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STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of
LEO J. DRISCOLL and MARY T. DRISCOLL,
Application for Hearing.

Docket No. 14-0187
OIC STAFF'S REPLY IN
MOTION FOR SUMMARY
JUDGMENT

I. MOTION AND RELIEF REQUESTED

Office of the Insurance Commissioner's ("OIC") staff submits this Reply to Petitioners' Response to OIC Staff's Motion for Summary Judgment (Petitioners' Response) and requests entry of an order dismissing Petitioners' Demand for Hearing as a matter of law.

II. BACKGROUND

On June 10, 2011, MetLife submitted a rate and form filing to the Office of the Insurance Commissioner that increased the premium rates for a long-term care insurance product line based upon the anticipated loss ratio. OIC actuarial staff specializing in long-term care insurance determined that MetLife submitted all required information to support the filing. These actuarial staff members reviewed the request and supporting materials. Disposition issued approving the rate and form filing on August 17, 2011. On December 9, 2011, Petitioners received notice from MetLife that the 2011 filing had been approved. This notice explained how the filing approval would impact Petitioners and the options available to Petitioners, including how to dispute the filing with the insurer.

1 Petitioners then waited almost three years, and on September 19, 2014, they filed
2 a Demand for Hearing with the Office of the Insurance Commissioner disputing the
3 2011 MetLife rate and form filing approval. Petitioners did not dispute the filing
4 pursuant to RCW 48.19.310, nor did Petitioners attempt to Demand a Hearing disputing
5 the Office of the Insurance Commissioner's Disposition order approving the MetLife
6 filing pursuant to RCW 48.04.010. Petitioners did not even file a demand for hearing
7 within the two-year-maximum catch-all statute of limitation in RCW 4.16.160 which
8 operates to create a barrier to any claim when the legislature or an agency fails to create
9 statutes of limitations. Therefore, the Office of the Insurance Commissioner has no
10 jurisdiction to conduct a hearing in this matter because statutory limitations bar
11 Petitioners from filing this untimely Demand for Hearing.

11 **III. ARGUMENT AND AUTHORITY**

12 Petitioners' Demand for Hearing is untimely under all statutory deadlines and
13 it must be dismissed as a matter of law. Petitioners' response to this failure to timely
14 demand a hearing is that the MetLife filing package was not approved within 30 days,
15 therefore the filing was deemed approved despite all evidence to the contrary.
16 Petitioners then argue that deeming a filing approved is equivalent to agency inaction
17 and then argue that the timeframe to challenge agency inaction is unlimited.

18 However, Petitioners' arguments have numerous flaws and Petitioners do not
19 cite any relevant Washington case law to support these claims. Furthermore,
20 Petitioners' confuse the issues and attempt to bolster their arguments by submitting
21 declarations that are not based upon personal knowledge but are purely speculation
22 and argument regarding MetLife filing approval. As a result, these declarations are
23 inadmissible. Petitioners' Demand for Hearing was filed over three years after the
24 Office of the Insurance Commissioner approved the 2011 MetLife rate and form filing,
25 there is no jurisdiction to hear this matter because all applicable statutory filing
26 deadlines have passed; and as a result the Demand for Hearing must be dismissed.

1 A. Petitioners' Declarations Are Inadmissible, Therefore Petitioners' Response
2 Cannot Withstand Summary Judgment

3 Petitioners' filed declarations speculating on how the Office of the Insurance
4 Commissioner approved the MetLife rate and form filing in an attempt to create issues
5 of material fact; however these speculative declarations are made without any personal
6 knowledge, and therefore, are inadmissible. Wash. Civ. Rule 56(e) requires that

7 “[s]upporting and opposing affidavits shall be made on personal
8 knowledge, shall set forth such facts as would be admissible in evidence,
9 and shall show affirmatively that the affiant is competent to testify to the
10 matters stated therein... When a motion for summary judgment is made
11 and supported as provided in this rule, an adverse party may not rest upon
12 the mere allegations or denials of his pleading, but his response, by
13 affidavits or as otherwise provided in this rule, must set forth specific
14 facts showing that there is a genuine issue for trial. If he does not so
15 respond, summary judgment, if appropriate, shall be entered against
16 him.”

17 In reviewing motions for summary judgment, courts may not consider affidavits or
18 declarations that do not comply with these requirements. *El Deeb v. University of*
19 *Minnesota*, 60 F.3d 423, 428 (8th Cir. 1995); *School Dist. 1J v. AC and S*, 5 F.3rd 1255,
20 1261 (9th Cir. 1993), cert. denied, 512 U.S. 1236 (1983); *Mitchell v. Toledo Hosp.*, 964
21 F.2d 577, 585 (6th Cir. 1992); *Friedel v. City of Madison*, 832 F.2d 965, 970 (7th Cir.
22 1987); *See United States v. M.E. Dibble*, 429 F.2d 598 (9th Cir. 1970).

23 The two declarations submitted with Petitioners' Response are inadmissible
24 because these declarations are not based upon personal knowledge, but rather are filled
25 instead with inferences, opinions and speculations that are not based upon personal
26 knowledge. However, all matters set forth in declarations and affidavits must be based
27 upon personal knowledge and statements made in a declaration are inadmissible unless
28 the declaration itself affirmatively demonstrates that the declarant has personal
29 knowledge of those facts. *Love v. Commerce Bank of St. Louis, N.A.*, 37 F.3d 1295,
30 1296 (8th Cir. 1994); *Gagne v. Northwestern Nat'l Ins. Co.*, 881 F.2d 309, 315-316 (6th
31 Cir. 1989); *El Deeb*, 60 F.3d at 428 (declarations shall be made on personal knowledge
32 and must include facts to show the affiant possesses that knowledge).

1 Declarations that are not based upon personal knowledge cannot raise a
2 genuine issue of material fact sufficient to withstand summary judgment. Wash Civ.
3 Rule 56(e); *Skillsky v. Lucky Stores, Inc.*, 893 F.2d 1088, 1091 (9th Cir. 1990). The
4 proper ground for excluding the declarations is that witnesses are permitted to testify
5 only from their personal knowledge. *See United States v. Giovannetti*, 919 F.2d 1223,
6 1226 (7th Cir. 1990). Testimony about matters outside their personal knowledge is not
7 admissible, and if it is not admissible at trial neither is it admissible in an affidavit
8 used to support or resist a motion for summary judgment. Wash Civ. Rule 56(e). *See*
9 *Visser v. Packer Engineering Associates, Inc.* 924 F. 2d; 655, 659 (7th Cir., 1991). Nor
10 would this testimony be admissible in an administrative hearing, therefore it cannot be
11 used to resist a motion for summary judgment in this matter.

12 In fact, Rule 56(e) incorporates Wash. Evidence Rule 602, in words as well as
13 reference, by stating that “supporting and opposing affidavits shall be based upon
14 personal knowledge.” Wash. Evidence Rule 602 states:

15 “A witness may not testify to a matter unless evidence is introduced
16 sufficient to support a finding that the witness has personal knowledge of
17 the matter. Evidence to prove personal knowledge may, but need not,
18 consist of the witness' own testimony. This rule is subject to the
19 provisions of rule 703, relating to opinion testimony by expert
20 witnesses.”

21 While it is true that “personal knowledge” includes inferences. *Id.* All
22 knowledge is inferential, but those inferences must be grounded in observation or first-
23 hand personal experience. *Id.* Declarations must not be flights of fancy, speculations,
24 hunches, intuitions, or rumors about matters remote from that experience. *Id.* citing
25 *Palucki v. Sears, Roebucks & Co.*, 879 F.2d 1568, 1572 (7th Cir. 1989) and *Friedel v.*
26 *City of Madison*, 832 F.2d 965, 970 (7th Cir. 1987). To be admissible to support or
oppose a motion for summary judgment, declarations must also set out specific facts –
not mere conclusory allegations. *See Lujan v. National Wildlife Fed'n*, 497 U.S. 871,
888 (1990). Conclusory allegations are insufficient to defeat a motion for summary
judgment. *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 20 L. Ed. 2d 569, 88 S.

