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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

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

WTIA'S OPPOSITION TO THE
MOTION FOR SUMMARY JUDGMENT
BY THE OFFICE OF THE INSURANCE
COMMISSIONER

I. INTRODUCTION

The Office of the Insurance Commissioner's ("OIC") Motion for Summary Judgment should be denied. RCW Chapter 48.125 (the "Statute"), its legislative history, and stated purpose do not, as the OIC alleges, preclude WTIA's application. To the contrary, as fully briefed in WTIA's Motion for Summary Judgment, the plain meaning of the Statute and its legislative history demonstrate that WTIA has a right to apply. WTIA's application was timely and complete, and the OIC fails to provide an argument for this tribunal to find otherwise.

II. ARGUMENT

A. The OIC's Interpretation of the Statute Fails.

In its November 18, 2015 denial, the OIC stated that RCW 48.125.020 and RCW 48.125.030(8), "read together", bar WTIA from applying for a certificate of authority ("COA")

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1 under the Statute. See Declaration of Michael Monroe in Support of WTIA Motion for Summary
2 Judgment (“Monroe Decl.”), at Ex. 15. The OIC now suggests in its Motion for Summary
3 Judgment that these provisions should be read separately, purportedly presenting before this
4 tribunal two separate legal questions (and two alternative grounds on which to uphold its denial
5 as a matter of law). Office of Insurance Commissioner Motion for Summary Judgment (“OIC
6 Motion”), at 1. As outlined in WTIA’s Motion for Summary Judgment, and as reiterated below,
7 the OIC’s position is not supported by these statutory provisions, regardless of whether these are
8 read together or apart.

9 **1. The OIC’s Argument that WTIA is Not Eligible for a COA Under RCW**
10 **48.125.030 Fails.**

11 The OIC has failed to demonstrate that RCW 48.125.030 explicitly prohibits a multiple
12 employer welfare arrangement with no history of self-funded operations, like the Washington
13 Technology Industry Association Employee Benefit Trust (“WTIA Trust”), from receiving a
14 COA under the Statute. The OIC contends that RCW 48.125.030 provides a “primary
15 requirement” that an applicant for a COA already be a self-funded MEWA, which must in turn
16 meet the seasoning requirement under Subsection (8). OIC Motion, at 5. For the reasons
17 discussed in WTIA’s Motion for Summary Judgment, the OIC’s argument fails. WTIA Motion
18 for Summary Judgment (“WTIA Motion”), at 7–8. RCW 48.125.030 provides: “The
19 commissioner may not issue a certificate of authority to a self-funded multiple employer welfare
20 arrangement unless the arrangement establishes to the satisfaction of the commissioner that the
21 following requirements have been satisfied by the arrangement. . . .”, including the seasoning
22 requirement in Subsection (8). In other words, RCW 48.125.030 simply provides that self-
23 funded multiple employer welfare arrangements satisfy certain requirements before a COA is
24 issued. There is no language in Subsection (8), or anywhere else in RCW 48.125.030,
25 prohibiting the issuance of a COA to a multiple employer welfare arrangement with no history of
26 self-funded operations.

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1 The OIC now appears to claim that RCW 48.125.030, if it is read in isolation from the
2 rest of the Statute, suggests that the Legislature intended for COAs to be available only for self-
3 funded MEWAs who meet the seasoning requirement. OIC Motion, at 5–7. In addition to
4 ignoring the plain language to the contrary under RCW 48.125.020 (discussed below), the OIC’s
5 interpretation conflicts with the purpose of the Statute and its legislative history. The OIC
6 contends that interpreting RCW 48.125.030 to require “significant history of self-funded
7 operations” to be eligible for a COA furthers the purpose of regulating self-funded MEWAs to
8 ensure financial integrity. *Id.* at 6. The OIC’s position necessarily bans any fully-insured
9 multiple employer welfare arrangement from operating a self-funded MEWA. Had the
10 Legislature intended to impose such a ban, this critical objective would have been noted in
11 legislative reports and clearly identified as a stated purpose under RCW 48.125.005. It is not.
12 Therefore, as discussed at length in WTIA’s Motion for Summary Judgment, adopting the OIC’s
13 interpretation would contradict the language of the Statute and would fly in the face of its
14 legislative history. WTIA Motion, at 7–10. Interpreting RCW 48.125.030, or any other
15 provision under the Statute, to ban WTIA from applying for a COA does not further the Statute’s
16 purpose; this thwarts it.

17 Notably, the OIC states that “[e]ven experienced self-funded MEWAs have had
18 difficulties meeting their obligations and remaining solvent. Lacking the self-funded experience
19 that these entities had, WTIA is even less likely to remain financially solvent, increasing risk for
20 its members.” OIC Motion, at 6. The OIC then presents in its supporting declaration a parade of
21 horrors about self-funded MEWAs that have decided to leave the market since the Statute went
22 into effect. Declaration of Steven E. Drutz in Support of OIC Motion for Summary Judgment, at
23 ¶¶ 9–15. The OIC’s concern about ensuring the long-term success of self-funded MEWAs is
24 well-founded and in accordance with the stated purpose of the Statute. However, that is not the
25 question that is before this tribunal. The parties have asked this tribunal to determine, as a matter
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1 of law, whether WTIA can apply for a COA under the Statute after April 1, 2005—and not
2 whether WTIA, or any association, could hypothetically succeed in a self-funded environment.

