

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of:

Docket Nos. 20-0257 & 20-0457

**ARMED CITIZENS' LEGAL
DEFENSE NETWORK, INC.,**

**OIC'S RESPONSE TO
APPELLANT'S MOTION FOR
SUMMARY JUDGMENT**

Appellant.

I. RELIEF REQUESTED

The Office of the Insurance Commissioner ("OIC" or "Insurance Commissioner") respectfully requests that Your Honor grant OIC's Motion for Summary Judgment ("OIC's Motion") and deny Appellant's¹ Motion for Summary Judgment ("Appellant's Motion"). There are no genuine issues of the material facts detailed in the Cease and Desist Order No. 20-0257 ("Cease and Desist Order") and Order Imposing a Fine No. 20-0457 ("Order Imposing a Fine"). Armed Citizens recognizes "all material *facts* laid out in the OIC Order are undisputed." *Appellant's Motion*, p. 8.

OIC found that Armed Citizens' conduct violated the Insurance Code, specifically RCW 48.05.030(1) and RCW 48.15.020(1). Armed Citizens unlawfully transacted insurance in Washington since 2008 and in doing so, violated these provisions over 2,000 times. Accordingly, the Insurance Commissioner was authorized to issue the Cease and Desist Order pursuant to RCW 48.02.080(3)(a) and RCW 48.15.023(5)(a)(i). The Insurance Commissioner was also authorized to issue the Order Imposing a Fine pursuant to RCW 48.15.023(5)(a)(ii).

¹ In this Response, Armed Citizens' Legal Defense Network, Inc. is referred to as Armed Citizens and Appellant.

1 OIC's Motion is supplemented by this Response, which addresses specific
2 statements and arguments in Appellant's Motion. This Response is also based on OIC's
3 Motion,² the Second Declaration of Jessica Bullington in Support of OIC's Motion
4 ("Second Bullington Decl."), exhibits 13-14, and all other documents previously filed in
5 this matter.

6 II. ARGUMENT

7 Title 48 RCW vests the authority to regulate all insurance transactions in this state
8 in the Insurance Commissioner. See RCW 48.01.020. In *Premera v. Kreidler*, 133 Wn.
9 App. 23, 42 (2006), the court summarizes the broad authority the Legislature conferred
10 upon the Insurance Commissioner to enforce the Insurance Code:

11 To protect the public in insurance matters, "the legislature created the office of
12 Insurance Commissioner and conferred upon that office the duty of enforcing the
13 provisions of the code." *Ins. Co. of N Am. v. Kueckelhan*, 70 Wn.2d 822, 831, 425
14 P.2d 669 (1967). To fulfill this mandate, it vested the Commissioner with broad
15 authority. *Nat'l Fed'n of Retired Persons, Inc. v. Ins. Comm'r*, 120 Wn.2d 101,
16 109, 838 P.2d 680 (1992). The Commissioner has authority conferred by and
17 reasonably implied from the insurance statutes. RCW 48.02.060(1); *Nat'l Fed'n
18 of Retired Persons*, 120 Wn.2d at 109.

19 Armed Citizens' undisputed conduct falls under the Insurance Code's statutory definition
20 (RCW 48.01.040) of insurance and is subject to the Insurance Commissioner's broad
21 regulatory authority. Title 48 does not define the following terms in RCW 48.01.040:
22 "contract," "indemnify," "specified amount," or "determinable contingencies."

23 In the absence of such a definition, statutory construction requires that we give
24 undefined words their common and ordinary meaning. To ascertain this meaning,
25 we may use a dictionary.

26 *Vance v. Dep't of Ret. Sys.*, 114 Wn. App. 572, 577 (2002)(citing *State v. Argueta*, 107
Wn. App. 532, 536 (2001)) (citations omitted). Armed Citizens incorrectly interprets these
terms and misapplies RCW 48.01.040 to its conduct. Armed Citizens also makes many
self-serving statements that do not show specific facts are in dispute or that Armed

² OIC's Motion was filed along with the Declaration of Jessica Bullington in Support of OIC's Motion
("Bullington Decl.") and Exhibits 1-12.

