

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

**ORDER ON CROSS MOTIONS FOR
SUMMARY JUDGMENT**

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

COPY TO: Mike Kreidler, Insurance Commissioner
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Doug Hartz, Deputy Commissioner, Company Supervision Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
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This case comes before me on Washington Technology Industry Association's (WTIA's) and the Office of Insurance Commissioner's (OIC's) Cross Motions for Summary Judgment.

I have considered the Motions filed January 22, 2016; the OIC's Opposition to WTIA's Motion, filed February 5, 2016; WTIA's Response to the OIC's Motion, filed February 5, 2016; the OIC's Reply in Support of its Motion, filed February 12, 2016; WTIA's Reply in Support of its Motion, filed February 12, 2016; and the declarations and other attachments to such submissions.

Issues.

In their briefing in support of their Motions, the parties present the following issues:

(1) Is WTIA eligible for a certificate of authority under RCW 48.125.020 and 48.125.030?

(2) If so, is WTIA's application complete under RCW 48.125.030 through 48.125.070?

I answer issue (1) in the negative, and therefore do not address issue (2) below, or the allegations and/or facts regarding that issue.

Background.

In 1984, WTIA was founded as a nonprofit industry trade association to serve the technology industry and the information and communication technology cluster in the state of Washington, including the business community that supports those industries. Declaration of Michael Monroe in Support of WTIA's Motion for Summary Judgment ("Monroe Decl."), ¶ 2. On January 1, 2000, WTIA established the Washington Technology Industry Association Employee Benefit Trust ("Trust") to provide health and welfare benefits to its members' employees and dependents. *Id.* at ¶ 3. Since its inception, the Trust has provided *fully-insured* health care services to WTIA's members (i.e., technology industry employers located in Washington State). *Id.*

On March 24, 2015, WTIA's legal counsel, Stoel Rives LLP ("Stoel Rives"), informed Michael Monroe, WTIA's Executive Director, that the OIC has not granted a certificate of authority (COA) to operate a *self-funded* multiple employer welfare arrangement ("MEWA") in at least seven or eight years, and that the statute [RCW Chapter 48.125] might have been intended only for preexisting self-funded MEWAs. Monroe Decl., ¶ 9. On March 27, 2015, WTIA submitted its first application to the OIC for a COA under RCW Chapter 48.125 to operate the Trust as a self-funded MEWA in the state of Washington. *Id.* at ¶ 10. On September 23, 2015, the OIC denied WTIA's first application for a COA. *Id.* at ¶ 25.

On October 26, 2015, WTIA submitted a second application for a COA to the OIC. *Id.* at ¶ 27. On November 18, 2015, the OIC denied WTIA's second application for a COA for the Trust. *Id.* at ¶ 29. In its denial, the OIC stated that RCW Chapter 48.125 did not authorize the OIC to issue a

COA to a MEWA such as the Trust since the Trust had no history of self-funded operation, and WTIA failed to submit a substantially complete application by April 1, 2005. November 18, 2015 letter from Steven E. Drutz, then Acting Deputy Insurance for the OIC's Company Supervision Division, to Kiran Griffith of Stoel Rives, attached to WTIA's Demand for Hearing.

On November 20, 2015, on behalf of its client WTIA, Stoel Rives requested a hearing to contest the OIC's denial of its second application for a COA under RCW Chapter 48.125 to operate a self-funded MEWA. WTIA argues that the OIC's denial is erroneous for several reasons, including:

- Neither the statutory language nor legislative history behind RCW Chapter 48.125 supports the OIC's position that RCW Chapter 48.125 provides for only grandfathered approval and regulation of then-operating self-funded MEWAs (i.e., as of April 1, 2005). Rather, WTIA argues that the statute anticipated that applications to form *new* self-funded MEWAs would be filed post-April 1, 2005;
- WTIA's second application is not deficient or incomplete as the OIC claims. Given the OIC has no prescribed application form available, WTIA argues that it filed an application that tracked all of the requirements under RCW 48.125.050; and
- The OIC's denial of WTIA's application to operate a self-funded MEWA deprives thousands of Washington residents of the opportunity to access more affordable and comprehensive health care services for themselves and their families.