1 Ct. 1575, (1968); *Shane v. Greyhound Lines, Inc.*, 868 F. 2d 1057, 1061 (9th Cir.
2 1989).

3 Petitioner and Declarant Leo Driscoll, appears to admit his lack of personal
4 knowledge, but attempts to overcome this lack of personal knowledge by asserting that
5 he is an expert in legal matters. However, an attorney's declaration is governed by the
6 same rules that apply to other declarants under Wash. Civ Rule 56(e). Thus, an
7 attorney's declaration is admissible only to prove facts that are within the attorney's
8 personal knowledge and must be based on facts that support the conclusion that the
9 attorney is competent to testify. *Sellers v. M.C. Floor Crafters, Inc.*, 842 F.2d 639 (2nd
10 Cir. 1988); *Friedel v. City of Madison*, 832 F.2d 965, 969 (7th Cir. 1987); *Local*
11 *Union No. 490 v. Kirkhill Rubber Co.*, 367 F.2d 956 (9th Cir. 1966).

12 Unless the attorney has first-hand knowledge, no insistence on his part, not
13 even his declaration, can have probative force in a motion for summary judgment.
14 *School Dist. No 1J*, at 1261. Driscoll's declaration fails to meet one or more of the
15 legal requirements of Rule 56(e). Nor is the information offered in the Petitioner's
16 declaration even hearsay, as sometimes acceptable in administrative hearings. Rather,
17 Petitioner is plainly testifying as to matters outside his personal knowledge and merely
18 offering conclusory, self-serving statements that are not based upon personal
19 knowledge. Moreover, Petitioner states no facts to show that he has personal
20 knowledge of the Office of the Insurance Commissioner's decision making process in
21 the 2011 MetLife filing, and he has not alleged that he is an insurance expert.

22 Petitioner's declaration and related references in Petitioners' Response are
23 simply speculations that are not based upon any personal knowledge. For example,
24 pages one through five (1-5) speculates on communications between OIC staff
25 members and the thought processes of those staff members. Petitioner also speculates
26 that communications were not made or relayed between OIC staff members as a result
of relying solely upon email communications that were provided to Petitioners in
response to a public records request. However, this is pure speculation because email

1 is not the only form of communication amongst OIC staff.¹ Page twelve (12) of
2 Petitioner's declaration, contains more assumptions about communications and
3 assumes that all communications between MetLife and OIC staff must happen within
4 SERFF (the filing program). However, because Petitioner does not have personal
5 knowledge of the 2011 MetLife filing, he does not consider that phone calls are a well-
6 used and common medium for communication, and that perhaps other forms of
7 communication might have occurred between MetLife and the Office of the Insurance
8 Commissioner.

9 ~~On pages six through thirteen (6-13) Petitioner declares himself to be an expert~~
10 ~~witness, but this is based upon his legal experience and not upon experience in the~~
11 ~~insurance industry. Petitioner then attempts to re-determine whether the filing should~~
12 ~~have been approved or not, how to interpret the filing documents and what should or~~
13 ~~should not have been submitted with the filing. However, Petitioner is not an actuary~~
14 ~~or an insurance expert. He is merely submitting speculations that are not based upon~~
15 ~~personal knowledge and attempting to buttress those speculations and avoid the~~
16 ~~requirements of personal knowledge by determining himself to be an expert witness.~~
17 ~~This material is appropriate in a closing argument, not in a declaration that must be~~
18 ~~based upon personal knowledge.~~

19 Further, experience as an attorney offers no insight into this proceeding and it
20 is not expert testimony. Washington Rule of Evidence 702 states that expert testimony
21 shall only be allowed "[i]f scientific, technical, or other specialized knowledge will
22 assist the trier of fact to understand the evidence or to determine a fact in issue..."
23 Even if an expert witness was permitted to testify on matters that are not within his or
24 her personal knowledge, the expert experience must be scientific, technical or
25 specialized and it must assist to understand the facts or evidence in this matter. Legal
26 experience does not qualify as expert testimony, nor is it technical or specialized from
the experience of the Presiding Officer in this matter. Petitioner's declarations are not

¹ Email is not the only form of communication, particularly in a small agency wherein department employees are located nearby to each other to allow for efficient communication.

1 supported by any personal knowledge and cannot raise genuine issues of material fact;
2 therefore they cannot be used to resist a motion for summary judgment.

3 B. Petitioners' Exhibits Are Not True Copies And Cannot Be Accepted

4 Attached to Petitioners' Response as Exhibit 1 are copies of OIC staff emails,
5 which are not true copies, and as a result, should not be accepted. A true copy is an
6 exact copy of a document with no alterations or changes. However, Petitioner states
7 "[the] undersigned has prepared and submitted "cut and paste" true copies of the 17
8 emails sent that are now arranged and numbered." Petitioners' Response, Pg. 1 at 1.2.
9 Petitioners submitted the following reason for altering the true and correct copies, "I
10 find that the multiplicity of emails and lack of chronologically ordered presentation of
11 them unduly impedes my ability to readily access, study and effectively communicate
12 regarding those emails." *Declaration of Driscoll*, Pg. 1. However, no summary of
13 emails is needed. The emails as submitted attached to OIC Staff's Motion for
14 Summary Judgment are true and accurate copies. These emails contain dates and
15 names allowing for clear ability to track the conversations. Furthermore, Petitioners
16 have no personal knowledge to summarize the emails or to rearrange the emails. OIC
17 Staff Emails Exhibit contains the true and accurate copies of the emails without
18 alteration. Petitioners' Exhibit 1 is not a true copy; it is an altered copy and should not
19 be admitted, but rather ignored or stricken.

20 Attached to the Declaration of Mr. Driscoll are also Exhibits 4 and 7, which
21 also are incomplete exhibits. Both exhibits only include a portion of the 2011 MetLife
22 filing. As a result, these Exhibits at most should only be viewed as a reference to
23 complete exhibits already submitted by OIC staff.

24 C. The MetLife Rate Filing Was Not Deemed Approved

25 Petitioners assert that the 2011 MetLife rate and form filing was deemed
26 approved, but have not submitted any evidence that MetLife deemed the filing
approved and Petitioners have not submitted any proof indicating that MetLife acted
upon this alleged deemed approval. MetLife is the only party that can deem a filing

1 approved, rely upon the deemed approval and thereby act upon the deemed approval to
2 issue notices to policyholders of the rate change and change the rate.

3 To the contrary, evidence in the record provides that MetLife did not deem the
4 filing approved. If MetLife desired the filing to be deemed approved, it would have
5 issued notices to policyholders sixty (60) days after the date that the rate could have
6 been deemed approved. Thus, if MetLife had deemed the filing to be approved, then
7 Petitioners should have received notice on approximately September 10, 2011.

8 However, as Petitioners describe in their Demand for Hearing, they received notice
9 from MetLife that the 2011 filing had been approved by the Office of the Insurance
10 Commissioner on December 9, 2011. *Demand for Hearing*, pg. 8. The fact that three
11 months passed without action on MetLife's part is evidence that MetLife did not deem
12 the filing approved.

13 Furthermore, MetLife did not deem the filing approved. "Consistent with the
14 conditions set forth in MetLife's June 10, 2011 filing with the WA DOI, MetLife did
15 not commence implementation of the 41% increase on the Driscolls' policies until
16 after receiving the August 17, 2011 communication from the WA DOI and after
17 providing the Driscolls with 60 days advance written notice. This is consistent with
18 MetLife's implementation process whereby we wait for an indication of acceptance
19 from a state insurance department before we proceed with implementing a rate
20 increase." *Declaration of Thomas Reilly*, pg. 2, attached hereto. Petitioners'
21 argument that MetLife deemed the filing approved and that Petitioners have unlimited
22 ability to demand a hearing as a result of a deemed approval fails because MetLife did
23 not deem the rate filing approved.

24 D. Even Assuming the Filing Had Been Deemed Approved, OIC's Approval of
25 the Filing on August 17, 2011 Moots Petitioners' Arguments.