1 Citizens is entitled to summary judgment as a matter of law. Armed Citizens’ discussion
2 about the overall purpose of the memberships and defense fund, the non-insurance
3 educational membership benefits, and Armed Citizens’ intent not to sell insurance, are not
4 material to whether Armed Citizens has actually transacted insurance under the Insurance
Code.

5 An analysis of the common and ordinary meaning of each of the undefined terms
6 in RCW 48.01.040, support a finding by the tribunal that Armed Citizens transacted
7 insurance as an unauthorized insurer in Washington under RCW 48.01.040 and RCW
8 48.01.050.

9 **A. The memberships are contracts.**

10 Armed Citizens agrees the following is undisputed: “since 2008, ACLDN has sold
11 2,559 memberships in Washington (Basis No. 16).” *Appellant’s Motion*, p. 8. Armed
12 Citizens further agrees: “When applied for and approved, ACLDN will pay attorneys’ fees
13 and legal expenses after a self-defense incident (Basis Nos. 13-15).” *Id.* at 8. Armed
14 Citizens acknowledges selling the memberships to Washington consumers, but asserts the
following:

- 15 • “Funds available to members for financial assistance with legal costs
16 associated with an event of lawful self-defense are not a contractual obligation
upon the purchase of a membership.” *Id.* at 2.
- 17 • “There are no contractual rights to the Funds.” *Id.* at 6.
- 18 • “There are no contractual standards which require any funds to be provided by
ACLDN.” *Id.* at 5.

19 OIC notes this language, or similar language, is not present in Armed Citizens’
20 Membership Application Brochure (“Brochure”), Explanation of Membership Benefits
21 (“Explanation”) or the webpages accessed by OIC during the course of the investigation.
22 *Bullington Decl.*, Exs. 7-9. These membership materials show Armed Citizens has entered
into contracts with Washington consumers.

23 A review of the principles of contract law further demonstrates that the
24 memberships are contracts. A “contract” is “an agreement between two or more persons
25 or parties to do or not do something.” *Webster’s Third New International Dictionary of*

1 *the English Language* 494 (2002); *see also Black’s Law Dictionary* 389 (10th ed. 2014)
2 (defining a “contract” as “An agreement between two or more parties creating obligations
3 that are enforceable or otherwise recognizable at law <a binding contract>.”)

4 A contract requires an offer, acceptance, and consideration. The terms of a
5 contract must be sufficiently definite that a court can ‘fix exactly the legal
6 liability of the parties.’ A contract must be supported by consideration to be
7 enforceable.

8 *Fed. Deposit Ins. Corp. v. Uribe, Inc.*, 171 Wn. App. 683, 688 (2012) (citations omitted).

9 Armed Citizens has entered into an agreement with Washington consumers to do
10 something – to cover members’ bail and legal expenses arising from a self-defense
11 incident. *OIC’s Motion for Summary Judgment*, pp. 3-4. *See also, Bullington Decl.*, Exs.
12 7-9. Armed Citizens offers to provide consumers with membership benefits. These
13 membership benefits are clearly spelled out in advertising and the membership materials.
14 These offers are accepted by consumers when they fill out an application, become
15 members, and pay fees. Certainly, there is a contract, in which Armed Citizens, for
16 monetary consideration, promises to provide the specified membership benefits.

17 In Appellant’s Motion, it states the following:

18 There is no contractual right to the Funds. Such is made further explicitly clear by
19 ACLDN:

20 **What We Are Not**

21 First off, we are NOT insurance! There is no insurance component in our
22 member benefits.

23 *Id.*, p 9, ¶¶ 45-46, Ex. F.

24 It simply could not be clearer that ACLDN membership does NOT come with a
25 right to the Fund, but only the right to apply for the Fund and be subject to the sole
26 discretion of ACLDN and its advisory board.

Armed Citizens errs in placing significance on the disclaimer. As to the existence of an
insurance contract, it is irrelevant that a contract asserts that it is not one of insurance.
McCarty v. King County Medical Serv. Corp., 26 Wn.2d 660, 684 (1946) (citations
omitted). Secondly, the disclaimer does not inform consumers that members do not have
any contractual rights to the membership benefits.

