Order"). On March 7, 2016, the Washington Technology Industry Association ("WTIA") timely requested reconsideration of the Order by and through its Motion for Reconsideration ("Motion"). I deny the Motion and incorporate by reference the reasoning in my Order. However, in doing so, below I directly address some issues raised in the Motion.¹

¹ With regards to a motion for reconsideration, RCW 34.05.470(4) states that assuming it is not "deemed denied under [RCW 34.05.470(3)]," the denial of motion for reconsideration shall be in the form of a written order denying the motion.

Analysis.

A. Legislative History

At 3:20-5:1-12 of its Motion, WTIA cites to portions of both the House Bill Analysis and House Bill Report for ESSB 6112, whose passage led to the creation of RCW Chapter 48.125, or the ‘self-funded multiple employer welfare arrangement regulation act’” (“Act”). Specifically, WTIA refers to the use of the term MEWA in both documents, without the “self-funded” qualifier, to suggest that the seasoning requirement of RCW 48.125.030(8) only mandates that an entity only be operating as MEWA for a requisite amount of time, not necessarily as a self-funded MEWA (“arrangement”). A casual reading of both documents WTIA cites for this proposition clearly shows that MEWA is used loosely in both documents, even though the Legislature and its staff clearly means self-funded MEWA, or arrangement. For instance, the passages at pages 3-5 of the House Bill Analysis dealing with topics headings such Solvency and Operational Requirements, Surplus and Contribution Rates, Reporting and Notice Requirements, Fees and Taxes, Market Conduct Examinations, Enforcement, all use the acronym “MEWA,” even though such topics are clearly referring to self-funded MEWAs (arrangements). See Griffith Decl., Ex. 7, pp. 3-5.

WTIA states at 4:23-25 of its Motion that if the legislature believed that ESSB 6112 only applied to then self-funded MEWAs, its reach would have been readily discoverable, since such entities were already subject to the OIC’s scrutiny. This is not true, as the Order explains, the House Bill Report for ESSB 6112 (“Bill Report”) summarizes the testimony in favor of passage of the Act, a portion of which was a need to establish a regulatory framework for self-funded MEWAs (arrangements), stating:

Failure of some thinly capitalized MEWAs in the 1980s created serious consequences for hospitals, doctors, and consumers. A regulatory framework for MEWAs is needed. At least two MEWAs have faced enforcement action by the OIC for failing to fit within the current statutory framework.

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More than 40 states have MEWA laws. This bill has the strongest financial requirements for MEWAs in the United States and provides good consumer protection. . . . The bill's proponents worked with the OIC on this bill. The OIC supports the Senate version. . . .

(Emphasis added).

B. Absurdity

At 6:4-8 of its Motion, WTIA argues that reading RCW 48.125.010(7)'s definition of "self-funded multiple employer welfare arrangement" or "arrangement" into the seasoning requirement of RCW 48.125.030(8) results in conflicting, but necessary, conditions to establish a self-funded MEWA, stating:

To wit – pursuant to .010(7), an entity only becomes an “arrangement” [that is, a self-funded MEWA] to the extent that it successfully applies for a certificate of authority; but, reading .010(7) into the seasoning requirement, an entity can only successfully apply for a certificate if it is already an arrangement.

(Emphasis added).

WTIA's reasoning fails for the reasons I articulate at pages 11-12 of the Order in which I address an identical argument from WTIA in its Reply, wherein I state:

Along those lines, WTIA argues at 3:7-11 of its Reply that to establish an “arrangement” a person must first obtain a COA, but the OIC can only issue a COA to an entity that is already an arrangement. WTIA adds: “We know this cannot be the case, because the OIC has issued certificates of authority to preexisting self-funded [MEWAs].” (Brackets added). WTIA asserts at 3:14 of its Reply that “OIC’s application of RCW 48.125.010(7) would lead to such an absurd result.”

While true that the OIC did issue certificates of authority to preexisting self-funded MEWAs after enactment of the Act, this was permitted by RCW 48.125.020(3) during a limited timeframe. Moreover, WTIA's assertion that this intuitively runs counter to the notion that for something to be deemed an “arrangement” presupposes that it first was issued a COA is faulty for the simple reason that something does not have to be issued a COA to be deemed an “arrangement” under RCW 48.125.070(7). RCW 48.125.020(1) only states that a person may not establish, operate, provide benefits, or maintain a self-funded MEWA (i.e., “arrangement”) in this state unless the arrangement first obtains a COA from the commissioner.

(Emphasis added).

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At 6:12-13 of its Motion, WTIA argues that the term “arrangement” in the seasoning requirement, or RCW 48.125.030(8), refers to any MEWA, self-funded or not. Along those lines, WTIA adds at 6:14-15 of its Motion: “Under such an interpretation, the seasoning requirement applies to every MEWA seeking a certificate of authority, with no consideration of whether the entity was self-funded at the time of Chapter 48.125’s enactment.” Far from being an immensely more reasonable reading of the seasoning requirement than the OIC’s, WTIA’s position would result in the word “arrangement” in RCW 48.125.030 meaning different things to different people throughout that statute depending on their viewpoint. The opening sentence of RCW 48.125.030, of which the seasoning requirement is only a small portion (subsection (8)), states: “The commissioner may not issue a certificate of authority to a self-funded multiple employer welfare arrangement unless the arrangement establishes to the satisfaction of the commissioner that the following requirements have been satisfied by the arrangement.” Clearly the terms “self-funded MEWA” and “arrangement” have a synonymous meaning in this sentence, as RCW 48.125.010(7) indicates, otherwise it makes no sense. To conclude that the word “arrangement” in the seasoning requirement, or RCW 48.125.030(8),² is used differently than in the remainder of RCW 48.125.030, or as WTIA suggests, would ignore the plain language of RCW 48.125.030, and as I state at pages 14-15 of the Order:

Much like MERS attempted to accomplish in *Bain*, WTIA’s arguments in favor of a selective application of the defined term “arrangement” in RCW 48.125.010(7) because of a common legislative caveat such as “unless the context clearly requires otherwise,” in order to support its construction of the Act, amounts to nothing more than a resort to so-called “extrastatutory conditions” (i.e., a desire to allow MEWAs that do not meet the seasoning requirement to be established under the Act).

(Brackets added).

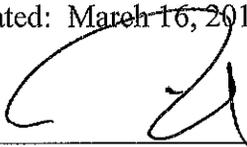
² Which reads:

The arrangement has been in existence and operated actively for a continuous period of not less than ten years as of December 31, 2003, except for an arrangement that has been in existence and operated actively since December 31, 2000, and is sponsored by an association that has been in existence more than twenty-five years;

Order.

WTIA's Motion is denied for the Reasons articulated in the original Order and above.

Dated: March 16, 2016



William G. Pardee
Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

CERTIFICATE OF SERVICE

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 filed and served the foregoing Order Denying Motion for Reconsideration on the following people at their addresses listed below:

Maren R. Norton
Stoel Rives LLP
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Seattle, WA 98101

Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Darryl Colman, Insurance Enforcement Specialist, Legal Affairs Division
Chuck Brown, Sr. Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Dated this 16th day of March, 2016, in Tumwater, Washington.


Dorothy Seabourne-Taylor
Paralegal
Hearings Unit