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BEFORE THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

IN THE MATTERS OF:

MASTER BUILDERS ASSOCIATION  
OF KING AND SNOHOMISH  
COUNTIES and MASTER BUILDERS  
ASSOCIATION OF KING AND  
SNOHOMISH COUNTIES EMPLOYEE  
BENEFIT GROUP INSURANCE TRUST  
("MBA TRUST")

No. 15-0062

CAMBIA HEALTH SOLUTIONS  
(RE MBA TRUST) ("CAMBIA 1")

No. 15-0071

BUILDING INDUSTRY ASSOCIATION  
OF WASHINGTON HEALTH  
INSURANCE TRUST ("BIAW TRUST")

No. 15-0075

CAMBIA HEALTH SOLUTIONS  
(RE BIAW TRUST) ("CAMBIA 2")

No. 15-0078

NORTHWEST MARINE TRADE  
ASSOCIATION and NORTHWEST  
MARINE TRADE ASSOCIATION  
HEALTH TRUST ("NMTA TRUST")

No. 15-0079

CAMBIA HEALTH SOLUTIONS  
(RE NMTA TRUST) ("CAMBIA 3")

No. 15-0084

Docket Nos. 15-0062; 15-0071; 15-0075;  
15-0078; 15-0079 and 15-084

DECLARATION OF JERRY BELUR IN  
SUPPORT OF MBA TRUST, BIAW  
TRUST AND NMTA TRUST'S MOTION  
FOR SUMMARY JUDGMENT

1 I, Jerry Belur, declare under penalty of perjury under the laws of the State of  
2 Washington that I am over the age of eighteen, I am competent to make this declaration, and  
3 make it upon personal knowledge.

4 1. I am Chief Executive Officer of EPK & Associates, Inc. (EPK). I have held  
5 this position since 1999. EPK is the third party administrator of the Master Builders  
6 Association of King and Snohomish Counties Employee Benefits Group Insurance Trust  
7 (MBA Trust), of the Building Industry Association of Washington Health Insurance Trust  
8 (BIAW Trust), and of the Northwest Marine Trade Association Health Trust (NMTA Trust),  
9 sometimes together called the AHPs.

10 2. The MBA Trust is a multiple employer trust fund formed in 1986 to provide  
11 for the payment of health and welfare benefits for participating employers, their employees  
12 and dependents. It is the Northwest's largest industry-specific healthcare program, with over  
13 40,000 enrolled members. In 2014, MBA Trust provided fully-insured benefit plans through  
14 Regence ("the MBA Plans") to over 1,300 companies in the building and construction  
15 industry located in King and Snohomish Counties, ranging in size from two to over 800  
16 employees. The MBA companies, in turn, offered the MBA Plans to their employees and  
17 their employees' eligible dependents ("MBA Members"). Approximately 40,000 MBA  
18 Members were enrolled in the Plans in 2014.

19 3. The BIAW Trust, which is modeled after the MBA Trust, provides companies  
20 in the building and construction industry located outside King and Snohomish Counties with  
21 high quality, affordable health insurance for their employees. In 2014, BIAW provided fully-  
22 insured benefit plans through Regence ("the BIAW Plans") to 600 employer members,  
23 ranging in size from two to approximately 600 employees. The BIAW's companies in turn  
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1 offered the BIAW Plans to approximately 15,000 employees and eligible dependents (“BIAW  
2 Members”) in 2014.

3 4. The NMTA Trust, also modeled after the MBA Trust, offers healthcare  
4 benefit plans to Washington companies in the recreational boating and marine industries. In  
5 2014, NMTA Trust provided fully-insured health benefit plans (through Regence) (the  
6 “NMTA Plans”) for over 114 companies. In 2014, this industry-specific healthcare program  
7 serves approximately 1,830 industry employees and 2,500 total members (“NMTA  
8 Members”). Recently created, the NMTA Trust first began serving NMTA Members in 2014.  
9

10 5. Earlier, in 2011, the Office of the Insurance Commissioner (OIC) had notified  
11 association health plans and their carriers that small group health plans (under 50 employees)  
12 obtained by employers through AHPs would be community rated beginning in 2014 unless  
13 the association constituted an “employer” under ERISA section 3(5). In that connection, the  
14 OIC also advised that if an association comprised a bona fide group of employers with a  
15 commonality of interest, it would be deemed an “employer” under ERISA, would be  
16 considered a large group by the OIC, and would not be subject to a community rating  
17 requirement.  
18