1 The membership benefits are clearly stated. *OIC's Motion*, pp. 3-4. Moreover,
2 Armed Citizens' website uses definite phrases to describe the membership benefits.

- 3 • "Join the Network so you can access..." *Bullington Decl.*, Ex. 9, p. 1;
- 4 • "Members who have been involved in a self-defense incident during their term of
5 membership receive the following: ..." *Id.* at 6-7;
- 6 • "What does my membership fee buy me?" *Id.* at 11-12; and
- 7 • "When a member joins the Network, they become eligible to receive member
8 benefits after a self-defense incident." *Id.* at 16.

9 This language is further proof that Armed Citizens has entered into contracts to provide
10 consumers with the membership benefits. Additionally, when a consumer becomes a
11 member, Armed Citizens provides the member with the Explanation and a membership
12 card. *Bullington Decl.*, Ex. 8. At this point, there is a clear contract and agreement by
13 Armed Citizens to provide the membership benefits to the member.³ A review of the
14 language in Armed Citizens' membership materials clearly show the memberships are
15 contracts. The memberships impose an obligation upon Armed Citizens to provide the
16 membership benefits to consumers that pay to become members. OIC requests that Your
17 Honor finds the memberships constitute contracts and reject any statements by Armed
18 Citizens denying it has a contractual obligation to provide the membership benefits.

19 **B. The memberships are insurance contracts.**

20 The memberships sold by Armed Citizens to Washington consumers are also
21 insurance contracts under the common and ordinary meaning of RCW 48.01.040. RCW
22 48.01.040 is unambiguous and its plain language evidences the legislature's intent for a
23 broad definition of insurance in Washington.⁴

24 ³ *Bullington Decl.*, Ex. 9 at p. 1 (Stating "The Network's entire purpose and goal is to assure that
25 members...2) have access to vigorous and skillful legal representation immediately after a self-defense
incident... The member is eligible for Network benefits from the time their dues payment is received
to the end of their membership term as shown on their membership card. Benefits are not available for
any incident occurring before or after their term of membership. The following paragraphs explain how
to access these membership benefits.")

⁴ *Kyrkos v. State Farm Mut. Auto Ins. Co.*, 121 Wn.2d 669, 674 (1993)(Discussing RCW 48.01.040
and stating "When a statute is unambiguous, its meaning must be derived from the actual language
chose by the Legislature.")(citations omitted).

1 Armed Citizens argues this case does not involve a document that is specifically
2 called an “insurance policy.” This circumstance is not uncommon with entities that are
3 transacting unauthorized insurance, as it is not in an unauthorized entity’s self-interest to
4 call attention to the fact it is doing business illegally. However, the name or description
5 given to a contract by the offeror, particularly in the realm of insurance, is not dispositive.
6 *McCarty*, 26 Wn.2d at 684. Here, the membership materials and promises made by Armed
7 Citizens, in return for payments by its members, form an insurance contract. As a result,
8 Armed Citizens has transacted insurance under RCW 48.01.040.

9 *i. Armed Citizens has entered into contracts with Washington consumers
10 wherein it has undertaken to pay a specified amount upon determinable
11 contingencies.*

12 On July 30, 2020, the Presiding Officer issued the Order on Motion for Stay, which
13 denied Armed Citizens’ request for a discretionary stay. Your Honor held:

14 Regarding the definition of insurance, there is prima facie evidence that ACLDN
15 is paying a specified amount - up to \$25,000 - upon a determinable contingency –
16 a self-defense incident that requires legal representation. This is sufficient, at this
17 time, to meet the definition of “insurance.” Further analysis of this issue may result
18 in a different finding, but based on the materials and evidence available at this
19 time, there is prima facie evidence that the memberships offered by ACLDN meet
20 the definition of insurance.

21 *Order on Motion for Stay*, p. 8. OIC notes any further analysis by the Presiding Officer
22 does not support a different finding.

