

3-23-2012

Altrua Healthshare, Inc. v. Deal Clerk's Record Dckt. 39388

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ALTRUA HEALTHSHARE, INC.,

Petitioner-Appellant,

vs.

BILL DEAL, in his capacity as Director of
the Idaho Department of Insurance, and the
IDAHO DEPARTMENT OF INSURANCE,

Respondents.

Supreme Court Case No. 39388

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE KATHRYN A. STICKLEN

CHRIST T. TROUPIS

ATTORNEY FOR APPELLANT

EAGLE, IDAHO

JOHN C. KEENAN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Altura Healthshare Inc vs. Bill Deal, The Idaho Department Of Insurance

Date	Code	User	Judge
1/24/2011	NCOC	CCRANDJD	New Case Filed - Other Claims
	PETN	CCRANDJD	Petition for Judicial Review of Final Agency Action
	NOTC	CCRANDJD	Notice of Filing Appeal and Petition for Judicial Review
1/26/2011	OGAP	DCTYLENI	Order Governing Judicial Review
2/7/2011	NOTC	CCMASTLW	Notice of Lodging Agency Record
2/25/2011	CERT	CCAMESLC	Certificate of Agency Record
3/23/2011	MOTN	CCVIDASL	Motion for Stay of Enforcement of Administrative Order
	AFFD	CCVIDASL	Affidavit of Randall Sluder in Support of Motion for Stay of Enforcement of Administrative Order
	MEMO	CCVIDASL	Memorandum in Support of Motion for Stay of Enforcement of Administrative Order
3/30/2011	AFFD	CCLATICJ	Affidavit of Counsel
	MEMO	CCLATICJ	Memorandum in Opposition to Petitioner's Motion for Stay of Enforcement of Administrative Order
4/4/2011	BREF	CCKINGAJ	Petitioner's Brief in Support of petition for Judicial Review of Administrative Order
4/13/2011	NOHG	CCMASTLW	Notice Of Hearing on Motion for Stay of Enforcement
	HRSC	CCMASTLW	Hearing Scheduled (Hearing Scheduled 05/24/2011 10:30 AM) Mo/Stay of Enforcement
5/2/2011	RSBR	CCSIMMSM	Respondents Brief Filed RE: Petition for Judicial Review of Administrative ORder
5/24/2011	DCHH	TCWEATJB	Hearing result for Hearing Scheduled held on 05/24/2011 10:30 AM: District Court Hearing Held Court Reporter: Nicole Omsberg Number of Transcript Pages for this hearing estimated: Under 100 Pages
	HRSC	TCWEATJB	Hearing Scheduled (Judicial Review 06/14/2011 11:00 AM)
5/26/2011	NOTC	DCTYLENI	Notice of Oral Argument (6/14/11 @ 11:00 a.m.)
6/14/2011	DCHH	CCCHILER	Hearing result for Judicial Review held on 06/14/2011 11:00 AM: District Court Hearing Held Court Reporter: Sue Wolf Number of Transcript Pages for this hearing estimated: less than 100
10/13/2011	DEOP	DCLYKEMA	Memorandum Decision and Order
	CDIS	DCLYKEMA	Civil Disposition entered for: Deal, Bill, Defendant; The Idaho Department Of Insurance, Defendant; Altura Healthshare Inc, Plaintiff. Filing date: 10/13/2011
	STAT	DCLYKEMA	STATUS CHANGED: Closed
11/17/2011	APSC	CCTHIEBJ	Appealed To The Supreme Court
12/19/2011	JDMT	DCLYKEMA	Judgment

Date: 2/23/2012

Fourth Judicial District Court - Ada County

User: CCTHIEBJ

Time: 09:38 AM

ROA Report

Page 2 of 2

Case: CV-OC-2011-01608 Current Judge: Kathryn A. Sticklen

Altura Healthshare Inc vs. Bill Deal, etal.

Altura Healthshare Inc vs. Bill Deal, The Idaho Department Of Insurance

Date	Code	User		Judge
2/23/2012	NOTC	CCTHIEBJ	Notice Of Transcript Lodged - Supreme Court Docket No. 39388	Kathryn A. Sticklen

000003

Christ T. Troupis, ISB # 4549
TROUPIS LAW OFFICE
 1299 E. Iron Eagle, Ste 130
 PO Box 2408
 Eagle, Idaho 83616
 Telephone: 208/ 938-5584
 Facsimile: 208/ 938-5482
 Email: ctroupis@troupislaw.com

NO. _____
 AM. _____ FILED P.M. 2:26

JAN 24 2011

CHRISTOPHER D. RICH, Clerk
 By STEPHANIE VIDAK
 DEPUTY

Attorney for Petitioner ALTRUA HEALTHSHARE

DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,
A Texas Nonprofit Corporation,

Petitioner,

vs.

BILL DEAL, in his capacity as Director
Of the Idaho Department of Insurance, and
THE IDAHO DEPARTMENT OF
INSURANCE,

Respondents.

CASE NO. CV **CV OC 1101608**

Fee Category L.3 - \$88.00

NOTICE OF APPEAL AND
PETITION FOR JUDICIAL
REVIEW OF FINAL AGENCY
ACTION

PETITIONER ALTRUA HEALTHSHARE, by and through undersigned counsel,
 hereby files this Petition seeking judicial review of a final agency action by the Idaho
 Department of Insurance.

STATEMENT OF THE CASE

1. This is a civil action pursuant to Idaho Code §§ 67-5270 and 67-5279 seeking judicial review of all of the orders issued by the Idaho Department of Insurance with respect to Petitioner Altrua Healthshare, Inc., Docket No. 18-2577-09, which became final on January 4, 2011. The Hearing Officer issued Findings of Fact, Conclusions of Law and a Preliminary Order on November 12, 2010, an

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Amended Preliminary Order and Revised Notification of Rights regarding the Preliminary Order on November 19, 2010, and an Order Denying Request for Reconsideration on December 21, 2010. These orders became final on January 4, 2011, fourteen (14) days after service of the order denying Altrua's Petition for Reconsideration of the Preliminary Order.

2. A hearing before the agency was held in the matter on September 1, 2010.

JURISDICTION AND VENUE

3. This petition is authorized by Idaho Code §§ 67-5270 and 67-5279.
4. This Court has jurisdiction over this action pursuant to Idaho Code §§ 41-201, et.seq. and 67-5272.
5. Venue lies in this Court pursuant to Idaho Code § 67-5270 and 67-5272 because the hearing was held and the final agency action was taken in this County.
6. The Order Denying Request for Reconsideration issued on December 21, 2010 is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

PARTIES

7. Petitioner, Altrua Healthshare, Inc. is a nonprofit corporation organized under the laws of the State of Texas.
8. Respondent, Idaho Department of Insurance is a state agency with its main office located at 700 W. State Street, Boise, Idaho. Respondent Bill Deal is the Director of the Idaho Department of Insurance.

STATEMENT OF INITIAL ISSUES

9. The Petitioner intends to assert the following issues on judicial review:
 - a. Whether the findings, inferences, conclusions or decisions issued by the Department of Insurance are supported by substantial evidence.

- b. Whether the findings, inferences, conclusions or decisions issued by the Department of Insurance are in violation of the Idaho law;
 - c. Whether the findings, inferences, conclusions or decisions issued by the Department are in excess of the statutory authority of the agency;
 - d. Whether the findings, inferences, conclusions or decisions issued by the Department of Insurance are arbitrary, capricious, or an abuse of discretion.
10. Pursuant to I.R.C.P. 84(d)(5), the Petitioner reserves the right to assert additional issues and/or clarify or further specify the issues for judicial review stated herein which are later discovered.

AGENCY RECORD

11. Judicial review is sought of the orders entered in Idaho Department of Insurance Docket No. 18-2577-09, including the Findings of Fact, Conclusions of Law and a Preliminary Order on November 12, 2010, an Amended Preliminary Order and Revised Notification of Rights regarding the Preliminary Order on November 19, 2010, and an Order Denying Request for Reconsideration on December 21, 2010.
12. The Department held a hearing in this matter on September 1, 2010, which was recorded and a transcript created, which transcript should be made part of the agency record in this matter. The Court Reporter who transcribed the proceedings was Barbara Burke. The transcript was provided to the Department of Insurance and Petitioner. The person who may have the original transcript is Deputy Attorney General John Keenan, Idaho Department of Insurance, 700 W. State Street, 3rd Floor, Boise, Idaho 83720-0043, Telephone: (208) 334-4283, Facsimile: (208) 334-4298, email: john.keenan@doi.idaho.gov.

13. Petitioner anticipates that it can reach a stipulation regarding the agency record with the Respondents, and will pay its necessary share of the fee for preparation of the record at that time.
14. Service of this Petition for Judicial Review of Agency Action has been made on counsel for the Idaho Department of Insurance at the time of the filing of this Petition.

Dated: January 24, 2011.

TROUPIS LAW OFFICE, P.A.




Christ T. Troupis
Attorney for Altrua Healthshare

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of January, 2011, I served the foregoing *Notice of Appeal and Petition for Judicial Review of Final Agency Action* by facsimile and U.S. Mail, first class postage prepaid, addressed to the following persons:

John Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0043
Fax: (208) 334-4298



Christ T. Troupis

Christ T. Troupis, ISB # 4549
TROUPIS LAW OFFICE
1299 E. Iron Eagle, Ste 130
PO Box 2408
Eagle, Idaho 83616
Telephone: 208/ 938-5584
Facsimile: 208/ 938-5482
Email: ctroupis@troupislaw.com

JAN 24 2011

CHRISTOPHER D. RICH, Clerk
By STEPHANIE VIDAK
DEPUTY

Attorney for Petitioner ALTRUA HEALTHSHARE

DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,
A Texas Nonprofit Corporation,

Petitioner,

vs.

BILL DEAL, in his capacity as Director
Of the Idaho Department of Insurance, and
THE IDAHO DEPARTMENT OF
INSURANCE,

Respondents.

CASE NO. CV 0C 1101608

Fee Category L.3 - \$88.00


NOTICE OF FILING
APPEAL AND PETITION FOR
JUDICIAL REVIEW OF FINAL
AGENCY ACTION

NOTICE IS HEREBY GIVEN THAT PETITIONER ALTRUA HEALTHSHARE,

has filed its Appeal and Petition for Judicial Review of Final Agency Action in the above entitled matter pursuant to Idaho Code §§ 67-5270 and 67-5279 seeking judicial review of all of the orders issued by the Idaho Department of Insurance with respect to Petitioner Altrua Healthshare, Inc., Docket No. 18-2577-09, which became final on January 4, 2011.

Dated: January 24, 2011

TROUPIS LAW OFFICE, P.A.



Christ T. Troupis, Attorney for
Altrua Healthshare, Inc.

SV

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of January, 2011, I served the foregoing Notice of Filing of Appeal and Petition for Judicial Review of Final Agency Action, together with Notice of Appeal and Petition for Judicial Review of Final Agency Action, by facsimile and by U.S. Mail, first class postage prepaid, addressed to the following persons:

John Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0043
Fax: (208) 334-4298



Christ T. Troupis

JAN 26 2011

By CHRISTOPHER D. RICH, Clerk
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC., a Texas
Nonprofit Corporation,

Petitioner,

vs.

BILL DEAL, in his capacity as Director of
the Idaho Department of Insurance, and
the IDAHO DEPARTMENT OF
INSURANCE,

Respondents.

Case No. CVOC1101608

ORDER GOVERNING
JUDICIAL REVIEW

Petition for Judicial Review having been filed herein, and it appearing that the issues presented on appeal are questions of law and fact; and it further appearing that a record/transcript is necessary to process this appeal:

It is ORDERED:

1) That upon completion of the record the agency shall mail or deliver a notice of lodging of transcript and record to all attorneys of record or parties appearing in person and to the district court.

2) That the notice shall inform the parties before the agency that they pick up a copy of the transcript and record at the agency and that the parties have fourteen (14) days from the date of the mailing of the notice in which to file with the agency any

objections, and the notice will further advise the petitioner to pay the balance of the fees for preparation before the transcript and record will be delivered to the petitioner.

3) That the Agency shall transmit the settled transcript and record to the district court within forty-two (42) days of the service of the petition for judicial review.

4) That the Agency, upon filing with the Court the record, shall send notice of such filing to all parties;

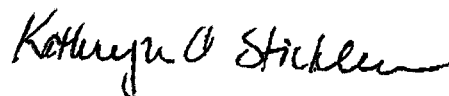
5) That the Petitioner's brief shall be filed and served within thirty-five (35) days of the date the transcript and record are filed with the Court.

6) That the Respondent's brief shall be filed and served within twenty-eight (28) days after service of Petitioner's brief.

7) That Petitioner's reply brief, if any, shall be filed and served within twenty-one (21) days after service of Respondent's brief.

8) That either party may notice the matter for oral argument after all briefs are filed, and that if within fourteen (14) days after the final brief is filed, neither party does so, the Court will deem oral argument waived and decide the case on the briefs and the record.

Dated this 26th day of January, 2011.



KATHRYN STICKLEN
Senior District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 26th day of January, 2011, I mailed (served) a true and correct copy of the within instrument to:

CHRIST T. TROUPIS
ATTORNEY AT LAW
PO BOX 2408
EAGLE, ID 83616

JOHN C. KEENAN
IDAHO ATTORNEY GENERAL'S OFFICE
PO BOX 83720
BOISE, ID 83720-0043

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____


Deputy Court Clerk

ORIGINAL

WILLIAM W. DEAL
Director
Idaho Department of Insurance
700 West State Street
P.O. Box 83720
Boise, Idaho 83720-0043
Telephone: (208) 334-4250
Facsimile: (208) 334-4298

NO. _____
FILED _____
A.M. _____ P.M. 3

FEB 07 2011

CHRISTOPHER D. RICH, Clerk
By ABBY GARDEN
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ALTRUA HEALTHSHARE, INC.,
a Texas Nonprofit Corporation,

Petitioner,

vs.

BILL DEAL, in his capacity as Director of the
Idaho Department of Insurance, and THE
IDAHO DEPARTMENT OF INSURANCE,

Respondents.

Case No. CVOC1101608

**NOTICE OF LODGING AGENCY
RECORD**

COMES NOW the assistant to the Director of the Department of Insurance (Department),
de facto clerk for the agency, and notifies the Court and parties that she has lodged the agency
record, consisting of three volumes, with the Department from the proceedings before the
Department, in the Matter of Altrua Healthshare, unlicensed, Docket No. 18-2577-09, and
certifies that a copy of the record is available for pick up and review at the address set forth
below. At the time of pick up, Petitioner shall pay the Department of Insurance the fees for
preparation of the record in the amount of \$67.05 for copying costs and \$30.00 for labor costs for
a total of \$97.05, in accordance with the agency's fee for copying of public records and Rule

84(f)(4), Idaho Rules of Civil Procedure.

While Petitioner requests, at paragraph 12 of its Petition for Judicial Review, that the transcript of the September 1, 2010, proceedings be made a part of the agency record, the agency has received no estimated fee for preparation of a copy of the transcript as required by Rule 84(g)(2)(A), Idaho Rules of Civil Procedure, nor is the agency aware of any order for preparation of a copy of the transcript placed with, or estimated fees for such paid to, the transcriber, Barbara Burke of M & M Court Reporting Service, Inc. Thus, no copy of the transcript is lodged with the agency record, however, the original transcript is available for viewing at the agency.

Pursuant to Rule 84(j), Idaho Rules of Civil Procedure, and the Court's Order Governing Judicial Review, the parties are informed that they have fourteen (14) days from the date of mailing of this notice in which to file with the agency any objections to the record.

DATED this 7th day of February 2011.

STATE OF IDAHO
DEPARTMENT OF INSURANCE

By: *Teresa Jones*
TERESA JONES
Assistant to the Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 7th day of February 2011 caused a true and correct copy of the foregoing NOTICE OF LODGING AGENCY RECORD to be served upon the following by the designated means:

Christ T. Troupis
Troupis Law Office
P.O. Box 2408
Eagle, ID 83616
ctroupis@trouplaw.com

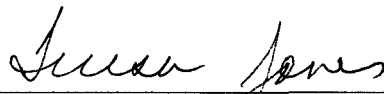
- first class mail
- certified mail
- hand delivery
- via facsimile
- e-mail

John C. Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State St., 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

- first class mail
- certified mail
- hand delivery
- via facsimile

M & M Court Reporting Service, Inc.
P.O. Box 2636
Boise, ID 83701-2636

- first class mail
- certified mail
- hand delivery
- via facsimile



TERESA JONES
Assistant to the Director

FEB 23 2011

CHRISTOPHER D. RICH, Clerk
By LARA RAMES
DEPUTY

WILLIAM W. DEAL
Director
Idaho Department of Insurance
700 West State Street
P.O. Box 83720
Boise, Idaho 83720-0043
Telephone: (208) 334-4250
Facsimile: (208) 334-4298

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ALTRUA HEALTHSHARE, INC.,
a Texas Nonprofit Corporation,

Petitioner,

vs.

BILL DEAL, in his capacity as Director of the
Idaho Department of Insurance, and THE
IDAHO DEPARTMENT OF INSURANCE,

Respondents.

Case No. CVOC1101608

CERTIFICATE OF AGENCY RECORD

I, Teresa Jones, Assistant to the Director of the Idaho Department of Insurance, hereby certify that the record, consisting of three volumes, and transcript filed herewith contain true and correct copies of the materials and documents maintained by the Idaho Department of Insurance as the agency record in the above entitled case, in accordance with Idaho Code § 67-5249.

DATED this 25th day of February 2011.

STATE OF IDAHO
DEPARTMENT OF INSURANCE

By: Teresa Jones
TERESA JONES
Assistant to the Director

2A

CERTIFICATE OF SERVICE

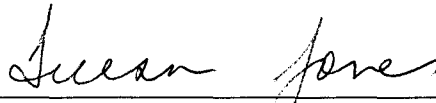
I HEREBY CERTIFY that I have on this 25th day of February 2011 caused a true and correct copy of the foregoing CERTIFICATE OF AGENCY RECORD to be served upon the following by the designated means:

Christ T. Troupis
Troupis Law Office
P.O. Box 2408
Eagle, ID 83616

- first class mail
- certified mail
- hand delivery
- via facsimile

John C. Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State St., 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

- first class mail
- certified mail
- hand delivery
- via facsimile



TERESA JONES
Assistant to the Director

RECEIVED

MAR 23 2011

NO. _____ FILED
A.M. 10:32 P.M. _____

Christ T. Troupis, ~~ISE # 4549~~
TROUPIS LAW OFFICE
1299 E. Iron Eagle, Ste 130
PO Box 2408
Eagle, Idaho 83616
Telephone: 208/ 938-5584
Facsimile: 208/ 938-5482
Email: ctroupis@troupislaw.com

MAR 23 2011

CHRISTOPHER D. RICH, Clerk
By STEPHANIE VIDAK
DEPUTY

Attorney for Petitioner ALTRUA HEALTHSHARE

DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,)
A Texas Nonprofit Corporation,)
)
Petitioner,)
vs.)
)
BILL DEAL, in his capacity as Director)
Of the Idaho Department of Insurance, and)
THE IDAHO DEPARTMENT OF)
INSURANCE,)
)
Respondents.)
_____)

CASE NO. CV OC 1101608

**MOTION FOR STAY OF
ENFORCEMENT OF
ADMINISTRATIVE ORDER**

PETITIONER ALTRUA HEALTHSHARE, INC., by and through its counsel, herewith moves for an Order Staying Enforcement of the Administrative Order issued by the Department of Insurance with respect to Petitioner Altrua Healthshare, Inc., Docket No. 18-2577-09, which became final on January 4, 2011. This motion is brought pursuant to I.R.C.P. Rule 84(m) upon the grounds that (1) grave and irreparable injury will result to Idaho members of Altrua Healthshare, Inc., and to the Petitioner if a stay is not granted; (2) no complaints have been filed against Altrua Healthshare, Inc. by any of its Idaho members or any Idaho medical provider, and therefore no harm has or will occur to the public during the pendency of this

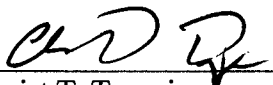
8V

proceeding if a stay is granted, (3) a stay is essential to ensuring that Altrua Healthshare, Inc., and its Idaho members receive the full protection of due process of law, and (3) the status quo in Idaho may be maintained simply by requiring Altrua Healthshare, Inc. to agree not to solicit or accept new members in Idaho during the pendency of these proceedings, and to advise the Department of Insurance forthwith in the event that Altrua Healthshare, Inc. is apprised of the issuance of any complaint against it by any Idaho member or provider during the pendency of these proceedings.