On December 15, 2015, the undersigned held a first prehearing conference. The OIC was represented by Darryl Colman, Staff Attorney, and Chuck Brown, Senior Staff Attorney, of the OIC's Legal Affairs Division. Attorney Maren R. Norton of Stoel Rives represented WTIA.

Summary Judgment Standard.

WAC 10-08-135, which governs motions for summary judgment in administrative

proceedings, provides:

A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

In ruling on a motion for summary judgment, the court must consider the material evidence and all reasonable inferences therefrom most favorably for the nonmoving party and, when so considered, if reasonable people might reach different conclusions, the motion should be denied. *Jacobsen v. State*, 89 Wn.2d 104, 108-109, 569 P.2d 1152 (1977). See also *Fleming v. Stoddard Wendle Motor Co.*, 70 Wn.2d 465, 467, 423 P.2d 926 (1967).

Since both the OIC and WTIA are each the nonmoving party when considering the other's Cross Motion for Summary Judgment, I will consider material evidence in the record in the manner most favorable to the nonmoving party in each instance. If reasonable persons might reach different conclusions given the evidence, then I should deny the Cross Motions of either or both the OIC and WTIA.

Whether WTIA is eligible for a COA pursuant to RCW 48.125.020 and RCW 48.125.030.

RCW 48.125.003 states that RCW Chapter 48.125 "may be cited as the 'self-funded multiple employer welfare arrangement regulation act.'" ("Act"). RCW 48.125.005 states that one of the purposes of the Act is to: "(1) Provide for the authorization and registration of self-funded multiple employer welfare arrangements. . . ."

RCW 48.125.010 contains definitions of key terms that OIC must apply when administering the Act, and states in part:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

* * *

(7) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple

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employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies licensed under this title.

RCW 48.125.020 requires that before a person establishes, operates, provides benefits, or maintains a self-funded MEWA in the state of Washington, it must obtain a COA from the OIC, and in some instances must do so by a specific date, and states:

(1) Except as provided in subsection (3) of this section, a person may not establish, operate, provide benefits, or maintain a self-funded multiple employer welfare arrangement in this state unless the arrangement first obtains a certificate of authority from the commissioner.

(2) An arrangement is considered to be established, operated, providing benefits, or maintained in this state if (a) one or more of the employer members participating in the arrangement is either domiciled in or maintains a place of business in this state, or (b) the activities of the arrangement or employer members fall under the scope of RCW 48.01.020.

(3) An arrangement established, operated, providing benefits, or maintained in this state prior to December 31, 2003, has until April 1, 2005, to file a substantially complete application for a certificate of authority. An arrangement that files a substantially complete application for a certificate of authority by that date is allowed to continue to operate without a certificate of authority until the commissioner approves or denies the arrangement's application for a certificate of authority.

As stated in *Tesoro Refining and Marketing Co. v. Dep't of Revenue*, 164 Wn.2d 310, 317, 190 P.3d 28 (2008): "The goal of statutory interpretation is to carry out the legislature's intent. *Burns*, 161 Wash.2d at 140, 164 P.3d 475. If the meaning of the statute is plain, the court discerns legislative intent from the ordinary meaning of the words." Recently, the high court in the state of Washington clarified that the plain meaning rule also encompasses related statutes:

Additionally, while traditional plain language analysis of statutes focused exclusively on the language of the statute, this court recently has also recognized that "all that the Legislature has said in the statute and related statutes" should be part of plain language analysis. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.* 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

Cerrillo v. Esparza, 158 Wn.2d 194, 202, 142 P.3d 155, 159 (2006).

The rules of statutory construction require that when possible the various provisions of an act be harmonized; this usually arises within particular statutory chapters. *State v. Williams*, 62 Wn. App.