23 Armed Citizens has offered and agreed to pay *specified amounts* upon
24 determinable contingencies, stating “[w]hen a member uses force in self defense, the
25 Network immediately sends up to \$25,000 to the member’s attorney and can provide up
26 to \$25,000 in bail assistance.” *Bullington Decl.*, Ex. 7, p. 2. “Specific” is defined as “1:
27 constituting or falling into the category specified...4a: characterized by precise
28 formulation or accurate restriction (as in stating, describing, defining, reserving)...”
29 *Webster’s Third New International Dictionary of the English Language* 2187 (2002).⁵

30 _____
31 ⁵ “Specify” is defined as “1a: to mention or name in a specific or explicit manner: tell or state precisely
32 in detail.” *Id.*

1 Armed Citizens notes the “up to \$25,000” language is no longer on its website. *Appellant’s*
2 *Motion*, p. 18, fn 11. However, at the time of OIC’s enforcement action, the language was
3 located in several places of Armed Citizens Brochure and website. *Bullington Decl.*, Ex.
4 7, p. 2, Ex. 9, pp. 7, 11-12, 16. Armed Citizens agreed to pay clear and detailed amounts
(when “up to \$25,000” language is used, coverage is restricted to \$1-\$25,000.)

5 Armed Citizens, without any actual factual evidence, incorrectly asserts the
6 memberships do not fall under RCW 48.01.040 because it has not undertaken to pay a
7 “specified amount.” *Appellant’s Motion*, pp. 17-18. Specifically, Armed Citizens states
8 that the phrase “up to” contradicts the term “specified amount,” and as a result of this
9 phrase, it is not forming an insurance contract. *Id.* at p. 18. However, in case law involving
10 memberships, the phrase “up to” did not prevent a finding of insurance. *See, e.g., Love v.*
11 *Money Tree, Inc.*, 279 Ga. 476, 478-479 (2006); *Ark. Motor Club v. Ark. Empl. Sec. Div.*,
237 Ark. 419, 423-425 (1963).

12 Armed Citizens’ argument, applied to a regular auto insurance policy, would mean
13 a policy that did not specify a single exact payment amount – for example, \$2,500 for each
14 and every collision, regardless of the circumstances – is not insurance. This argument is
15 clearly absurd. Instead, the “up to \$25,000” language is clearly analogous to a policy limit
16 in an authorized insurance policy – allowing payment in amounts less than or equal to that
17 amount, depending on the loss circumstances in an individual case. The Presiding Officer
18 should find “up to \$25,000” is a “specified amount” under RCW 48.01.040. The Presiding
19 Officer should not adopt Armed Citizens’ reasoning as such interpretation of “specified
20 amount” is not consistent with the plain language of the statute. Further, corporations
21 could easily avoid OIC’s regulation by making sure all of their offers simply included “up
22 to” language.

23 Lastly, Armed Citizens has agreed to pay specified amounts upon *determinable*
24 *contingencies*. As Your Honor held, OIC presented “prima facie evidence that ACLDN is
25 paying a specified amount - up to \$25,000 - upon a determinable contingency – a self-
26 defense incident that requires legal representation.” *Order on Motion for Stay*, p. 8.

1 “Determinable” is defined as “1: capable of being determined, definitely ascertained, or
2 decided upon...” *Webster’s Third New International Dictionary of the English Language*
3 616 (2002). “Contingency” is defined as “1: the quality or state of being contingent: as a
4 (1): the condition that something may or may not occur: the condition of being subject to
5 chance...” *Webster’s Third New International Dictionary of the English Language* 493
6 (2002). Contrary to Armed Citizens’ statements, legal and bail expenses arising from a
7 member’s use of self-defense are determinable contingencies. A self-defense incident that
8 requires legal representation or bail can be determined. Further, such event may or may
9 not happen, depending on a variety of possible events discussed in Armed Citizens’
10 membership materials: police contact, arrest, criminal charges, trial, retrial, civil lawsuit,
11 and/or appeal. OIC requests that the Presiding Officer find that Armed Citizens has
12 undertaken to pay a specified amount upon determinable contingencies and therefore,
13 transacted insurance in Washington.