This motion is supported by the Memorandum in Support of Motion for Stay of Enforcement of Administrative Order and the Affidavit of Randall L. Sluder submitted herewith.

Dated: March 21, 2011

TROUPIS LAW OFFICE, P.A.

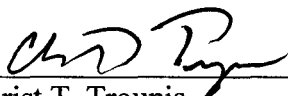


Christ T. Troupis
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of March, 2011, I served the foregoing *Motion to Stay Enforcement of Administrative Order* by facsimile and U.S. Mail, first class postage prepaid, addressed to the following persons:

John Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0043
Fax: (208) 334-4298



Christ T. Troupis

RECEIVED)

MAR 23 2011

Ada County Clerk
Christ T. Troupis, ISB # 4549
TROUPIS LAW OFFICE
1299 E. Iron Eagle, Ste 130
PO Box 2408
Eagle, Idaho 83616
Telephone: 208/ 938-5584
Facsimile: 208/ 938-5482
Email: ctroupis@trouplaw.com

NO. _____
A.M. 10:32 FILED P.M. _____

MAR 23 2011

CHRISTOPHER D. RICH, Clerk
By STEPHANIE VIDA K
DEPUTY

Attorney for Petitioner ALTRUA HEALTHSHARE

DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,)
A Texas Nonprofit Corporation,)
)
Petitioner,)
vs.)
)
BILL DEAL, in his capacity as Director)
Of the Idaho Department of Insurance, and)
THE IDAHO DEPARTMENT OF)
INSURANCE,)
)
Respondents.)

CASE NO. CV OC 1101608

AFFIDAVIT OF
RANDALL L. SLUDER
IN SUPPORT OF MOTION
FOR STAY OF ENFORCEMENT
OF ADMINISTRATIVE ORDER

State of Texas)
) ss.
County of Travis)

Randall L. Sluder, being first duly sworn, deposes and states:

1. I am the Executive Director of Altrua Healthshare, Inc., a Texas Nonprofit Corporation, and the Petitioner in this action. Each of the matters set forth herein are known to me of my own personal knowledge and if sworn as a witness in this matter, I could testify competently thereto.

This Affidavit is submitted in support of Petitioner's Motion for a Stay of Enforcement of the

SV

Administrative Order issued by the Department of Insurance with respect to Petitioner Altrua Healthshare, Inc., Docket No. 18-2577-09, which became final on January 4, 2011.

2. Altrua HealthShare formerly Zion Share has been operating since 2001. Altrua HealthShare (hereinafter AHS) is a Non-Insurance faith-based health sharing organization by which means members of Altrua HealthShare contribute monthly shares to assist each other with medical claims as they are submitted to Altrua HealthShare. The members of Altrua HealthShare remain self pay and sign the membership application with the knowledge that each member is fully responsible for their medical claims but that by submitting them to AHS, the members will help share in what was submitted according to the guidelines. The members are responsible for a portion of their medical claims even when the other members help to share in portions of what was submitted. The members of AHS fully believe that by following what the Bible calls us to do as Christians, together we can share in each other's burdens by sharing in medical claims with each other.

3. Since 2001, members in Idaho have submitted their claims and have had their claims discounted and adjusted through the providers which has saved both the membership and families large amounts of money.


4. From 1/1/2006 through the present date, AHS has resolved 6,331 medical claims for its Idaho members, and issued payments to medical providers of \$1,050, 479.50.

5. AHS has approximately 59 families in Idaho that are current members and out of those 59 families 100% of those families are of the LDS faith. These families fully rely on the other current members to help share in their medical claims that are submitted for sharing through Altrua HealthShare. Most of these families have limited financial means and would not be able to afford health insurance coverage from traditional health insurers. If AHS

ceases to offer help to these families in Idaho, most, if not all of them, will be left without any assistance for their medical needs, resulting not only in great hardship to them, but in an additional burden to the State of Idaho and local hospitals and other medical providers.

FURTHER, AFFIANT SAYETH NOT.

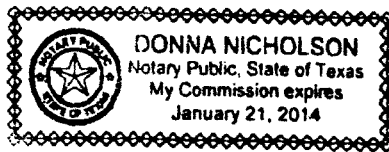
Dated: March 17, 2011.




Randall L. Sluder

State of Texas)
) ss.
County of ~~Travis~~ *Hays*)

Subscribed and sworn to before me, a Notary Public in and for the State of Texas and County of Travis on this 17th day of March, 2011.





Notary Public
My commission expires: *1-21-14*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of March, 2011, I served the foregoing *Affidavit of Randall L. Sluder in Support of Motion to Stay Enforcement of Administrative Order* by facsimile and U.S. Mail, first class postage prepaid, addressed to the following persons:

John Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0043
Fax: (208) 334-4298



Christ T. Troupis

Sticklen
m/kes
CS 3/24

RECEIVED

MAR 23 2011
Ada County Clerk

Christ T. Troupis, ISB # 4549
TROUPIS LAW OFFICE
1299 E. Iron Eagle, Ste 130
PO Box 2408
Eagle, Idaho 83616
Telephone: 208/ 938-5584
Facsimile: 208/ 938-5482
Email: ctroupis@troupislaw.com

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A.M. 10:32 P.M. _____

MAR 23 2011
CHRISTOPHER D. RICH, Clerk
By STEPHANIE VIDAK
DEPUTY

Attorney for Petitioner ALTRUA HEALTHSHARE

DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,)
A Texas Nonprofit Corporation,)
)
Petitioner,)
vs.)
)
BILL DEAL, in his capacity as Director)
Of the Idaho Department of Insurance, and)
THE IDAHO DEPARTMENT OF)
INSURANCE,)
)
Respondents.)

CASE NO. CV OC 1101608
MEMORANDUM IN SUPPORT
OF MOTION FOR STAY OF
ENFORCEMENT OF
ADMINISTRATIVE ORDER

I

THE COURT MAY ISSUE A STAY OF ENFORCEMENT
UPON APPROPRIATE TERMS

On January 15, 2010, the Idaho Department of Insurance issued a Notice of Violation and on March 10, 2010, a Final Order and Notification of Rights. Altrua filed a Petition for Reconsideration on March 31, 2010 and an Order was issued on that Petition on April 21, 2010. A hearing was held on September 1, 2010 and following that hearing and post trial briefing, the hearing officer issued Findings of Fact and Conclusions of Law, and a Preliminary Order that

Memorandum in Support of
Motion to Stay Enforcement of Administrative Order

21

“Altrua Healthshare cease and desist activities in violation of Idaho Code §41-305(1), and further that Altrua Healthshare make application for a certificate of authority under Chapter 3, Title 41 of the Idaho Code.” Altru moved for reconsideration of those Findings and Conclusions, which was denied. On January 4, 2011, the Preliminary Order became final. Altrua filed this Petition for Judicial Review on January 24, 2011.

Idaho Rules of Civil Procedure, Rule 84(m) provides that the Court may issue a stay of enforcement of agency action during consideration of a petition for judicial review. That rule states:

Stay of proceedings. Unless otherwise provided by statute, the filing of a petition for judicial review with the district court does not automatically stay the proceedings and enforcement of the action of an agency that is subject to the petition. Unless prohibited by statute, the agency may grant, or the reviewing court may order, a stay upon appropriate terms.

For the reasons set out below, this Court should issue a stay in this case.

II

**A STAY SHOULD BE ISSUED IN THIS CASE
BECAUSE GRAVE AND IRREPARABLE INJURY
WILL RESULT TO IDAHO CITIZENS AND THE PETITIONER
IF THE AGENCY ENFORCED THE ADMINISTRATIVE ORDER**

1. Altrua provides a valuable service to 59 Idaho families by assisting them in sharing their medical expenses.

Altrua Healthshare, Inc. (“Altrua”) is a Texas nonprofit Corporation that administers a program as an alternative to insurance coverage that enables its members to share their medical expenses with other members. Altrua first commenced doing business in Idaho when it acquired Kirtland Sharing aka Zion Healthshare, a Utah nonprofit corporation. (“Zion”) When Altrua acquired Zion, it had a number of Idaho members, all of the LDS faith, who voluntarily paid membership fees into an escrow account that was administered by Zion to share and pay

medical expenses among its members. In September, 2001, the Idaho Department of Insurance reviewed the medical sharing program of Kirtland Sharing Alliance dba Zion Healthshare, Altrua Healthshare's predecessor, and determined that its medical sharing program did not constitute insurance under Idaho law.

Altrua Healthshare acquired Zion Healthshare's business in 2005. Altrua continues to operate the same program that Zion Healthshare operated in Idaho. It has made no substantial changes in the way that funds are escrowed, claims reviewed or moneys distributed. Altrua Healthshare has continued to provide membership services to Idaho members who were formerly members of Zion Healthshare's program. At present, Altrua serves the medical needs of 59 Idaho families. Affidavit of Randall L. Sluder, ¶ .

Altrua's Brochure states that membership needs are shared among the membership from their contributions. Altrua acts as an Escrow and processing company for membership contributions. It states:

- a) "Altrua Healthshare is not insurance, does not collect premiums, make promises of payment, or guarantee that your medical needs will be shared by the membership. Sharing of eligible medical needs is completely voluntary among the membership. Member contributions are used to share in eligible medical needs as directed in the Membership Escrow Instructions listed on the application."
- b) Altrua's Guidelines brochure informs applicants of Altrua's role. "To those who may be unfamiliar with the concept of people caring for one another and voluntarily sharing their medical needs, Altrua Healthshare is a medical-cost sharing membership that acts as a neutral escrow agent for the members. Our members voluntarily submit monthly contributions into an escrow account with Altrua Healthshare acting as the escrow agent between members."

Unlike an insurance company, Altrua Healthshare escrows membership funds and distributes them according to Guidelines agreed to by the Members. Altrua Healthshare is a nonprofit organization. It does not have the right to appropriate the

members' escrowed funds for its own use or benefit. It receives an administrative fee for negotiating and resolving claims under the Guidelines and administering the escrowed funds to pay approved members' claims.

2. Altrua and its Idaho members would suffer grave and irreparable injury if Altrua were forced to cease representing its Idaho members during the pendency of these proceedings.

Since 2001, members in Idaho have submitted their claims and have had their claims discounted and adjusted by providers through the efforts of Altrua which has saved both the membership and families large amounts of money. From 1/1/2006 through the present date, Altrua has resolved 6,331 medical claims for its Idaho members, and issued payments to medical providers of \$1,050, 479.50. Aff. Randall L. Sluder, ¶ 4.

Altrua has approximately 59 families in Idaho that are current members and out of those 59 families 100% of those families are of the LDS faith. These families fully rely on the other current members to help share in their medical claims that are submitted for sharing through Altrua HealthShare. Most of these families have limited financial means and would not be able to afford health insurance coverage from traditional health insurers. If AHS ceases to offer help to these families in Idaho, most, if not all of them, will be left without any assistance for their medical needs, resulting not only in great hardship to them, but in an additional burden to the State of Idaho and local hospitals and other medical providers. Aff. Randall L. Sluder, ¶ 5.

Since the entry of the administrative order on January 4, 2011, Altrua has resolved claims for its Idaho members approximating \$500,000. If these members were denied Altrua's

assistance, they would be forced to find either high deductible low quality health insurance coverage or apply for Medicaid coverage.

If Altrua terminates its Idaho members, they will seek other means to provide for payment of their medical expenses, consisting either of a high deductible low quality insurance coverage, or Medicaid. Even if the Department's order was subsequently reversed, Altrua would effectively be out of business in Idaho. Most of its member families were inherited from Zion in 2005, and it is unlikely that Altrua would acquire enough new member families to re-establish business in Idaho. Due process demands that Altrua and its Idaho members have a full and fair opportunity to litigate their defenses to the claims of the Department of Insurance before being deprived completely of their rights.

2. No complaints have been filed against Altrua Healthshare, Inc. by any of its Idaho members or any Idaho medical provider, and therefore no harm is likely to result from issuance of a stay during the pendency of these proceedings.

Altrua Healthshare, Inc. has not been the subject of any complaints by either its members of Idaho medical providers. No evidence of such a complaint was presented at the administrative hearing. There is no likelihood that any harm would result from allowing Altrua to continue to serve the interests of its existing Idaho members while its appeal is pending.

3. Appropriate terms can be fashioned to maintain the status quo during these proceedings.

The status quo in Idaho may be maintained simply by requiring Altrua Healthshare, Inc. to agree not to solicit or accept new members in Idaho during the pendency of these proceedings, and to advise the Department of Insurance forthwith in the event that Altrua Healthshare, Inc. is apprised of the issuance of any complaint against it by any Idaho member or provider during the pendency of these proceedings. It is most probable that if anyone had a

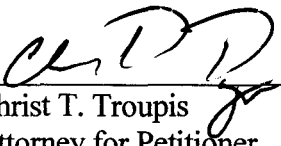
complaint against Altrua, that the Department of Insurance would be the first entity to receive notice of it, directly from the consumer.

CONCLUSION

For all of these reasons, Altrua's motion for a stay of enforcement of the administrative order should be granted.

Dated: March 21, 2011

TROUPIS LAW OFFICE, P.A.




Christ T. Troupis
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of March, 2011, I served the foregoing *Memorandum in Support of Motion to Stay Enforcement of Administrative Order* by facsimile and U.S. Mail, first class postage prepaid, addressed to the following persons:

John Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0043
Fax: (208) 334-4298



Christ T. Troupis

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NO. _____ FILED _____
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ORIGINAL

LAWRENCE G. WASDEN
Attorney General

MAR 30 2011

JOHN C. KEENAN
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, Idaho 83720-0043
Telephone: (208) 334-4283
Facsimile: (208) 334-4298
I.S.B. No. 3873

CHRISTOPHER D. RICH, Clerk
By CARLY LATIMORE
DEPUTY

Attorneys for Department of Insurance

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ALTRUA HEALTHSHARE, INC.,
a Texas Nonprofit Corporation,

Petitioner,

vs.

BILL DEAL, in his capacity as Director of the
Idaho Department of Insurance, and THE
IDAHO DEPARTMENT OF INSURANCE,

Respondents.

Case No. CVOC1101608

AFFIDAVIT OF COUNSEL

State of Idaho)
 : ss.
County of Ada)

JOHN C. KEENAN, being first duly sworn upon oath, deposes and says:

1. That he is a deputy attorney general of the State of Idaho and is the attorney-of-record in the above-entitled matter on behalf of the Respondents.
2. That he makes this Affidavit based upon his personal knowledge and belief.

ck

3. That attached hereto as Exhibit "A" is correspondence, which is incorporated herein as if fully set forth.

4. That Affiant is the author of the correspondence set forth in Exhibit "A."

5. That Affiant received no written response to said correspondence.

6. That on or about March 21, 2011, the Affiant was in a telephone conference with Altrua's Idaho counsel-of-record, Christ Troupis, Esq.; Altrua's out-of-state counsel, John Patton, Esq.; and Randall Sluder, executive director of the Respondent, Altrua Healthshare, Inc., a Texas nonprofit corporation, doing business in Idaho as Altrua Healthshare.

7. That, as a result of Affiant's conversation with the gentlemen stated in paragraph No. 6, above, Affiant understands that Altrua has not complied with the Department's requests as stated in Exhibit "A," and that it is Affiant's impression that Altrua does not intend to comply.

8. That Affiant checked the public records of the Idaho Secretary of State in the summer of 2010 and again on March 21, 2011.

9. That Affiant determined that Altrua is not a registered foreign corporation as required under Idaho Code § 30-1-1501, *et seq.*

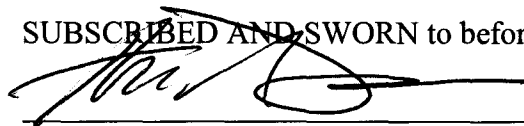
10. Further your Affiant saith not.

Dated this 30th day of March 2011.

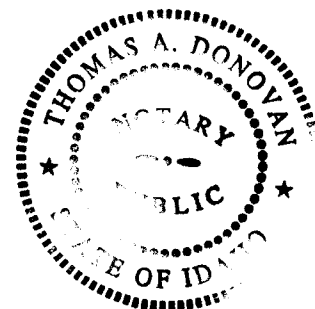


JOHN C. KEENAN
Affiant

SUBSCRIBED AND SWORN to before me this 30th day of March 2011.



Notary Public for Idaho
Residing at: Burise
Commission Expires: 2/17/2013

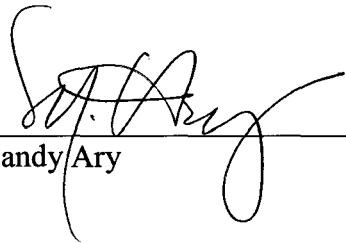


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have, on this 30th day of March 2011, caused a true and correct copy of the foregoing document to be served upon the following by the designated means:

Christ T. Troupis
Troupis Law Office
P.O. Box 2408
Eagle, ID 83616

- first class mail
- certified mail
- hand delivery
- via facsimile



Mandy Ary

EXHIBIT A

000036



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

January 6, 2011

Mr. Christ T. Troupis, Esq.
PO Box 2408
Eagle, Idaho 83616
VIA FACSIMILE: 208.938.5482

Re: *In re: Altrua HealthShare, unlicensed.*

Dear Mr. Troupis:

I appreciated the opportunity to speak with you yesterday.

Please be advised that the Idaho Department of Insurance expects Altrua HealthShare to comply with the Final Order issued in the referenced matter and immediately cease operations in Idaho with the following conditions regarding its current members and policies in effect:

- (1) That Altrua it will give sixty (60) days advance notice to its Idaho members before the effective date of termination of any memberships and related individual health plans; and,
- (2) Concurrent with the advance notice, a certificate of creditable coverage shall be provided to each person(s) being terminated in accordance with 42 U.S.C. § 300gg *et seq.*

The Department understands that Altrua may be changing its method of doing business in Idaho. If so, as we discussed, the Department expects to review and approve any plan that Altrua may propose.

