

**FILED**

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

2014 OCT -8 A 9:41

In the Matter of	)	<b>Docket No. 14-0187</b>
	)	
<b>LEO J. DRISCOLL and</b>	)	
<b>MARY T. DRISCOLL</b>	)	<b>ORDER ON PREHEARING</b>
	)	<b>CONFERENCE</b>
Application for Hearing	)	
	)	
	)	
	)	
	)	

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**TO:** Leo J. Driscoll  
4511 E. North Glenngrae Ln.  
Spokane, WA 99223

**COPY TO:** Mike Kreidler, Insurance Commissioner  
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner  
Molly Nollette, Deputy Commissioner, Rates and Forms Division  
Mandy Weeks, Insurance Enforcement Specialist, Legal Affairs Division  
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

This case came before me on October 7, 2014, for telephonic preliminary conference. Leo J. Driscoll appeared pro se, speaking for himself and his wife, Mary T. Driscoll. Mandy Weeks, Insurance Enforcement Specialist in the Legal Affairs Division of the Office of Insurance Commissioner ("OIC"), appeared on behalf the Insurance Commissioner. After considering the views of the Driscolls and the OIC, I enter the following Order:

1. On September 19, 2014, the Driscolls filed a 36-page Application with Washington State Insurance Commissioner Mike Kreidler “seeking a consolidated Adjudicative Proceeding under RCW 34.05.413 as to four (4) related counts.” In brief:

2. *Count 1-A.* Seeks adjudication that a 2011 41% premium increase request for individual long-term care insurance (“LTCI”) policies issued by TIAA-CREF Life Insurance Company (“T-C Life”), through Metropolitan Life Insurance Company (“MetLife”) as indemnitor-reinsurer and administrative agent, was insufficiently supported by information demonstrating compliance with applicable laws and regulations; that the OIC’s failure to timely disapprove such request resulted in statutorily-deemed approval, filing and legal effectiveness; that the premium increase resulted in unconstitutional deprivation of the Driscolls’ property rights in violation of the Due Process clauses of the Washington State and U.S. Constitutions; that the Driscolls were denied Procedural Due Process due to inadequate notice of the pendency of the request, the lack of necessary information, and the absence of a meaningful opportunity to be heard and present objections; and that the OIC failed to consider and balance competing interests. *B.* Alleges unconstitutional delegation, abdication, and surrender of legislative power to the private proponent of the premium increase and failure to provide essential procedural safeguards and to balance competing interests. *C.* Seeks adjudication that the LTCI at issue is subject to most provisions of Ch. 48.19 RCW.

3. *Count 2.* Seeks an administrative order directing T-C Life to provide documentary information to the Driscolls pertaining to their LTCI affected by the 41% premium increase.

4. *Count 3.* Seeks a remedy under Ch. 48.18 RCW, alleging that OIC’s approval of the premium increase and the related Policy Schedule forms was erroneous because such approval

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was, and is, ungrounded, and that the Commissioner has authority, grounds, cause, and duty to hold a hearing and to issue an order pursuant to RCW 48.18.100(3) and (4) and RCW 48.18.110(1) directing the insurer to cease use of and withdraw the changed Policy Schedule forms and granting other prospective relief.

5. *Count 4.* Seeks prospective relief under RCW 48.19.120 from the 41% premium increase on the grounds that the premium increase request was, and is, unsupported by information showing that it complied with applicable laws and regulations and/or adjudication as to the futility of pursuing that remedy (because of the provisions of RCW 49.19.120(2) and applicability thereof to an order under RCW 48.19.120(1) in relation to the policy forms). The Driscolls seek to access and exhaust available administrative remedies, if any, and to invoke the primary jurisdiction of the OIC, if any, in respect to such matters.

6. The OIC intends to file a dispositive Motion asserting that the Driscolls have waived their claims as the result of untimeliness; the OIC may also assert other grounds for dispositive relief. By October 28, 2014, the OIC shall serve and file a dispositive Motion. By November 26, 2014, the Driscolls shall serve and file their Response to such Motion. By December 2, 2014, the OIC shall serve and file its Reply to such Response. I expect to rule without oral argument as soon as possible after briefing is complete.

7. The Driscolls requested that notice of this matter be provided to T-C Life and to MetLife, pursuant to RCW 34.05.434. The Driscolls and OIC may give notice of this matter and provide related documents to T-C Life, MetLife, and the Attorney General. (The OIC indicated that it intends to provide notice to the Attorney General.) If this matter proceeds after my ruling on the dispositive Motion, I will consider whether further notice is appropriate.

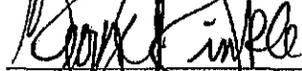
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8. Mr. Driscoll and Ms. Weeks may meet and confer (by telephone or in-person) to attempt to narrow the issues and to shape this matter appropriately.

Dated: October 8, 2014



JUDGE GEORGE FINKLE (Ret.)

Presiding Officer

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Leo J. Driscoll, Mike Kreidler, James T. Odiome, J.D., CPA, Molly Nollette, Mandy Weeks., and AnnaLisa Gellermann.

DATED this 8<sup>th</sup> day of October, 2014.



KELLY A. CAIRNS