14 ii. *Armed Citizens has entered into contracts wherein it has undertaken to*
15 *indemnify Washington consumers.*

16 Armed Citizens has indemnified Washington consumers under the common and
17 ordinary meaning of “indemnify.” Armed Citizens states the “Presiding Officer
18 recognized that the ACLDN memberships did not involve indemnification in the Order
19 on Motion for Stay.” *Appellant’s Motion*, p. 17, fn 10. OIC notes, however, that the
20 Presiding Officer did not specifically rule on the issue of indemnification in the Order on
21 Motion for Stay. Armed Citizens’ conduct demonstrates that Armed Citizens has
22 indemnified Washington members’ legal and bail expenses. Webster’s Third International
23 Dictionary defines “indemnify” as “1a: to secure or protect against hurt or loss or
24 damage...” *Webster’s Third New International Dictionary of the English Language* 1147
25 (2002). “Indemnify” means 1. To reimburse (another) for a loss suffered because of a third
26 party’s or one’s own act or default; 2. To promise to reimburse (another) for such a loss;
3. To give (another) security against such a loss.” *Black’s Law Dictionary* 918 (11th ed.
2019).

1 Armed Citizens states it has not indemnified members because “there is no ‘loss’
2 and no ‘loss suffered because of a third party’s act.’” *Appellant’s Motion*, p. 16. Contrary
3 to these statements, Armed Citizens sold memberships to consumers wherein Armed
4 Citizens agreed to indemnify its members against bail expenses and a variety of legal
5 expenses. If a member uses force in self-defense and is subject to a variety of events, such
6 as police contact, an arrest, criminal charges, trial, retrial, civil lawsuit, and/or appeal,
7 Armed Citizens made offers, and entered into contracts, to pay the member’s legal and
8 bail expenses arising from these events. These events result from a member’s act of self-
9 defense and there is a loss suffered when a member incurs legal and bail expenses. Armed
10 Citizens offered and agreed to secure and protect members against these expenses.
11 Accordingly, Armed Citizens has indemnified members’ legal and bail expenses and such
12 conduct falls under the ordinary and common meaning of “indemnify.” Further, OIC
13 gathered proof that Armed Citizens not only agreed to indemnify members, but did so in
14 many cases. *Bullington Decl.*, Ex. 10. Armed Citizens provided a list of 25 members
15 across the United States that sought coverage for incidents. *Id.* Armed Citizens made
16 payments related to 22 memberships. *Id.* Of the 25 claims, two (2) incidents occurred in
17 Washington and Armed Citizens paid \$2,000 on behalf of one member. *Id.*, at 3. OIC
18 requests that the Presiding Officer find that Armed Citizens undisputedly indemnified
19 members’ legal and bail expenses.

20 *iii. Armed Citizens improperly adds new extra statutory elements to RCW*
21 *48.01.040 and misconstrues the definition of insurance by citing to*
22 *inapplicable authorities.*

23 The elements of risk-shifting and risk-distribution are not included in the Insurance
24 Code’s definition of insurance. RCW 48.01.040. Neither are the “four essential elements
25 of an insurance contract” or the five-element substantial control test referenced by Armed
26 Citizens. *Appellant’s Motion*, pp. 10-13, 22. It is axiomatic that a court or tribunal “cannot
add words or clauses to an unambiguous statute, when the legislature has chosen not to
include that language.” *State v. Delgado*, 148 Wn.2d 723, 727 (2003). The Insurance

1 Code’s definition of insurance is unambiguous.⁶ As a result, Your Honor should not add
2 new elements to the Insurance Code’s definition of insurance.