If Altrua intends to continue its present operations in Idaho, the Department expects that Altrua will immediately file for a certificate of authority as a domestic as provided under chapters 3 and 28, title 41, Idaho Code.

Mr. Christ T. Troupis, Esq.
Thursday, January 6, 2011
Page Two

Please call me upon your review of this matter with your client. If you have any questions, my direct line is 334-4283. Thank you.

Sincerely,

Handwritten signature of John C. Keenan in black ink.

John C. Keenan
Deputy Attorney General

C: William W. Deal, Director
Shad Priest, Esq., Deputy Director
Georgia Shiel, Bureau Chief
Gina McBride, Bureau Chief

ORIGINAL

NO. _____ FILED 2:32
A.M. _____ P.M.

MAR 30 2011

CHRISTOPHER D. RICH, Clerk
By CARLY LATIMORE
DEPUTY

LAWRENCE G. WASDEN
Attorney General

JOHN C. KEENAN
Deputy Attorney General
Idaho Department of Insurance
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P.O. Box 83720
Boise, Idaho 83720-0043
Telephone: (208) 334-4283
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I.S.B. No. 3873

Attorneys for Department of Insurance

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ALTRUA HEALTHSHARE, INC.,
a Texas Nonprofit Corporation,

Petitioner,

vs.

BILL DEAL, in his capacity as Director of the
Idaho Department of Insurance, and THE
IDAHO DEPARTMENT OF INSURANCE,

Respondents.

Case No. CVOC1101608

**MEMORANDUM IN OPPOSITION TO
PETITIONER'S MOTION FOR STAY
OF ENFORCEMENT OF
ADMINISTRATIVE ORDER**

COME NOW the Respondents and submit this memorandum as follows:

**I.
PROCEDURAL HISTORY**

The administrative procedural history of the above-entitled matter is accurately stated in the Petitioner's Memorandum in support of its Motion for Stay.

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II. ARGUMENT

The District Court may grant “a stay on appropriate terms.” Idaho Code § 67-5274. *See, also*, I.R.C.P. Rule 84(m) and IDAPA 04.11.01.780. While it appears there are no Idaho cases setting the standard for granting a stay pursuant to the law, the federal Ninth Circuit has expressed a standard in the case of *Calif. Pharmacists Ass’n v. Maxwell-Jolly*, 563 F.3d 847, (9th Cir. 2009). The Court in *Calif. Pharmacists* stated it would consider granting a motion for a stay dependent on the following factors: (1) whether the movant has made a strong showing that it is likely to succeed on the merits; (2) whether the movant will be irreparably injured absent a stay; (3) whether granting a stay will substantially injure other parties interested in the proceeding; and, (4) where the public interest lies. *Calif. Pharmacists Ass’n*, 563 F.3d at 850.

1. Likelihood of Success.

After extensive testimony and briefing, a capable Hearing Officer concluded that Altrua Healthshare, Inc. (hereinafter “Altrua”), is operating as an insurer without a certificate of authority in violation of Idaho Code § 41-305. T. pp. 147-172. The decision was affirmed on Altrua’s motion for reconsideration. T. pp. 188-195. By operation of law, the Hearing Officer’s Preliminary Order became a Final Order effective January 4, 2011. Idaho Code § 67-5246. As noted in the above-cited decisions, the evidence shows Altrua is engaged in underwriting by assessing risks and setting rates on the assumed risks based on its application, medical questionnaires, medical standards set out in its guidelines, exclusions, preexisting conditions, and tiered membership levels and by retaining the ultimate decision relative to claims paid. In determining the likelihood of success, it is incumbent to review whether the Final Order should be given deference.

Without detailing an argument in favor of the ultimate question of this litigation, it is

necessary for purposes of the Motion for Stay that the record be reviewed. The Department of Insurance (hereinafter the “Department”) has been entrusted with the responsibility to construct Title 41, Idaho Code, in general and section 41-305 in particular. *See, generally*, Title 41, Idaho Code. Further, while the statute in question does not directly address the question at issue, *i.e.*, whether Altrua is engaged in business as an insurer, the Final Order in this matter is reasonable, intelligible, and articulate based upon a careful review of the facts and law. The Final Order clearly expresses the legislative intent that insurers should carry a certificate of authority per section 41-305 and applies the facts and law to the case. The Department asks the Court to give the Department’s interpretation of the law considerable weight. *See, J.R. Simplot Company, Inc. v. Idaho State Tax Commission*, 120 Idaho 849, 862, 820 P.2d 1206, 1219 (1991).

2. Irreparable Harm.

Altrua claims that “grave and irreparable harm” will result if it is not granted its Motion for Stay. *See*, Petitioner’s Memorandum in Support of Motion for Stay, pp. 4-5. The Final Order was effective January 4, 2011. On January 6, 2011, counsel for the Department forwarded a letter to Altrua’s attorney requesting compliance with the Final Order along with related federal law. Knowing that Altrua had existing members in Idaho, the Department granted Altrua sixty (60) days to achieve compliance. That letter stated in relevant part:

Please be advised that the Idaho Department of Insurance expects Altrua HealthShare to comply with the Final Order issued in the referenced matter and immediately cease operations in Idaho with the following conditions regarding its current members and policies in effect:

- (1) That Altrua it [sic] will give sixty (60) days advance notice to its Idaho members before the effective date of termination of any memberships and

related individual health plans; and,

- (2) Concurrent with the advance notice, a certificate of creditable coverage shall be provided to each person(s) being terminated in accordance with 42 U.S.C. § 300gg, *et seq.*

The Department understands that Altrua may be changing its method of doing business in Idaho. If so, as we discussed, the Department expects to review and approve any plan that Altrua may propose.

If Altrua intends to continue its present operations in Idaho, the Department expects that Altrua will immediately file for a certificate of authority as a domestic as provided under chapters 3 and 28, title 41, Idaho Code.

See, Exhibit A to Affidavit of Counsel, filed herewith. With regard to the issues raised in the January 6, 2011, Department letter, the Department heard nothing from Altrua or its counsel-of-record until March 21, 2011, the date on which the Motion for Stay was filed. *Affidavit of Counsel, p. 2.* If irreparable injury was inevitable, Altrua should have filed this motion in a timely manner.

The Department had asked Altrua to give sixty (60) days' advance notice before shutting down its business in Idaho and also to give appropriate notice to its Idaho members in accordance with HIPAA. Based on conversations with Altrua's counsel, no such notice to its Idaho members was completed or is forthcoming. *See, Affidavit of Counsel, p. 2.* If Altrua wanted relief from the Final Order, it should have filed a Motion for Stay earlier.

3. Substantial Harm.

The third review is whether granting a stay will substantially injure the other parties interested in the proceeding. The Department obtained a cease and desist order prohibiting

Altrua from operating in Idaho. In order to avoid any injury to Altrua's Idaho members, on January 6, 2011, the Department offered Altrua a sixty (60) day window in which to obey the cease and desist order and give reasonable notice to its members, or, in the alternative, to file for a certificate of authority in accordance with Idaho Code § 41-305. Altrua has not complied with the offer. As there are other insurers in the market from whom Altrua's members may obtain insurance coverage, Altrua's compliance with Idaho law will not cause substantial injury to any other party.

4. Where the Public Interest Lies.

The Idaho Insurance Code, Title 41, Idaho Code, states:

“[t]he business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives, and all concerned in insurance transactions, rests the duty of preserving the integrity of insurance.”

Idaho Code § 41-113. By this statement, the law expresses well the public policy of the state of Idaho regarding the business of insurance. As noted above, ample evidence demonstrates that Altrua functions as an unlicensed insurer within this state; it is appropriate that it make an application for a certificate of authority or cease its operations in Idaho.

5. Altrua Makes Arguments Unsupported by the Record.

At page 3 of Altrua's Memorandum in support of its Motion for Stay, Altrua asserts that “[i]n September 2001, the Idaho Department of Insurance reviewed the medical program of Kirtland Sharing Alliance dba Zion Healthshare, Altrua Healthshare's predecessor, and determine that its medical sharing program did not constitute insurance under Idaho law.” No

evidence was introduced at the time of hearing giving details or comparison of the Kirtland program as it existed in 2001 and Altrua's program as it existed at the time of hearing; therefore, there was no evidence comparing the details of the two plans and no findings of the Hearing Officer regarding the similarities of the two plans.

Altrua also makes a claim within its Memorandum, at page 5, that its members "would be forced to find either high deductible low quality health insurance coverage or apply for Medicaid coverage." It is contemplated that, if Altrua chooses not to obtain a certificate of authority under section 41-305 as ordered, it will cease its current operations in Idaho. It necessarily follows that upon ceasing operations, its members will seek alternative options to health insurance within the marketplace. There is no basis in the record, however, that Altrua's members would be "forced to find either high deductible low quality health insurance or apply for Medicaid coverage." There is likewise no basis in the record for Altrua's assertion at page 4 of its Memorandum that its members "have limited financial means and would not be able to afford health insurance coverage from traditional insurers."

III. CONCLUSION

In closing, the Department resists Altrua's motion to stay these proceedings for the reasons stated hereinabove.

RESPECTFULLY SUBMITTED this 30th day of MARCH 2011.

OFFICE OF ATTORNEY GENERAL

By 

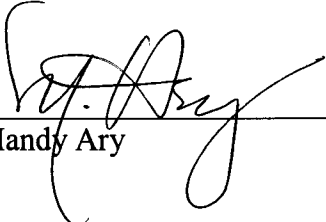
John C. Keenan
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have, on this 30th day of March 2011,
caused a true and correct copy of the foregoing document to be served upon the following by the
designated means:

Christ T. Troupis
Troupis Law Office
P.O. Box 2408
Eagle, ID 83616

- first class mail
- certified mail
- hand delivery
- via facsimile



Mandy Ary

Christ T. Troupis, ISB # 4549
TROUPIS LAW OFFICE
1299 E. Iron Eagle, Ste 130
PO Box 2408
Eagle, Idaho 83616
Telephone: 208/ 938-5584
Facsimile: 208/ 938-5482
Email: ctroupis@troupislaw.com

APR 04 2011

CHRISTOPHER D. RICH, Clerk
By ELYSHIA HOLMES
DEPUTY

Attorney for Petitioner ALTRUA HEALTHSHARE

DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,)	
A Texas Nonprofit Corporation,)	CASE NO. CV OC 1101608
)	
Petitioner,)	PETITIONER'S BRIEF
vs.)	IN SUPPORT OF PETITION
)	FOR JUDICIAL REVIEW
BILL DEAL, in his capacity as Director)	OF ADMINISTRATIVE
Of the Idaho Department of Insurance, and)	ORDER
THE IDAHO DEPARTMENT OF)	
INSURANCE,)	
)	
Respondents.)	
)	

I

STATEMENT OF THE CASE

Altrua Healthshare, Inc., a Texas Nonprofit Corporation, ("Altrua") administers a membership program for sharing of medical needs, as an alternative to health insurance. Altrua presently serves 59 member families in Idaho. Courts have held that these types of programs do not constitute insurance because they do not transfer risk from members to the company. The U.S. Supreme Court has held that risk transfer is the essential element of any insurance contract. Altrua's membership plan does not agree to indemnify members or

AP

promise to pay their medical expenses, but only to follow its guidelines in reviewing and settling medical claims from with members' funds.

The Idaho Department of Insurance filed a Notice of Violation against Altrua, contending that it was operating as a health insurance company in Idaho without being licensed. After an administrative hearing, findings of fact, conclusions of law, and an order were issued. The agency has concluded that Altrua is operating as a health insurance company in Idaho. An administrative order has been entered against Altrua, ordering it to cease and desist from operating in Idaho, or alternatively, requiring it to obtain a license as an insurance company.

Altrua has filed this Petition for Judicial Review because the agency decision was in error on the facts and the law. Altrua does not operate as a health insurer because it does not assume any risk for payment of member claims, which the U.S. Supreme Court has held is an essential element of the contract of insurance.

II

STATEMENT OF FACTS

Altrua is a private nonprofit Christian organization designed to help members pay for their health care expenses through voluntary sharing among of those expenses among members. Membership in the organization is based on religious principles and beliefs common to its members. Members of Altrua pay a monthly fee that is placed in an escrow account. These funds are administered by Altrua to resolve medical expense claims submitted by the members. Altrua negotiates and settles claims that fall within its sharing guidelines. The only promise made by Altrua to its members is that it will use the members' escrowed funds to resolve and pay medical claims submitted by the members in accordance

with the guidelines subscribed to by all of the members. Altrua is a nonprofit entity. It does not receive any monetary benefit from the approval or denial of any members' claims. It receives only an administrative fee for its handling of the escrow account and claims resolution.

The 59 Idaho families who are members of Altrua are among more than 100,000 people in the United States who are members of Altrua or other medical expense sharing groups. Their health care bills are resolved not through guaranteed insurance claim payments, but instead by agreeing to voluntarily share those expenses among fellow believers.

The following facts were established at the hearing in this case.

1. In order to have an insurance contract, there must be a promise to pay or indemnify by the "insurer." Tr. 23/17 – 21, Eileen Mundorff Testimony; Idaho Code §41-102.
2. Upon review of the medical sharing program of the Christian Brotherhood in 2000, the Idaho Department of Insurance determined that the agreement by its members to share in the medical expenses of the other members, was not a contract of insurance because there was no contract to indemnify or pay a benefit to another party. Respondent's Exh. 6, 12/14/00 IDOI Letter.
3. Altrua Healthshare's Membership Application does not include any promise to pay or indemnify the members' medical expenses. There are specific disclaimers in Altrua Healthshare's Membership Agreement and Guidelines. Tr. 24/1 – 24; 26/16 – 22; 32/15 – 33/2, Eileen Mundorff Testimony; Tr. 48/16 – 49/6; 51/16 – 52/6, Randall L. Sluder Testimony;

4. There is no provision in the plan documents that states that Altrua has a duty to pay a claim. Tr. 24/1 – 24; 26/16 – 22; 32/15 – 33/2, Eileen Mundorff Testimony; Tr. 48/16 – 49/6; 51/16 – 52/6, Randall L. Sluder Testimony.
5. Altrua Healthshare has not undertaken to indemnify or pay any benefits to members. It does not make any promise that a member's expenses will be shared or reimbursed. Tr. 48/16 – 49/6; 51/16 – 52/6, Randall L. Sluder Testimony; Respondent's Exh. 2, p. 4, 6; Exh. 5, DOI – 000031.
6. Altrua Healthshare does not assume the responsibility for payment of any member's medical expenses. Each member remains financially liable for all of his or her unpaid medical needs, as set out in Altrua's Guidelines. Respondent's Exh. 5, DOI-000031; Tr. 48/16 – 49/6; 51/16 – 52/6, Randall L. Sluder Testimony;
7. The Acknowledgements, Standards and Commitments section of Altrua's Application for Membership (Respondent's Exh. 2, p. 4) states in pertinent part:
 - a) "I understand that the membership is not insurance but is a voluntary medical needs sharing program, and that there are no representations, promises, or guarantees that my medical expenses will be paid. I also understand that sharing for medical needs does not come from an insurance company, but from the membership according to the guidelines and membership Escrow Instructions."
 - b) "I understand that the guidelines are not a contract and do not constitute a promise or obligation to share, but instead are for Altrua Healthshare's reference in following the Membership Escrow Instructions."
 - c) "I understand that monthly contribution amounts are based on operating and medical needs and the total number of members and that monthly contributions are figured on a periodic basis as needed and are subject to change at any time. I also understand that the payment of my monthly contributions is voluntary and that I am not obligated in any way to send any money."

8. Unlike an insurance company, Altrua Healthshare escrows membership funds and distributes them according to Guidelines agreed to by the Members. Respondent's Exh. 2, p. 5; Tr. 37/18 – 38/8, Eileen Mundorff Testimony; Tr. 48/16 – 49/6; 51/16 – 52/6, 57/15 – 58/6; 67/3 – 69/9, Randall L. Sluder Testimony.
9. Altrua's Brochure states that membership needs are shared among the membership from their contributions. Altrua acts as an Escrow and processing company for membership contributions. It states:
- a) "Altrua Healthshare is not insurance, does not collect premiums, make promises of payment, or guarantee that your medical needs will be shared by the membership. Sharing of eligible medical needs is completely voluntary among the membership. Member contributions are used to share in eligible medical needs as directed in the Membership Escrow Instructions listed on the application." Respondent's Exh. 2, p. 6.
 - b) Altrua's Guidelines brochure, Respondent's Exh. 5, DOI-000031, informs applicants of Altrua's role. "To those who may be unfamiliar with the concept of people caring for one another and voluntarily sharing their medical needs, Altrua Healthshare is a medical-cost sharing membership that acts as a neutral escrow agent for the members. Our members voluntarily submit monthly contributions into an escrow account with Altrua Healthshare acting as the escrow agent between members."
 - c) The following disclaimer is also set out in Altrua's Guidelines Brochure Respondent's Exh. 5, DOI-000031: "This publication or membership is not issued by an insurance company, nor is it offered through an insurance company. This publication or the membership does not guarantee or promise that your eligible medical needs will be shared by the membership. This publication or the membership should never be considered as a substitute for an insurance policy. If the publication or the membership is unable to share in all or part of your eligible medical needs, or whether or not this membership continues to operate, you will remain financially liable for any and all unpaid medical costs.
This is not a legally binding agreement to reimburse you for medical needs you incur, but is an opportunity for you to care for one another in a time of need, to present your medical needs to others as outlined in these membership guidelines. The financial assistance you may receive will come from other members' monthly contributions that are placed in an escrow account, not from Altrua Healthshare."

10. In September, 2001, the Idaho Department of Insurance reviewed the medical sharing program of Kirtland Sharing Alliance dba Zion Healthshare, Altrua Healthshare's predecessor, and determined that its medical sharing program did not constitute insurance under Idaho law. Respondent's Exhibit 1, p. 8, IDOI Letter dated 9/18/01.
11. Altrua Healthshare acquired Zion Healthshare's business in 2005. Altrua operates the same program that Zion Healthshare operated in Idaho. It has made no substantial changes in the way that funds are escrowed, claims reviewed or moneys distributed. Tr. 44/3 – 46/1, Randall L. Sluder Testimony.
12. Altrua Healthshare has continued to provide membership services to Idaho members who were formerly members of Zion Healthshare's program. Tr. 47/17 – 48/7, Randall L. Sluder Testimony.
13. Altrua Healthshare is a nonprofit organization. It does not have the right to appropriate the members' escrowed funds for its own use or benefit. Tr. administrative fee for negotiating and resolving claims under the Guidelines and administering the escrowed funds to pay approved members' claims. It does not make a profit by declaring member's claims ineligible for sharing. It has nothing to gain or lose financially from approving or disapproving payment of a member's claim with the members' funds. Tr. 82/22 – 84/7, Randall L. Sluder (RLS) Testimony.
14. Altrua Healthshare is paid an administrative fee for administering the Membership program pursuant to the Guidelines. Tr. 82/2 – 84/7, Randall L. Sluder (RLS) Testimony.