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336, 338, 813 P.2d 1293 (1991), review denied, 117 Wn.2d 1027 (1991). Statutes that concern the same subject matter, *in pari materia*, should be construed “as constituting one law to the end that a harmonious total schema which maintains the integrity of both is derived.” *Beach v. Board of Adjustment*, 73 Wn.2d 343, 346, 438 P.2d 617 (1968); *State v. Houck*, 32 Wn.2d 681, 684, 203 P.2d 693 (1949). In seeking to harmonize provisions of a statute, statutes relating to the same subject must be read as complementary instead of in conflict with each other. *State v. Chapman*, 140 Wn.2d 436, 448, 998 P.2d 282 (2000).

At 6:15-16 of its Motion, WTIA admits the Trust is a MEWA with no history of self-funded operation. As such, WTIA is correct that RCW 48.125.020(3) is inapplicable to it. However, this does not lead to the conclusion as WTIA suggests at 7:9-11 of its Motion that RCW 48.125.020(1) provides that MEWAs with no history of self-funded operation, such as the Trust, can operate on a self-funded basis (or as arrangements) after April 1, 2005 if they obtain a COA from the OIC. RCW 48.125.020(1) simply states that one may not establish, operate, provide benefits, or maintain a self-funded MEWA (arrangement) in the state of Washington without first obtaining a COA from the OIC, nothing more.

The Trust, and others attempting to become newly minted self-funded MEWAs (arrangements), cannot under a reasonable meaning of the Act, as WTIA suggests at 7:16-17 of its motion, apply “for a COA before establishing or operating a self-funded MEWA.” RCW 48.125.080(3) prevents this. RCW 48.125.080(3) requires that the OIC deny an application for a COA if it fails to meet certain requirements, and states: “The commissioner shall deny the application of an arrangement that does not satisfy the applicable requirements of RCW 48.125.030 through 48.125.070. . . .”

RCW 48.125.030 states in part that the OIC may not issue a COA to a self-funded MEWA

(arrangement) “unless the arrangement establishes to the satisfaction of the commissioner that the following requirements have been satisfied by the arrangement,” including:

. . . (8) 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; and . . .

This is referred to as the so-called “seasoning requirement.”

At 8:4-6 of its Motion WTIA states: “The plain language of [RCW 48.125.030(8)] imposes a seasoning requirement only on an “arrangement – that is, as noted above, a self-funded MEWA – and thus does not apply to the Trust.” (Brackets added). There we have WTIA’s crucial argument. WTIA argues that since the Trust cannot operate as a self-funded MEWA in the state of Washington prior to applying to the OIC for a COA to do so (except for the limited circumstances in RCW 48.125.020(3) inapplicable here), the seasoning requirement does not apply to it, and RCW 48.125.030(8) is inapplicable to its application for a COA. If true, this leads to the absurd result that those who were self-funded at the time the Act was made law were required to meet the seasoning requirement, while those who were not, but now want a COA, do not. We adhere to the well-settled principle of statutory construction - that we should construe the law to avoid absurd results. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

The language of RCW 48.125.030(8) is clear that the OIC may only issue a COA to operating in the state of Washington to an existing arrangement (i.e., self-funded MEWA) that meets the seasoning requirement. This reading of the Act is not inconsistent with the language of RCW 48.125.020(1) which simply states that one may not operate a self-funded MEWA (arrangement) in the state of Washington without first obtaining a COA. RCW 48.125.020(3) further narrows the pool of potential applicants operating self-funded MEWAs in the state of Washington prior to December 31, 2003, by giving such applicants until April 1, 2005 to file a substantially complete application

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with the OIC for a COA. Simply put, under the statutory scheme created by RCW 48.125.020 and RCW 48.125.030, only preexisting self-funded MEWAs in Washington State or elsewhere may apply for a COA to operate in the state of Washington. To be eligible for a COA, both classes of self-funded MEWAs must satisfy the requirements of RCW 48.125.030 through 48.125.070, including the seasoning requirement. Further, any self-funded MEWA established, operated, providing benefits, or maintained *in this state* prior to December 31, 2003, has until April 1, 2005, to file a substantially complete application for a certificate of authority. Therefore, this leaves only self-funded MEWAs currently operating in another state that meet the seasoning requirement as potential applicants to the OIC for a COA.