3 Armed Citizens refers to many taxation cases in an effort to add elements to
4 Washington State’s definition of insurance and narrow the Insurance Commissioner’s
5 regulatory authority. *See Appellant’s Motion*, p. 11. In these cases, the courts did not
6 interpret RCW 48.01.040; they are therefore inapplicable. Furthermore, the courts grapple
7 with the definition of insurance for the purposes of taxation and not for the purposes of
8 Washington insurance regulation. *See In re Estate of Smiley*, 35 Wn.2d 863, 866 (“whether
9 the amounts derived from the contracts are proceeds of insurance *within the meaning of*
10 *inheritance tax statutes*”) (emphasis added); *Amerco, Inc. v. C.I.R.*, 979 F.2d 162, 165 (9th
11 Cir. 1992) (interpreting insurance for *the purposes of federal taxation*). All insurers must
12 comply with the Insurance Code. *See, e.g.*, RCW 48.01.020; RCW 48.01.040; RCW
13 48.01.050; Chapter 48.05 RCW.

14 The definition of insurance is necessarily broad because the Insurance
15 Commissioner is required to take action against both licensed insurers and those who are
16 acting as insurers without authorization. Entities acting as insurers without authorization
17 often avoid characterizing themselves as insurers or referring to their contracts as
18 insurance policies. Whereas, entities seeking recognition as a “bona fide insurance
19 company” under federal taxation standards have a different incentive: they are attempting
20 to be recognized as insurers because of the taxation benefits and seek to demonstrate they
21 constitute insurers. *See, e.g. Rent-A-Center, Inc. and Affiliated Subsidiaries v.*
22 *Commissioner*, 142 T.C. No. 1 (2014). As a result, a state’s definition of insurance must
23 be broader than the federal definition because it allows states to take action against those
24 entities who are *acting as* unauthorized insurers, not just those entities that actively *desire*
25 insurer status. *See* RCW 48.02.080; RCW 48.05.030; RCW 48.15.023. In summary, non-

26 ⁶ *Kyrkos v. State Farm Mut. Auto Ins. Co.*, 121 Wn.2d 669, 674 (1993).

1 insurance tax authorities are not instructive for interpreting Washington’s statutory
2 definition of insurance.

3 Additionally, Armed Citizens refers to the Ninth Circuit’s discussion of insurance
4 in *Physicians’ Def Co. v. Cooper*, 199 F. 576 (9th Cir. 1912). *See Appellant’s Motion*, pp.
5 10, 15. This case is not binding precedent, as the Washington Insurance Code determines
6 what is insurance in Washington State, and that case does not discuss Washington’s
7 statutory definition. The Court in *Physicians’ Def* examined California’s Insurance Code,
8 not Washington law. The language cited by Armed Citizens in this case is inapplicable to
9 the tribunal’s analysis of whether Armed Citizens’ conduct falls under RCW 48.01.040.

10 However, even if the Presiding Officer decides to apply any of the discussed cases
11 in this subsection, to Armed Citizens’ conduct, the tribunal should find there has been a
12 transfer of risk between a consumer and Armed Citizens upon the purchase of a
13 membership. Armed Citizens has offered and agreed to cover the member’s legal and bail
14 expenses arising from the use of self-defense. As a result, the members’ risk of incurring
15 these expenses has shifted to Armed Citizens. This is further evidenced by the claims
16 Armed Citizens has received wherein Armed Citizens paid the legal and bail expenses of
17 its members. *See Bullington Decl.*, Ex. 10.

18 *iv. Legal and bail expenses are insurable.*

19 Armed Citizens concludes “[t]he concept that self-defense is an intentional act and
20 not a determinable contingency or an insurable act is not new.” *Appellant’s Motion*, p. 21.
21 This assertion is incorrect. Washington courts have clearly stated that legitimate self-
22 defense is potentially insurable. As the Court of Appeals put it:

23 [M]embers of the public may wish to insure themselves from the cost of
24 defending liability actions where the facts ultimately exonerate them, and
25 that it would not violate public policy to permit an insurance company to
26 defend an action where the insured is excused on the basis of self-defense.

1 *Grange Ins. Co. v. Brosseau*, 113 Wn.2d 91, 99-100 (1989).⁷ As discussed above, the
2 determinable contingencies insured by Armed Citizens are the legal and bail expenses
3 arising from a self-defense incident.