I

THE ALTRUA AGREEMENT IS UNAMBIGUOUS AND IS NOT A CONTRACT OF INSURANCE

A. Contracts must be interpreted according to the plain meaning of their words.

Altrua's Membership Application and Guidelines Brochure clearly delineate that it is not insurance, and that membership does not create any legally binding agreement for Altrua to pay a member's medical expenses. Altrua operates as an escrow company, administering the payment of member's claims with member's funds. Respondent's Exh. 2, p. 5 ("Escrow Instructions") The Application and Guidelines Brochure are replete with disclaimers and notices to members that inform them that they are not purchasing insurance coverage, and that Altrua does not agree to pay or indemnify them for their medical expenses. Respondent's Exh. 2, p.4, 6

The Department of Insurance argues that, notwithstanding the clear and unambiguous terms of the membership application and guidelines, and the specific language in the plan documents disclaiming any duty to pay on the part of Altrua Healthshare, that an Idaho Court could rewrite the contract in order to find that it is a contract of insurance. The Department's expert, Eileen Mundorff, admitted that the Altrua Membership documents include these disclaimers, and that there is no specific provision that states that Altrua has a duty to pay a claim, or language stating that Altrua will pay a member's claim. Instead, she relied entirely on "the general tenor of the plan documents." Tr. 32/15 – 33/2.

Idaho law does not support the Department's position. In *Reynolds v. Shoemaker*, 139 Idaho 591, 83 P.3d 135, 137 (App. 2003), the Idaho Supreme Court declared:

If the terms of a contract are clear and unambiguous, then interpretation of that contract is a question of law. *City of Idaho Falls v. Home Indem. Co.*, 126 Idaho 604,

607, 888 P.2d 383, 386 (1995). The meaning of an unambiguous contract must be determined from the plain meaning of the contract's own words. *Id.*

Idaho courts have applied this basic principle of contract interpretation to insurance contracts. Thus, our Court noted in *Andrae v. Idaho Counties Risk Management Program Underwriters*, 175 P.3d 195 (2007):

“Insurance policies are contracts, and “the parties' rights and remedies are primarily established within the four corners of the policy.” *Featherston By and Through Featherston v. Allstate Ins. Co.*, 125 Idaho 840, 843, 875 P.2d 937, 940 (1994).

Like other contracts, insurance policies “are to be construed as a whole and the courts will look to the plain meaning and ordinary sense in which words are used in a policy.” *Miller v. Farmers Ins. Co. of Idaho*, 108 Idaho 896, 899, 702 P.2d 1356, 1359 (1985). Finally, where the “policy language is clear and unambiguous, coverage must be determined in accordance with the plain meaning of the words used.” *Mut. of Enumclaw Ins. Co. v. Roberts*, 128 Idaho 232, 235, 912 P.2d 119, 122 (1996).”

Article I, §10 of the United States Constitution states that “No State shall ... pass any...law impairing the obligation of contracts...” Citizens have a constitutional right to enter into a contract, and a State may not retroactively alter a contract, except under very limited circumstances. The terms of a contract are entitled to be honored. Therefore, under Idaho law, the court must find an ambiguity in the words of the agreement in order to ‘reform the instrument,’ with the intent not to alter the contract, but to enforce it according to the actual intention of the contracting parties. A Court has no power to impose its own construction on the plain language of the contract just because the Court believes that rewriting the agreement would make it more equitable. These principles were set out in *Chandler v. Hayden*, 147 Idaho 765, 215 P.3d 485, 492 (2009), in which the Court noted:

”[I]n *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 93 P.3d 685 (2004), we reiterated that “ [c]ourts do not possess the roving power to rewrite contracts in order to make them more equitable.” *Id.* at 362, 93 P.3d at 693. Although we recognize that this portion of the opinion is dicta in light of our determination that the grant of summary judgment must be vacated, we address this issue in order to provide guidance to the district court on remand.

We have held that " a court is acting properly in reforming an instrument when it appears from the evidence ... that the instrument does not reflect the intentions of the parties and that such failure is the product of a mutual mistake, a mistake on the part of all parties to the instrument." *Collins v. Parkinson*, 96 Idaho 294, 296, 527 P.2d 1252, 1254 (1974). *See also Belk v. Martin*, 136 Idaho 652, 658, 39 P.3d 592, 598 (2001). However, we emphasize that when reforming an instrument, the court gives effect to the contract that the parties did make, but that by reason of mistake was not expressed in the writing executed by them. *Id.* (quoting *Uptick Corp. v. Ahlin*, 103 Idaho 364, 372, 647 P.2d 1236, 1244 (1982)). Thus, the district court is not free to reform the Agreement simply for the purpose of arriving at a result that is subjectively viewed as " fairer" to one of the parties."

In light of the clear and unambiguous language found in the Altrua Membership Application and its Guidelines Brochure, including specific disclaimers, and no language stating that Altrua had any duty to pay a member's claim, or assume any risk for payment or indemnification of a member's claim, the Department cannot reasonably contend that an Idaho Court could rewrite the Membership Agreement in order to call it an Insurance contract.

B. To constitute an insurance contract, the insurer must assume some "element of risk." The Altrua Member's Agreement is not insurance because Altrua does not assume any risk of payment of a member's expenses.

The Department of Insurance argues that Altrua's Membership Application and Guidelines create a contract of insurance, even though Altrua has no legal obligation to pay a member's medical expenses. The Department's argument is contradicted by established insurance law, as well as its own expert's admission, that an essential element of an insurance contract is the requirement that the "insurer" take on some risk of payment of the "insured's" claims.

Idaho Code §41-102 defines insurance as a "contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies." An insurer is a person or entity "engaged as indemnitor,

surety, or contractor in the business of entering into contracts of insurance or of annuity.”

Idaho Code §41-103.

In Paragraph 8 of the Conclusions of Law, it is noted that “the fundamental attribute of insurance is risk sharing; this, however, is not simply the spreading of loss. “Risk sharing is the lynch pin of insurance...Risk sharing connotes not only a transfer of risk (risk shifting) to others but a distribution (sharing) of the risk among the others.” *Appleman* § 1.3 p.10.

Paragraphs 10 and 11 of the Conclusions of Law acknowledge that “To be an insurance contract” Altrua must “undertake some risk of payment of the insured’s claim or loss.” “The agreement provided must show that Altrua has assumed or had transferred to it the subject risk.”

The United States Supreme Court held that risk taking by the insurer is central to the concept of ‘insurance,’ in *Securities & Exch. Comm’n v. Variable Annuity Life Ins. Co.*, 359 U.S. 65, 71-73, 79 S.Ct. 618, 622, 3 L.Ed.2d 640, 644-45 (1959). The Court declared:

“[W]e conclude that the concept of “insurance” involves some investment risk-taking on the part of the company.... We deal with a more conventional concept of risk-bearing when we speak of “insurance.” For, in common understanding, “insurance” involves a guarantee that at least some fraction of the benefits will be payable in fixed amounts. *See Spellacy v. American Life Ins. Ass’n*, 144 Conn. 346, 354-355, 131 A.2d 834, 839; Couch, *Cyclopedia of Insurance Law*, Vol. 1, § 25; Richards, *Law of Insurance*, Vol. 1, § 27; Appleman, *Insurance Law and Practice*, Vol. 1, § 81. The companies that issue these annuities take the risk of failure. But they guarantee nothing to the annuitant except an interest in a portfolio of common stocks or other equities -- an interest that has a ceiling, but no floor. There is no true underwriting of risks, the one earmark of insurance as it has commonly been conceived of in popular understanding and usage.”

The Department cites *Messerli v. Monarch Memory Gardens, Inc.*, 88 Idaho 88, 110, 397 P.2d 34 (1964) for the same proposition. In that case, the Idaho Supreme Court declared that “a contract of insurance must contain an element of risk in so far as the particular individual contract is concerned.”

In asserting that Altrua's escrow arrangement constitutes a contract of insurance, the Department misses the essential fact in the holdings of the U.S. Supreme Court on the issue. That is, in order to constitute a contract of insurance, the insurer must assume an 'element of risk' for each of its 'insureds.' A transfer of risk from one member to a group of members without any assumption of risk by an 'insurer' for any of them does not qualify as a 'contract of insurance.' The U.S. Supreme Court's analysis in *Group Health & Life Ins. Co. v. Royal Drug, Inc.*, 440 U.S. 205, 212, 99 S.Ct. 1067, 59 L.Ed.2d 261(1979) illustrates this conclusion.

"The significance of underwriting or spreading of risk as an indispensable characteristic of insurance was recognized by this Court in *SEC v. Variable Annuity Life Ins. Co.*, 359 U.S. 65. That case involved several corporations, representing themselves as "life insurance" companies, that offered variable annuity contracts for sale in interstate commerce... The Court held that the annuity contracts were not insurance, even though they were regulated as such under state law and involved actuarial prognostications of mortality. **Central to the Court's holding was the premise that "the concept of 'insurance' involves some investment risk-taking on the part of the company."** 359 U.S. at 71. Since the variable annuity contracts offered no guarantee of fixed income, **they placed all the investment risk on the annuitant, and none on the company.** *Ibid.* The Court concluded, therefore, that the annuities involved "no true underwriting of risks, the one earmark of insurance as it has commonly been conceived of in popular understanding and usage." *Id.* at 73 (emphasis added)

Altrua has pointed out that it does not assume any risk of indemnity or payment of a member's claims. The express language of the membership agreement does not create a legal right to payment of any claim. Such rights are expressly disclaimed. No one has a legal right to require their claims to be paid out of the escrowed funds, and Altrua has no obligation to pay any claim, either from the escrowed funds, or from its own funds. No member has a legal claim against the assets of Altrua Healthshare, which is the essence of risk transfer.

C. Administering members' funds to obtain cost savings does not create a contract of insurance.

Even though Altrua assumed no risk of payment or indemnity for its members expenses, the Department suggested that Altrua's contracts with preferred medical providers to obtain cost savings for its members is the 'business of insurance.' That finding is contradicted by the Supreme Court's holding in the *Group Health* case, *supra*. In that case, an insurer entered into separate Pharmacy Agreements with pharmacies to obtain cost savings for its insureds. The Supreme Court held that these contracts alone did not constitute the 'business of insurance', even though in that case an insurance company was a party to them. The Court noted:

"The Pharmacy Agreements thus do not involve any underwriting or spreading of risk, but are merely arrangements for the purchase of goods and services by Blue Shield....Such cost-savings arrangements may well be sound business practice, and may well inure ultimately to the benefit of policyholders in the form of lower premiums, but they are not the "business of insurance."... Id at 214.

D. Altrua's use and administration of an escrow account does not transmute its plan into an insurance contract.

Altrua's plan uses an escrow account to administer member's funds to pay member's medical expenses. The Altrua guidelines state:

"To those who may be unfamiliar with the concept of people caring for one another and voluntarily sharing their medical needs, Altrua Healthshare is a medical-cost sharing membership that acts as a neutral escrow agent for the members. Our members voluntarily submit monthly contributions into an escrow account with Altrua Healthshare acting as the escrow agent between members."

"This publication or membership is not issued by an insurance company, nor is it offered through an insurance company. This publication or the membership does not guarantee or promise that your eligible medical needs will be shared by the membership. This publication or the membership should never be considered as a substitute for an insurance policy. If the publication or the membership is unable to share in all or part of your eligible medical needs, or whether or not this membership continues to operate, you will remain financially liable for any and all unpaid medical costs.

“This is not a legally binding agreement to reimburse you for medical needs you incur, but is an opportunity for you to care for one another in a time of need, to present your medical needs to others as outlined in these membership guidelines. The financial assistance you may receive will come from other members’ monthly contributions that are placed in an escrow account, not from Altrua Healthshare.” Respondent’s Exh. 5, DOI – 000031

The Department found that Altrua’s use of an escrow account made it an insurer. That finding conflicts with the U.S. Supreme Court’s decisions that require ‘risk transfer’ to the insurer in order to create an insurance contract.

The Altrua Plan escrow does not make Altrua an insurer. First, if there is any risk transfer, it is from one member to all members’ funds on deposit in the escrow account. There is no risk transfer to Altrua because it does not assume any risk of loss in its agreement. Altrua’s escrow account consists entirely of the members’ monies. Altrua does not own and has no financial interest in those funds. Tr. 82/22 – 84/7

Second, there is no risk transfer because each member remains contractually obligated for his or her medical expense, and there is no promise or guarantee of payment under the terms of the Altrua Plan.

Third, there is no transfer of risk to the escrow account because those funds are not legally obligated for payment of any specific medical expense. The escrow account merely provides a source of payment for claims that are approved for payment from it. The escrow account has no contractual liability to any member for payment of his medical expenses.

Altrua’s Membership Application and Guidelines create a contract with and between the members. Under the terms of that agreement, Altrua serves as a consumer cooperative with regard to its member’s medical expenses, that provides an escrow service to (1) determine whether a member’s medical expenses qualify for assistance from the other

members, and (2) pay those expenses from the member's funds on deposit in escrow.

Altrua's duties to its members are those of an escrow company and administrator of the member's funds in accordance with the Guidelines. Tr. 48/16 – 49/6; 57/15 – 58/6; 67/3 – 69/9, Randall L. Sluder Testimony.

The Department conceded that the "Christian Brotherhood" medical expense sharing model is not insurance because the corporation merely assists members in sharing their medical expenses with the other members.¹ The Department distinguished Altrua's medical expense sharing model based solely on the fact that it used an escrow to hold and distribute member's funds, instead of the Brotherhood's program for direct payment from one member to the other. But that is a distinction without a difference. Whether the plan calls for a member's funds to be transferred from all of the members to one member who pays his medical bill directly with those funds, or calls for all of the members to pay into an escrow, whose agent pays each member's medical bill from those funds, the company administering the plan is not an insurer because neither has assumed any risk of loss that is the pre-requisite of an insurance contract.

Nor does Altrua's control over disbursement of these funds create an insurance contract. Altrua has no ownership interest in the monies. Altrua has established guidelines

¹ Respondent's Exhibit 6, 12/14/00 Letter from Gina McBride, Compliance Officer, Idaho Dept. of Insurance. The Department concluded that the Christian Brotherhood program was not insurance. She stated:

"Under Idaho Code §41-102, the definition of insurance is:

"A contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies."

It is the Department's position that there is no contract to indemnify or pay any benefit to another party. Therefore the Christian Brotherhood Newsletter does not meet the definition of insurance, and is not subject to regulation by the Department of Insurance.

For your information, I have attached the Iowa Supreme Court decision of Barberton Rescue Mission dba Christian Brotherhood Newsletter v. Insurance Division of Iowa, 586 N.W.2d 352 (1998).

Also, we obtained a copy of the membership packet from the Christian Brotherhood Newsletter, and I have attached a copy for your review. This includes several disclaimers to the effect "The Christian Brotherhood Newsletter is not insurance."

that determine what claims are approved and paid. The escrowed monies remain the property of the members, and Altrua does not benefit financially by denying claims. It receives fees to administer the members' funds and nothing more. Neither Altrua nor Christian Brotherhood are insurers because neither plan assumes any risk of loss, or has any opportunity for gain by reason of the handling of members' claims.

Finally, the Department contends that because Altrua has discretion in interpreting and applying the claim Guidelines, that it is not a true 'escrow' agent or administrator. That conclusion is not supported in the law. The cases cited by the Department do not say that an escrow agent must not have discretion, but only that he must be a neutral party. The definition cited by the Department from I.C. §30-902(4) states that a realty escrow is:

“any transaction in which any person...delivers...money...to a third person to be held by that third person until the happening of a specified event...when the...money...is then to be delivered by the third person to a [third party]...pursuant to written instructions.”

The authority of an escrow agent, just as that of a trustee, is determined by its written instructions, which may include discretionary authority. Nothing in the case law or Idaho Code prohibits the written instructions from delegating discretionary authority to the escrow agent. *See, e.g. Driver v. S.I. Corporation*, 139 Idaho 423, 80 P.3d 1024 (2003) (escrow agent authorized to pay claims from funds on deposit); Idaho Code §68-106 (a),(c)(1), (23) (trustee's discretionary authority to collect and retain trust assets and make distributions); *Dolan v. Johnson*, 95 Idaho 385, 509 P.2d 1306 (1975) (foundation managers given discretionary authority over distribution of foundation monies)

E. The Altrua Plan is not an illusory contract against public policy.

The Department reasoned that the Altrua membership agreement must be read either to allow a member to assert an enforceable contractual claim against Altrua to pay his or her

medical claims, or it would be an illusory contract that would violate public policy because it did not afford insurance coverage to its members. That reasoning is based upon a faulty premise. It assumes that Altrua's membership agreement must be a contract of insurance in order to be a valid contract, and then concludes that as an insurance contract, the Altrua violates public policy.

As noted above, the Altrua contract is not insurance, but nonetheless a valid contract. The Altrua membership agreement is not an insurance contract because there is no agreement for Altrua to assume any of its members' risks. But It is also not illusory because it is a specific and unambiguous agreement that imposes duties upon both Altrua and upon its members, and is supported by consideration. To constitute a valid contract, all that Altrua's agreement must provide is some consideration to its members. It does that by agreeing to hold and administer their escrowed membership funds according to specific guidelines, and to use those funds to pay claims that fall within those guidelines. Members agree to contribute monies to share medical expenses with other members, and to abide by certain lifestyle requirements.

The cases cited by the hearing officer do not support the conclusion that the Altrua contract would be found to be illusory and held void as against public policy. In *National Fire Union Ins. v. Dixon*, 141 Idaho 537, 112 P.3d 825 (2005), the Court stated that insurance policies that provide an 'illusion of coverage' will be held void as against public policy. But to create that 'illusion,' the policy language must unambiguously state that it provides coverage, but then eliminate any real coverage through ambiguous exclusions. In our case, there is no such 'illusion' of coverage. The Plan's language clearly and unambiguously disclaims any promise of payment of claims. Members know from the outset that their claims

will be covered only if other members contribute enough monies into the escrow account and only if the claim falls within the guidelines. This absence of ambiguity in a plan's limitations was considered dispositive by the Court in upholding the contract in *American Foreign Insurance Co. v. Reichert*, 140 Idaho 394, 399-400, 94 P.3d 699 (2004). The Court said:

The provision in dispute provides that "Any amount payable under this coverage shall be reduced by all sums paid or payable under any workers' compensation, disability benefits or similar law[.]" (This provision is hereinafter referred to as the "offset provision"). Reichert argues that the offset provision is void because American knew that all claimants would only receive minimal, if any, coverage because all claimants would also receive worker's compensation benefits. In support of his argument Reichert relies on *Martinez v. Idaho Counties Reciprocal Mgmt. Program*, 134 Idaho 247, 999 P.2d 902 (2000).

In our review, we found nothing in the offset provision that is ambiguous and we assume the Director approved this policy and it comports with public policy. The *Martinez* case does not apply to these facts.

In *Martinez*, this Court held that the uninsured motorist coverage issued to the city was illusory. *Martinez*, 134 Idaho at 252, 999 P.2d at 907. The city paid premiums for something they thought they were receiving, but due to the exclusion provisions the coverage did not exist. *Id.* at 251-52, 999 P.2d at 906-07. The policy was ambiguous as to uninsured motorist coverage. *Id.* at 250, 999 P.2d at 905.... The *Martinez* case is distinguishable. In the instant case, the policy is unambiguous, unlike the policy in the *Martinez* case."

F. Altrua should be entitled to rely upon the Safe Harbor created by the Idaho Department of Insurance's determination that the ZionShare program was not 'insurance.'