As stated in *Seatoma Convalescent Ctr. v. DSHS*, 82 Wn. App. 495, 518, 919 P.2d 602, 613 (1996), review denied 130 Wn.2d 1023 (1997), an agency's construction of a statute it administers is entitled to deference provided it is both plausible and not contrary to legislative intent:

Substantial weight and deference should be given to an agency's interpretation of the statutes and regulations it administers. *St. Francis*, 115 Wn.2d at 695; *Multicare Medical Ctr. v. Department of Social & Health Servs.*, 114 Wn.2d 572, 589, 790 P.2d 124 (1990) (additional citation omitted), *superseded by statute on other grounds sub nom. Neah Bay Chamber of Commerce v. Department of Fisheries*, 119 Wn.2d 464, 832 P.2d 1310 (1992). The agency's interpretation should be upheld if it reflects a plausible construction of the language of the statute and is not contrary to the legislative intent. *Sybrandy v. United States Dep't of Agric.*, 937 F.2d 443, 446 (9th Cir. 1991) (citing *Rust v. Sullivan*, 500 U.S. 173, 184, 111 S. Ct. 1759, 1767, 114 L. Ed. 2d 233 (1991)); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43, 104 S. Ct. 2778, 2781-82, 81 L. Ed. 2d 694 (1984)).

(Emphasis added). Along the same lines, in *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975) the Court stated:

At times, administrative interpretation of a statute may approach "lawmaking," but we have heretofore recognized that it is an appropriate function for administrative agencies to "fill in the gaps" where necessary to the effectuation of a general statutory scheme. . . . It is likewise valid for an administrative agency to "fill in the gaps" via statutory construction – as long as the agency does not purport to "amend" the statute.

(Citations omitted).

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As WTIA suggests at 3:8-9 of its Response, the “OIC’s position necessarily bans any fully-insured [MEWA] from operating a self-funded MEWA.” (Brackets added). The OIC’s position is what the language of the Act dictates. Furthermore, the Act’s legislative history is consistent with my reading of both RCW 48.125.020 and RCW 48.125.030 above since it demonstrates that the proponents of the Act only intended for it to govern a limited number of preexisting MEWAs that met the seasoning requirement. This same history is inconsistent with WTIA’s position at 3:14-17 of its Response where it states: “Interpreting RCW 48.125.030, or any other provision under the [Act], to ban WTIA from applying for a COA does not further the [Act’s] purpose; this thwarts it.” (Brackets added). The House Bill Report for ESSB 6112 (“Bill Report”), the passage of which made the Act law, summarizes the testimony in favor of passage of the Act, and the basis underlying it, and the limited universe of MEWAs to which the Act would apply, as follows:

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.

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. . . .

The bill’s proponents initially identified one MEWA to which these provisions would apply. At least three other MEWAs have been identified during the legislative process. . . .

(Emphasis added).

The Bill Report clearly states that only self-funded MEWAs (arrangements) that satisfy the seasoning requirement under the Act may receive a COA, and states:

To obtain a certificate of authority, a MEWA must have been in existence and actively operated continuously for at least 10 years as of December 31, 2003. An exception is provided for any MEWA in existence and actively operated since December 31, 2000, that is sponsored by an association in existence more than 25 years.

See also House Bill Analysis for ESSB 6612.

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Since WTIA cannot, and never will be able to, comply with the seasoning requirement of RCW 48.125.030(8), it is not eligible for a COA to operate a self-funded MEWA in the state of Washington. While convenient to end the discussion here, WTIA's argument that the OIC's application of the word "arrangement" in the Act is inconsistent with both the Act's language and the legislative intent of the Act is worth addressing. So I now turn my attention to that.

Whether the OIC correctly applies the definition of self-funded MEWA or "arrangement" in the Act to conclude that WTIA is not eligible for a COA to operate a self-funded MEWA in Washington State.