4 The Insurance Commissioner has taken prior enforcement action against multiple
5 entities that unlawfully insured Washington consumer’s legal and bail expenses. *See, e.g.,*
6 *Bullington Decl.*, Ex. 11; Ex. 12. *See also Second Bullington Decl.*, Ex.13. The
7 enforcement action against Lyndon Southern Insurance Company provides an example of
8 an insurance company that made changes to its policy filing to become compliant with
9 Washington law and lawfully insure legal expenses. *See Second Bullington Decl.*, Ex. 13;
10 Ex. 14.

11 Armed Citizens may insure legal and bail expenses so long as it becomes properly
12 registered as an insurer, meets the necessary requirements, and complies with the
13 Insurance Code. Armed Citizens states the Cease and Desist Order “prohibits all
14 membership sales in Washington, which prohibits citizens access to the educational and
15 network benefits as well as the Fund.” *Appellant’s Motion*, p. 7. OIC has made it clear
16 that Armed Citizens is permitted to continue any of the non-insurance conduct, such as
17 providing memberships with the educational benefits. *See OIC’s Response in Opposition*
18 *to Appellant’s Motion to Stay Cease and Desist*, pp. 8-9 (discussing the scope of the Cease
19 and Desist Order).

20 **C. Armed Citizens’ conduct is not self-insurance.**

21 Armed Citizens has re-characterized its conduct as self-insurance in an attempt to
22 remove the memberships from the Insurance Commissioner’s regulatory authority. *See*
23 *Appellant’s Motion*, pp. 22-23. Self-insurance is defined in the Insurance Code for local
24 government insurance transactions as “a formal program of advance funding and
25 management of entity financial exposure to a risk of loss that is not transferred through

26 ⁷ *See also Mass. Bay Ins. Co. v. Waljlor Indus., Inc.*, 383 F. Supp.3d 1148, 1167-1169 (W.D. Wash.
2019).

1 the purchase of an insurance policy or contract.”⁸ The definition indicates self-insurance
2 is the total retention of all the risk *without* a transfer “through the purchase of an insurance
3 policy or contract” to any other entity. Self-insurance consists of an arrangement in which
4 an entity reserves its own funds in order to defray its own future risk. *Kyrkos v. State Farm*
5 *Mutual Automobile Insurance Company*, 121 Wn.2d 669 (1993). As further explained by
6 the Court of Appeals:

7 traditional insurance involves risk shifting, while **self-insurance involves**
8 **risk retention**: ‘Self-insurance does not constitute insurance in any
9 traditional form. In self-insurance the company, governmental entity or
10 individual **chooses not to purchase** insurance but rather retains the risk of
11 loss. In order to protect against losses, the self-insured **will often set aside**
12 **funds** on a regular basis to **provide its own pool from which losses will**
13 **be paid**. This can be analogized to the situation where a party purchasing
14 traditional insurance pays premiums to the insurer on a regular basis.
15 However, in a self-insurance situation there is no shifting of the risk from
16 the individual person or company to a larger group.’

17 *Bordeaux, Inc. v. Am. Safety Ins. Co.*, 145 Wn. App. 687, 696 (2008) (emphasis added).
18 Armed Citizens’ conduct does not constitute self-insurance. Here, individuals are
19 purchasing a product, not setting aside their own funds in a pool they themselves control.
20 Instead, Armed Citizens receives monies in a common pool from all members and pays
21 claims when they occur. Individual members do not have control over whether, how, and
22 when their expenses are paid; Armed Citizens does so pursuant to the terms of its contracts
23 with its members upon the occurrence of defined events. This is insurance, not self-
24 insurance.

25 Here, Washington consumers have paid Armed Citizens recurring membership
26 fees, and in exchange, Armed Citizens has agreed to provide insurance coverage for legal
and bail expenses. If this contractual arrangement did not exist, the Washington
consumers, and not Armed Citizens, would bear the risk of the legal and bail expenses.
Therefore, risk has shifted from the Washington consumers to Armed Citizens. In a
genuine self-funded arrangement, an individual can only lay away their own funds for

⁸ RCW 48.62.021(6). Chapter 48.62 RCW relates to Local Government Insurance Transactions.