Altrua's predecessor company was Kirtland Sharing Alliance aka Zion Share. Altrua operates the same program as Zion Share. Its only principal difference is that Altrua does not restrict membership to members of the LDS Church. Tr. 44/3 – 46/1. The Idaho Department of Insurance reviewed Zion Share's program materials and initially concluded that it was a contract of insurance. Its determination was based on Zion Share's use of an excess reinsurance company, and the absence of limiting language on statements in Zion Share's materials that it would pay the balance of medical expenses after members met a deductible and co-payment. Zion Share made changes to its program recommended by the Department

of Insurance. On September 18, 2001, Dale Freeman, Consumer Affairs Supervisor of the Idaho Department of Insurance wrote to counsel for Zion Share, and stated:

“Thank you for the materials that you submitted on behalf of Zion Share to the attention of Tom Donovan. The Department has reviewed those materials, and believes that Zion Share has made the necessary changes in its written materials so that the Department does not consider the product to be a contract of insurance.” Respondent’s Exh. 1, p. 8, IDOI Letter dated 9/18/01.

Since it took over from Zion Share in 2004, Altrua has not made any substantive changes to its sharing program, apart from admitting more members. Tr. 44/3 – 46/1 In its case here, the Department of Insurance has not pointed to any substantive differences between the Zion Share program and Altrua’s, let alone any differences that justify the Department’s abrupt reversal of its position, or its attempt to now characterize Altrua as an insurance company.

CONCLUSION

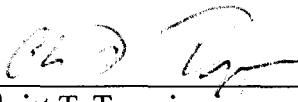
Altrua Healthshare’s Membership plan does not constitute an insurance contract. The facts and the law bear this out. The Department’s own expert admits that to have an insurance contract, the “insurer” must assume some risk of payment of claims. There is none in this case.

Nonetheless, in the absence of any consumer complaint, the Idaho Department of Insurance has reversed the position it took on this company’s operations when it was Zion Share. The Department has characterized Altrua as an insurance company, based on its completely hypothetical argument that in the absence of any language in Altrua’s plan documents creating a promise to pay claims, or assuming the risk of payment, and in the face of clear and unambiguous disclaimers of such duty, that, if a complaint were ever filed against Altrua, a Court might rewrite its plan documents to imply such a duty.

Altrua is entitled to a finding that it is not in the business of selling insurance; that its medical expense sharing program does not constitute the business of insurance, and it is therefore not subject to the regulation of the Idaho Department of Insurance.

Dated: April 4, 2011

TROUPIS LAW OFFICE, P.A.

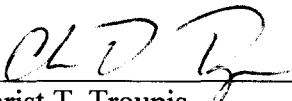


Christ T. Troupis
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2011, I served the foregoing *Petitioner's Brief in Support of Petition for Judicial Review* by facsimile and U.S. Mail, first class postage prepaid, addressed to the following persons:

John Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, ID 83720-0043
Fax: (208) 334-4298



Christ T. Troupis

Sticklen
McKee
CS 4114

Christ T. Troupis, ISB # 4549
TROUPIS LAW OFFICE
1299 E. Iron Eagle, Ste 130
PO Box 2408
Eagle, Idaho 83616
Telephone: 208/ 938-5584
Facsimile: 208/ 938-5482
Email: ctroupis@troupislaw.com

NO. _____ FILED _____
A.M. _____ P.M. 243

APR 13 2011

CHRISTOPHER D. RICH, Clerk
By **ELYSHIA HOLMES**
DEPUTY

Attorney for Petitioner ALTRUA HEALTHSHARE

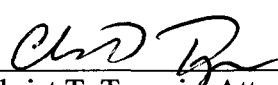
DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,)
A Texas Nonprofit Corporation,)
)
Petitioner,)
vs.)
)
BILL DEAL, in his capacity as Director)
Of the Idaho Department of Insurance, and)
THE IDAHO DEPARTMENT OF)
INSURANCE,)
)
Respondents.)
_____)

CASE NO. CV OC 1101608
NOTICE OF HEARING ON
MOTION FOR STAY OF
ENFORCEMENT OF
ADMINISTRATIVE ORDER

PLEASE TAKE NOTICE that a hearing on Plaintiff's Motion for Stay of Enforcement of Administrative Order will be held on the 24th day of May, 2011, at 10:30 A.M., before the Honorable Judge Kathryn Sticklen in the above-entitled court located at 200 West Front Street, Boise, Idaho 83702.

Dated: This 13^h day of April, 2011. TROUPIS LAW OFFICE, P.A.



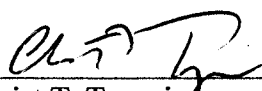
Christ T. Troupis, Attorney for Petitioner

3

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 2012, I served the foregoing Notice of Hearing on Motion for Stay of Enforcement of Administrative Order by U.S. Mail, first class postage prepaid, addressed to the following persons:

John Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, ID 83720



Christ T. Troupis

Plan B
Chamber
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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ALTRUA HEALTHSHARE, INC.,
a Texas Nonprofit Corporation,

Petitioner,

vs.

BILL DEAL, in his capacity as Director of the
Idaho Department of Insurance, and THE
IDAHO DEPARTMENT OF INSURANCE,

Respondents.

Case No. CVOC1101608

**RESPONDENTS' BRIEF RE: PETITIONER'S PETITION FOR JUDICIAL REVIEW
OF ADMINISTRATIVE ORDER**

Petition for Judicial Review of Final Agency Action

CHRIST T. TROUPIS, ISB No. 4549
TROUPIS LAW OFFICE
1299 E. Iron Eagle, Suite 130
P.O. Box 2408
Eagle, Idaho 83616
Telephone: (208) 938-5584
Facsimile: (208) 938-5482

Attorney for Petitioner

LAWRENCE G. WASDEN
Attorney General
JOHN C. KEENAN, ISB No. 3873
Deputy Attorney General
State of Idaho
Department of Insurance
700 West State Street, 3rd Floor
P.O. Box 83720
Boise, Idaho 83720-0043
Telephone: (208) 334-4283
Facsimile: (208) 334-4298

Attorneys for Respondents

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COME NOW the Respondents and submit this brief as follows:

I. PROCEDURAL HISTORY

The Idaho Department of Insurance (hereinafter "Department") filed a Verified Notice of Violation and Right to Hearing on January 15, 2010. It was served on Altrua HealthShare (hereinafter "Altrua" or "Altrua HealthShare") and its attorney, John R. Patton, Esq., on the same day. R. Vol. I, pp. 1-68. Altrua failed to plead by answer or otherwise give notice of its intent to defend on a timely basis. R. Vol. I, p. 69.

The Director of the Department entered a final order on March 10, 2010, that ordered Altrua to cease and desist the soliciting and effectuating of insurance contracts within the state of Idaho; to discontinue all memberships of Idaho residents no later than June 1, 2010, and to immediately notify Altrua members of the impending discontinuation; to pay all legitimate claims or needs submitted by Altrua's Idaho members no later than August 31, 2010; and to pay an administrative penalty in the sum of \$15,000. R. Vol. I, pp. 70-74.

Thereafter, a Petition for Reconsideration was filed, and an appearance entered, by an Idaho attorney, Christ Troupis, Esq., on March 31, 2010. R. Vol. I, pp. 75-79. The Department responded to the Petition for Reconsideration on April 19, 2010. R. Vol. I, pp. 80-86. On April 21, 2010, the Director of the Department entered an order withdrawing and rescinding the March 10, 2010, order and appointing a hearing officer. R. Vol. I, pp. 83-86. After an initial hearing date was vacated, a new hearing date was scheduled for September 1, 2010. R. Vol. I, pp. 87-94. The hearing was held before David V. Nielsen, Esq., Hearing Officer. Tr., p. 2. After post-hearing briefing was completed by both parties [R. Vol. I, pp. 95-146], the Hearing Officer issued his initial Findings of Fact, Conclusions of Law, and Preliminary Order on November 15, 2010. R. Vol. I, pp. 147-173. Due to a clerical error, the Hearing Officer entered an Amended

Preliminary Order on November 22, 2010. R. Vol. I, pp. 174-177.

Altrua HealthShare filed a Motion for Reconsideration and a Memorandum in Support on December 2, 2010. R. Vol. I, p. 178-184. The Department filed its response on December 6, 2010. R. Vol. I, pp. 185-187.

On December 22, 2010, an Order Denying Request for Reconsideration was entered. R. Vol. I, pp. 188-195. The Hearing Officer's Preliminary Order (hereinafter "Final Order") [R. Vol. I, p. 147] became a final order by operation of law on January 4, 2011. *See*, sections 67-5243 – 67-5247, Idaho Code.

Altrua filed a Notice of Appeal and Petition for Judicial Review on January 24, 2011.

II. ISSUE PRESENTED ON APPEAL

Whether the Court should affirm the Hearing Officer's findings of fact and conclusions of law, i.e., the Department's Final Order, that Altrua HealthShare is in violation of section 41-305(1), Idaho Code, by transacting insurance within the state of Idaho without first obtaining a certificate of authority?

III. ARGUMENT

A. Standard of Review.

With regard to the Hearing Officer's findings of fact, unless clearly erroneous, this Court should not "substitute its judgment for that of the [Department] as to the weight of the evidence on questions of fact." Idaho Code § 67-5279(1). *See, Chisholm v. Twin Falls County*, 139 Idaho 131, 132, 75 P.3d 185, 187 (2003). The Department's factual determinations are binding on this Court, "even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record." *Barron v. Idaho Dept. of Water Resources*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). "Substantial and competent evidence is

‘relevant evidence which a reasonable mind might accept to support a conclusion.’” *Wohrle v. Kootenai County*, 147 Idaho 267, 273, 207 P.3d 998, 1005 (2009)(quoting *Lane Ranch Partnership v. City of Sun Valley*, 144 Idaho 584, 590, 166 P.3d 374, 380 (2007)).

However, this Court as “a reviewing court must affirm the [Department’s] action unless the [Department’s] decision (a) violates constitutional or statutory provisions; (b) exceeds the statutory authority [of the Department]; (c) is made upon unlawful procedure; (d) is not supported by substantial evidence in the record; or [] is arbitrary, capricious, or an abuse of discretion.” *Wohrle*, 147 Idaho at 273, 207 P.3d at 1004 (citing Idaho Code § 67-5279(3)). “A strong presumption of validity favors [the Department’s] actions.” *Young Elec. Sign Co. v. State ex rel. Winder*, 135 Idaho 804, 808, 25 P.3d 117, 121 (2001). Altrua HealthShare “must first show that the agency erred in a manner specified in I.C. 67-5279(3) and then establish that a substantial right has been violated.” *Chisholm v. Idaho Dept. of Water Resources*, 142 Idaho 159, 162, 125 P.3d 515, 519. (*See*, Idaho Code § 67-5279(4)).

B. Upholding the Department’s Conclusions and Findings.

1. The focus of attention is on Altrua HealthShare’s “contract” for membership.

The focus of this inquiry is on the Altrua contract for membership. Altrua’s contract for membership includes its Application for Membership. R. Vol. III, pp. 369-374. The Application for Membership includes a general information questionnaire (R. Vol. III, p. 383); a medical history questionnaire (R. Vol. III, p. 384); a medical history explanation (R. Vol. III, p. 385); a statement of acknowledgements, standards and commitments (R. Vol. III, p. 386); and, a statement of escrow instructions, signatures, and application checklist (R. Vol. III, p. 387).

The Membership Eligibility Manual is also a part of the Altrua contract for membership, as it is used as the “standard against which an applicant’s medical history is measured to

determine if the applicant qualifies for the membership, and if so, what membership limitations should apply.” R. Vol. III, pp. 392-401. The Membership Eligibility Manual includes a list of “general rules” for eligibility (R. Vol. III, pp. 392-394); a list of “automatic denials” list (R. Vol. III, p. 395); a “Height and Weight Guidelines” (R. Vol. III, pp. 396-397); a list of membership comparison types (R. Vol. III, p. 398); a Medical Review Questionnaire (R. Vol. III, pp. 399-401); and a list of monthly contribution requests (R. Vol. III, pp. 402-403).

The next part of the contract for membership includes the Guidelines. R. Vol. III, pp. 407-420. The Guidelines are incorporated into the Application for Membership described above. R. Vol. III, p. 386 (under “Acknowledgments”).

The Membership Eligibility Manual [R. Vol. III, pp. 392-401], the membership comparison chart [R. Vol. III, p. 398], the Medical Review Questionnaire [R. Vol. III, pp. 399-401], and the Membership Guidelines [R. Vol. III, pp. 407-420] combine to “fully describe membership and membership type eligibility.” R. Vol. III, p. 378 (correspondence dated July 14, 2009 from John Patton, Esq., attorney for Altrua HealthShare, to the Department).

In this brief, Altrua HealthShare’s contract for membership will be referred to as “Altrua’s contract,” “contract,” or “contract for membership.”

2. Does the Department’s decision violate constitutional or statutory provisions?

With regard to the U.S. Constitution, Altrua HealthShare cites the Contract Clause of the U.S. Constitution, which provides at Article I, §10, “No State shall . . . pass any . . . law impairing the obligation of contracts” In its brief to this Court, Altrua notes that “[c]itizens have a constitutional right to enter into a contract, and a State may not retroactively alter a contract, except under very limited circumstances. The terms of a contract are entitled to be honored.” *Petitioner’s Brief*, at p. 8 (underscore here). Claiming that Altrua’s contract is clear

and unambiguous, Altrua states that an Idaho court cannot reconstruct the Altrua application and guidelines into an insurance contract under Idaho law. *Petitioner's Brief*, at pp. 8-9. This is generally true except in limited circumstances. However, Altrua misses the point. First, the Department is not asking this Court to rewrite Altrua's contract for membership. Rather, the Department finds that the Altrua contract in question is insurance and, as such, Altrua must obtain a certificate of authority under section 41-305, Idaho Code. Under this finding, the terms of the contract are not rewritten.

Second, it is not a violation of the Contract Clause for the Department to determine that Altrua's contract is a contract of insurance. As noted by the U.S. Supreme Court, the Contract Clause must accommodate "the inherent police power of the State 'to safeguard the vital interests of its people.'" *Energy Reserves Group, Inc., v. Kansas City Power & Light Co.*, 459 U.S. 400, 410, 103 S.Ct. 697 (1983) (hereinafter *Energy Reserves Group*). For Altrua to effectively challenge the Department's interpretation of Idaho law as applied to Altrua HealthShare under the Contract Clause, Altrua must show: (1) that Idaho's law substantially impairs a contractual relationship; (2) that the applicable Idaho insurance code has a narrow purpose without "a significant and legitimate purpose behind the regulation, such as the remedying of a broad and general social or economic problem[;]" and (3) that the law is unreasonable and inappropriate for its intended purpose. *Energy Reserves Group*, at 413-419.

Insurance is a heavily regulated industry under title 41, Idaho Code. The public policy of the state of Idaho states clearly that the insurance business is affected "by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters." Idaho Code § 41-113. To the extent that Idaho's insurance code impairs Altrua's contract, Idaho's law is "prompted by [] significant and legitimate state

interests.” *Energy Reserves Group*, 459 U.S. at p. 416. Therefore, if Altrua’s contract is a contract of insurance as a matter of law, that contract as presently drafted is subject to the Idaho insurance code.

Further, in view of legitimate state interests and public policy, it would be unsound to conclude—as Altrua urges—that, as a general rule, when two parties enter a contract and where such contract is clear and unambiguous, it creates a shield against state regulation. Rather, where unambiguous contracts violate public policy, they are illegal and unenforceable. *National Union Fire Ins. Corp of Pittsburgh, PA v. Dixon*, 141 Idaho 537, 542, 112 P.3d 825, 830 (2005). The public policy of the state of Idaho is found in its Constitution, in its statutes, and in its judicial decisions. *Stearns v. Williams*, 72 Idaho 276, 287, 240 P.2d 833, 840 (1952). With regard to the issue of insurance, Idaho’s public policy is stated in title 41, Idaho Code, and Idaho’s body of case law. If Altrua’s contract is a contract of insurance, it is subject to Idaho law.

3. In deciding that Altrua’s contract is a form of insurance under Idaho law, has the Department exceeded its statutory authority?

The Director of the Department of Insurance is required to enforce and execute the provisions of title 41, Idaho Code, and the Director may delegate to his or her deputies such powers or duties as imposed by the insurance code. *See, generally*, title 41, chapter 2, Idaho Code. These duties and powers include the Director’s duty to authorize insurers to operate under Idaho law. *See, generally*, title 41, chapter 3, Idaho Code. This includes the issuance of a certificate of authority to authorized insurers, as the law states that no entity or person “shall act as an insurer and no insurers or its agents . . . shall directly or indirectly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the director . . .” Idaho Code § 41-305(1).

Transacting insurance includes the solicitation, inducement, negotiation, and effectuation

of a contract of insurance. Idaho Code § 41-112. The insurance code provides a penalty in the amount of \$15,000 against any person who transacts insurance without a proper license. Idaho Code § 41-117A. Among the Director's enforcement powers, after hearing, is the power to impose a cease and desist order or, among other things, to impose an administrative penalty in accord with title 41, Idaho Code. *See*, Idaho Code § 41-213.

The Final Order entered herein (R. Vol. I, pp. 147-176) did not exceed the Director's authority to enforce Idaho's insurance code.

4. Was the Department's decision made upon unlawful procedure?

The Department understands from discussion and briefing herein that Altrua has not made a claim that the Department's decision regarding Altrua's contract as a contract of insurance was made under an unlawful process.

5. Was the Department's decision that Altrua's contract is a form of insurance under Idaho law not supported by substantial evidence on the record as a whole; or was it arbitrary, capricious, or an abuse of discretion?

Substantial and competent evidence is "relevant evidence which a reasonable mind might accept to support a conclusion." *Jensen v. City of Pocatello*, 135 Idaho 406, 409, 18 P.3d 211, 214 (2000). After careful and detailed review of the evidence and record before him, the Hearing Officer who issued the Final Order on November 15, 2011 found that "Altrua is in violation of Idaho Code Section 41-305(1) by transacting insurance in the State of Idaho without having obtained a certificate of authority." R. Vol. I, p. 170.

The Hearing Officer reviewed whether the contract for membership was one of indemnification and whether it effectively shifted the subject risk from the members to Altrua. He rejected Altrua's claim that it was merely in the business of administering and/or managing a simple cost sharing, finding instead that the Altrua contract constitutes insurance because it is

“the form of the relationship and transaction which determine the ultimate relationship here, not the designation given by Altrua.” R. Vol. I, p. 160. Based on his detailed findings, the substantial yet relevant evidence led the Hearing Officer to reasonably conclude that the contract in question was a contract of insurance.

The next part of the question turns on whether the Department’s decision was arbitrary, capricious, or an abuse of discretion. The Department’s actions “are considered arbitrary and capricious if made without a rational basis, or in disregard of the facts and circumstances, or without adequate determining principles.” *Lane Ranch Partnership v. City of Sun Valley*, 145 Idaho 87, 91, 173 P.3d 776, 780 (2007). While the parties to this action may disagree, upon a careful review of the Final Order in this proceeding, it cannot be seriously argued that there is no rational basis for the Hearing Officer’s decision or that certain facts and circumstances were simply ignored. The Hearing Officer clearly applied the legal principles of law regarding insurance, indemnification, and underwriting to the Altrua contract in concluding it is a contract of insurance.