26 Petitioners argue that once a filing was deemed approved that a filing cannot be
later approved, or conversely disapproved by the agency. However, to support this
argument Petitioners rely on insurance case law from other states, and Petitioners
provide no comparison of how these laws from other states would be similar to

1 Washington law despite drastic differences between the states' regulation of
2 insurance.²

3 Petitioners also cite to Washington case law that is completely unrelated to
4 insurance regulation or insurance. These cases are only relevant to property law,
5 wherein generally, parties have more rights as a result of the liberty interests involved
6 in property disputes. Petitioners then misconstrue the meaning of those cases. For
7 example, Petitioners cite to *Norco Construction v. King County*, a case that discusses
8 the approval of land plats. *Norco Construction v. King County*, 29 Wn. App. 179, 627
9 P.2d 988 (Wash. App. 1981). In that case, King County Council did not approve or
10 make a determination on a proposed plat within the six-months as required by statute,
11 and in the meantime, the laws had changed and now would disallow plat usage as
12 applied for in Norco Construction's plat application.

13 As Petitioners' note, that Court did find that Norco had developed certain
14 vested rights in connection with the application. *Petitioners' Response*, Pg. 2.
15 However, contrary to Petitioners' assertions, the holding of that case was not that the
16 application was deemed approved and that this deemed approval could not be later
17 undone by any subsequent approval or disapproval of the Council as a result of
18 Norco's vested right. In fact, this case stands in opposition to that assertion. That
19 Court held, "[t]he right which vests in the preliminary plat application is not the right
20 to preliminary plat approval. What vests is the applicant's right to have the
21 preliminary plat application considered under the zoning ordinances and procedures
22 existing at the time the application should have been acted upon." That Court then
23 held that King County Council can and must still make a determination on the plat
24 application, and that the King County Council must base its determination on laws
25 then in existence at the time of application. Although this case is unrelated to
26

² Even facially, the insurance laws of North Carolina are dramatically different from
Washington. North Carolina, as cited by Petitioners, allows for deemed approval after 60 days,
whereas Washington's potential deemed approval statutes provide a window of only 30 days for
approval, but include the right to later re-determination by the Office of the Insurance
Commissioner.

1 insurance laws or regulations governing insurance, the Court's finding stands in
2 opposition to the Petitioners' contention. In fact, that Court orders that agency to
3 make a determination on Norco Construction's application, and in effect, held that the
4 ability to later deny or approve an item is not lost simply because of the failure to
approve or deny within the statutory timeframe.

5 Furthermore, Washington's insurance statutes and regulations specifically
6 provide for later determination by the Commissioner despite the potential deemed
7 approved provision of RCW 48.19.060. "If at any time subsequent to the applicable
8 review period provided in RCW 48.19.060 or 48.19.110, the commissioner finds that a
9 filing does not meet the requirements of this chapter, he or she shall, after a hearing,
10 notice of which was given to every insurer and rating organization which made such
11 filing, issue his or her order specifying in what respect he or she finds that such filing
12 fails to meet the requirements of this chapter, and stating when, within a reasonable
13 period thereafter, the filings shall be deemed no longer effective." RCW 48.19.120.
14 Similarly, the Commissioner is able grant his approval even if after a filing had been
15 deemed approved to assure companies that the Commissioner has not disapproved of
the filing.

16 Finally, an administrative agency does not lose its power to act merely because
17 a filing was deemed approved, unless the statute specifically states that the agency
18 loses its power to act. See *Brock, Secretary of Labor v. Pierce County*, 476 U.S. 253,
19 106 S. Ct 1834 (1986).³ The mere use of the word shall, such as "shall approve," is
20 not enough to remove the power to act at a later date. *Id.* The failure of an agency to
21 observe a procedural requirement does not subsequently void agency action. *Id.* An
22 agency can, at any time, take action on items deemed approved. *Id.* With regard to
23 rate and form filings, there is no specific provision that states that the Office of the
Insurance Commissioner cannot later approve a filing that has been deemed approved.

24 _____
25 ³ The case cited by Petitioners, *Norco Construction v. King County*, reached an identical
26 conclusion that public policy, the public interest and the public's right in obtaining a decision on
a matter forbids being prejudiced by the failure to meet a statutory deadline.

1 On the contrary, RCW 48.19.120 specifically provides that the Commissioner can
2 make a later determination after a filing has been deemed approved.

3 The Commissioner took agency action and approved the 2011 MetLife filing
4 on August 17, 2011 as allowed by statute and agency authority, therefore the filing
5 could no longer be deemed approved.⁴ Furthermore, MetLife never even deemed the
6 filing to be approved. Thus, Petitioners' arguments relating to the MetLife filing being
7 deemed approved and any arguments related to agency inaction are moot by the Office
8 of the Insurance Commissioner's Disposition order that approved the MetLife filing on
9 August 17, 2011.

10 E. The Timeframe for Challenging Agency Inaction Is Not Unlimited. It is
11 Subject to Statutory Timeframes Like all Other Challenges.

12 The failure of an agency to take action cannot weigh perpetually in the balance,
13 waiting for any given time a grievant chooses to challenge the inaction, even waiting
14 years, as in this instance, despite knowledge of the agency's actions, or alleged failure
15 to act. However, Petitioners assert that agency inaction is not subject to a statute of
16 limitations. Petitioners offer no case law or authority supporting this contention and
17 instead rely upon a 1988 law review article that theorizes why the Legislature did not
18 specifically define agency inaction. Petitioners argue that this is equivalent to
19 adopting an unlimited time frame for challenging agency inaction. However,
20 Petitioners misunderstand the theories surrounding agency inaction.

21 Although not directly stated by the Petitioners, it appears that Petitioners are
22 attempting to argue the doctrine of continuing violations, which can hold that a statute
23 of limitations does not apply when the alleged failure to take an action represents an
24 "on-going" violation. Under the doctrine of continuing violations, an on-going

25 ⁴ If Petitioners were merely challenging an alleged deemed approval as asserted in
26 Petitioners' Response, then approval on August 17, 2011, which would have operated to moot a
potentially deemed approved filing, would also moot Petitioners arguments. As Petitioners note,
there is no benefit that can be gained from undoing the approval, the paid rates cannot be
refunded.

1 violation sometimes operates to exempt certain Plaintiffs from an applicable statute of
2 limitations. The doctrine of continuing violations permits a grievant to sue on a claim
3 that would otherwise be time-barred if considered in isolation, but subsequent
4 violations act to prevent accrual or otherwise toll the limitations period. However, this
5 remedy has been limited in many courts, including the state of Washington. This
6 limitation puts a stopper in the continuing violations doctrine and requires that the
7 statute of limitations starts (or no longer tolls) when a reasonably prudent person
8 would have been able to determine that a violation (such as an alleged deemed
9 approval or agency inaction) occurred. ~~See *Wild Fish Conservancy v. Kenneth*~~
10 ~~*Salazar*, 688 F. Supp 2.d 1225, (E. D. Wash., 2010).~~ Therefore, the statute of
11 limitations is triggered when the right of action first accrues and as soon as the
12 Petitioners can maintain an action, even if he or she does not know that a cause of
13 action has accrued. *Id.*

14 Without question, Petitioners were aware of the approval of the MetLife filing
15 on December 9, 2011. At the very latest, and even considering the doctrine of
16 continuing violations, all applicable statutes of limitations began running on December
17 9, 2011, when Petitioners learned MetLife's 2011 filing had been approved.

18 However, even if the doctrine of continuing violations could be applied, and
19 even without accounting for the applicable statutes of limitations within the insurance
20 code, two years is the maximum time allowed to challenge any action that is not
21 specifically provided for under another statute, including agency inaction. RCW
22 4.16.130 is a catch-all statute creating a two-year limitation to filing any claim or
23 grievance where there is no other statute of limitations specific to the cause of action.
24 RCW 4.16.130 states "[a]n action for relief not hereinbefore provided for, shall be
25 commenced within two years after the cause of action shall have accrued."

26 Petitioners' Demand for Hearing was filed on September 19, 2014. Setting aside
applicable insurance code statutory regulations and simply applying the maximum
statutory time period under RCW 4.16.130, Petitioners' Demand for Hearing is still
barred and cannot be heard. All statutory time limitations have passed, the Office of
the Insurance Commissioner has no authority or jurisdiction to hear this matter.

1 Furthermore, any tolling gained from the doctrine of continuing violations
2 ceased when the agency took action on August 17, 2011. The Office of the Insurance
3 Commissioner took action on that date, rendering any tolling argument moot because
4 there was no alleged further inaction, or continuing violation, by the agency.