19 6. In December 2011, along with a representative of the Master Builders  
20 Association, I began a series of meetings with the Insurance Commissioner (Mike Kreidler),  
21 his Chief Legal Deputy (Carol Sureau) and the Deputy Commissioner for Rates and Forms  
22 (Beth Berendt). Throughout 2012 we met in person several times and worked collaboratively  
23 to amend the underlying trust agreement governing the MBA Trust and identify those  
24 industries that would be eligible to receive benefits under the Trust. During these meetings  
25 there was no mention of rating restrictions or the ability of the participating employer groups  
26

1 in the Trust to select specific plans for their employees. We did agree that approximately 150  
2 companies would no longer be eligible to participate in the MBA Trust due to industry  
3 classification and would have to exit the MBA Trust by January 1, 2014. Our negotiations  
4 resulted in a letter dated September 25, 2012 sent to the MBA Trust and signed by  
5 Commissioner Kreidler, a copy of which is attached hereto as **Exhibit A**. A similar letter  
6 dated March 26, 2013 was sent by the OIC to the BIAW Trust, which identified the agreed  
7 occupational categories allowed to be in the BIAW Trust, while preserving its status as a  
8 qualified bona fide employer group under ERISA 3(5) – **Exhibit B**.

10 7. Subsequently, the BIAW Trust and the NMTA Trust (upon its creation) were  
11 configured or restructured to conform to the “employer” definition under ERISA Section 3(5).  
12 Consequently, the MBA Trust, BIAW Trust and NMTA Trust now meet all ERISA  
13 requirements to be a “bona fide” group with a “commonality of interest” and are not,  
14 therefore, subject to community rating. The OIC has recently, on its website addressing the  
15 disapprovals at issue here, acknowledged the bona fide status of the MBA Trust, the BIAW  
16 Trust, and the NMTA Trust, calling each a “True Employer under ERISA.” **Exhibit C** at p.2.

18 8. In mid-February 2014, the MBA Trust and NMTA Trust carrier, Regence,  
19 submitted the 2014 MBA and NMTA Trust rate and form filing to the OIC. As had been the  
20 case in the prior 20 plus years of MBA filings with OIC, the filing included 4 rate categories  
21 that were applied to the plans. Each participating employer slotted into one of the 4 rate  
22 categories on the basis of several factors. These factors included geographic location,  
23 industry classification, contribution levels, level of employee participation, utilization, trust  
24 longevity and demographics. No individual health status information was or is used in setting  
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1 the participating employer rates. For MBA Trust, this method of rating had been accepted by  
2 the OIC since 1995, including 2011, 2012 and 2013, after passage of the Affordable Care Act.

3 9. On April 24, 2014, the BIAW Trust carrier, Regence, submitted the 2014 rate  
4 and form filing to the OIC.

5 10. The OIC filed objections to the MBA Trust and NMTA Trust filings in March  
6 2014. The carrier, Regence, responded to the objections in April 2014 and continued  
7 discussions with the OIC throughout 2014. Similarly, the OIC filed objections to the BIAW  
8 Trust filing on July 3, 2014. The carrier, Regence, responded to the objections on August 1,  
9 2014 and continued discussions with the OIC throughout 2014.

10 11. The OIC made further objections in October 2014 concerning all three  
11 association health plans, to which the carrier, Regence, responded; and the discussions and  
12 efforts to resolve differences were continued for all three AHPs.

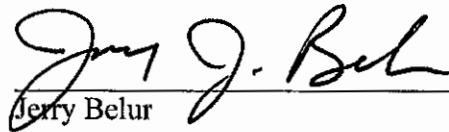
13 12. On January 15, 2015 the OIC issued disapprovals of the 2014 rates for all three  
14 AHPs. See Regence Dec. at ¶16 and Exs. 13-15. In February of 2015, the three AHPs filed  
15 2015 rates and forms, and as of this date no action has been taken by the OIC. All current  
16 members of the MBA Trust, BIAW Trust, and the NMTA Trust are enrolled in 2015 plans.

