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2015 MAR 13 / 16 P 12:44
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March 13, 2015

Via U.S. Mail and email
hearings@oic.wa.gov

Office of Insurance Commissioner
Attention: Administrative Hearings Unit
P.O. Box 40255
Olympia WA 98504-0255

Re: Associated Industries Management Services; Moda; Demand for
Hearing and Stay of Actions

To Whom It May Concern:

Our office represents Associated Industries Management Services (“AIMS”), a third party administrator of six (6) industry specific Health Benefit Trusts (“Trusts”); each of the six (6) industry specific Health Benefits Trusts: Health Alliance (ALLtech) for Technology Health Trust, Greater Columbia Manufacturing Benefits Trust, Columbia Retail Benefits Trust, Greater Northwest Health Industry Benefits Trust, Pacific Business Resource Benefits Trust, and Associated Employers Trust - Commercial Construction Health and Welfare Trust; each of the sponsoring employers (approximately 988 employers) solely with respect to the insurance coverage provided by such Trusts, with Associated Industries of the Inland Northwest serving as a representative for such employers; and the individual participants of such Trusts (approximately 21,620 insureds), with Mr. James DeWalt serving as a representative for such participants. To the extent that Moda Health Plan, Inc., doing business as Moda Health Insurance, (“Moda”) is also necessary for our clients’ standing in this proceeding, Moda has agreed that our clients are an “aggrieved party” with standing. We ask that any hearing in this matter be consolidated with Moda’s hearing.

The insurance carrier, Moda, received notification on December 16, 2014 that the Office of Insurance Commissioner (the “OIC”) indicated that the associations sponsoring the Trusts would not satisfy the definition of employer within the meaning of Section 3(5) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) in order to qualify for large-group coverage under Washington State law. This notification also indicated that the OIC rejected the rating methodology utilized by Moda for the issuance of health care coverage to the Trusts at large group rates.

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On behalf of the above referenced parties, we hereby demand a hearing before an administrative law judge pursuant to RCW 48.04.010 *et seq.* to challenge the action by the OIC on the grounds set forth below. These grounds, however, may be supplemented at a later date.

The parties also hereby request, pursuant to RCW 48.04.020(2), that the OIC grant a stay of all the OIC directives and actions, pending a decision in this action. In this regard, the parties further request a stay of this administrative action pending the OIC's examination of the 2015 filing by Moda on behalf of the parties. In this regard, the Hearing Examiner should be aware that this hearing request is for an OIC denial based on a 2014 contract filing. There is no one covered under the 2014 policy and the policy is no longer being sold. Therefore, there is no current case or controversy with respect to the 2014 policy. For this reason, the hearing on the 2014 policy should be stayed until the OIC makes a determination on the 2015 policy, and through the subsequent 90 day period to request a hearing. At that point, the two matters could either be consolidated or the parties could agree that any issues under the 2014 policy could be dismissed without further OIC action and that the parties would litigate only the issues under the 2015 policy. The parties request that the Hearing Examiner establish a conference call to determine whether the OIC is agreeable to such a stay. Depending on the results of such a call, the parties may seek a stay by a court.

With regard to the ERISA Section 3(5) issue, it is our clients' position that the OIC's action is improper because it misconstrues applicable Washington State law to give the OIC authority to determine whether each of the Trusts is sponsored by an association or group of employers that meets the definition of "employer" for purposes of Section 3(5) of ERISA. WAC 284-170-958 provides that an issuer may not offer or issue an association health plan a large group insurance contract unless, among other things, the association or member-governed group to whom the insurance is issued constitutes an employer under ERISA Section 3(5). The insurer must also make a good faith effort to ensure that the association that sponsors an insured product meets the applicable requirements. The OIC's action, however misinterprets this provision to give it, rather than the insurer, the responsibility to make the determination of whether each of the Trusts is sponsored by an employer under ERISA Section 3(5). Furthermore, the OIC's action indicates that it has taken upon itself to make a determination on an issue that is solely a federal question, and a matter that is not within the jurisdiction of the OIC or this administrative proceeding. Moreover, it is the parties' position that the sponsors of the Trust are, nevertheless, ERISA Section 3(5) employers, within the meaning of federal law.

With respect to the rating methodology, our clients take the following positions: (1) the rating methodology utilized by Moda is in compliance with state law and federal law; (2) the OIC's rating methodology violates state law and violates the state court's decision in *Associated Industries of the Inland Northwest and the Association of Washington Businesses v. State of Washington Office of the Insurance Commissioner; Mike Kreidler*, No. 2007-02-00592-1,

Superior Court, Spokane, August 27, 2007; (3) the OIC's rating methodology is not required by federal law; and, lastly (4) the OIC's unilateral change to the state's rating methodology is an unconstitutional exercise of legislative authority, an issue not within the jurisdiction of this administrative proceeding.

Due to the OIC's action, the rights of the association-sponsors' employees to current coverage under the policies issued by Moda are adversely affected. Moda has been told to discontinue policies and to transition employees. Thus, the insurance coverage of the approximately 21,620 participants will be disrupted. As a result of this disruption, the Trusts' 988 member employers and/or their employees will likely face increased costs for any new coverage that may be obtained in the small group or individual market. Additionally, the small group or individual policies available for purchase will not be tailored to meet the needs of each Trust's industry.

Lastly, if ERISA Section 3(5) status is denied, the business model of our clients will be severely disrupted as the six (6) Trusts and the 988 sponsoring employers will no longer be permitted to market a large group policy.

Upon receipt of this letter, please acknowledge receipt and schedule a conference to determine whether the OIC is agreeable to stay the 2014 policy issues until a ruling is made with respect to the 2015 policies, and the subsequent 90 day period to request a review, as there is no case or controversy related to the 2014 policies and no one is currently covered by such policies and such policies are no longer being sold. Please serve copies of all future papers and proceedings herein upon Richard J. Birmingham and Christine Hawkins at the address listed above.

Yours truly,

Davis Wright Tremaine LLP



Richard J. Birmingham

cc: Commissioner Mike Kreidler (via U.S. Mail)
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