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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

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BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

IN THE MATTER OF:

Docket No. 15-0290

WASHINGTON TECHNOLOGY
INDUSTRY ASSOCIATION ("WTIA") –
DISAPPROVAL OF APPLICATION TO
OPERATE SELF-FUNDED MEWA
No. 15-0290

DECLARATION OF MICHAEL MONROE
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT BY WTIA

1. I am the Executive Director of the Washington Technology Industry Association Employee Benefit Trust ("Trust"). I am above the age of 18 and competent to testify to the matters set forth herein.

2. Washington Technology Industry Association ("WTIA") was founded in 1984 as a not-for-profit industry trade association to serve the technology industry and the information and communication technology cluster in the state of Washington, as well as the business community that supports these industries.

3. WTIA established the Trust on January 1, 2000, to provide health and welfare benefits to its members' employees and dependents. Since its inception, the Trust has

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1 continuously provided fully-insured health care services on behalf of technology employers
2 across Washington. In 2015, the Trust provided health care benefits to 13,000 Washington state
3 residents.

4 4. In March 2013, following a two-year process of working with several personnel
5 with the Office of the Insurance Commissioner ("OIC"), the OIC recognized the WTIA's status
6 as a bona fide association.

7 5. In the summer of 2014, WTIA met with Deputy Commissioner Molly Nollette,
8 Deputy Commissioner AnnaLisa Gellermann, and Senior Insurance Enforcement Specialist
9 Charles Brown at the OIC to discuss WTIA's bona fide association status, as well as the OIC's
10 general concerns about the methodology used to establish rates for association health plans.
11

12 6. Following the 2014 meeting, WTIA made changes to the Trust, including changes
13 to its governance structure and its member participation, to ensure the Trust's status as a bona
14 fide association health plan and to comply with rating standards. At that time, we also began
15 analyzing funding strategies that would allow the Trust to better serve its membership and to
16 help improve access to affordable health care in the state of Washington. WTIA decided to
17 provide self-funded health care services under the Trust to better serve its membership and to
18 help improve access to affordable health care in the state of Washington. We understood that
19 such an arrangement would be considered a self-funded multiple employer welfare arrangement
20 ("self-funded MEWA") under RCW Chapter 48.125 (the "Statute"), and decided to apply for a
21 certificate of authority ("COA").
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23

24 7. On January 29, 2015, WTIA obtained an actuarial analysis of the Trust from
25 Milliman, Inc. ("Milliman"). A true and correct copy of the analysis is attached hereto as
26

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1 Exhibit 20. Milliman's analysis provided preliminary conclusions that approximately \$5.6
2 million would need to be initially contributed to the self-funded MEWA if all participants
3 currently receiving benefits under the Trust began receiving self-funded health care services
4 effective September 1, 2015.

5
6 8. In February and March 2015, Milliman reached out to the OIC multiple times on
7 our behalf to obtain information about the process for applying for a COA under the Statute and
8 to obtain a copy of the application form provided under RCW Section 48.125.050. Initially, the
9 OIC referred us to its insurer webpage. However, that webpage did not provide information for
10 self-funded MEWA applications.

11 9. On March 24, 2015, Stoel Rives LLP ("Stoel Rives") informed me that the OIC
12 finally confirmed there is no formal application form available for COAs under the Statute. I
13 also learned that an OIC representative had stated that the OIC has not granted a COA to operate
14 a self-funded MEWA in at least seven or eight years and that the Statute might have been
15 intended only for preexisting self-funded MEWAs. We believe that new self-funded MEWAs
16 can be formed under the Statute, and that WTIA is eligible to apply for the COA. Regardless,
17 the OIC asked us to provide more information about WTIA and the Trust, as well as a copy of
18 our written plan of intended operation as a self-funded MEWA.
19

20
21 10. In response to the OIC's request, I submitted a letter on March 27, 2015,
22 providing background information about WTIA and the Trust, a copy of Milliman's actuarial
23 analysis to serve as our written plan of intended operation, and the documentation listed under
24 RCW 48.125.050. A true and correct copy of WTIA's self-funded MEWA application is
25 attached hereto as Exhibit 1. In our transmittal letter, we requested that this submission serve as
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1 WTIA's formal application for a COA under the Statute, given that there is no formal application
2 form available for this purpose.