17 13. The OIC disapprovals and proposed remedies will negatively affect thousands  
18 of Washington employees who will be obligated to transfer to coverage that may have  
19 substantially higher premiums. Additional harm to several thousand members of these trusts  
20 will be incurred in the form of potentially reduced benefits and adjusted income tax filings for  
21 both the employer groups and their employees. Should previously paid benefits be adjusted  
22 by insurance carriers due to the dilatory disapprovals filed by the OIC, many participants will  
23 also have larger co-payments, co-insurance and other out of pocket expenses. Those  
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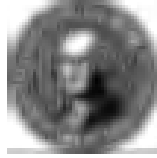
1 specifically on Health Savings Account plans could also face IRS penalties and be required to  
2 amend tax filings due to the delayed disapprovals filed by the OIC.  
3

4 I certify under penalty of perjury under the laws of the State of Washington that the  
5 foregoing is true and correct to the best of my knowledge and belief.

6 Dated this 5<sup>th</sup> day of MAY, 2015.

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Jerry Belur

**EXHIBIT A**



OFFICE OF  
INSURANCE COMMISSIONER

September 25, 2012

Sam Anderson, Executive Officer  
Employee Benefit Group Insurance Trustees  
Master Builders Association of King & Snohomish Counties  
335 - 116th Avenue SE  
Bellevue, WA 98004

Dear Mr. Anderson and Trustees:

As you know, under the federal Affordable Care Act, small group employers' health plans for their employees obtained through associations will be community rated beginning in 2014, unless the association constitutes an "employer" under ERISA Sec. 3 (5), which includes:

*Any person acting directly as an employer or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.*

While the U.S. Department of Labor (DOL) is the agency charged with administering ERISA, and its determination of this question will be given deference by a court, the Office of the Insurance Commissioner (OIC) has attempted, through careful analysis of the statutes and existent DOL Advisory Opinions regarding this issue and through consultation with individuals at DOL, to examine the facts of your organization and test them against the DOL/ERISA criteria. This letter will review the work that the OIC, in cooperation with your association and health trust, has done to analyze whether the Master Builders Association of King and Snohomish Counties, (MBAKS)'s health insurance trust arrangements and history satisfy the definition of "employer" in ERISA.<sup>1</sup>

The Master Builders Association of King and Snohomish Counties was originally formed in 1909 to promote the viability of the housing industry and to secure cooperative action in advancing the common purpose and objectives of the building and construction industry. Our analysis of the association's history prior to the 1995 inception of the Insurance Trust indicates that the employer members who are eligible for participation in the Insurance Trust have a commonality of interest and genuine organizational relationship beyond participation in the trust. Further, the Insurance Trust Agreement's limitation of the categories of MBAKS members allowed to

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<sup>1</sup> This letter will not address any fiscal issues involving Trust management, such as those contained in Articles VII and VIII of the Insurance Trust Agreement.





**OFFICE OF INSURANCE COMMISSIONER**

Sam Anderson, Executive Officer  
Employee Benefit Group Insurance Trustees  
Master Builders Association of King & Snohomish Counties  
September 25, 2012  
Page 2

participate in the Trust to 284 business categories<sup>2</sup> clearly engaged in the building and construction industry is also indicative of the commonality of interest and genuine organizational relationship of the employer members beyond participation in the insurance trust.

The Trust Agreement makes clear that only those employers whose principal business purpose is engaging in the building and construction industry are eligible for participation in the insurance Trust.<sup>3</sup> While MBAKS is the sponsor of the Trust, it is the Trustees who control the operations of the Trust and it is the Participating Employers who elect the Trustees from among their number. The Participating Employers delegate to those duly elected Trustees certain responsibilities and authority as set forth in Article 5.01 of the Trust Agreement. The Trust Agreement allows the Trustees to delegate to MBAKS specific responsibilities and implementation authority, but requires Trustee approval of MBAKS' executing any documents on behalf of the Trust.

The Trust Agreement provides for seven voting Trustees and the Executive Officer of MBAKS as a non-voting Trustee. Each voting Trustee must be a principal in a Participating Employer and are elected by a majority of the Participating Employers. Candidates may be nominated by MBAKS, by a majority of incumbent Trustees, or by written petition signed by the lesser of 10% of the Participating Employers or 10 Participating Employers.