5 Moreover, contrary to Petitioners' assertions, Washington statutes are not silent
6 on time limitations to bring an action for agency inaction. The Insurance Code
7 specifically states any person aggrieved by an act or omission by the [Insurance]
8 Commissioner must make a written demand for a hearing which the Commissioner
9 shall grant if the request is made within 90 days." RCW 48.04.010; *Taylor v. Bankers*
10 *Life & Cas. Co.*, No. 08-cv-0447, 2008 U.S. Dist. LEXIS 108102 (W.D. Wash. Aug
11 29, 2008). As that Court points out, a person aggrieved by an omission or agency
12 inaction must make a request within ninety (90) days of notice of the agency inaction.
13 However, nearly three years had passed between notice to the Petitioners from
14 MetLife on December 9, 2011 and when Petitioners filed the Demand for Hearing.
15 Petitioners' Demand for Hearing must be dismissed as a matter of law because
16 Petitioners are outside of all applicable statutes of limitations and the Office of the
17 Insurance Commissioner no longer has jurisdiction to hear this matter.

18 F. Petitioners' Request for an Order Compelling Documents From MetLife Must
19 be Denied Because Petitioners Request is Overbroad.

20 Petitioners again do not clarify what documents the Office of the Insurance
21 Commissioner should order MetLife to produce and the Office of the Insurance
22 Commissioner cannot issue a blanket order for MetLife. However, Petitioners'
23 Exhibit #5 attached to Declaration #2 appears to be the letter referenced in Petitioners
24 Demand for Hearing as the unfulfilled request from MetLife. That letter requests all
25 items submitted to Office of the Insurance Commissioner regarding the filing, but the
26 Office of the Insurance Commissioner has already provided all materials related to the
filing in response to Petitioners' public records requests as exhibited in the Declaration
of Stephanie Ferrell attached to OIC Staff's Motion for Summary Judgment.

1 Petitioners' have obtained all of the information submitted and required by the Office
2 of the Insurance Commissioner.

3 In that letter, Petitioners also appear to request original document filings for the
4 policy series .02 (Petitioners' policy was series .04 and was issued in 2001), but
5 Petitioners have still not alleged any authority for the Office of the Insurance
6 Commissioner to issue an Order directing an insurer to provide documents to
7 Petitioners. Additionally, the Office of the Insurance Commissioner has no
8 requirements mandating that insurer maintain original filings from so long ago, but
9 rather only requires that insurer be able to replicate the last set of filing data and
10 submit it at the time of a subsequent filing request.⁵ MetLife was determined to have
11 met these requirements by supplying sufficient data on the prior filings in the 2011
12 rate and form filing as required in the Insurance Code.

13 Furthermore, Petitioners assert a right to these documents because MetLife
14 breached its duty of good faith by not providing the requested documents. "Count 2
15 does not address or challenge agency action but rather seeks agency adjudication of
16 issues between private parties and enforcement of the insurance code and applicable
17 law." *Demand for Hearing*, pg. 5. The Office of the Insurance Commissioner does
18 not conduct adjudications between insurers and insureds. A breach of the duty of good
19 faith cannot be litigated under the Insurance Code, breaches of good faith are provided
20 for under the Consumer Protection Act (CPA). *Pain Diagnostics and Rehabilitation
21 Associates, P.S. v. Brockman*, 97 Wn App. 691, 697, 988 P.2d 972 (1999).
22 Petitioners' remedy for a breach of the duty of good faith is available under the CPA,
23 not the Insurance Code.

24 G. Washington Loss Ratios Were Not Statistically Creditable, the Most
25 Statistically Accurate Experience Available was Accepted, Which was
26 MetLife's National Experience.

⁵ There are additional requirements relating to document retention, but the requirements of those statutes do not reach as far back as the year 2001, thus are inapplicable (typically 5 to 7 years depending upon the purpose of the documents and type of investigation being conducted by the Office of the Insurance Commissioner).

1 Petitioners submit a red herring argument that debates the Commissioner's
2 acceptance of the 2011 MetLife filing loss ratios in order to create issues of material
3 fact. However, this argument acknowledges that the Office of the Insurance
4 Commissioner did approve the rate filing and that it was not deemed approved.
5 Furthermore, this argument is clearly a challenge to the actual insurance ratings,
6 calculations and actuarial assumptions of the filing. Regardless of the type of
7 challenge made, the Petitioners have lost the ability to debate loss ratios because
8 Petitioners have exceeded all applicable timeframes for filing a demand for hearing.

9 However to clarify the record, Washington specific rates were not filed with
10 the MetLife filing because those rates would have been statistically inaccurate and
11 misleading. Between all three MetLife policy product lines (series .02, .03 and .04)
12 there were only fifty-five (55) policies sold to Washington State consumers. *See* OIC
13 Exhibit 4 SERFF Filing. Long-term insurance actuaries use Bayesian Creditability
14 Theory to determine the creditability of loss-ratios. *See* Second Declaration of Scott
15 Fitzpatrick. Bayesian Creditability Theory requires that at least 1,082 claims be
16 currently filed on a policy (not just policies sold, but policies that are in active claim
17 status) for statistical creditability for rate filing and loss ratio analysis. *Id.* With only
18 fifty-five (55) policies sold in Washington State, creditability cannot be attained, nor
19 could it be attained in combination with a few states. *Id.* As a result, the most
20 creditable loss ratio and actuarial analysis must be performed at a national level.⁶ *Id.*

21 This is precisely why RCW 48.19.030 allows an insurer to use loss experience
22 from the combined experiences of other states that are likely to produce loss
23 experience similar to that in this state when the loss experience in Washington is not
24 statistically creditable. *See* RCW 48.19.030. Furthermore, RCW 48.19.080 allows the

25 ⁶ Petitioner's Declaration, on page 6, cites to Connecticut as a state that accepted state
26 specific rates. However, as a result of the small number of policies issued in this product line, a
state that accepted state specific rates was likely to be subjected to higher than average rate
increases. For example, Petitioners cites that the loss rate of Connecticut was 61.54%,
significantly higher than national average of 43.41%. Thus, if Connecticut used that loss-ratio
alone to determine its rates, Connecticut would be paying significantly higher premiums as a
result of this higher than average loss-ratio.

1 Commissioner to suspend or modify the filing requirements as he deems advisable.
2 For the consumers of Washington, the Office of the Insurance Commissioner accepted
3 the most statistically creditable loss experience available to the limited MetLife
4 product line, which was nationwide loss experience. To do otherwise would have
5 likely resulted in higher premiums as a consequence of an extremely low number of
6 claims counting toward the loss experience. This information is only provided to
7 clarify the record; Petitioners are beyond any applicable statute of limitations that
8 would have possibly enabled Petitioners to challenge the MetLife filing approval or
9 the rate methodology.

10 H. Petitioners' Demand for Hearing is Barred by Any Applicable Statutes of
11 Limitations and Must be Dismissed.

12 Compliance with a statutory filing deadline is a jurisdictional requirement.
13 *Snohomish County Fire Prot. Dist. No. 1 v. Wash. State Boundary Review Bd. For*
14 *Snohomish County*, 121 Wn. App. 73, 82, 87 P.3d 1187 (2004) aff'd, 155 Wn.2d 70,
15 117 P.3d 348 (2005). A mandatory filing period acts as a jurisdictional bar. *Graham*
16 *Thrift Group, Inc. v. Pierce County*, 75 Wn. App. 263, 267-268, 887 P.2d 228. The
17 Office of the Insurance Commissioner has express jurisdiction to hear appeals
18 concerning a rate filing pursuant to RCW 48.19.310. However, Petitioners did not
19 timely file a demand for hearing in accordance any available remedy and now
20 Petitioners' untimely demand must be dismissed as a matter of law.