3 11. WTIA intends to demonstrate the financial integrity of its self-funded MEWA by
4 satisfying RCW 48.125.040(1)(b)(i). In the absence of any guidance or formal application form
5 from the OIC, WTIA enclosed in its application a copy of Milliman's January 29th analysis,
6 which was identified as "Written Plan of Operation to Ensure Financial Integrity" as provided
7 under RCW 48.125.040(1)(b)(i)(B). *See* Exhibits 1 & 20. On or around March 30, 2015, WTIA
8 earmarked \$200,000 to satisfy the deposit requirement under RCW 48.125.040(1)(b)(i)(A),
9 which we understood from prior approvals published by the OIC would likely be satisfied by
10 entering into a tri-party depository agreement with the OIC and a bank. True and correct copies
11 of these prior approvals are attached hereto as Exhibits 17-19.

12
13
14 12. WTIA made a good faith effort to work with the OIC to ensure that its application
15 was complete and on track for approval. On April 16, 2015, I emailed the OIC to confirm it had
16 the information it needed to review WTIA's application. At that time, I asked for an in-person
17 meeting with the OIC before the end of April to discuss our application. That same day, the OIC
18 confirmed its receipt of WTIA's application and stated that we would be contacted to schedule a
19 meeting once the OIC completed its preliminary review. True and correct copies of my email
20 correspondence with the OIC are attached as Exhibits 2-3.

21
22 13. Throughout the month of May, WTIA, through its counsel, maintained contact
23 with the OIC by telephone and email to get updates and to offer to provide additional
24 information to facilitate its review. WTIA, through its counsel, also reiterated our request to
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1 meet in person to discuss our application and the process for becoming a self-funded MEWA.
2 *See* Declaration of Kiran H. Griffith (“Griffith Decl”), at Exs. 1 through 2.

3 14. On May 21, 2015, I learned from Stoel Rives that the OIC was waiting for the
4 Attorney General’s opinion on what the OIC referred to as the “seasoning requirement” under
5 RCW 48.125.030(8). Stoel Rives told me that an OIC representative had suggested that this
6 requirement might not be an issue for WTIA, but that a final decision would not be made until
7 the Attorney General provided an opinion. The OIC had also stated that, once the review of the
8 application was complete, WTIA would go through a “solicitation process.” We were not sure
9 what the OIC meant by “solicitation process,” and the OIC did not use this phrase again until
10 early October—after it had denied WTIA’s application.
11

12 15. On June 9, 2015, WTIA, through its counsel, reiterated its request to meet in
13 person with the OIC, and a meeting was finally scheduled for June 22nd. *See* Griffith Decl., at
14 Exs. 3 through 4.
15

16 16. On June 22, 2015, we met with representatives from the OIC at its offices in
17 Tumwater, Washington. Michael Schutzler and I attended on behalf of WTIA and the Trust.
18 WTIA’s outside counsel, Melanie Curtice and Kiran Griffith from Stoel Rives, were also in
19 attendance. We met with Gayle Pasero, Charles Brown, and AnnaLisa Gellermann. During the
20 meeting, the OIC asked WTIA to provide additional information to assist in its review, although
21 the OIC did not indicate that it considered WTIA’s application to be incomplete. Specifically,
22 the OIC asked WTIA to explain: (1) why WTIA believes that it complies with RCW
23 48.125.020(3) and RCW 48.125.030(8); (2) why the Trust is uniquely set up to effectively
24 operate a self-funded MEWA, including why association health plans would likely not use the
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1 Statute as a means to avoid state insurance regulation; and (3) the pricing and/or rating
2 philosophy that WTIA intends to employ in a self-funded environment. True and correct copies
3 of my email correspondence with the OIC in this regard are attached hereto as Exhibits 4-5.