C. The question of prior Department action and an Altrua “safe harbor.”

Altrua HealthShare took over Zion Share (aka Kirtland Healthsharing) in October, 2005. Tr. p. 44, LL. 11-22; p. 47, LL. 17-20.

Altrua HealthShare argues that it is entitled to rely upon a “safe harbor” due to a 2001 Department determination that Zion Share, Altrua’s predecessor-in-interest, was not insurance. R. Vol. III, p. 341. Altrua claims it “operates the same program as Zion Share.” R. Vol. I, p. 124 (*Note, also*, Altrua “has not made any substantive changes to its sharing program, apart from admitting more members.” R. Vol. I, P. 124). *See, also*, Tr. pp. 44, LL. 15-25; 45, LL. 17-25; 46, L. 1. In 2001, after Zion Share submitted its program materials to the Department and

recommended amendments were completed, on September 18, 2001 the Department sent Zion Share a letter stating it had “reviewed those materials, and believes that Zion Share has made the necessary changes in its written materials so that the Department does not consider the product to be a contract of insurance.” R. Vol. III, p. 341. (*See, also*, Respondent’s Post Hearing Brief, R. Vol. I, p. 124). As a result thereof, Altrua claimed that it justifiably relied upon the original Department letter of September 18, 2001 wherein it states that Zion Share was not a contract of insurance.

The Hearing Officer rejected the argument. *See*, R. Vol. I, pp. 169-170. This Court should reject this quasi-estoppel type of argument for the reasons set forth below.

The doctrine of quasi-estoppel:

precludes a party from asserting to another’s disadvantage a right inconsistent with a position previously taken by [the Department]. The doctrine applies where it would be unconscionable to allow a person to maintain a position inconsistent with one in which he acquiesced or of which he accepted a benefit. The act of the party against whom the estoppel is sought must have gained some advantage to himself or produced some disadvantage to another; or the person invoking the estoppel must have been induced to change his position.

Floyd v. Board of Commissioners of Bonneville County, 137 Idaho 718, 726, 52 P.3d 863, 871 (2002) (hereinafter *Floyd*). In other words, as Altrua may argue, the Department should be estopped from asserting that the Altrua contract is a contract of insurance because such an assertion is inconsistent with the Department’s position taken in its September 18, 2001 letter to Zion Share.

This argument falls short for three reasons. First, the defense that the Department should be estopped from asserting the Altrua contract is insurance based upon a prior inconsistent position cannot “be applied against the state in matters affecting its governmental or sovereign functions.” *Floyd*, 137 Idaho at 727, 52 P.3d at 872 (citing, *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 68 S.Ct. 1 (1947)).

Second, Altrua is not the original organization that relied upon the representation in 2001.

Third, contrary to Altrua’s claim that there are no substantive changes to its sharing program, the record in front of this Court reveals otherwise. As noted at the September 1, 2010 hearing, the Zion Share Guidelines, Application, and brochure, as provided to the Department in 2001, were included as Altrua’s “Exhibit No. 2.” *See*, Tr. p. 9, LL. 1-8. *See, also*, R. Vol. III, pp. 343-367 (Respondent’s Exhibit No. 2). Also at hearing, the Altrua membership contract in question was admitted as part of Altrua’s “Exhibit No. 5.” *See*, R. Vol. III, pp. 383-420.

The 2001 Zion Share Guidelines is a three-page document describing Kirtland Healthshare as a sharing program, the process of member participation, exclusions, the amount of sharing, maternity, and the processing of “needs” claims. R. Vol. III, pp. 343-345 (“Official Guidelines for the Kirtland Healthshare Program” p. 343).

The contemporary Guidelines used by Altrua HealthShare is a 14-page document [R. Vol. III, pp. 407-420.] detailing definitions, contribution instruction, membership qualifications, eligible needs, sharing limits, affiliated and non-affiliated providers, recreational and occupational activity limits, organ transplant limits, sleep apnea treatment, other resources, pre-notification, case management requirements, office visit MRA options, maternity qualifications, denied needs, appeal procedures, and, among other things, members’ rights and responsibilities.

This document is incorporated into the Altrua Application. *See*, R. Vol. III, p. 386 (Acknowledgments).

The Zion Share Application [R. Vol. III, pp. 349-353] is a five page-document that includes short statements regarding the contract, billing and claim process, promises to avoid tobacco and alcohol, etc., a medical questionnaire, abide by standards, a pre-condition restriction, deductible, notice requirements, and release of information. R. Vol. III, pp. 349-353.

The Altrua HealthShare Application [R. Vol. III, pp. 369-374] is a six-page document that includes the terms in the original application plus other terms and incorporates the Guidelines into the Application and Contract.

Comparing the Zion Share Guidelines [R. Vol. III, pp. 343-344] against the Altrua Guidelines [R. Vol. III, pp. 407-420], it becomes clear that these are two very different contracts. While Altrua's objective of medical expense sharing largely remains the same as Zion Share, the additional conditions, terms, exclusions, restrictions, membership classifications, and other factors outlined in the Altrua contract, guidelines, membership eligibility manual, and application demonstrate that Altrua HealthShare is engaged in underwriting and indemnification.

For the foregoing reasons, Altrua HealthShare should not receive any "safe harbor" relative to the Final Order in question.

D. Altrua's contract for membership is a contract for insurance.

"Insurance" is a "contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies." Idaho Code § 41-102. To indemnify a person means to "restore the victim of a loss, in whole or in part, by payment, repair, or replacement." *Black's Law Dictionary*, 5th Edition, p. 692. An "indemnity" is

the shifting of an entire loss by a person compelled to pay damages to a responsible party. *Chenery v. Agri-Lines Corporation*, 115 Idaho 281, 290, 766 P.2d 751, 760 (1988).

The Altrua contract at issue is a form of disability insurance under Idaho law, which includes “[i]nsurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto . . .” Idaho Code § 41-503(1). *See, also*, Tr. p. 19, LL. 11-13.

If a loss occurs, the insurer indemnifies another person or allows a “specified or ascertainable amount or benefit upon determinable risk contingencies.” Section 41-102. In insurance law, the term “risk” is “the danger or hazard of a loss of the property insured; the casualty contemplated in a contract of insurance; the degree of hazard; a specified contingency or peril; . . . [i]n general, the element of uncertainty in an undertaking.” *Black’s Law Dictionary*, 5th Ed., p. 1193. In the influential 1964 case of *Messerli v. Monarch Memory Gardens, Inc.*, 883 Idaho 88, 397 P.2d 34 (Idaho 1964) (hereinafter “*Messerli*”), in deciding that the contract in controversy was not a contract of insurance, Idaho’s highest Court ruled that a “contract of [] insurance must contain an element of risk in so far as the particular individual contract is concerned.” *Messerli*, 88 Idaho at 110, 397 P.2d at 49 (quoting *Georgia Funeral Homes v. Harrison*, 183 Georgia 379, 188 S.E. 529 (1936)). In another Idaho case, the Court defined insurance as a “contract by which one party, for a consideration . . . promises to make a certain payment of money upon the destruction or injury of something in which the other party has an interest.” *Rungee v. Allied Van Lines, Inc.*, 92 Idaho 718, 4349 P.2d 378 (1968).

The word “determinable” has been defined as “[l]iable to come to an end upon the happening of a certain contingency. Susceptible of being determined, found out, definitely

decided upon, or settled.” *Black’s Law Dictionary*, 5th Ed., p. 405. The word “contingency” has been defined as “[q]uality of being contingent or casual; the possibility of coming to pass; an event which may occur; a possibility, a casualty.” *Black’s Law Dictionary*, 5th Ed., p. 290.

At hearing, Eileen Mundorff, an expert witness and consumer affairs officer for the Department, noted that the term “determinable risk contingencies” in the case of Altrua means:

[that the] insurer would have specific eligibility Guidelines, specific underwriting Guidelines, where they would accept eligibility for a person based on those Guidelines. So [Altrua] are determining the type of risks they are willing to take on in order to provide the coverage under this contract of insurance. There are specific plan benefit levels that are being included and offered through this. There are option benefits that a person could elect to take. There are specific dollar amounts that are payable under those plans. There are negotiations with a preferred provider network where they are willing to take certain dollar amounts in payments for certain treatment. Those would be the type of risks that are determined in advance for any type of contingency of loss, injury, sickness that would combine to make this a contract of insurance.

Tr. pp. 21, LL. 17-25; 22, LL. 1-22.

When a person joins Altrua HealthShare, he or she, known as “the membership participant,” (hereinafter “participant”) signs a form entitled “Membership Escrow Instructions.” R. Vol. III, p. 387. The instructions direct Altrua to hold any monthly contributions paid by the participant in escrow and to pay out in order as directed. R. Vol. III, p. 387. The order of payment requires Altrua to first “pay the expenses of the membership” then to “pay eligible needs pursuant to the guidelines as modified from time to time by Altrua HealthShare and as

interpretes [*sic*] and applied by Altrua HealthShare[,]” and, in the event of any surplus, such “remaining funds shall be disbursed to qualified charities, as determined by Altrua HealthShare.” R. Vol. III, p. 387 (underscore in original). The Guidelines and other program elements per Eileen Mundorff’s testimony are set out as follows: the Guidelines are at R. Vol. III, pp. 407-420; the membership eligibility manual is at R. Vol. III, pp. 392-401; the automatic exclusions are at R. Vol. III, p. 395; the height and weight guidelines are at R. Vol. III, pp. 396-397; the membership classifications and specific plan benefit levels (including selected “monthly contribution requests” based on membership benefit levels) are R. Vol. III, p. 398; and the medical review questionnaire of participant is R. Vol. III, pp. 399-401.

As the record reveals, Altrua steadfastly denies that the contract in question is insurance and the term “insurance” is consistently avoided in the documents. *See*, R. Vol. III. Even so, “all of the elements of an insurance contract are present.” *Rungee*, 92 Idaho at 721, 449 P.2d at 381. *See also*, *McCarty v. King County Medical Service Corporation*, 26 Wn.2d 660, 684, 175 P.2d 653, 666 (Washington 1946) (“No one can change the nature of insurance by declaring in the contract that it is not insurance.”).

For a thorough discussion of the Altrua contract and its elements, *please see* R. Vol. I, pp. 98-105.

When asked what about the Altrua contract makes it an indemnification under section 41-102, Idaho Code, Ms. Mundorff noted:

Because there's a specific application form, there are underwriting criteria and Guidelines, specific eligibility Guidelines, that would appear to me to be an application where there is a promise on behalf of Altrua HealthShare to promise to pay or indemnify someone for specific causes, for specific reasons; that once

someone qualifies to be covered under this product, a person can negotiate specific plan coverages, plan levels. There are optional benefits that are available that a person can elect. There are specific dollar limits included in annual limits, lifetime limits. There are exclusions. There is a requirement -- a request to use their preferred provider organization. All of these would combine to be a contract of indemnification to pay specific dollar amounts or benefits based on the covered expenses that are included under this contract.

Tr. pp. 20, LL. 21-25; 21, LL. 1-16. As the foregoing notes with regard to Altrua's eligibility requirements, underwriting standards, benefit levels, membership types, optional benefit level, dollar amounts, limitations, pre-notification, and negotiations with "preferred providers," Altrua is underwriting and determining the risk of paying the "needs" of its members. Here are a few of the elements of underwriting that Altrua uses in determining its risks:

- (1) The guidelines are the governing document for determining eligibility of the member participant's medical needs submitted to Altrua. R. Vol. II, p. 386.
- (2) The member participant promises to bring no legal claim, demand or suit of any kind for unpaid medical needs; the participant accepts and appoints Altrua as the final authority on the interpretation of the guidelines and the membership eligibility manual; and the participant also promises to hold Altrua and its trustees, officers, etc., harmless from any damages or expenses, including legal fees, arising from any breach of these promises, from any failure to follow the guidelines. R. Vol. II, p. 386.
- (3) The contributions are first applied to Altrua HealthShare and then to pay eligible needs pursuant to the guidelines as "modified from time to time by

Altrua HealthShare” as applied and interpreted by Altrua. R. Vol. II, p. 387.

- (4) Altrua declares it is not health insurance but represents itself as a faith based “membership of individuals who share in each other’s medical needs by bearing the burdens of others.” R. Vol. II, p. 286. *See, also*, Vol. II, pp. 386,408.
- (5) Altrua declares that contributions are placed in an escrow account from which members medical needs are shared according to the Altrua documents and “escrow instructions.” It also declares that “[t]o date, all eligible medical needs have been shared according to the membership guidelines and escrow instructions.” R. Vol. II, p. 287.
- (6) Altrua notes that its members report that the eligible medical needs shared by Altrua compare very favorably to their prior medical coverage. R. Vol. II, p. 292.
- (7) The Altrua contract makes up all the norms and character of an insurance contract. These include:
 - a. Medical history (and application)
R. Vol. III, pp. 383-387, 399-402, 411.
 - b. Application, Acceptance, and Effective Date.
R. Vol. III, pp. 383-387.
 - c. Lifetime limits, annual limits, membership responsibility amounts (MRAs) [deductibles], non-affiliated and affiliated providers, recreational and occupational limits, eligible and non-eligible needs [exclusions], pre-notification, case management, office visit MRAs, and appeal procedures,

membership categories according to states and levels of benefits, height and weight guidelines, Altrua's final authority to clarify rules of manual and assignment of appropriate codes, etc. *See, generally*, R. Vol. III, pp. 392-401, 402-403, 407-410.

As noted by Ms. Mundorff at hearing, the Altrua contract sets forth criteria to determine the element of risk, as these are "the type of risks that are determined in advance for any type of contingency of loss, injury, sickness that would combine to make this a contract of insurance." Tr. p. 22, LL. 19-22.

"Underwriting is the [] process by which insurance companies determine whether the risk assumed is worth the premium received." *Vincent v. Safeco Ins. Company of America*, 136 Idaho 107, 109, 29 P.3d 943, 945 (2001). Another instructive definition of the term "underwriting" is: the "process of examining, accepting, or rejecting insurance risks, and classifying those selected, in order to charge the proper premium for each. The purpose of underwriting is to spread the risk among a pool of insureds in a manner that is equitable for the insured and profitable for the insurer." *Dictionary of Insurance Terms*, 4th Edition, p. 537 (2000).

In addition to the above factors demonstrating underwriting, the Altrua contract states that "monthly contributions do not fluctuate from month to month. However, [] subject to review by the [Altrua HealthShare] Board of Trustees, adjustments may be made periodically, usually on an annual basis, to meet the needs of the membership." R. Vol. II, p. 292. These "monthly contributions" are pooled into one escrow account.

At hearing, Ms. Mundorff, an expert testifying on behalf of the Department, was asked by opposing counsel to interpret the Altrua contract phrase where it states that an

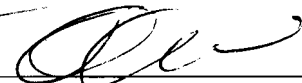
Altrua membership provides “an opportunity for someone to care for another and to present your medical needs to others.” Tr. p. 31, LL. 17-25. Ms. Mundorff responded, “I think it’s interesting phrasing, it is ‘an opportunity for someone to care for another and to present your medical needs to others.’ You’re not presenting them to other members, but to Altrua for payment of medical needs.” Tr. pp. 31, LL. 23-25; 32, LL. 1-4. Phrased differently, Altrua is pooling the funds for payment of medical needs in furtherance of its underwriting processes.

IV. CONCLUSION

In closing, despite its claims to the contrary, Altrua is engaged in underwriting and has assumed the risk of the medical needs submitted to it by its members. The Department’s Final Order should be affirmed.

RESPECTFULLY SUBMITTED this 2nd day of May 2011.

OFFICE OF ATTORNEY GENERAL

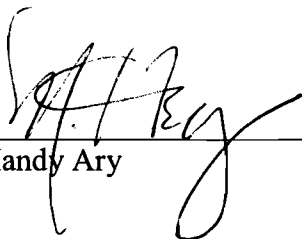
By 
John C. Keenan
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have, on this 2nd day of May 2011, caused a true and correct copy of the foregoing document to be served upon the following by the designated means:

Christ T. Troupis
Troupis Law Office
P.O. Box 2408
Eagle, ID 83616

- first class mail
- certified mail
- hand delivery
- via facsimile



Mandy Ary

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT MAY 26 2011

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS
CHRISTOPHER D. RICH, Clerk
By NICOL TYLER
DEPUTY

ALTRUA HEALTHSHARE, INC.,

Petitioner,

vs.

BILL DEAL, in his capacity as Director of
the Idaho Department of Insurance, and the
IDAHO DEPARTMENT OF
INSURANCE,

Respondents.

Case No. CVOC1101608

NOTICE OF
ORAL ARGUMENT

PLEASE TAKE NOTICE That the Honorable Kathryn A. Sticklen, District Judge, has set this matter for hearing for Oral Argument on the 14th day of June, 2011 at 11:00 a.m., at the Ada County Courthouse, 200 West Front Street, Boise, Id.

CHRISTOPHER D. RICH
Clerk of the Court
Ada County, Idaho

By: _____

Deputy

CERTIFICATE OF MAILING

I hereby certify that on this 26th day of May, 2011, I mailed (served) a true and correct copy of the within instrument to:

CHRIST T. TROUPIS ATTORNEY AT LAW PO BOX 2408 EAGLE, ID 83616	JOHN C. KEENAN IDAHO ATTORNEY GENERAL'S OFFICE PO BOX 83720 BOISE, ID 83720-0043
--	---

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____

Deputy Court Clerk

CC: Counsel/ nt
Notice of Hearing

ND

OCT 13 2011

CHRISTOPHER D. RICH, Clerk
By MARTHA LYKE
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC., a)
Texas Nonprofit Corporation,)

Petitioner,)

vs.)

BILL DEAL, in his capacity as Director)
of the Idaho Department of Insurance, and)
the IDAHO DEPARTMENT OF)
INSURANCE,)

Respondents.)
_____)

Case No. CV-OC-2011-01608

MEMORANDUM DECISION
AND ORDER

This is a petition seeking judicial review of a decision of the Idaho Department of Insurance (Department) prohibiting the petitioner Altrua HealthShare, Inc. (Altrua) from selling insurance in this state. For the reasons that follow, the decision will be affirmed.

FACTS AND PROCEDURAL HISTORY

The Idaho Department of Insurance filed a Verified Notice of Violation and Right to Hearing on January 15, 2010. It was served on Altrua and its attorney, John R. Patton, Esq., on the same day. Altrua failed to plead by answer or otherwise give notice of its intent to defend on a timely basis.

The Director of the Department entered a final order on March 10, 2010, that ordered Altrua to cease and desist the soliciting and effectuating of insurance contracts within the state of Idaho; to discontinue all membership of Idaho residents no later than June 1, 2010, and to immediately notify Altrua members of the impending discontinuation; to pay all legitimate claims or needs submitted by Altrua's Idaho members no later than August 31, 2010; and to pay an administrative penalty in the sum of \$15,000. (*Id.*, at 70-74).