21 "The Code anticipates consumer involvement, and provides a mechanism for
22 their input on rate-setting." *Blaylock v. First Am. Title Ins. Co.*, 504 F. Supp 2d 1091,
23 1095 (W.D. Wash. 2007). Pursuant to a written request and a reasonable fee, insurers
24 are required to provide affected consumers "all pertinent information" related to the
25 rate. *See RCW 48.19.310 and Id.* Insurers are also required to provide "reasonable
26 means" by which "any persons aggrieved" by a rate filing may be heard, in person on
written request to review the manner in which such a rating system has been applied in
connection with their insurance. *Id.* If the rating organization or insurer fails to grant
or reject such request within thirty (30) days, the applicant may proceed in the same

1 manner as if his or her application had been rejected. *Id.* Afterwards, the aggrieved
2 party may appeal to the Insurance Commissioner within thirty (30) days, who after a
3 hearing may affirm or reverse. *Id.*

4 Entitled "Complaints of Insureds," RCW 48.19.310 details this process for
5 policyholders, such as the Petitioners, to dispute rate filings. Petitioners' Demand for
6 Hearing is clearly an attempt to challenge the long-term care insurance rate filing, not
7 the Office of the Insurance Commissioner's alleged deemed approval of the MetLife
8 filing. This is demonstrated through Petitioners' Demand for Hearing, Petitioners'
9 Response, and Petitioners' Declaration, wherein Petitioners frequently debate the loss
10 ratios and methodology of loss ratios for long-term care insurance rates.⁷ RCW
11 48.19.310 provides the means for an insured to file a rate filing grievance, but the
12 timeframe for Petitioners to file this grievance has long passed and now Petitioners are
13 barred from seeking this remedy.

14 Arguably, Petitioners might have been also been able to file a demand for
15 hearing challenging the Disposition order which approved the 2011 MetLife filing,
16 however Petitioners' Demand for Hearing is untimely in accordance with that statutory
17 provision as well. From the issue of a Disposition order, an aggrieved person must file
18 a request for hearing within ninety (90) days. *See* RCW 48.04.010(1)-(3). A
19 Disposition order was entered on August 17, 2011 that approved the MetLife filing.
20 *See OIC Exhibit 4: Disposition, pg. 1.* This Disposition notice was a written
21 statement of particular applicability that finally determined the legal rights, duties,
22 privileges, immunities, or other legal interests of MetLife. *Id.* If the Disposition had
23 instead disapproved the rate filing, MetLife could have exercised its rights to appeal
24 that Disposition determination under RCW 48.04.010(3).

25 ⁷ Petitioners state "that is because applicants have no grievance arising from application of the
26 insurer's rating system as to age, sex, health history or other differentiating factors(s) in
respect to the insurance afforded to him or her" therefore RCW 48.19.310 is not available to
Petitioners, however there are no such requirements in order to file a grievance pursuant to this
statute.

1 Similarly, any other aggrieved party who alleges that their rights have been
2 affected by the Disposition must also appeal within ninety (90) days notice of the
3 determination. *Id.* However, even counting ninety (90) days from December 9, 2011
4 (the date the Petitioners received notice of the rate filing approval), statutory
5 limitations now preclude the Office of the Insurance Commissioner from hearing the
6 Petitioners' untimely demand. *See Demand for Hearing, pg. 8.* Petitioners, like
7 MetLife, are required to timely exercise their rights to appeal and demand a hearing
8 within ninety (90) days from notice. Petitioners' demand cannot be sustained under
9 this statutory provision either because Petitioners' untimely demand was not filed
10 within 90 days from receipt of notice.

11 Petitioners did not avail themselves of the processes that might have been
12 available under RCW 48.04.010 or RCW 48.19.310, and instead seek relief under
13 RCW 48.19.120(3), which provides that when the Insurance Commissioner
14 subsequently disapproves of a previously approved filing any aggrieved persons may
15 in good faith request a hearing to dispute a filing then in effect prior to disapproval.
16 However, RCW 48.19.120 entitled "Subsequent Disapproval" details the rights of
17 various parties when, and if, the Commissioner issues a subsequent disapproval of a
18 rate filing. The first half of RCW 48.19.120 details the rights of insurers when the
19 Commissioner subsequently disapproves of a filing. The second half of RCW
20 48.19.120 details the rights of any other aggrieved parties whose policies and filings
21 were in effect prior to the Commissioner's subsequent disapproval of the filing.
22 Furthermore, because an order would issue if the Commissioner orders the subsequent
23 disapproval, aggrieved parties must file a demand for hearing within 90 days from the
24 issuance of that order pursuant to RCW 48.04.010.⁸ Under every possible means

25 ⁸ Petitioners have also not fulfilled the additional prima facie elements for standing
26 under that statute. A hearing can only be held if the Insurance Commissioner finds that the
application is made in good faith, that the applicant would be so aggrieved if his or her grounds
are established, and that the grounds provided by the petitioner would justify holding the
hearing. *See RCW 48.19.120(3).* Petitioners are not persons who are considered to be
"aggrieved" by the approval of the rate filing, which is the first prima facie standing element.
Furthermore, Petitioners have not submitted the demand for hearing in good faith. Years have

1 provided for under the insurance code, Petitioners have failed to timely file a demand
2 for hearing and now the Office of the Insurance Commissioner must dismiss
3 Petitioners' Demand for Hearing because compliance with a filing deadline is a
4 jurisdictional requirement.⁹

5 Furthermore, Petitioners do not have standing to demand a hearing under any
6 statutory remedy because Petitioners are not aggrieved persons and have not timely filed
7 the Demand for Hearing as required to obtain standing under the APA, RCW 48.04.010,
8 RCW 48.19.120(3) and RCW 48.19.310. A person has standing to obtain review of
9 agency action if that person is aggrieved by the agency action. *See* RCW 34.05.530,
10 RCW 48.04.010, RCW 48.19.310 and RCW 48.19120.

11 A person is aggrieved or adversely affected only when all three of the following
12 factors are present: (1) the petitioner has suffered a concrete and particularized injury
13 that the agency action has actually caused or will cause; (2) that person's asserted
14 interests are among those that the agency was required to consider when it engaged in
15 the agency action challenged; and (3) a judgment in favor of that person would
16 substantially eliminate or redress the prejudice to that person caused or likely to be
17 caused by agency action. *Seattle Bldg. & Constr. Trades Council*, 129 Wash.2d 787,
18 794, 920 P.2d 581 (1996). Simply because a filing may have affected policyholders
19 does not confer standing to those policyholders. Petitioners must have a substantial
20 interest in the agency action. *Id.* However, policyholders are not required to obtain
21 insurance nor are they required to pay the changed rate, rather policyholders remain free
22 to contract. In this instance, policyholders were even offered a number of options to

23 passed since the approval of the rate filing. Good faith requires, in part, that the matter was
24 timely pursued. This is not sufficient grounds to justify a hearing, particularly in light of the
25 delayed filing.

26 ⁹ The crux of the Petitioners' Demand for Hearing is to contest the application of the
rate filing and to obtain relief from that rate filing. Regardless of the hearing provisions
provided, "[t]he Washington Insurance Code governs the regulation of insurance and does not
itself provide protection or remedies for individual interests." *Pain Diagnostics and
Rehabilitation Associates, P.S. v. Brockman*, 97 Wn App. 691, 697, 988 P.2d 972 (1999).
Protection of individual interests and remedies for violations of the insurance statutes and
regulations must be brought under the CPA, including actions to recover excess premiums. *Id.*

1 avoid the impact of the rate increase. Therefore, policyholders, such as the Petitioners,
2 do not have a substantial property interest sufficient to acquire standing.

3 The second test limits review to those for whom it is most appropriate. *Id.*
4 The test focuses on whether the legislature intended the agency to protect the party's
5 interest when taking the action at issue. *Id.* "The Washington Insurance Code governs
6 the regulation of insurance and does not itself provide protection or remedies for
7 individual interests." *Pain Diagnostics and Rehabilitation Associates, P.S. v.*
8 *Brockman*, 97 Wn. App. 691, 697, 988 P.2d 972 (1999). Instead, protection for
9 individual interests and remedies for violations of the insurance statutes and
10 regulations must be brought under the CPA. Therefore, Petitioners cannot be
11 aggrieved because the intent of the Legislature was to regulate insurance. The
12 Legislature created the CPA to protect individual interest, including insurance
13 interests.

14 Finally, Petitioners also cannot pass the last test which requires that a judgment
15 in favor of that person would substantially eliminate or redress the prejudice to that
16 person caused or likely to be caused by agency action for two reasons. First, Petitioners
17 are barred by statutory time deadlines from demanding a hearing in this matter, therefore
18 no judgment can be issued that would eliminate or redress any alleged prejudice caused
19 by the agency. Second, even if successful, it would only result in the same findings; that
20 the filing was approved because it was not excessive, inadequate, or unfairly
21 discriminatory based upon the actuarial experience. Third, subsequent approval by the
22 Office of the Insurance Commissioner issued on August 17, 2011 renders Petitioners'
23 claims moot. Therefore, Petitioners are not aggrieved persons as defined by law and do
24 not have standing to demand a hearing.