3 **2. The OIC's Argument that WTIA Failed to Timely Apply for a COA Also Fails.**

4 WTIA is not time-barred from applying for a COA under RCW 48.125.020(3).
5 Subsection (3) of RCW 48.125.020 does not apply to WTIA, for the reasons set forth in WTIA's
6 Motion for Summary Judgment. WTIA Motion, at 4-7. The OIC now suggests that this
7 "statutory limitations period" should be read in isolation to require, in addition to self-funded
8 MEWAs that preexisted the Statute, any other preexisting multiple employer welfare
9 arrangement that would ever wish to operate on a self-funded basis at any time in the future to
10 apply by April 1, 2005, or forever lose out on the opportunity. OIC Motion, at 7. The OIC is
11 wrong for the reasons outlined below.

12 First, Subsection (3) imposes the application deadline on "arrangements" operating prior
13 to December 31, 2003 (i.e., self-funded MEWAs under RCW 48.125.010(7))—not on multiple
14 employer welfare arrangements under RCW 48.125.010(5), like the WTIA Trust.¹ Second, the
15 OIC makes no reference to Subsection (1) of RCW 48.125.020, which clearly permits entities
16 that were not preexisting self-funded MEWAs to obtain a COA:

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

22 ¹ Notably, the OIC appears to claim that "arrangement" means a self-funded MEWA as
23 defined under RCW 48.125.010(7) when that term is used in RCW 48.125.030, but means all
24 multiple employer welfare arrangements when that term is used in RCW 48.125.020(3). The
25 OIC does not address why the term "arrangement," which is statutorily defined, should have an
26 entirely different meaning when it is used in RCW 48.125.020(3). When a statute defines a term,
it applies throughout the statute, and the OIC provides no basis for finding otherwise here. *State*
v. Morris, 77 Wn. App. 948, 950, 896 P.2d 81, 82 (1995) ("The statutory definition of a term
controls its interpretation."); *see also Cobra Roofing Servs., Inc. v. State Dep't of Labor &*
Indus., 157 Wn.2d 90, 101, 135 P.3d 913, 917 (2006) ("We must construe the statute to give
effect to the definitions provided by the legislature.").

1 The OIC fails to reconcile its interpretation of Subsection (3) with the plain language in
2 Subsection (1). Instead, it would have this tribunal look solely to Subsection (3) as grounds for
3 time-barring WTIA from applying for a COA under the Statute. This would render Subsection
4 (1) meaningless. Thus, while that might be convenient for the OIC's position, that would
5 directly contradict the plain language of the Statute. Such an interpretation must be rejected. *See*
6 *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (internal citations
7 omitted) ("Statutes must be interpreted and construed so that all the language used is given
8 effect, with no portion rendered meaningless or superfluous."). For all of these reasons, the
9 OIC's argument fails. As discussed in WTIA's Motion for Summary Judgment, RCW
10 48.125.020(1) permits WTIA to apply for a COA before it begins operating a self-funded
11 MEWA, and WTIA has done so in accordance with this provision. WTIA Motion, at 6-7.

12 **B. The OIC's Determination that WTIA's Application was Not Substantially Complete**
13 **Is Incorrect.**

14 The OIC's determination that WTIA's application was not substantially complete is in
15 error for all of the reasons set forth in WTIA's Motion for Summary Judgment.² *Id.* at 11-13.
16 The OIC has no prescribed application form for a self-funded MEWA. In the absence of a
17 prescribed form, WTIA's application included all of the documentation under RCW 48.125.050,
18 with the exception of third-party verification reports submitted directly to the OIC by the
19 approved vendor, and was completed pursuant to all of the input and feedback WTIA had
20 gathered from the OIC to date. The OIC claims that WTIA must meet the surplus requirement
21 under RCW 48.125.060 before filing an application. OIC Motion, at 7-8. However, the OIC

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23 ² The OIC suggests that WTIA and/or its representatives were informed that the
24 application was deficient before the OIC issued its first denial on September 23, 2015. *See*
25 Declaration of Gayle Pasero in Support of OIC Motion for Summary Judgment, at ¶ 4. The OIC
26 did not specifically inform WTIA (directly or through its representatives) that either application
was "deficient," or "incomplete" or "not substantially complete" until the OIC issued its denials,
despite numerous opportunities to do so during the multiple phone calls and emails and the in-
person meeting on June 22, 2015. *See* Monroe Decl., at ¶¶ 10-24, 27-28; *see also* Declaration
of Kiran H. Griffith in Support of WTIA Motion for Summary Judgment, at ¶¶ 6-12.

1 refused to engage WTIA on how to satisfy this and other financial provisions the OIC required
2 unless and until a second application was filed.

3 As discussed at length in WTIA's Motion for Summary Judgment and supporting
4 declarations, the OIC has declined to prescribe an application form identifying all of the
5 requirements one must meet to receive a COA, and it has required WTIA to satisfy certain
6 financial provisions before approving the application but fails to provide any guidance on how to
7 do it. WTIA Motion, at 11-14. Instead, the OIC seeks to hold WTIA accountable for failing to
8 divine this information, from either the OIC's conflicting comments or the Statute itself, and
9 erroneously presents this as an alternative ground for upholding its denial.

10 **III. CONCLUSION**

11 For the reasons set forth above, WTIA respectfully requests that OIC's Motion for
12 Summary Judgment be denied.

13 Dated this 5th day of February, 2016.

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2 **CERTIFICATE OF SERVICE**

3 I, Shannon Liberio, certify under penalty of perjury under the laws of the State of
4 Washington that, on February 5, 2016, I caused the foregoing document to be served on the
5 persons listed below in the manner shown:

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

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