Thereafter, a Petition for Reconsideration was filed, and an appearance entered, by an Idaho attorney, Christ Troupis, Esq., on March 31, 2010. (*Id.*, at 75-79). The Department responded to the Petition for Reconsideration on April 19, 2010. (*Id.*, at 80-86). On April 21, 2010, the Director of the Department entered an order withdrawing and rescinding the March 10, 2010, order and appointing a hearing officer. (*Id.*, at 83-86). After an initial hearing date was vacated, a new hearing date was scheduled for September 1, 2010. (*Id.*, at 87-94). The hearing was held before David V. Nielsen, Esq., Hearing Officer. After post-hearing briefing was completed by both parties (*id.*, at 95-146), the Hearing Officer issued his initial Findings of Fact, Conclusions of Law, and Preliminary Order on November 15, 2010. (*Id.*, at 147-73). Due to a clerical error, the Hearing Officer entered an Amended Preliminary Order on November 22, 2010. (*Id.*, at 174-77). The hearing officer made the following findings of fact, which are supported by substantial evidence (as noted by the parenthetical cites to the record):

1. Altrua is a business entity incorporated in Texas on October 27, 2005. (R.60).
2. Altrua is a non profit entity.
3. Altrua provides to members documentation including a Membership Application, Needs Processing form, Sample HealthShare ID card, Membership Guidelines, Escrow Instructions, Membership Eligibility Manual, Membership Comparisons Chart. Medical Review Questionnaires. (*See* R.17-22).

4. Altrua has members who reside in the State of Idaho. (R.55-58).
5. In marketing materials, Altrua describes itself as ‘(A) nationwide faith based membership of individuals who share in each other’s medical needs by bearing the burden of others.’ (R.38).
6. Altrua’s application for membership brochure further describes the entity ‘To those who may be unfamiliar with the concept of people caring for one another and voluntarily sharing their medical need, Altrua HealthShare is a medical-cost sharing membership that acts as a neutral escrow agent for its members. Our members submit monthly contributions into an escrow account with Altrua HealthShare acting as the escrow agent between members . . .’ (R.41).
7. Also stated in the marketing materials: ‘Altrua HealthShare is not insurance, does not collect premiums, make promises of payment, or guarantee that your medical needs will be shared by the membership. Sharing of eligible medical needs is completely voluntary among the membership. Member contributions are used to share in eligible medical needs as directed in the membership escrow instructions listed on the application.’ (R.39).
8. A potential member fills out a membership application, along with a medical history questionnaire, escrow instruction sheet along with a signature verification for an acknowledgement and a commitment agreement containing a statement of standards to be followed by the member. (*See* R.17-21).
9. Membership qualifications as indicated in the Altrua guidelines: ‘In order to become and remain a member of Altrua HealthShare, a person must meet the following criteria: (1) religious conviction and standards-the person must have a religious conviction of the importance of helping others and/or maintaining a healthy lifestyle as outlined in the statement of standards contained in the membership application; (2) Medical history-the person must meet the criteria to be qualified for a membership on his/her application date, based on the criteria set forth in the membership eligibility manual . . . (3) Application, acceptance and effective date-a person must submit a membership application, and be accepted into the membership by meeting the criteria of the members eligibility manual . . . To keep a membership active, member must submit an annual membership of \$100.00 and submit their monthly contribution of the amount specified by Altrua HealthShare . . .’ (R.45).
10. The monthly contribution amount has three levels of participation along with separate categories based upon particular State groupings. The monthly contribution amount varies between members, dependent in part upon age and marital status of the member. (R.35).
11. Separate designated levels of membership are available. Variations in the membership levels include distinctions on the payment of medical needs in both the percentage of reimbursement, out of pocket deductible expense imposed, as well as annual maximum limits on reimbursement. (R.31, 35-36, 39.).

12. Membership materials also include itemized eligibility rules and specific listings for automatic denials based on particular medical conditions and activities such as tobacco or alcohol use. Further eligibility requirements include conformity with height and weight guidelines. (R.28-30).

13. After an individual becomes a member, monthly contributions paid by that participant are held in 'escrow' by Altrua and these escrow funds are paid out by Altrua to members following the submission of a medical needs form. (R.46-47, 52-53).

14. Monthly contributions are designated as voluntary. (R.43).

15. Failure of an individual to submit monthly contributions in the amount specified by the program guidelines renders that individual's membership inactive and no funds would be paid to the member. 'Monthly contributions are requested to be received by the 1st of each month. If the monthly contribution is not received by the 15th of each month, an administrative fee will be assessed to track, receive, and post the monthly contribution. If the monthly contribution is not received by the end of the month, a membership will become inactive as of the last day of the preceding month in which a monthly contribution was received. R.43, 45-46.

16. The Membership materials contain a set of escrow instructions: 'Membership Escrow Instructions. I, the membership participant, direct Altrua HealthShare to hold in escrow, an escrow agent, all membership monthly contributions that are delivered to Altrua HealthShare and then to distribute all monthly contributions to the following escrow instructions and in the following order: (1) First, to pay the expenses of operating the membership, including all of Altrua's HealthShare's needs necessary to provide for the continued viability of their membership; (2) Then, to pay eligible needs pursuant to the guidelines as modified from time to time by Altrua HealthShare and as interprets and applied by Altrua HealthShare; (3) Then in the event the membership is to be terminated, and after Altrua HealthShare determines that the funds held in escrow are sufficient to pay for the items listed above, any remaining funds shall be dispersed to qualified charities as determined by Altrua HealthShare. (R.20).

17. The membership guidelines designate Altrua as the party responsible for interpreting the guidelines:

CONTRIBUTORS INSTRUCTION AND CONDITIONS - By submitting monthly contributions, the contributor instructs Altrua HealthShare to share escrowed funds in accordance with the membership escrow instructions. Since Altrua HealthShare has nothing to gain or lose financially by determining if a need is eligible or not, the contributor designates Altrua HealthShare as the final authority for the interpretation of these guidelines. By participation in the membership, the member accepts these conditions as enforceable and binding. (R.44).

18. The application materials contain the following:

COMMITMENTS

I have read and understand the guidelines and accept them as the governing document for determining eligibility of my, or anyone else's medical needs submitted to Altrua HealthShare. (R.19).

I further agree to hold Altrua HealthShare and its trustees, officers, employees, representatives and service providers harmless, and to limit any dispute I may have over the eligibility of my, or anyone else's medical needs to the appeal procedure described in the guidelines. (*Id.*).

So as not to take advantage of my fellow members, I have answered all questions in this application in good faith, truthfully, completely and accurately. (*Id.*).

In recognition of the voluntary nature of the membership, I hereby promise that in the event of a disagreement over the payment of my or anyone else's medical needs, my dependents and I will bring no legal claim, demand or suit of any kind for unpaid medical needs, but will follow the appeal and mandatory mediation procedures described in the guidelines. I and my dependents also accept and appoint Altrua Healthshare as the final authority on the interpretation of the guidelines and Membership Eligibility Manual and, agree to indemnify and hold harmless Altrua HealthShare and its trustees, officers, employees, representatives and service providers from any damages or expenses, including legal fees, arising from any breach of these promises, from any failure to follow the guidelines, or from any failure to provide accurate, complete and honest information to Altrua HealthShare. (*Id.*).

SIGNATURES – With my signature below, I hereby verify each of the following: (1) That I am aware of and understand each item under ACKNOWLEDGEMENTS on page 4 of this application. (2) That I live according to each item under the STATEMENT OF STANDARDS on page 4 of this application. (3) That I commit to each item under COMMITMENTS on page 4 of this application to Altrua HealthShare. (4) That I issue the ESCROW INSTRUCTIONS on page 5 of this application to Altrua HealthShare. (5) That I have provided a true and accurate medical history in this application as directed on the Medical History Questionnaire and Medical History Explanation pages. (6) I hereby authorize and permit true copies of facsimiles of this original application to be used in its place. (R.20).

19. Brochure materials also contain the following:

Each month, members of Altrua HealthShare voluntarily send their monthly contributions to be placed in an escrow account from which members' eligible medical needs are shared according to the membership guidelines and escrow instructions. Individual members remain financially responsible for their own medical needs in the event the membership is unable to share in their medical needs. (R.38).

The membership process[es] all medical needs according to the official membership guidelines. Not one eligible medical need has gone unpaid since the membership started. (*Id.*).

20. A number of disclaimers are found in the materials provided to members, these include but are not limited to:

I understand that the membership is not insurance but is a voluntary medical need sharing program, and that there are no representations, promises, or guarantees that my medical expense will be paid. I also understand that sharing for medical needs does not come from an insurance company, but from the membership according to the guidelines and membership escrow instructions. (R.19).

I understand that the guidelines are not a contract and do not constitute a promise or obligation to share, but instead are for Altrua's HealthShare's reference in following the membership escrow instructions. (*Id.*).

This publication or membership is not issued by an insurance company, nor is it offered through an insurance company. This publication or membership does not guarantee or promise that your eligible medical needs will be shared by the membership. This publication or the membership should never be considered as a substitute for an insurance policy. If the publication or the membership is unable to share all or part of your eligible medical needs, or whether or not this membership continues to operate, you will remain financially liable for any and all unpaid medical costs. This is not a legally binding agreement to reimburse you for medical needs you incur, but is an opportunity for you to care for another in a time of need, to present your medical needs to others as outlined in these membership guidelines. (R.41).

The guidelines are provided as an outline for eligible needs in which contributions are shared in accordance with the membership escrow instructions. They are not for the purpose of describing to potential contributors what amounts will be shared in their behalf and do not create a legally excusable right on the part of any contributor. (R.42).

Altrua Healthshare is not insurance, does not collect premiums, make promise of payment, or guarantee that your medical needs will be shared by the membership. Sharing of eligible medical needs is completely voluntary among the membership. Member contributions are used to share in eligible medical needs as directed in the Membership Escrow Instructions listed on the application. (R.39). Hearing Officers' Findings of Fact, Conclusions of Law and Preliminary Order, 3-9.

Altrua filed a Motion for Reconsideration and a Memorandum in Support on December 2, 2010. (*Id.*, at 178-84). The Department filed its response on December 6, 2010. (*Id.*, at 185-87).

On December 22, 2010, an Order Denying Request for Reconsideration was entered. (*Id.*, at 188-95). The Hearing Officer's Preliminary Order (*id.*, at 147) became a final order by operation of law on January 4, 2011.

Altrua filed a Notice of Appeal and Petition for Judicial Review on January 24, 2011. Respondent's Brief, at 1-2.

STANDARD OF REVIEW

A. Generally

The procedures concerning judicial review of Idaho state agency determinations are set forth in the Idaho Administrative Procedure Act, as noted hereinafter:

- (1) Judicial review of agency action shall be governed by the provisions of this chapter unless other provision of law is applicable to the particular matter.
- (2) A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.
- (3) A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter if the person complies with the requirements of sections 67-5271 through 67-5279. I. C. § 67-5270.

In reviewing an agency's decision, an appellate court may not "substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Idaho Code § 67-5279(1).

Instead, the court must defer “to the agency's findings of fact unless they are clearly erroneous.”

Price v. Payette County Board of County Commissioners, 131 Idaho 426, 429, 958 P.2d 583, 586 (1998); *Bennett v. State*, 147 Idaho 141, 142, 206 P.3d 505, 506 (Ct. App. 2009).

Agency action must be affirmed on appeal unless the court determines that the agency's findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3); *Bennett*, 147 Idaho at 142, 206 P.3d at 506. The party attacking the agency’s decision bears the burden of demonstrating that the agency erred in a manner specified in section 67-5279(3) and that a substantial right has been prejudiced. *Price*, 131 Idaho at 429, 958 P.2d at 586; *Bennett*, 147 Idaho at 142, 206 P.3d at 506.

B. Applicable Insurance Statutes

“When interpreting a statute, this Court must strive to give force and effect to the legislature’s intent in passing the statute. ‘It must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction.’ However, if the result is palpably absurd’ this Court must engage in statutory construction. When engaging in statutory construction, this Court has a ‘duty to ascertain the legislative intent, and give effect to that intent. ‘The Court must construe a statute as a whole, and consider all sections of applicable statutes together to determine the intent of the legislature. The Court must also take account of all other matters such as the reasonableness of the proposed interpretations and the policy behind the statute.’” *Wheeler v. Idaho Department of Health and Welfare*, 147 Idaho 257, 263, 207 P.3d 988, 994 (2009) (citations omitted).

“‘Insurance’ is a contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies.” I.C. § 41-102.

“Insurer’ includes every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuity.” I.C. § 41-103.

“Transacting Insurance’ includes any of the following: (1) Solicitation and inducement. (2) Preliminary negotiations. (3) Effectuation of a contract of insurance. (4) Transaction of matters subsequent to effectuation of a contract of insurance and arising out of it. (5) Mailing or otherwise delivering any written solicitation to any person in this state by an insurer for fee or compensation.” I.C. § 41-112.

I.C. § 41-305 provides that “[n]o person shall act as an insurer and no insurer or its agents, attorneys, subscribers, or representatives shall directly or indirectly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the director, except as to such transactions as are expressly otherwise provided for in this code.”

The clear intent of the Idaho legislature, reviewing these applicable statutes, is to prohibit the sale of insurance products in this state, absent the approval and supervision of the Idaho Department of Insurance.

ANALYSIS

“Altrua has filed this Petition for Judicial Review because the agency decision was in error on the facts and the law. Altrua does not operate as a health insurer because it does not assume any risk for payment of member claims, which the U.S. Supreme Court has held is an essential element of the contract of insurance.” Brief in Support of Petition for Judicial Review, at 2. In short, Altrua asserts that the Department’s decision is erroneous because the Altrua agreement is not an insurance contract.

The hearing officer heard and considered Altrua’s contentions that it was not engaged in the sale of insurance in Idaho. The hearing officer noted that Altrua asserted that it “does not provide a

contract of insurance or indemnity. Altrua further asserted that [neither] does it contract to pay benefits to members or make specific promise that a member's medical expenses will be reimbursed noting disclaimer language in the issued program brochure materials and membership instructions." Hearing Officer's Findings of Fact, Conclusions of Law and Preliminary Order, at 2. The hearing officer rejected Altrua's assertions.

Altrua disagrees with this conclusion arguing the following: (1) contracts must be interpreted according to the plain meaning of their words and the Altrua agreement, by its express terms, is not an insurance contract; (2) to constitute an insurance contract, the insurer must assume an element of risk and the Altrua Agreement is not insurance because Altrua assumes no risk of paying a member's expenses; (3) administering the funds of its members to save money does not create an insurance contract; (4) Altrua's use and administration of an escrow account does not "transmute" its plan into an insurance contract; (5) the Altrua Plan is not an illusory contract that is against public policy; and (6) Altrua should be entitled to rely on the safe harbor resulting from the department's determination that the ZionShare program did not constitute insurance.

The Altrua agreement does contain a number of references disclaiming that it is a contract of insurance. However, this is not necessarily dispositive as to whether it is considered a contract of insurance pursuant to Idaho law. *See Messerli v. Monarch Memory Garden, Inc.*, 88 Idaho 88, 103, 397 P.2d 34, 43 (1964) ("[I]t is the plan as a whole, not artificially disjointed and segregated single phases of it, with which we are concerned . . ."). *See also Tokuhisa v. Cutter Management Co.*, 122 Hawai'i 181, 190, 223 P.3d 246, 255 (Ct. App. 2009) ("[A] court should not consider the terminology used in the contract, but only the nature of the contract actually entered into in determining whether it is a contract for insurance."); *Selander v. Erie Insurance Group*, 85 Ohio St.3d 541, 546, 709 N.E.2d

1161, 1164-65 (1999) (“[T]he type of policy is determined by the type of coverage provided, not by the label affixed by the insurer.”).

Whether or not the Altrua agreement is an insurance contract depends upon whether it meets the criteria set forth in the applicable Idaho statutes and other relevant law for an insurance agreement.¹

“The primary elements of an insurance contract are the spreading and underwriting of a policyholder’s risk. ‘It is characteristic of insurance that a number of risks are accepted, some of which involve losses, and that such losses are spread over all the risks so as to enable the insurer to accept each risk at a slight fraction of the possible liability upon it. Insurance is an arrangement for transferring and distributing risk . . . The significance of underwriting or spreading of risk [is] an indispensable characteristic of insurance . . .’ *Group Life & Health Insurance Co. v. Royal Drug Co.*, 440 U.S. 205, 211, 99 S.Ct. 1067, 1073, 59 L.Ed.2d 261 (1979) (citations omitted). *See Selkirk Seed Co. v. State Insurance Fund*, 135 Idaho 434, 438, 18 P.3d 956, 960 (2000) (Contract is an insurance policy if it provides coverage for real and determinable risks); *Rungee v. Allied Van Lines, Inc.*, 92 Idaho 718, 721, 449 P.2d 378, 381 (1968) (“Insurance has been defined as a contract by which one party, for a consideration promises to make a certain payment of money upon the destruction or injury of something in which the other party has an interest.”).²

¹Subjecting potential insurance contracts to review by a state insurance department, for consumer protection purposes, does not violate the constitutional prohibitions on the impairment of contracts. *See Messerli*, 88 Idaho at 99-100, 397 P.2d at 41 (“While rights of contract are favored and protected there is no principle of absolute freedom of contract. It is a qualified right and the State may, in its legitimate exercise of the police power, pass laws which limit or affect the right of contract so long as those regulations are reasonably necessary to secure the health, safety, morals or general welfare of the community.”).

²*See also Metropolitan Life Insurance Co. v. State Board of Equalization*, 32 Cal.3d 649, 654, 652 P.2d 426, 428, 186 Cal. Rptr. 578, 580 (1982) (“[I]nsurance necessarily involves two elements: (1) a risk of loss to which one party is subject and a shifting of that risk to another party; and (2) distribution of risk among similarly situated persons.”); *Huff v. St. Joseph’s Mercy Hospital of Dubuque Corp.*, 261 N.W.2d 695, 700 (Iowa 1978) (“[T]he term ‘insurance,’ or ‘insurance policy,’ denotes a contract by which one party, for a compensation called the ‘premium,’ assumes particular risks of the other party and promises to pay him or his nominee a certain ascertainable sum of money on a specified contingency . . . All insurance contracts involve risk transference, but not all contracts concerning risk transference are insurance.”); *McAnarney v. Newark*

However, “[t]hat an incidental element of risk distribution or assumption may be present should not outweigh all other factors. If attention is focused only on that feature, the line between insurance or indemnity and other types of legal arrangement and economic function becomes faint, if not extinct. This is especially true when the contract is for the sale of goods or services on contingency. But obviously it was not the purpose of the insurance statutes to regulate all arrangements for assumption or distribution of risk. That view would cause them to engulf practically all contracts, particularly conditional sales and contingent service agreements. The fallacy is in looking only at the risk elements, to the exclusion of all others present or their subordination to it. The question turns, not on whether risk is involved or assumed, but on whether that or something else to which it is related in the particular plan is its principal object and purpose . . . *Whether there are sufficient elements in a contract such as risk . . . to render the entire contract one of insurance depends on the facts of a particular case.*” *Messerli*, 88 Idaho at 103-05, 397 P.2d at 43-45 (emphasis added).

The Altrua HealthShare agreement clearly involves an element of underwriting and spreading of risk. As the hearing officer noted, the prospective Altrua HealthShare member must undergo a medical underwriting procedure: “Medical history-the person must meet the criteria to be qualified for membership on his/her application date, based on the criteria set forth in the membership eligibility manual . . .” *See* R.45. The membership materials also provide for automatic denials for tobacco and alcohol use and other medical conditions. *See* R. 28-30.