4 17. I wanted to respond to the OIC's requests and concerns discussed at the June 22nd
5 meeting as soon as possible to facilitate its review of WTIA's application. In particular, we
6 believed that the provisions under the Statute that the OIC raised concerns about represented a
7 fundamental threshold question of whether any association, let alone WTIA, could apply for a
8 COA after April 1, 2005.

10 18. On July 7, 2015, I submitted a written discussion of why the Trust is uniquely set
11 up to operate a self-funded MEWA and the intended pricing and/or rating philosophy to be used
12 in a self-funded environment. True and correct copies of my correspondence with the OIC in
13 this regard are attached hereto as Exhibits 6 and 8. Stoel Rives submitted its analysis of RCW
14 48.125.020(3), RCW 48.125.030(8), and why WTIA is eligible to apply for a COA under the
15 Statute. A true and correct copy of Stoel Rives's analysis is attached hereto as Exhibit 7.

17 19. On August 3, 2015, Stoel Rives informed me that the OIC's executive
18 management team planned to meet on August 4th to determine their position on WTIA's
19 application.

20 20. On August 13, 2015, Stoel Rives informed me that they confirmed the OIC's
21 executive management team had met to review our application, but that they did not provide a
22 response to our July 7th legal analysis or otherwise confirm the OIC's position on this
23 fundamental legal question. Instead, the OIC asked WTIA to provide the following information:
24 (1) how the Trust's Form 5500 and Form M-1 reporting obligations are enforced by the United
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1 States Department of Labor; (2) whether the Trust complies with the Patient Protection and
2 Affordable Care Act (“PPACA”); and (3) identification of the agencies tasked with enforcing
3 compliance under PPACA. To WTIA, this requested information did not fall within the statutory
4 elements required under RCW 48.125.050 to be included in its application, but Stoel Rives
5 agreed to respond to the OIC’s questions on WTIA’s behalf as a courtesy. A true and correct
6 copy of this response is attached hereto as Exhibit 9; *see also* Griffith Decl., at Ex 9.
7

8 21. On August 31, 2015, the OIC provided an update on its review of WTIA’s
9 application. *See* Griffith Decl., at Exs. 10 through 11.

10 22. On September 9, 2015, the OIC confirmed it had completed its review of WTIA’s
11 application, but stated: “While it is not yet determined if there is authority to issue a certificate
12 of authority under Chapter 48.125 RCW, we have noted areas below where additional
13 information or documentation is required prior to making that decision.” The OIC asked WTIA
14 to provide more information or documentation about the Trust’s financials. WTIA was also
15 instructed to submit third-party investigative reports that are completed by a vendor recognized
16 by the National Association of Insurance Commissioners (“NAIC”), as required under RCW
17 48.125.050(8). *See* Griffith Decl., at Ex. 12.
18

19 24. On September 18, 2015, WTIA responded to the OIC’s request for additional
20 information. A true and correct copy of WTIA’s response is attached hereto as Exhibit 10.
21 WTIA confirmed its ability to meet the deposit requirement under RCW 48.125.040(1)(b)(i)(A)
22 upon receiving further instruction from the OIC, provided an explanation for Note 10 in the
23 auditor’s report, and confirmed that new third-party investigative reports requested from an
24 approved vendor would be submitted directly to the OIC upon completion. With respect to the
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1 remaining items, WTIA stated that RCW 48.125.080 required the OIC to issue its decision based
2 on WTIA's satisfaction of the applicable requirements of RCW 48.125.030 through RCW
3 48.125.070. WTIA requested the OIC to issue a decision, based on WTIA's application and all
4 of the additional information provided to date, by September 23, 2015 (the statutory deadline
5 provided under RCW 48.125.080).
6

7 25. On September 23, 2015, the OIC denied WTIA's application. A true and correct
8 copy of the OIC's denial is attached hereto as Exhibit 11.