1 their own risk. The case *Armed Citizens* references also mentions this principle. *See*
2 *Hawkins v. Ford Motor Co.*, 211 W. Va. 487, 491, fn 1 (2002):

3 ...the phrase ‘self-insurance’ means, generally, the assumption of one’s own risk
4 and, typically, involves the setting aside of a special fund to meet losses and pay
5 valid claims, instead of insuring against such losses and claims through an
6 insurance policy.

7 (citations omitted). *Armed Citizens*’ conduct is not self-insurance as it involves
8 Washington consumers. *Armed Citizens* collects membership fees from Washington
9 consumers and in return shifts the members’ risk to *Armed Citizens*. Under *Kyrkos*, *supra*,
10 121 Wn.2d at 674, and the discussed case law, *Armed Citizens*’ conduct does not
11 constitute self-insurance because *Armed Citizens* entered a third-party arrangement and
12 received compensation. Again, the memberships constitute insurance contracts under
13 RCW 48.01.040 and *Armed Citizens* has acted as an insurer under RCW 48.01.050, which
14 *Armed Citizens* was not, and is not, authorized to do.

15 **D. *Armed Citizens* stipulates there are no material facts in dispute and has**
16 **not established it is entitled to summary judgment as a matter of law.**

17 *Armed Citizens* agrees that material facts are not in dispute. *Armed Citizens*
18 states “all material *facts* laid out in the OIC Order are undisputed.” *Appellant’s Motion*, p.
19 8. These undisputed material facts gave the Insurance Commissioner cause to believe that
20 insurance code violations had occurred, justifying the issuance of the Order to Cease and
21 Desist as a matter of law. RCW 48.02.080(3) and RCW 48.15.023(5)(a)(i). The Insurance
22 Commissioner was also authorized to issue the Order Imposing a Fine as a matter of law.
23 RCW 48.15.023(5)(a)(ii).

24 *Armed Citizens* is not entitled to summary judgment as a matter of law. On the
25 contrary, OIC has met its burden in showing there are not any material facts in dispute
26 and OIC is entitled to summary judgment as a matter of law. *See* CR 56(c); *Atherton*
Condo. Ass’n v. Blume Dev. Co., 115 Wn.2d 506, 516 (1990) (citations omitted); *LaPlante*
v. State, 85 Wn.2d 154, 158 (1975); *Jacobsen v. State*, 89 Wn.2d 104, 108 (1977).

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V. CONCLUSION

Based on the evidence, authority, and arguments presented by the Insurance Commissioner in this matter, the Insurance Commissioner has the authority and undisputed factual basis to issue the Cease and Desist Order and Order Imposing a Fine. Armed Citizens has not disputed the material facts set in these orders. OIC on the other hand has demonstrated that there is no genuine issue of material fact and that, as a matter of law, summary judgment in favor of OIC is the proper remedy in this matter. Therefore, OIC respectfully requests Your Honor grant OIC’s Motion for Summary Judgment and deny Appellant’s Motion for Summary Judgment.

DATED this 26th day of August, 2020.

/s/ Sofia Pasarow
Sofia Pasarow
Insurance Enforcement Specialist
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’S RESPONSE TO APPELLANT’S MOTION FOR SUMMARY JUDGMENT, THE SECOND DECLARATION OF JESSICA BULLINGTON, AND CORRESPONDING EXHIBITS 13-14 on the following individuals in the manner indicated:

<p>Julia Eisentrout, Presiding Officer Office of the Insurance Commissioner 5000 Capitol Boulevard SE Tumwater, WA 98501 hearingsu@oic.wa.gov juliae@oic.wa.gov</p> <p><i>By email per the tribunal’s instructions.</i></p>	<p>Spencer D. Freeman Attorney at Law Freeman Law Firm, Inc. 1107-½ Tacoma Avenue South Tacoma, WA 98402 sfreeman@freemanlawfirm.org sierra@freemanlawfirm.org</p> <p><i>By email per electronic service agreement between the parties.</i></p>
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SIGNED this 26th day of August, 2020, at Tumwater, Washington.

/s/ Christine Tribe
Christine Tribe
Paralegal