A Trustee may be removed by Participating Employers whose contributions during the preceding 12 months totaled more than 50 percent of all contributions. Article 6.13 of the Trust Agreement sets forth the powers and duties of the Trustees, providing them and, through them, the Participating Employers, with complete control of the critical functions of the insurance Trust. Article 7.01 provides that all duties not allocated by the Agreement to the Trustees are to be exercised by the Participating Employer. Finally, in Article 8.01, the Trust may be amended only by a majority of Trustees approving or by Participating Employers whose contributions during the preceding 12 months totaled more than 50 percent of total contributions. It appears that the Participating Employers control and direct the activities and operation of the MBAKS' insurance Trust.

The Participating Employers are engaged in the same industry. They also have a history of organized cooperation on employment-related matters and a genuine organizational relationship through their membership in MBAKS unrelated to the provision of welfare benefits. Furthermore, because of their authority to elect and remove the Trustees and to amend or terminate the Trust, they appear to control and direct the activities and operations of the Trust.

Based on the information submitted to this office, it is the view of the OIC that the Participating Employer members of the insurance Trust would, at least in form, constitute a bona fide group

<sup>2</sup> (MBAKS has 470 total business categories of membership in the Association).

<sup>3</sup> The only other eligible participants are the MBAKS' employees.

**OFFICE OF INSURANCE COMMISSIONER**

Sam Anderson, Executive Officer  
Employee Benefit Group Insurance Trustees  
Master Builders Association of King & Snohomish Counties  
September 25, 2012  
Page 3

or association of employers, and the welfare benefits provided to Participating Employers through the Insurance Trust would, at least in form, constitute an employee welfare benefit plan for purposes of Title I of ERISA.

I want to thank the association staff and Trustees for your cooperation and openness to this process; it allowed me to conclude that the Participating Employers are entitled to act as an "employer" within the meaning of ERISA Sec. (3) (2) in the offering of employee welfare benefits through the MBAKS' Health Insurance Trust. This process enabled me to fulfill my responsibilities to insurance consumers in Washington state, while supporting MBAKS' position that the Health Insurance Trust does, in my opinion, constitute, at least in form, a bona fide association of employers that satisfies the ERISA definition of "employer."

Sincerely,



Mike Kreidler  
Insurance Commissioner

Enclosure

cc: Joe Canary, Director, Office of Regulations and Interpretations  
Susan Elizabeth Rees, Chief, Division of Coverage, Reporting and Disclosure  
U.S. Department of Labor

**EXHIBIT B**

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

Phone: (360) 725-7000  
www.insurance.wa.gov



OFFICE OF  
INSURANCE COMMISSIONER

March 26, 2013

Art Castle  
Executive Vice President  
Building Industry Association of Washington  
P O Box 1909  
Olympia, WA 98507

In Re: Building Industry Assn of WA Occupational Categories

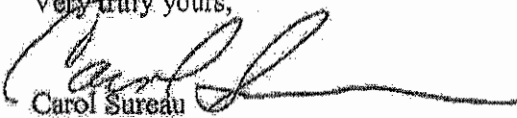
Dear Mr. Castle:

First, I'd like to thank you for your assistance in the effort we've made to analyze your association membership in the context of your insurance benefits vehicle to determine whether the membership constitutes an "employer" under 29 USCS 1002 (5).

Attached is a copy of the list of occupational categories we have agreed constitute a single industry. Also attached is a copy of the Trust Agreement governing the insurance vehicle which we have agreed provides for the employer members included in the occupational categories list to control the insurance vehicle. These documents should be provided to your carrier, as they will be needed for your plan filings.

If you have any questions, please let me know. Thank you again for your cooperation in this effort.

Very truly yours,

  
Carol Sureau  
Deputy Commissioner, Legal Affairs

Enclosures

cc: Beth Berendt, Deputy Commissioner, Rates & Forms  
Charles Brown, Senior Staff Attorney  
Marta DeLeon, Assistant Attorney General  
Brendan Williams, Deputy Commissioner, Policy



**EXHIBIT C**

2014 association health plans

Approved association health plans:

