

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BUSINESS HEALTH TRUST, in its fiduciary )  
capacity for an association or member-governed )  
group plans; and THE ASSOCIATION OR )  
MEMBER GROUP-GOVERNED PLANS, )  
Plaintiffs, )  
v. )  
MIKE KREIDLER, in his capacity as )  
Washington State Insurance Commissioner, )  
Defendant. )

No. 2:14-cv-01918-RSL

**DECLARATION OF RICHARD  
J. BIRMINGHAM IN SUPPORT  
OF PLAINTIFFS' REPLY IN  
SUPPORT OF MOTION FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

I, Richard J. Birmingham, declare and state as follows:

1. I am a partner with the law firm of Davis Wright Tremaine LLP, and counsel of record for the Plaintiff, Business Health Trust. I make this declaration based on personal knowledge and am competent to testify as to the matters set forth herein.

2. On or around January 22, 2015, I spoke with representatives for Premera Blue Cross ("Premera"), who indicated that currently Premera does not intend to challenge a disapproval of the rating filing applications or the Employer 3(5) status for the Member-Group Governed Plans.

1  
2 3. Attached hereto as Exhibit A is a true and correct copy of a letter dated  
3 March 26, 2013, from Carol Sureau, Deputy Commissioner, Legal Affairs, to Mr. Jeff Marcell  
4 regarding the Aerospace Industry Health Trust and the Commissioner's determination that the  
5 membership constitutes an ERISA Section 3(5) employer.

6  
7 4. Attached hereto as Exhibit B is a true and correct copy of a letter dated  
8 May 7, 2013, from Charles Brown, Acting Deputy Legal Affairs, to Mr. Jason Froggatt of  
9 Davis Wright Tremaine LLP regarding the Commissioner's finding that the Agriculture  
10 Industry Health Trust may be considered an ERISA Section 3(5) employer.

11 5. Attached hereto as Exhibit C is a true and correct copy of a letter dated  
12 October 28, 2014, from Commissioner Kriedler to Maud Daudon regarding the impending  
13 disapproval of the Association Health Plans as ERISA Section 3(5) employers.

14 6. Attached hereto as Exhibit D is a true and correct copy of the Memorandum  
15 Decision on Plaintiffs' Motion for Summary Judgment and Defendant's Cross-Motion for  
16 Summary Judgment issued in *Associated Industries of the Inland Northwest v. State of*  
17 *Washington Office of the Insurance Commissioner et. al.*, Docket No. 2007-02-00592-1, which  
18 was entered in the Superior Court of Washington for Spokane County on August 27, 2007.

19 7. Attached hereto as Exhibit E is a true and correct copy of the Group Master  
20 Application for the Media Industry Health Trust.  
21

22 8. Attached hereto as Exhibit F is a true and correct copy of a screenshot from the  
23 Bend Chamber website ([http://bendchamber.org/chamber-weekly/chamber-health-plan-back-](http://bendchamber.org/chamber-weekly/chamber-health-plan-back-on-track/)  
24 [on-track/](http://bendchamber.org/chamber-weekly/chamber-health-plan-back-on-track/)), as accessed on February 6, 2015.  
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1 9. Attached hereto as Exhibit G is a true and correct copy of an excerpt from the  
2 Commissioner's Reply, submitted on February 5, 2015, In the Matter of Business Health Trust  
3 before the State of Washington Office of the Insurance Commissioner Administrative Hearings  
4 Unit. Docket No. 14-0246 at 11-14.

5 I declare under penalty of perjury under the laws of the United States that the foregoing  
6 is true and correct.

7 Executed this 6th day of February, 2015, at Seattle, Washington.

8  
9 /s/ Richard J. Birmingham  
10 Richard J. Birmingham

**CERTIFICATION OF SERVICE**

1  
2 I hereby declare under penalty of perjury under the laws of the State of Washington, that  
3 on February 6th, 2015, I electronically filed the attached **Declaration of Richard J.**  
4 **Birmingham in Support of Plaintiffs' Reply** with the Clerk of the Court using the CM/ECF  
5 system which will send notification of such filing to the following:  
6

7 Marta DeLeon  
8 Assistant Attorney General  
9 Office of the Attorney General  
10 Government Compliance and Enforcement Division  
11 1125 Washington Street SE  
12 PO Box 40100  
13 Olympia, WA 98504-0100  
14 [martad@atg.wa.gov](mailto:martad@atg.wa.gov)

15 DATED this 6th day of February, 2015.

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