To reiterate, RCW 48.125.010, which defines the word "arrangement" for purposes of the Act, states in part:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

* * *

(7) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies licensed under this title.

(Emphasis added).

As stated in *Tenino Aerie v. Grand Aerie*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002): "Legislative definitions provided in a statute are controlling. . . . This court, however, will avoid literal reading of a statute which would result in unlikely, absurd, or strained consequences. "The spirit or purpose of an enactment should prevail over . . . express but inept wording." (Footnotes omitted). See also *Postema v. Postema Enters., Inc.*, 118 Wn. App. 185, 195, 72 P.3d 1122 (2003), review denied, 151 Wn.2d 1011 (2004) ("If a term is defined in a statute, we must use that definition.") (footnote omitted); *License of Farina*, 94 Wn. App. 441, 459, 972 P.2d 531 (1999) ("Fortunately, RCW 18.64.011 qualifies its definitions with the saving language, 'unless the context clearly requires

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otherwise. . . .’ Here, the context clearly does require otherwise to avoid absurdity.”) (Emphasis added).

Given this standard, the query is whether WTIA has articulated a sufficient reason for the OIC or any person interpreting the Act to abandon the use of the word “arrangement” as it is defined in the Act to prevent an absurd result. I conclude not.

At 2:13-15 of its Reply, WTIA argues that the OIC’s “application of RCW 48.125.010(7) ignores the definition’s qualifying language – namely, that it ‘appl[ies] throughout [the Act] unless the context clearly requires otherwise. (Emphasis and brackets added).” Further, at 3:5-7 of its Reply WTIA argues that the OIC’s literal application of RCW 48.125.010(7), in conjunction with RCW 48.125.020(1) and RCW 48.125.080, means that no self-funded MEWA “could ever be established, operating, providing benefits, or maintained in the [s]tate of Washington.” (Brackets added). 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.

WTIA also argues at 3:15-18 of its Reply that “[i]n addition to avoiding absurdity, Washington courts look to legislative intent, as ascertained from legislative history, when determining whether the context allows for the application of a given definition that is limited by saving language such as the clause ‘unless the context clearly requires otherwise’ in RCW 48.125.010.” At 4:1-5 of its Reply WTIA argues that the legislative history does not support the OIC’s approach of isolating a single statutory definition, contrary to the savings clause in RCW 48.125.010 and without regard to the rest of the Act, “to restrict the issuance of certificates of authority to only preexisting self-funded [MEWAs].” (Brackets added). WTIA continues at 4:24-5:3 of its Reply that if the goal of the Act was to bar the existence of new self-funded MEWAs in the state of Washington, “why did the Legislature fail to use one of its multiple opportunities to insert explicit statutory language saying so? The OIC’s interpretation of the [Act] to specifically impose such a restriction would purport to amend the [Act] to add language that simply is not there.” (Brackets added).

Contrary to WTIA’s assertions, the legislative history of the Act (e.g., Bill Report addressed above), and the statutory scheme created by RCW 48.125.020 and RCW 48.125.030, dictate that only preexisting self-funded MEWAs in Washington State or elsewhere may apply for a COA to operate in the state of Washington. To be eligible for a COA, both classes of self-funded MEWAs must satisfy the requirements of RCW 48.125.030 through 48.125.070, including the seasoning requirement. Further, any self-funded MEWA established, operated, providing benefits, or maintained *in this state* prior to December 31, 2003, has until April 1, 2005, to file a substantially complete application for a certificate of authority. The caveat in RCW 48.125.010 which states “unless the context clearly requires otherwise,” does not alter this construction of the Act. Controlling

case law interpreting this common legislative caveat demonstrates that the justification for an altered statutory definition of “arrangement” in RCW 48.125.010(7) selectively applied throughout the Act to justify WTIA’s desired construction of the Act is lacking here.