25 I. Petitioners Have Not Been Deprived of Any Constitutionally Protected Interest
26 In This Matter; Therefore Petitioners Cannot Invoke Due Process Protections.

27 In this matter, Petitioners cannot invoke due process protections because they
28 cannot claim deprivation of a constitutionally protected interest arising under federal,
29 state or local law. Statutes and regulations can create such interests, including state-
30 issued licenses, permits, certifications, other similar forms of authorization required by

1 law. See RCW 34.09.010(9) (defining “license”) and RCW 34.05.422 (providing
2 a process to revoke, suspend or modify a license.

3 However, protection and remedies for individual interests, such as Petitioners’, in
4 violations of the insurance statutes and regulations must be brought under the CPA. See
5 *Id.* Petitioners do not have a constitutionally protected interest involved in the approval
6 of a filing. A constitutionally protected interest is not established merely because the
7 insurance industry is regulated. Buyers are free to stop paying premiums, purchase other
8 insurance, or decline coverage. The absence of a constitutionally protected interest is
9 fatal to Petitioners’ ability to invoke due process protections.

10 Petitioners’ Motion to Supplement Petitioners’ Response cites to an out-of-state
11 insurance case to support Petitioners’ contention that the Insurance Code creates a
12 constitutionally protected right. See *Pennsylvania Coal Mining Association v. Insurance*
13 *Department of Pennsylvania*, 370 A.2d 685, 471 Pa 431 (PA, 1977) and *Petitioners*
14 *Motion to Supplement*. However, not only was that case a Pennsylvania case and not a
15 Washington case, but that Court specifically held that due process protections apply only
16 because Pennsylvanian mining companies were required to purchase black lung
17 workers’ compensation insurance in order to operate.¹⁰ There are no such requirements
18 for Petitioners. Long-term care insurance is neither mandated nor required. Therefore,
19 even if Pennsylvanian law could be persuasive in Washington, and even if that
20 Pennsylvania’s insurance regulatory laws were identical to Washington’s insurance
21 regulatory laws, this case is simply inapplicable to Petitioners.

22 Moreover, even when a constitutionally protected right is established, due
23 process only requires that notice and an opportunity to be heard are provided appropriate
24 to the nature of the case prior to a government deprivation of protected interest. See
25 *Cleveland Bd. Of Educ. V. Loudermill*, 470 U.S. 532, 542, 105 S. Ct.1487, 84 L. Ed. 2d
26 494 (1985) (quoting *Mullane v. Cent. Hanover Bank & Trust*, 339 U.S. 306, 313, 70 S.

¹⁰ “We conclude that the requirement that the coal mining companies, the importance of the insurance rate to their ability to remain in business, and the purposes of regulation by the Insurance Department create the combination of dependency and reliance which make applicable the protections of procedural due process.” *Id.* at 691.

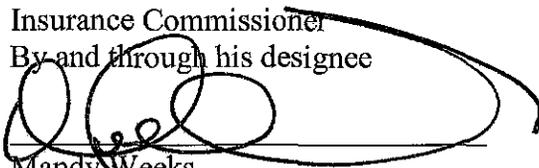
1 Ct. 652, 94 L. Ed. 865 (1950).¹¹ This opportunity was provided. When rate filings are
2 approved they are not effective for at least sixty (60) days after notification is provided
3 to the affected policyholders. After receiving this notice, aggrieved parties can request a
4 hearing pursuant to RCW 48.04.010 or RCW 48.19.310. Each of these provides notice
5 and an opportunity to be heard before the effective date of any increase. Petitioners
6 simply failed to avail themselves of the protections provided under Washington law and
7 are now barred from arguing any related claims due to a lack of standing and the
untimely submission of Petitioners' Demand for Hearing.

8 **IV. CONCLUSION**

9
10 For these reasons, OIC staff requests entry an order dismissing Petitioners'
11 Demand for Hearing. Petitioners misconstrue the governing statutes and raise non
12 justiciable issues upon which no effective relief can be granted. OIC staff therefore
13 respectfully requests the Demand for Hearing be dismissed as a matter of law.
14

15 DATED this 20th day of January, 2015.

16
17 MIKE KREIDLER
Insurance Commissioner
18 By and through his designee

19 
20 Mandy Weeks
Insurance Enforcement Specialist
21 Legal Affairs Division
22

23 ¹¹ Even when insurance was required in the Pennsylvania case cited by Petitioners, that
24 Court found that "[t]he association's rights are limited to notice and an opportunity to present
25 written objections." "We do not believe that due process requires that the Association receive a
26 full hearing before rate can become effective." *Pennsylvania Coal Mining Association v,
Insurance Department of Pennsylvania, 370 A.2d 685, 693, 471 Pa 431 (PA, 1977) and
Petitioners Motion to Supplement.*

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CERTIFICATE OF MAILING

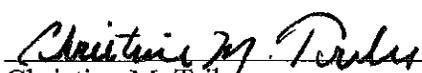
The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

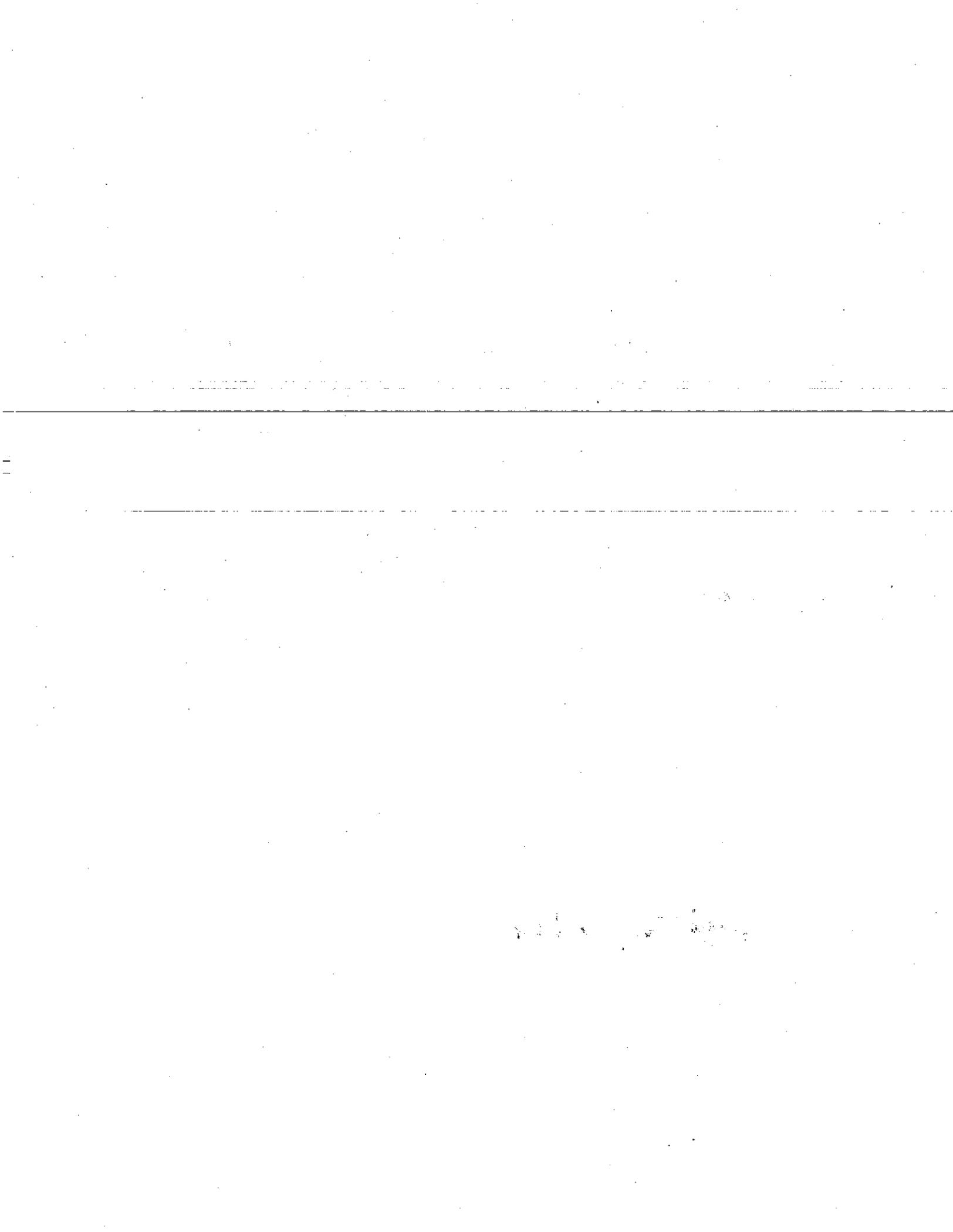
On the date given below I caused to be served the foregoing OIC STAFF'S REPLY IN MOTION FOR SUMMARY JUDGMENT on the following individuals in the manner indicated:

Leo Driscoll and Mary Driscoll
4511 E. North Glenngrae Ln.
Spokane, WA 99223
oleod1@msn.com (Parties have electronic service agreement)
Via U.S. Mail and Email

OIC Hearings Unit
Attn: George A. Finkle, Presiding Hearings Officer
Washington State Insurance Commissioner
5000 Capitol Blvd
Tumwater, WA 98501
hearings@oic.wa.gov
Via Hand Delivery and Email

SIGNED this 20th day of January, 2015, at Tumwater, Washington.


Christine M. Tribe



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STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

**LEO J. DRISCOLL and MARY T.
DRISCOLL**

Application for Hearing.

Docket No. 14-0187

SECOND DECLARATION OF
SCOTT FITZPATRICK

I, Scott Fitzpatrick, declare as follows:

1. I am over the age of eighteen (18) and make this declaration based on my personal knowledge.
2. I am employed by the Washington State Office of Insurance Commissioner as an Actuary 3 with the Company Supervision and Rates and Forms Divisions. I am a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries.
3. Actuaries, like myself, specialize in particular practice areas corresponding to their training and credentials. I am a life actuary, specializing in disability and long-term care insurance.
4. I have twenty-six (26) years of experience as an actuary, and seven (7) years specializing as an actuary in long term care insurance.
5. It is part of my primary responsibilities to review companies' rate filings for disability and long-term care insurance to make sure that the

1 companies' proposed rates are justified actuarially and meet statutory
2 requirements.

- 3 6. I am experienced and familiar with the NAIC's System for Electronic
4 Rate and Form Filing (SERFF).
5 7. Rate filing review and written correspondence with the filers is all
6 electronic through the NAIC's System for Electronic Rate and Form
7 Filing (SERFF).
8 8. I am experienced and familiar with the Insurance Code and the Office of
9 the Insurance Commissioner obligation under the statutes and rules
10 pertaining to insurance, especially the statutes and rules governing
11 disability and long-term care insurance.
12 9. I have knowledge of, and access to, the 2011 TIAA-Cref (MetLife) rate
13 filing that is the subject of the Demand for Hearing.
14 10. All rate filing materials are reviewed by Office of the Insurance
15 Commissioner staff actuaries who specialize in reviewing particular
16 rating filings that corresponds to their training and credentials.
17 11. I am not the Actuary who conducted the actuarial review of the 2011
18 MetLife rate filing. Lee Michelson, who approved the MetLife rate
19 filing, left the Office of the Insurance Commissioner for other
20 employment. Lee Michelson, like all Office of the Insurance
21 Commissioner staff actuaries, specialized in reviewing particular rate
22 filings that corresponded to his training and credentials, which were
23 disability and long-term care insurance.
24 12. In order to provide responses to the Demand for Hearing, I conducted a
25 thorough review of the 2011 MetLife rate filing.
26 13. I have reviewed the MetLife Premium Rate Schedule Increase Filing.
14. I have reviewed the Actuarial Memorandum in support of the MetLife
Premium Rate Schedule Increase Filing.
15. I have reviewed the OIC actuary staff email communications regarding
the 2011 MetLife rate filing. A true and correct copy of these emails is

1 attached as Exhibit 3 to Declaration of Scott Fitzpatrick (previously
2 submitted).

3 16. I have reviewed the Disposition provided to MetLife regarding the 2011
4 rate filing which approved the 2011 rate filing.

5 17. Amongst other arguments, Leo and Mary Driscoll (Petitioners) allege that
6 the filing should not have been approved because the filing did not
7 include Washington specific rates.

8 18. Washington specific rates were not filed with the rate filing because those
9 rates would be statistically inaccurate and misleading. Between all three
10 MetLife policy product lines (series .02, .03 and .04) only fifty-five (55)
11 policies were sold to Washington State consumers.

12 19. Actuaries use the Bayesian Creditability Theory to determine the
13 creditability of long-term care insurance loss-ratios within states. The
14 Bayesian Creditability Theory requires that at least 1,082 claims be
15 currently filed on a policy form within a state to attain statistical
16 creditability for a rate filing and loss ratio analysis. With only a total of
17 fifty-five (55) policies sold in the state of Washington (of which only a
18 fraction are in claim status), creditability cannot be attained, nor could it
19 be attained in combination with a few states.

20 20. Due to the small number of policies sold, in order to attain creditable
21 statistics, the analysis must be performed at a national level.

22 21. RCW 48.19.030 permits an insurer to use loss experience from the
23 combined experiences of other states (including at the national level if
24 needed) that are likely to produce loss experience similar to that in this
25 state when the loss experience in Washington is not statically creditable.

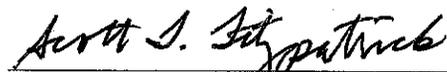
26 22. The Office of the Insurance Commissioner accepted the most statistically
credible loss experience available to the limited MetLife product line,
which was nationwide loss experience and issued the Disposition
approving of the MetLife rate and form filing on August 17, 2011.

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23. The 2011 MetLife rate filing and supporting materials were no different in form or substance than any other typical rate filing. The rate filing was accurately determined to be supported by the calculations.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Executed on the 16th day of January, 2015, at Tumwater, Washington.



Scott L. Fitzpatrick FSA, MAAA
Actuary 3
Office of the Insurance Commissioner

**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

DOCKET NO. 14-0187

**LEO J. DRISCOLL AND MARY T.
DRISCOLL**

DECLARATION OF METROPOLITAN LIFE INSURANCE COMPANY

I, Thomas Reilly, represent and warrant, declare and say:

1. My name is Thomas Reilly. I am over 18 years of age and I am competent to testify regarding the matters in this affidavit as of my own personal knowledge.

2. Metropolitan Life Insurance Company ("MetLife") is incorporated in New York, with a principal place of business in New York. I am employed with MetLife as a Director of Product Management and Compliance. In this capacity I am familiar with Long-Term Care Insurance products, long-term care product and rate filings and long-term care compliance matters.

3. My responsibilities now relate to the filing of long-term care insurance rate filings applicable to long-term care insurance products insured and reinsured by MetLife as well as ensuring MetLife's products are compliant. My responsibilities in 2011 were consistent with what they currently are and I managed the rate filing project commencing in 2011 that included filing rate increases in Washington for various MetLife long-term care insurance policies and TIAA-CREF Life Insurance Company long-term care insurance policies reinsured and administered by MetLife, including policies issued to Leo Driscoll and Mary Driscoll ("the Driscolls").

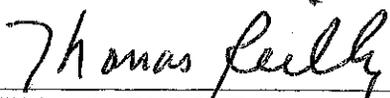
4. On June 10, 2011, MetLife submitted long-term care insurance rate increase filings to the Washington State Office of the Insurance Commissioner ("WA DOI") for review and approval. In the filing letter (attached hereto as "Exhibit A") applicable to the policy forms issued to the Driscolls, MetLife requested

a 41% increase and specifically advised the WA DOI that MetLife was filing the increase for the WA DOI's "review and approval" and further stated that MetLife would only make the rate increase effective after MetLife "obtained approval of the premium rate increase" from the WA DOI and after providing 60 days advance notice to policyholders.

5. On August 17, 2011, MetLife received a communication from the WA DOI setting forth an implementation date for the 41% increase requested in MetLife's June 10, 2011 filing (WA DOI August 17, 2011 communication attached hereto as "Exhibit B").