9 26. In early October 2016, Stoel Rives contacted the OIC on WTIA's behalf. *See*
10 *Griffith Decl.*, at Ex. 14. We wanted to identify the specific information WTIA could provide to
11 enable the OIC to approve our application. Following its telephone conference with the OIC,
12 Stoel Rives informed me that the OIC had declined to provide such instruction. For example, the
13 OIC did not provide information on how to satisfy the \$200,000 deposit requirement, although it
14 seemed to agree that this would be done by a tri-party depository agreement. Instead, the OIC
15 had stated that WTIA must submit a new application under the Statute if it wished for the OIC to
16 continue its review. The OIC also said that WTIA might be required to apply for a solicitation
17 permit under RCW 48.06.030 to raise additional funds for the surplus, but then stated in a
18 follow-up email that the solicitation permit process did not appear to apply to self-funded
19 MEWAs. *See Griffith Decl.*, at Ex. 15.
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22 27. On October 26, 2015, WTIA resubmitted its application for a COA under the
23 Statute. A true and correct copy of WTIA's resubmitted application is attached hereto as Exhibit
24 13; a true and correct copy WTIA's electronic transmittal of the resubmitted application is
25 attached hereto as Exhibit 12. Our resubmitted application reflected all of the input and
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1 information we had gathered during the OIC's review of our initial application and was
2 completed pursuant to that guidance. Our transmittal letter asked the OIC to notify WTIA of any
3 additional information the OIC required to complete its review, including specific guidance or
4 instruction on the steps, if any, WTIA must take to satisfy the surplus and deposit requirements
5 under the Statute. We also asked to meet with Commissioner Mike Kreidler and Chief Deputy
6 Commissioner Jim Odiorne to discuss our applications and the process for obtaining a COA
7 under the Statute.
8

9 28. On November 3, 2015, after receiving no response, I reached out to the OIC to
10 confirm its receipt of WTIA's resubmitted application and asked if the OIC needed additional
11 information to complete its review. I also reiterated my request to meet with OIC leadership
12 about our applications. A true and correct copy of my correspondence is attached hereto as
13 Exhibit 14. The OIC did not respond to my inquiry.
14

15 29. The OIC issued its denial of WTIA's resubmitted application on November 18,
16 2015. A true and correct copy of the OIC's denial is attached hereto as Exhibit 15. This was the
17 first time that the OIC addressed the threshold legal question that was formally raised in our June
18 22nd in-person meeting and that was discussed at length in our July 7th analysis. *See* Exhibit 7.
19

20 30. On November 30, 2015, WTIA filed a demand for hearing. A true and correct
21 copy of the demand for hearing is attached hereto as Exhibit 16.
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1 **CERTIFICATE OF SERVICE**

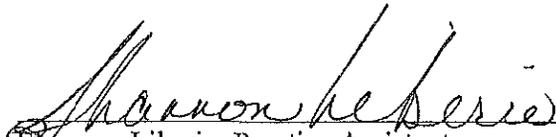
2 I, Shannon Liberio, certify under penalty of perjury under the laws of the State of
3 Washington that, on January 22, 2016, I caused the foregoing document to be served on the
4 persons listed below in the manner shown:

5 **Via U.S. Mail and Email:**

6 Judge William Pardee
7 Office of Insurance Commissioner
8 Hearings Unit
9 P.O. Box 40255
10 Olympia, WA 98504-0255
11 hearings@oic.wa.gov
12 and
13 c/o Dorothy Seabourne-Taylor, Hearings
14 Unit Paralegal
15 DorothyS@oic.wa.gov

6 **Via U.S. Mail and Email:**

7 Charles Brown, Sr. Insurance Enforcement
8 Specialist
9 Darryl Colman, Insurance Enforcement Specialist
10 Office of Insurance Commissioner
11 Legal Affairs Division
12 P.O. Box 40255
13 Olympia, WA 98504-0255
14 charlesb@oic.wa.gov
15 darrylc@oic.wa.gov

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Shannon Liberio, Practice Assistant
Stoel Rives LLP

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