

and that such amendments also be deemed applicable to the demands for hearing of Counts 1, 3, and 4 appearing in Paragraph 9, page 5 of the Prefatory:

"5-D. PERSONS AGGRIEVED BY THE ALLEGED FAILURES TO ACT UNDER PROVISIONS OF THE CODE: Applicant and his spouse Mary T. Driscoll are *persons aggrieved* by the following listed failures of duty of the commissioner (OIC) to timely act as required under and by provisions of the insurance code and regulations, which failures resulted in the 41% increase being *deemed approved* by operation of law and subsequently implemented as to the LTC.04(WA) policy forms, including those issued to applicant and spouse:

- (1) Failure of duty imposed by the insurance code and regulations to fully review the unfounded premium rate increase request for compliance with all applicable laws and regulations within the time limits allotted for such review, as alleged in Part G and H, paragraphs 1.32 to 1.67 of Count 1 of the application, and re-alleged in Counts 3 and 4;
- (2) Failure of duty imposed by the insurance code to timely notify MetLife and/or T-C Life of OIC's need for extension of time for review, as needed and as more fully alleged in paragraphs 1.58 to 1.60 inclusive and 1.63 to 1.66 inclusive of Count 1 of the application and re-alleged in Counts 3 and 4;
- (3) Failure of duty imposed by the insurance code to disapprove such unfounded request before expiration of time allotted by statute(s) for such disapproval, as specified and alleged in paragraphs 1.61, 1.62, 1.64, and 1.65 of Count 1 of the application and as re-alleged in Counts 3 and 4, thereby causing the increase request to be deemed approved by operation of law as alleged in paragraph 1.64 thereof.

Each such alleged failure to act is deemed an act under the insurance code within the meaning of RCW 48.04.010(2) and WAC 284-02-070(1)(b) in that each such alleged failure is a failure of duty that arises under and is imposed by and under the insurance code and/or regulations promulgated thereunder:

"5-E. GROUNDS TO BE RELIED UPON AS A BASIS FOR RELIEF TO BE DEMANDED AT THE HEARING: Such alleged failures to act, together with the alleged violation of constitutional due process, alleged un-constitutional delegation of legislative power, and other matter alleged in Count 1, 3 and 4, respectively, provide the basis for the relief to be demanded at the hearing as to each of those counts."

MEMORANDUM IN SUPPORT OF MOTION

These amendments are needed not only to assert the additional grounds for demanding hearing that appear in RCW 48,04.010(1)(b) and WAC 284-02-070(1)(b)

but also to effect compliance with the procedural requirements imposed by that statute and regulation that appear to be applicable to the existing demands for hearing. Applicant recognized the procedural deficiency and need for amendment only within the past week, has since hastened to put this motion in proper form, and does not believe approval of this motion will work a special hardship on any one at this stage.

RCW 34.05.413(4) requires the agency to hold an adjudicative proceeding as to Count 1 which is based on constitutional grounds and as to Counts 3 and 4 which are based on statutory grounds alleged in the application and requires *"the agency to conduct appropriate adjudicative proceedings, whether or not the applicant expressly requests those proceedings"*, thereby inferring that a motion to cure deficiencies in the form and content of the demand for hearing should be granted readily. Applicant is providing a copy of this motion to OIC's counsel Mandy Weeks and will seek her consent to the motion.

Dated October 23, 2014

s/ 
Leo J. Driscoll, Applicant
4511 E. North Glenngrae Ln.
Spokane, WA 99223
(509) 747 7468

Declaration of Mailing

I declare under penalty of perjury under the laws of State of Washington that on the date listed below, I mailed a copy of this document via 1st class mail, United States Postal Service, postage prepaid, to Mandy Weeks, Insurance Enforcement Section, Legal Affairs Division, Office of the Insurance Commissioner, P. O. Box 40255, Olympia, WA 98504-0255. Signed and dated by me in Spokane County, WA October 23, 2014.

s/ 
Leo J. Driscoll