

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

ASSOCIATED INDUSTRIES
MAGNAGEMENT SERVICES, in its
fiduciary capacity as
administrator for an
association or member-
governed group plans; THE
ASSOCIATION OR MEMBER GROUP-
GOVERNED PLANS; and JAMES
DeWALT, in his capacity as a
participant in one of the
above-referenced plans,

Case No. 3:14-cv-01711-AA

ORDER TO SHOW CAUSE

Plaintiffs,

v.

MODA HEALTH PLAN, INC., dba
MODA HEALTH INSURANCE, an
Oregon Corporation,

Defendant.

AIKEN, Chief Judge:

Plaintiffs filed suit pursuant to the Employee Retirement
Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001, et seq,
seeking declaratory and injunctive relief.

On behalf of themselves and participating employers, plaintiffs seek a declaratory judgment that the Health Benefit Trusts at issue in this case are sponsored by an "Employer" within the meaning of ERISA, 29 U.S.C. § 1002(5). Plaintiffs also seek injunctive relief enjoining defendant Moda Health Plans, Inc. (Moda) from terminating the group insurance contracts issued through the Health Benefit Trusts in Washington State, solely on the basis that they are not sponsored by an "Employer" under ERISA.

Under Washington State law, Moda must make a good faith effort to ensure that the Health Benefit Trusts are employer-sponsored and eligible to obtain large group insurance contracts. Def.'s Response to Pl.'s Motion for Summ. J. at 2. Significantly, the State of Washington Insurance Commissioner has determined that the Health Benefit Trusts are not "Employers" within the meaning of ERISA and are not eligible to purchase large group insurance for its members. See id. at 3 ("the Insurance Commissioner stated that the Trusts at issue in this case did not meet the "Employer" definition under ERISA").

Plaintiffs moved for summary judgment on the issue of whether the Health Benefit Trusts are sponsored by an "Employer" as defined by ERISA. Moda does not oppose plaintiffs' motion but seeks clarification as to its obligations, as it will not offer group insurance contracts to the Health Benefit Trusts absent a court ruling that they are sponsored by an "Employer."

The court has received notice that a case involving the precise issue raised in this case is pending in the Western District of Washington, and the State of Washington Insurance Commissioner is the named defendant in that action.¹ Business Health Trust, et al v. Kreidler, 2:14-cv-01918-RSL (W.D. Wash. 2014). Notably, venue in this case is proper in the Western District of Washington, as Moda may be "found" there. 29 U.S.C. § 1132(e)(2) (venue is appropriate in a district where a defendant may be found); see <https://www.modahealth.com/about> (Moda has an office located in Bothell, Washington).

Given the potential for inconsistent court rulings, as well as the significance of the issues to the State of Washington, it appears that the Western District of Washington is the more appropriate venue for this case.

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¹ Plaintiffs filed a motion for leave to amend its complaint and add claims against the State of Washington Insurance Commissioner. Plaintiffs sought "to enjoin Moda and the [Insurance Commissioner] from terminating the insurance coverage issued through the Health Benefit Trusts solely on the basis that the sponsor is not an Employer within the meaning of ERISA Section 3(5), and to enjoin the [Insurance Commissioner] from acting upon its finding that the sponsors of the Health Benefit Trusts are not employers within the meaning of ERISA." Pls.' Proposed Am. Compl. at 9. The court denied the motion because plaintiffs failed to provide legal authority to support this court's jurisdiction over a Washington State agency to enjoin potentially pending agency action. Plaintiffs did not renew the motion or otherwise seek reconsideration of the court's order.

Accordingly, within fourteen days the parties are ordered to show cause why this case should not be transferred to the United States District Court for the Western District of Washington.

IT IS SO ORDERED.

DATED this 24th day of March, 2015.

A handwritten signature in cursive script, appearing to read "Ann Aiken", is written above a horizontal line.

Ann Aiken

United States District Court