In *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012) the Court addressed the definition of “beneficiary” in the deed of trust act, RCW 61.24.005(2), which reads: “[T]he holder of the instrument or document evidencing the obligations secured by the deed of trust.” In *Bain*, the Court explained that in the 1990’s several large companies in the mortgage industry established the Mortgage Electronic Registration System Inc. (MERS). MERS and its allied corporations maintain a private electronic registration system for tracking ownership of mortgage-related debt. MERS allows its users to avoid the cost and inconvenience of the traditional public recording system, and has created a robust secondary market in mortgage backed debt and securities. Its customers include among others lenders, debt servicers, and financial institutions that trade in mortgage debt and mortgage backed securities. As the Court in *Bain* explains, in many states including the state of Washington, MERS is frequently listed as the “beneficiary” of the deeds of trust that secure its customers’ interests in the homes securing the debts. At issue in *Bain*, were certified questions from the Federal District Court for the Western District of Washington, including whether MERS was a lawful beneficiary under RCW 61.24.005(2) if it never held the promissory note secured by the deed of trust.

In *Bain*, MERS argued that it met the definition of “beneficiary” in RCW 61.24.005(2) under a more expansive view of the deed of trust act. MERS specifically referenced the fact that the definition section of the act begins by cautioning that its definitions apply “unless the context clearly requires otherwise.” Along those lines, MERS argued that the context in its case required that it be recognized as a beneficiary per the statutory definition, even though it did not hold the debt

instrument. MERS argued the legislature was creating a more efficient default remedy for lenders, not putting up barriers for foreclosure. MERS contended that the parties were legally permitted to contract as they see fit, and did so by the parties contractually agreeing that the beneficiary under the deed of trust was MERS. MERS argued that it was in that context that the Court should apply the deed of trust act and the definition of “beneficiary” in RCW 61.24.005(2). Rejecting MERS’ argument in *Bain*, the Court emphasizes that the language “unless the context clearly requires otherwise” is frequently used in statutes, and only in limited circumstances does it alter the use of a statutory definition, such as “beneficiary” in RCW 61.24.005(2), stating:

The “unless the context clearly requires otherwise” language MERS relies upon is a common phrase that the legislative bill drafting guide recommends be used in the introductory language in all statutory definition sections. See STATUTE LAW COMM., OFFICE OF THE CODE REVISER, BILL DRAFTING GUIDE 2011. A search of the unannotated Revised Code of Washington indicates that this statutory language has been used over 600 times. Despite its ubiquity, we have found no case—and MERS draws our attention to none—where this common statutory phrase has been read to mean that the parties can alter statutory provisions by contract, as opposed to the act itself suggesting a different definition might be appropriate for a specific statutory provision. We have interpreted the boilerplate language “[t]he definitions in this section apply throughout the chapter unless the context clearly requires otherwise” only once, and then in the context of determining whether a general court-martial qualified as a prior conviction for purposes of the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW. See *State v. Morley*, 134 Wn.2d 588, 952 P.2d 167 (1998). There, the two defendants challenged the use of their prior general courts-martial on the ground that the SRA defined “conviction” as “an adjudication of guilt pursuant to Titles 10 or 13 RCW.” *Morley*, 134 Wn.2d at 595 (quoting RCW 9.94A.030(9)). Since, the defendants reasoned, their courts-martial were not “pursuant to Titles 10 or 13 RCW,” they should not be considered criminal history. We noted that the SRA frequently treated out-of-state convictions (which would also not be pursuant to Titles 10 or 13 RCW) as convictions and rejected the argument since the specific statutory context required a broader definition of the word “convictions” than the definition section provided. *Id.* at 598. MERS has cited no case, and we have found none, that holds that *extrastatutory* conditions can create a context where a different definition of defined terms would be appropriate. We do not find this argument persuasive.

Bain, 175 Wn.2d at 99-100 (emphasis added).

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).

Ruling.

WTIA’s Cross Motion for Summary Judgment is denied. OIC’s Cross Motion for Summary Judgment is granted.

Dated: February 25, 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 on Cross Motions on the following people at their addresses listed below:

Maren R. Norton
Stoel Rives LLP
600 University Street, Suite 3600
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 25th day of February, 2016, in Tumwater, Washington.


Dorothy Seabourne-Taylor
Paralegal
Hearings Unit