Altrua offers what it characterizes as different designated levels of membership. Membership levels differ based upon the percentage of reimbursement, the out of pocket deductible expense

Fire Insurance Co., 247 N.Y. 176, 184, 159 N.E. 902, 904 (Ct. App. 1928) (“Indemnity is the basis and foundation of all insurance law.”); *Hillegass v. Landwehr*, 176 Wis.2d 76, 81, 499 N.W.2d 652, 654 (1993) (“Whether the contract is one of indemnity or liability, the critical element in both definitions is a contractual shifting of risk in exchange of premiums.”).

involved, and the annual maximum reimbursement limits. This is very similar to a traditional health insurance scheme. *See* R.31, 35-36, 39.³

Altrua's "neutral escrow account"⁴ and "cost-savings" arguments appear to simply be an effort by it to characterize its plan in an effort to avoid it being classified as insurance and, presumably, to avoid having its plan come under the purview of the Idaho Department of Insurance and, presumably, the insurance departments of other states, for consumer protection purposes.

While Altrua is careful to state that this is a completely voluntary sharing of eligible medical needs, as noted by the hearing officer, "[f]ailure of an individual to submit monthly contributions in the amount specified by the program guidelines renders that individual's membership inactive and no funds would be paid to the member." *See* R.43, 45-46. However, this is precisely what occurs when an insured stops paying his insurance premium: he no longer has insurance coverage.

While the Altrua agreement states that it "does not guarantee or promise that your eligible medical needs will be shared by the membership," (*see* R.39, 41), it further states that "[n]ot one eligible medical need has gone unpaid since the membership started," (R.38) thereby implying such a guarantee. There is also an appeals process for "denied needs," just as there typically is in a traditional health insurance plan. *See* R.50-51.

Altrua receives claims for medical payments from its members and it pays those claims, when they are eligible claims. *See, i.e.*, September 1, 2010 Transcript of Proceedings, at 67 ("[Y]ou interpret the Guidelines on behalf of Altrua HealthShare to determine whether a claim is in or out of the Guidelines; is that right? That's correct. And the members aren't making that decision – they

³*See also* September 1, 2010 Transcript of Proceedings, at 19 ("There are application forms that a person would use in order to sign up for this coverage; there is health underwriting; there's specific plan provisions; a variety of plans; there are limitations and exclusions as to what will and will not be covered.").

⁴"The financial assistance you may receive will come from other members' monthly contributions that are placed in an escrow account, not from Altrua HealthShare." R.41 ("Disclaimer").

decided on the Guidelines, but you are making the decision, ‘Does it fall within or outside on a specific claim? That is correct.’). *See also* R.38 (“Each month, members of Altrua HealthShare voluntarily send their monthly contributions to be placed in an escrow account from which members’ eligible medical needs are shared according the membership guidelines and escrow instructions.”); R.44 (“[T]he contributor designates Altrua HealthShare as the final authority for the interpretation of these guidelines.”); R.46-48 (guidelines listing of 46 separate types of medical “needs” which are “not eligible for sharing” [in other words, payment]).

Altrua asserts that it has no legal obligation to pay these claims, but this a questionable proposition, notwithstanding the presence of the disclaimer language, given that its members are obviously paying what are in essence premiums with an expectation that they will be paid for covered medical expenses.

In sum, a review of the Altrua HealthShare plan reveals that it is essentially a health insurance contract or plan. It is set up nearly identically to a traditional health insurance plan, with premium payments, underwriting, policy limitations and exclusions, and payments to participants for covered services, along with an appeals process for members to pursue who believe that their payments requests have been improperly denied.

This determination is supported by the decision of the Kentucky Supreme Court in *Commonwealth v. Reinhold*, 325 S.W3d 272 (2010). In that case, the court reviewed “Medi-Share,” which, like Altrua HealthShare, is a religion-based program which referred to itself “as ‘a ‘sharing ministry’ because people voluntarily join the program . . . to help pay the medical bills of other members. In return, the people who join Medi-Share are eligible to receive donations from other members to help pay for their own medical expenses. Since Medi-Share does not consider itself insurance, it is not licensed to sell insurance in the Commonwealth, and it avoids other regulatory

requirements and oversight to which conventional insurance companies are subject.” 325 S.W.3d at 273.

The Medi-Share program is very similar to the Altrua Healthshare program, as detailed in *Reinhold*. The court found that “the Medi-Share program fits comfortably within the statutory definition of an insurance contract.” *Id.*, at 276.⁵ The court noted that “a company may be found to be engaged in an insurance business even though it expressly disclaims any intention to sell insurance.” *Id.*, at 277. The court found particularly dispositive the Medi-Share component, which is also present in the HealthShare program, that “[i]n return for paying their monthly ‘share,’ Medi-Share members remain eligible to receive payment for their medical needs through the program. This process clearly shifts the risk of payment for medical expenses from the individual member to the pool of sub-accounts from which his expenses will be paid. Thus, regardless of how Medi-Share defines itself or what disclaimers it includes in its literature, in the final analysis, there is a shifting of risk. Moreover, as Medi-Share’s advertising materials tout, all members’ medical needs have thus far been satisfied through the program . . . While we do not doubt the claim that Medi-Share members are altruistically inspired, neither do we doubt that they pay ‘shares’ with the expectation of a financial return based on Medi-Share’s history of claims payments in the form of the payment of their own medical bills.” *Id.*, at 277-78.

In the Court’s view, this is not an illusory insurance policy.⁶ Instead, it is an insurance contract that pays out specific benefits for specific conditions, despite the disclaimer language, which

⁵Defined in the Kentucky statute as “a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils called ‘risks,’ or to pay or grant a specified amount or determinable benefit or annuity in connection with ascertainable risk contingencies, or to act as surety.” *Id.*

⁶If an insurance policy “is truly illusory, the contract is void for lack of consideration without a resort to public policy.” *Vincent v. Safeco Insurance Co.*, 136 Idaho 107, 112, 29 P.3d 943, 948 (2001). “[W]hen . . . it appears that if any actual coverage exists it is extremely minimal and affords no realistic protection to any group or class of injured persons,” the policy is illusory. *Id.*

appears primarily intended to prevent the Altrua HealthShare plan from being considered insurance. However, the Court agrees with the Department that it could be considered an illusory policy if, as Altrua argues, it were allowed to sell this health insurance product within the state, without being legally bound to pay the medical benefits for which its members are clearly paying premiums.

As for the Department's prior consideration of the Zion Share plan, which Altrua contends is not substantively different from its plan and which was not considered by the Department to be an insurance contract, this is essentially a quasi-estoppel argument. Altrua has failed to show that this doctrine is applicable here. *See Weitz v. Green*, 148 Idaho 851, 861, 230 P.3d 743, 753 (2010) ("In order to obtain equitable estoppel, a party must show: (1) a false representation or concealment of a material fact made with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not and could not have discovered the truth; (3) an intent that the misrepresentation or concealment be relied upon; and (4) that the party asserting estoppel relied on the misrepresentation or concealment to his or her prejudice. Quasi-estoppel differs from equitable estoppel, in that the first and fourth requirements of equitable estoppel are not required. 'The doctrine of quasi-estoppel applies when it would be unconscionable to allow a party to assert a right which is inconsistent with a prior position.'"); *Floyd v. Board of Commissioners of Bonneville County*, 137 Idaho 718, 52 P.3d 863, 872 (2002) ("Nor may the defense of estoppel be applied against the state in matters affecting its governmental or sovereign functions."). *See also Jordan v. DMG America*, 2010 WL 3946067, *2 (W.D. N.C.) ("Quasi-estoppel requires a mutuality of parties . . .").

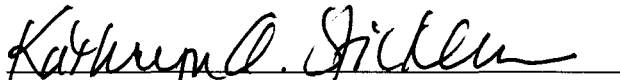
Bearing in mind that "[w]hether there are sufficient elements in a contract such as risk . . . to render the entire contract one of insurance depends on the facts of a particular case" (*Messerli*, 88 Idaho at 103-05, 397 P.2d at 43-45), the conclusion that Zion Share was not an insurance product was noted in a letter (*see* R.341). The review process for Zion Share (*see* R.334-66) does not appear to

have been nearly as complete as it was in this case, where the decision was rendered after the development of a record of several hundred pages and after a hearing was held in the matter, where testimony was given.

CONCLUSION

In sum, in view of the foregoing, the court finds that Altrua's petition for review of the Idaho Department of Insurance's decision that the Altrua HealthShare plan is an insurance contract was not done in violation of constitutional or statutory provisions, was not done in excess of the statutory authority of the agency, was not made upon unlawful procedure, is supported by substantial evidence on the record as a whole, and was not arbitrary, capricious, or an abuse of discretion. The Department's decision, therefore, is hereby affirmed.

SO ORDERED AND DATED THIS 13th day of October 2011.


Kathryn A. Sicklen
Senior District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the MEMORANDUM DECISION AND ORDER as notice pursuant to Rule 77(d) I.R.C.P. to each of the parties of record in this cause in envelopes addressed as follows:

CHRIST T. TROUPIS
ATTORNEY AT LAW
1299 E. IRONEAGLE, SUITE 130
PO BOX 2408
EAGLE, ID 83616

JOHN C. KEENAN
DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF INSURANCE
700 WEST STATE ST., 3D FLOOR
PO BOX 83720
BOISE, ID 83720-0043

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

Date:

Oct. 13, 2011

By Martha Lyke
Deputy Clerk

NOV 17 2011

CHRISTOPHER D. RICH, Clerk
By LARAAMES
DEPUTY

Christ T. Troupis, ISB # 4549
TROUPIS LAW OFFICE
1299 E. Iron Eagle, Ste 130
PO Box 2408
Eagle, Idaho 83616
Telephone: 208/ 938-5584
Facsimile: 208/ 938-5482
Email: ctroupis@troupislaw.com

Attorney for Petitioner ALTRUA HEALTHSHARE, INC.

DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,)
A Texas Nonprofit Corporation,)
)
 Petitioner,)
vs.)
)
BILL DEAL, in his capacity as Director)
Of the Idaho Department of Insurance, and)
THE IDAHO DEPARTMENT OF)
INSURANCE,)
)
 Respondents.)

CASE NO. CV OC 1101608
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENTS, BILL DEAL, in his capacity as Director of the Idaho Department of Insurance, and THE IDAHO DEPARTMENT OF INSURANCE, and their attorney of record:

1. The above-named Appellant, ALTRUA HEALTHSHARE, INC., a Texas Nonprofit Corporation, hereby appeals against the above named Respondents to the Idaho Supreme Court from the Memorandum Decision and Order entered in the above-entitled action on or about the 13th day of October, 2011, The Honorable Kathryn A. Sticklen, District Judge Presiding.

BT

2. That the parties have the right to appeal to the Idaho Supreme Court, and the final judgment described in paragraph 1 is an appealable order under and pursuant to Rule 11(a)(1),I.A.R.
3. A preliminary statement of the issues on appeal, which the Appellant intends to assert, are as follows:
 - (a) Whether the District Court based its factual findings upon substantial and competent evidence, and whether that evidence supported the District Court's conclusions of law and judgment;
 - (b) Whether the findings, inferences, conclusions or decisions issued by the Department of Insurance and affirmed by the District Court are in violation of the Idaho law;
 - (c) Whether the findings, inferences, conclusions or decisions issued by the Department of Insurance and affirmed by the District Court are in excess of the statutory authority of the agency;
 - (d) Whether the findings, inferences, conclusions or decisions issued by the Department of Insurance and affirmed by the District Court are arbitrary, capricious, or an abuse of discretion.
 - (e) Appellant may assert other issues in addition to the foregoing.
4. Appellant requests the preparation of a Standard Reporter's Transcript in compressed format, with no more than four (4) pages of original transcript compressed on a single page of the following hearings held in this case:
 - a. Motion for stay hearing held on 5/24/2011
 - b. Oral argument on briefing held on 6/14/2011.

5. Appellants requests and designate the following documents to be included in the Clerk's Record on Appeal.
 - (a) The Standard Clerk's Record of the proceedings,
6. I certify:
 - (a) That a copy of this notice of appeal and any request for additional transcript have been served on the reporter.
 - (b) That the District Court reporters will be paid an initial installment of \$200.00 each for preparation of the reporters' transcripts pending a final determination of the total cost;
 - (c) That the initial estimated fee of \$100.00 for preparation of the Clerk's record has been paid;
 - (d) That the Appellants' filing fee has been paid;
 - (e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 16th day of November, 2011.

By 
Christ T. Troupis
Attorney for Appellant
Altrua Healthshare, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of November, 2011, I caused a true and correct copy of the foregoing NOTICE OF APPEAL BY ALTRUA HEALTHSHARE, INC., to be served upon the following person(s) in the following manner:

- U.S. Mail, Postage Prepaid
- Express Mail
- Hand Delivery
- Facsimile Transmission
- Federal Express

John Keenan
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, ID 83720

Nicole Olmsberg
Ada County Courthouse
Transcript Department
200 W. Front Street
Boise, Idaho 83702

Sue Wolf
Ada County Courthouse
Transcript Department
200 W. Front Street
Boise, Idaho 83702

By 

Christ T. Troupis
Attorney for Appellant
Altrua Healthshare, Inc.

RECEIVED

DEC 13 2011

Ada County Clerk
LANCE G. WASDEN
Attorney General

JOHN C. KEENAN
Deputy Attorney General
Idaho Department of Insurance
700 W. State Street
P.O. Box 83720
Boise, Idaho 83720-0043
Telephone: (208) 334-4283
Facsimile: (208) 334-4298
I.S.B. No. 3873

Attorneys for Department of Insurance

NO. _____
AM _____ FILED P.M. 1:52

DEC 19 2011

CHRISTOPHER O. RICH, Clerk
By MARTHA LYNE
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ALTRUA HEALTHSHARE, INC.,
a Texas Nonprofit Corporation,

Petitioner,

vs.

BILL DEAL, in his capacity as Director of the
Idaho Department of Insurance, and THE
IDAHO DEPARTMENT OF INSURANCE,

Respondents.

Case No. CVOC1101608

JUDGMENT

The Court having entered a Memorandum Decision and Order in the above-entitled matter making certain findings and conclusions, and in consideration of the premises;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Idaho Department of Insurance's decision relating to Altrua HealthShare, Inc., in the above-entitled matter is hereby AFFIRMED; ~~and~~

SMH

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment in this above-entitled matter should be ~~certified as final under I.R.C.P. Rule 54(b).~~ *(not needed) (ICAS).*

IT IS SO ORDERED AND DATED THIS 15th day of December, 2011.

Kathryn A. Sticklen
Kathryn A. Sticklen
Senior District Judge

~~RULE 54(b) CERTIFICATE~~

~~With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the Court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.~~

~~Dated this _____ day of December, 2011.~~

Kathryn A. Sticklen
Senior District Judge

CERTIFICATE OF MAILING

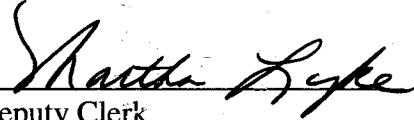
I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the JUDGMENT, as notice pursuant to Rule 77(d) I.R.C.P. to each of the parties of record in this cause in envelopes addressed as follows:

CHRIST T. TROUPIS
ATTORNEY AT LAW
1299 E. IRONEAGLE, SUITE 130
PO BOX 2408
EAGLE, ID 83616

JOHN C. KEENAN
DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF INSURANCE
700 WEST STATE ST., 3D FLOOR
PO BOX 83720
BOISE, ID 83720-0043

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

Date: 12/19/11

By 
Deputy Clerk

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TO: CLERK OF THE COURT, IDAHO SUPREME COURT
451 WEST STATE STREET, BOISE, IDAHO
FAX (208) 334-2616

FEB 23 2012

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY


ALTRUA HEALTHSHARE, INC.,)	DOCKET NO. 39388-2011
)	
Petitioner-Appellant,)	Case No. CVOC-2011-0001608
)	
vs.)	NOTICE OF LODGING
)	
BILL DEAL, et al,)	
)	
Respondents.)	
)	

NOTICE OF TRANSCRIPT(S) LODGED

Notice is hereby given that on January 17, 2012,
I lodged one (1) transcript(s), totalling 30 pages, for
the following dates/proceedings:

06-14-11 Motion Hearing

for the above-referenced appeal with the District Court
Clerk for Ada County, in the Fourth Judicial District.



Susan M. Wolf,
RPR, CSR No. 728

1 TO: CLERK OF THE COURT
2 IDAHO SUPREME COURT
3 451 WEST STATE STREET
4 BOISE, IDAHO 83702

NO. _____
A.M. 8:00 FILED P.M. _____

FEB 23 2012

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

6 ALTRUA HEALTHSHARE, INC.,)

7 Plaintiff-Respondent,)

8 v.)

9 BILL DEAL,)

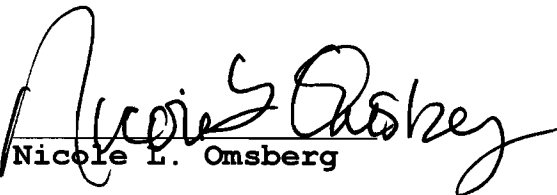
10 Defendant-Appellant.)

) Supreme Court
) No. 39388

) Case No. CVOC 1101608

11 _____
12 **NOTICE OF TRANSCRIPT FILED**

13 Notice is hereby given that on February 7th, 2012, I
14 filed a transcript of 26 pages in length for the
15 above-referenced appeal with the District Court
16 Clerk of the County of Ada in the Fourth Judicial
17 District.
18

19 
20 Nicole L. Omsberg

21 2-7-12
22 Date

23 HEARINGS: 5/24/11.
24 PDF SENT 2/6/12.
25

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,

Petitioner-Appellant,

vs.

BILL DEAL, in his capacity as Director of
the Idaho Department of Insurance, and the
IDAHO DEPARTMENT OF INSURANCE,

Respondents.

Supreme Court Case No. 39388

CERTIFICATE OF EXHIBITS

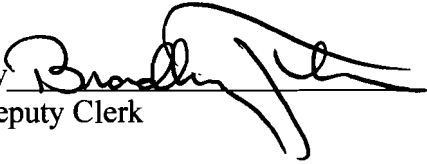
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Agency's Record On Petition For Judicial Review, Volume 1, received February 25, 2011.
2. Agency's Record On Petition For Judicial Review, Volume 2, received February 25, 2011.
3. Agency's Record On Petition For Judicial Review, Volume 3, received February 25, 2011.
4. Transcript of Proceedings Held September 1, 2010, Boise, Idaho, received February 25, 2011.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 23rd day of February, 2012.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE OF EXHIBITS

000119

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,

Petitioner-Appellant,

vs.

BILL DEAL, in his capacity as Director of
the Idaho Department of Insurance, and the
IDAHO DEPARTMENT OF INSURANCE,

Respondents.

Supreme Court Case No. 39388

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

CHRIST T. TROUPIS

ATTORNEY FOR APPELLANT

EAGLE, IDAHO


JOHN C. KEENAN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

CHRISTOPHER D. RICH
Clerk of the District Court

Date of Service: FEB 23 2012

By 
Deputy Clerk

CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ALTRUA HEALTHSHARE, INC.,

Petitioner-Appellant,

vs.

BILL DEAL, in his capacity as Director of
the Idaho Department of Insurance, and the
IDAHO DEPARTMENT OF INSURANCE,

Respondents.


Supreme Court Case No. 39388

CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 17th day of November, 2011.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE TO RECORD

000121