Associated General Contractors of Washington	United Healthcare
Association of Washington Cities	Group Health Cooperative
Central Region Insurance Services Pool	Group Health Options, Inc.
Central Region Insurance Services Pool	Group Health Cooperative
Hanford Employees Welfare Trust	Group Health Options, Inc.
Lutheran Services of the Northwest	Group Health Cooperative
Lutheran Services of the Northwest	Group Health Options, Inc.
Master Builders Association (MBA)(Rates)/ MBA Group Insurance Trust(Forms)	Group Health Options, Inc.
Microsoft Alumni Network Benefits Trust	Premera Blue Cross
Washington Fire Commissioners Association	Group Health Cooperative

Disapproved for lack of True Employer under ERISA status and large group rating issues:

*OIC is working with carriers to move enrollees to compliant plans without disruption of coverage*

Columbia Retail Benefits Trust	Moda Health Plan, Inc.
Commercial Construction Health and Welfare Trust	Moda Health Plan, Inc.
Greater Columbia Manufacturing Benefits Trust	Moda Health Plan, Inc.
Greater Northwest Health Industry Benefits Trust	Moda Health Plan, Inc.
Health Alliance (Alltech) for Technology Health Trust	Moda Health Plan, Inc.
Pacific Business Resource Benefits Trust	Moda Health Plan, Inc.
Aerospace Industry Health Trust	Premera Blue Cross
Agriculture Industry Health Trust	Premera Blue Cross
Business Services Industry Health Trust	Premera Blue Cross
Community Service Organization Industry Health Trust	Premera Blue Cross
Construction Industry Health Trust	Premera Blue Cross
End-Line Manufacturing Industry Trust	Premera Blue Cross
Health Care Industry Trust	Premera Blue Cross
Information Technology Industry Trust	Premera Blue Cross
Media Industry Health Trust	Premera Blue Cross
Retail Industry Health Trust	Premera Blue Cross
Tourism Industry Health Trust	Premera Blue Cross
Transportation Industry Health Trust	Premera Blue Cross
Wholesaling Industry Health Trust	Premera Blue Cross

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Disapproved for large group rating issues (True Employers under ERISA):

*OIC is working with carriers to move enrollees to compliant plans without disruption of coverage*

Building Industry Association of Washington Health and Welfare Benefits Trust	Asuris Northwest Health
Building Industry Association of Washington Health and Welfare Benefits Trust	Regence BlueShield
Hospitality Industry Health Insurance Trust (HINIT)	Group Health Cooperative
Hospitality Industry Health Insurance Trust (HINIT)	Group Health Options, Inc.
Master Builders Association of King and Snohomish Counties	Asuris Northwest Health
Master Builders Association of King and Snohomish Counties	Regence BlueShield
Northwest Financial Association	Group Health Cooperative
Northwest Financial Association Employee Benefit Trust	Premiera Blue Cross
Northwest Marine Trade Association	Regence BlueShield
Salem Contractors Exchange Employee Welfare Benefit Plan and Trust	Kaiser Foundation Health Plan of the NW
Washington Electricians and Plumbers Association	Premiera Blue Cross
Washington Electricians and Plumbers Association	Premiera Blue Cross
Washington Counties Insurance Fund (WCIF)	Group Health Cooperative
Washington Counties Insurance Fund (WCIF)	Group Health Options, Inc.
Washington Counties Insurance Fund (WCIF)	Premiera Blue Cross
Washington Counties Insurance Fund (WCIF)	LifeWise Health Plan of WA
Washington Farm Bureau	Asuris Northwest Health
Washington Farm Bureau	Regence BlueShield
Washington Fire Commissioners Association	Kaiser Foundation Health Plan of the NW
Washington State Auto Dealers Insurance Trust	Premiera Blue Cross

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Washington State Rural Hospital Insurance Trust	Premier Blue Cross
Wenatchee Valley Traffic Association	Premier Blue Cross

**Fillings under review:**

Association of Washington Business	Premier Blue Cross
Association of Washington Business	LifeWise
Vigilant Manufacturers Trust	Asuris Northwest Health
Vigilant Manufacturers Trust	Regence BlueShield
Washington Automotive Industry Association	Regence BlueShield
Washington Automotive Industry Association	Asuris Northwest Health
Washington Education Association	Premier Blue Cross
Washington Fire Commissioners Association	Kaiser Foundation Health Plan of the NW
Washington Technology Industry Association Employee Benefit Trust	Regence BlueShield
Washington Technology Industry Association Employee Benefit Trust	Asuris Northwest Health