6. Consistent with the conditions set forth in MetLife's June 10, 2011 filing with the WA DOI, MetLife did not commence the implementation of the 41% increase on the Driscolls' policies until after receiving the August 17, 2011 communication from the WA DOI and after providing the Driscolls with 60 days advance written notice. This is consistent with MetLife's implementation process whereby we wait for an indication of acceptance from a state insurance department before we proceed with implementing a rate increase.

FURTHER DECLARANT SAYETH NOT.


THOMAS REILLY, Director, Product Management and Compliance
Metropolitan Life Insurance Company

Dated: January 2, 2015

EXHIBIT "A"

Metropolitan Life Insurance Company
1096 Sixth Avenue
New York, NY 10036
Tel 212 578-2944 Fax 212 578-3874
croth@metlife.com

MetLife®

Carolyn J. Roth
Director
Institutional Business Contracts

June 10, 2011

Washington State Office of the Insurance Commissioner
Insurance 5000 Building
5000 Capitol Way
Tumwater, WA 98501

Re: TIAA-CREF Life Insurance Company ("T-C Life")
Individual Long-Term Care Insurance – Premium Rate Schedule Increase Filing
T-C Life NAIC Company No. is 60142
T-C Life FEIN is 13-3917848

Dear Sir/Madam:

The referenced filing is being submitted by Metropolitan Life Insurance Company ("MetLife") as administrator on behalf of T-C Life, under an administrative agreement between MetLife and T-C Life that became effective on May 1, 2004. A letter authorizing MetLife to submit this filing on behalf of T-C Life is included in this filing.

Background on Reinsurance Transactions

On May 1, 2004, MetLife entered into indemnity reinsurance agreements with each of T-C Life and Teachers Insurance and Annuity Association ("TIAA" and together with T-C Life, "Teachers"), pursuant to which MetLife agreed to reinsure all of Teachers' long-term care insurance business on an indemnity reinsurance basis.

Concurrently with entering into the indemnity reinsurance agreements, MetLife entered into assumption reinsurance agreements with each of TIAA and T-C Life, pursuant to which MetLife agreed to assume Teachers' direct obligations under their long-term care insurance policies on the terms and conditions set forth in the assumption reinsurance agreements.

All required approvals were obtained for these transactions.

This filing for approval only pertains to those long-term care insurance policies issued by T-C Life in your state that MetLife reinsures on an indemnity reinsurance basis. Concurrently with this filing, we are submitting the following filings to request approval of premium rate schedule increases for:

- a filing to request approval of premium rate schedule increases for the long-term care policies that MetLife indemnity reinsures for TIAA (policy form series LTC.02 and LTC.03); and
- a filing to request approval of premium rate schedule increases for the TIAA and T-C Life long-term care policies assumed by MetLife.

Although we are submitting three separate filings for rate increases related to the Teachers long-term care business, we are requesting that the policies to which the three filings relate be treated as one block of business for purposes of review and approval of our premium rate schedule increase filings and consistency in the amount of the rate increase which is ultimately approved.

Request for Approval of Inforce Premium Rate Schedule Increase

We are filing, for your review and approval, a request for a premium rate schedule increase on the following T-C Life long-term care insurance policy forms series:

W11-27 TL (TC-LIFE - Rates)

- TCL-LTC.04(WA) Ed. 4/00, initially approved by your Department on March 16, 2001, along with any rider and endorsement forms that were contemporaneously or subsequently approved for use with that policy form. This policy series is no longer being marketed to new policyholders in any state.

At this time, we are requesting a premium rate increase of 41% on the above listed policy forms series and all associated riders that were issued in your state. No premium rate increase has been previously approved or implemented for these forms. We are submitting an actuarial memorandum and rates in support of our request.

Notification to Policyholders of Premium Rate Schedule Increase

After we have obtained approval of the premium rate increase, we intend to provide policyholders with a minimum of 60 days advance written notification prior to the first effective date of the increase. In our written notification we will explain that:

- the policyholder can continue his/her current coverage by paying the new premium amount when due;
- the policyholder can reduce his/her coverage to lessen the impact of the premium rate schedule if the current level of coverage permits a reduction; or
- if the policyholder's coverage lapses (due to nonpayment of premium or cancellation) at anytime from the date of our written notification up to 120 days following the first due date of the new premium ("Election Period"), that the policyholder will have nonforfeiture coverage.

If the policyholder's coverage includes the shortened benefit period nonforfeiture benefit and coverage lapses during the Election Period, the nonforfeiture coverage will be provided under that feature.

In all other cases, we will automatically issue the policyholder the Limited Coverage Upon Lapse Following Premium Increase Endorsement ("LCUL") described below. Note that if the policyholder qualifies for coverage under Contingent Benefit Upon Lapse, we will instead provide coverage under LCUL since the benefit payable under LCUL is equal to the benefit payable under Contingent Benefit Upon Lapse.

The LCUL endorsement provides the same benefits that were in effect under the policy immediately prior to the date it lapsed, except that:

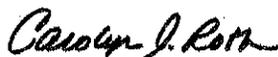
- the policyholder's lifetime benefit maximum will be reduced to the greater of:
 - the sum of all paid premiums; or
 - 30 times the nursing home daily benefit maximum in effect immediately prior to lapse; and
- no further premiums will be due, the policyholder may no longer change benefit amounts and will no longer receive increases under any inflation option that is part of the policy.

Total benefits payable under the endorsement will not exceed the remaining lifetime benefit maximum in effect immediately prior to lapse.

We will not provide coverage under more than one nonforfeiture coverage provision.

Thank you for your attention to our filing. We look forward to hearing from you.

Sincerely,



Carolyn Roth
Director

EXHIBIT "B"

<i>SERFF Tracking Number:</i>	<i>META-127150316</i>	<i>State:</i>	<i>Washington</i>
<i>Filing Company:</i>	<i>TIAA-CREF Life Insurance Company</i>	<i>State Tracking Number:</i>	<i>230615</i>
<i>Company Tracking Number:</i>	<i>W11-27 TL (TC-LIFE - RATES) CC</i>		
<i>TOI:</i>	<i>LTC06 Long Term Care - Other</i>	<i>Sub-TOI:</i>	<i>LTC06.000 Long Term Care - Other</i>
<i>Product Name:</i>	<i>Long Term Care Insurance</i>		
<i>Project Name/Number:</i>	<i>LCUL.04-TCL/W11-27 TL (T-C LIFE)</i>		

SERFF Tracking Number: META-127150316

State: Washington

Filing Company: TIAA-CREF Life Insurance Company

State Tracking Number: 230615

Company Tracking Number: W11-27 TL (TC-LIFE - RATES) CC

TOI: LTC06 Long Term Care - Other

Sub-TOI: LTC06.000 Long Term Care - Other

Product Name: Long Term Care Insurance

Project Name/Number: LCUL.04-TCL/W11-27 TL (T-C LIFE)

Disposition

Disposition Date: 08/17/2011

Implementation Date: 10/16/2011

Status: Filed

Comment:

You have been selected to take part in our online customer survey. Please take a minute or two to give us your feedback so we can better serve you. The survey is completely voluntary and confidential.

Take the survey at: <http://www.sesrc.wsu.edu/PugetSound/RatesandForms>

Company Name:	Overall % Indicated Change:	Overall % Rate Impact:	Written Premium Change for this Program:	# of Policy Holders Affected for this Program:	Written Premium for this Program:	Maximum % Change (where required):	Minimum % Change (where required):
TIAA-CREF Life Insurance Company	41.000%	41.000%	\$35,747	55	\$87,187	41.000%	41.000%

SERFF Tracking Number: META-127150316 State: Washington
 Filing Company: TIAA-CREF Life Insurance Company State Tracking Number: 230615
 Company Tracking Number: W11-27 TL (TC-LIFE - RATES) CC
 TOI: LTC06 Long Term Care - Other Sub-TOI: LTC06.000 Long Term Care - Other
 Product Name: Long Term Care Insurance
 Project Name/Number: LCUL04-TCLW11-27 TL (T-C LIFE)

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document	Actuarial Memorandum		Yes
Supporting Document	Long Term Care Rates		Yes
Supporting Document	Cover Letter		Yes
Supporting Document	Authorization Letter		Yes
Rate	Generic Rates		Yes