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BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of	)	**Docket No. 14-0187**
	)	
LEO J. DRISCOLL and MARY T. DRISCOLL,	)	**PETITION FOR RECONSIDERATION OF ORDER ON OIC STAFF'S MOTION FOR SUMMARY JUDGMENT**
	)	
Application for Hearing	)	

Applicant petitions that the Presiding Officer, Judge George Finkle (Ret.), reconsider, amend, and/or supplement as appropriate the Order issued January 12, 2015 on OIC Staff's Motion for Summary Judgment in the following particular ways and for the reasons and grounds specified below.

1. The first sentence of paragraph 8 of the Order states that "The facts set forth in this Order are either undisputed or are taken in the light most favorable to the Driscolls". That sentence is not entirely correct; the Presiding Officer is requested to correct the Order as to items "(a)" and "(f)" below and to state that items (b) to (e) inclusive remain in dispute between the parties to these proceedings:

(a) Paragraph 12 incorrectly states that MetLife assumed the Driscolls' policies from a prior insurer in 2004 and was entitled to seek the rate increase at issue. As set forth in paragraphs 1.24 and 1.25 of the application (which are based on personal knowledge of applicant), the Driscolls did not consent to the proposed novation and assumption by MetLife. T-C Life remains our insurer. As set forth in paragraph 1.19 of the application, applicant is informed and believes that MetLife is the administrator and reinsurer on a 100% indemnity reinsurance basis as to our policies.

(b) Paragraph 13 is incorrect if and to the extent that that its' first sentence may infer that MetLife provided all information that was required by applicable laws or regulations to support the rate increase request.. The statement in the second sentence that "MetLife represented that it would implement the proposed rate increase only after OIC approval" is disputed by applicant.

(c) The content of the first sentence of Paragraph 14 of the Order is disputed by applicant if and to the extent that it may infer that the entries that appear in the "Disposition" section of the SERFF generated records for the subject rate filing, (*see Applicant's Exhibit 6)* provided notice to the Driscolls of an "order of the commissioner" approving the subject rate increase. The second sentence of Paragraph 14 is incorrect, unsupported by the evidence that has been presented, and is a matter that is in dispute.

(d) Paragraph 18 states or infers that the Driscolls received notice that "the OIC had approved the rate increase filing", which issue is disputed.

(e) Paragraph 20 includes words that the Driscolls had "a reasonable opportunity" to be heard", which fact and issue is disputed.

(f) The use of the term or reference to "OIC" in the first sentence of paragraph 3 of the Order is incorrect and, upon review by applicant or appears to be the obvious result of applicant's own inadvertent, un-thinking, erroneous inclusion of that term in paragraph 3 of the "Preface" which appears to have been the reason why it was included in paragraph 3 of the Order. Applicant requests that the Order be amended to delete "OIC" from paragraph 3 of the Order.

2. Request is made that the Presiding Officer amend the Order to delete any reference to RCW 4.16.130 in paragraph 19 of the Order on the grounds and for the reason that such statute was not asserted as a basis of the Motion for Summary Judgment and that the issue of its' applicability to Counts 1, 3, and/or 4 was first advanced by the moving party in the Reply to the Response to the Motion for Summary Judgment, contrary to CR 56(c) and cases construing such rule including R.D. Merrill v. Pollution Board, 137 Wn. 2d 118, 147-148(1999).

   (a) The Reply was served on applicant on January 20, 2013. Three days later, on January 23, 2000 applicant received a copy of the January 23, 2015 Order via e-mail. Applicant has not had reasonable opportunity to consider and brief the issue of applicability of RCW 4.16.130. Applicant's initial concerns include these:

   (b) Count 3 seeks <u>prospective</u> relief from approval of the premium increase and "changed Policy Schedule" forms relating thereto (by whatever means such approval occurred be-it a deemed or affirmative approval). Count 3 alleges the approval was and is ungrounded for reasons stated and re-alleged by reference to Count 1. Count 3, including 3.11 thereof, alleges that the

"*Commissioner has authority, grounds, cause, and duty under RCW 48.18.100 and 48.18.110(1) to withdraw approval of the Policy Schedule forms that reflect* " the ungrounded and erroneous premium increase.

(c) RCW 48.18.100(3) provides in relevant part: "The commissioner may withdraw any approval at any time for cause". Notwithstanding that open-ended authority, the Order, as issued, effectively determines that aggrieved policyholders are perpetually subject to an unfounded and erroneous increase if they do not step forward, show cause, and make demand for hearing within 2 years of accrual of a right to do so under RCW 4.16.130.

(d) Issues exist but have not been addressed as to when the "cause of action" accrued under that statute, or whether the insured's lack of information (and inability to obtain it) as set forth in Count 1 and as re-alleged in Count 3 and Count 4, affect the accrual of the cause of action under RCW 4.16.130.

(e) Significant public policy considerations pro and con seemingly exist as to the applicability of RCW 4.16.120 to Counts 3 and 4 which should be considered in depth and rules of statutory construction as to reconciling the statutes must be considered. .

3. **Notice**: Applicant has alleged that any approval of the unfounded rate increase request by OIC subsequent to the date when the request was deemed approved by operation of law is void ab initio and of no legal effect. Within the past week, applicant became aware of the decision of the Washington Supreme Court, *Durland v. San Juan County*, #89293-8, December, 2014, and it is appropriate that the Presiding Officer and counsel for OIC be made aware of it. Applicant has briefly scanned the decision, notes that it deals with a statutory time limitation for challenging agency action in another regulated field, and that it cites precedent holding that "even illegal decisions must be challenged in a timely manner",

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4. Clarification is needed as to part of the first sentence of paragraph 13 of the Order; Question: Is that a finding that MetLife's filing was supported by "actuarial and (*some*) other required information"? Or is it a finding that the filing was supported by "actuarial and (*all*) required information"? I believe it reasonably can be read either way. The Presiding Officer is requested to amend the Order to eliminate that ambiguity, with findings, conclusions, reasons and basis if the answer to the question is to the effect that *all* required information was submitted.

5. The Presiding Officer is requested to amend and supplement the Order by including a statement therein in keeping with RCW 34.05.461 as to the basis for disregarding applicants second declaration (*LJD Declaration #2)*,which simply identifies and submits the exhibits that are referenced therein.

6. The Presiding Officer is requested reconsider the ruling set forth in the second sentence of paragraph 8 of the Order insofar as it applies to disregarding the initial paragraph and paragraphs 3.1 to 4.4 inclusive of applicant's declaration that is identified as "*LJD Declaration #1"* and to include a statement of findings, conclusions, basis and reasons for disregarding such matters in keeping with RCW 34.05.461.

7. The Presiding Officer is requested to amend the Order to include findings, conclusions, reasons and basis therefor, relative to the determination in the Order that the procedures set forth in RCW 48.19.310 are applicable in this matter.

Respectfully submitted, February 2, 2015.

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