

FILED

2014 DEC -5 P 2:23

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

COMMONWEALTH
INSURANCE COMPANY OF
AMERICA,

Authorized
Domestic Insurer.

Docket No. 14-0214

WAOIC# 111240
NAIC 10220

OIC'S RESPONSE TO
COMMONWEALTH INSURANCE
COMPANY OF AMERICA'S
REQUEST FOR PROTECTIVE
ORDER

I. INTRODUCTION

Commonwealth Insurance Company of America ("Commonwealth") seeks to prevent disclosure of public records in this matter. Commonwealth's request for a protective order should be denied as it has failed to meet its burden to show that the records are exempt and not subject to disclosure. Moreover, the proposed protective order is contrary to the public interest.

II. FACTS

In its request for a protective order, Commonwealth seeks to deny the public access to its biographical affidavit personal information and pro-forma financial statement. Commonwealth also seeks to protect its management discussion and analysis, and actuarial opinion, despite the fact that it included both documents in the "public records package" portion of its application for redomestication. All of these documents are typically published by the Office of the Insurance Commissioner ("OIC"). The purpose of publication is to allow the public access to the information, so they can evaluate the OIC's hearings administration. In addition to promoting transparency of the hearing process, publication also conserves limited state resources by promoting efficient public records disclosures – when a member of the public requests hearings documents, the OIC can point the requestor to the documents posted

1 online by its Hearings Unit, but only if the documents are not overly redacted or withheld.
2 Currently, the OIC Hearings Unit redacts birthdates, social security numbers, and home
3 addresses before publishing redomestication application materials.

4 In support of its motion, Commonwealth cites the possible harm of disclosure and the
5 competition. However, as of May 2012, Commonwealth has been in runoff and has no plans to
6 write new business. *See* Commonwealth Statement of Actuarial Opinion at 2 (attached as Ex.
7 1).

8 III. ANALYSIS

9 A. Public Records Act Exemptions in General

10 Washington's Public Records Act ("PRA") clearly mandates maximum disclosure and
11 transparency:

12 The people of this state do not yield their sovereignty to the agencies that serve
13 them. The people, in delegating authority, do not give their public servants the
14 right to decide what is good for the people to know and what is not good for them
15 to know. The people insist on remaining informed so that they may maintain
16 control over the instruments that they have created. This chapter shall be liberally
17 construed and its exemptions narrowly construed to promote this public policy.
18 RCW 42.56.030. Courts shall take into account the policy of this chapter that free
19 and open examination of public records is in the public interest, even though such
20 examination may cause inconvenience or embarrassment to public officials or
21 others. RCW 42.56.550(3).

22 As a result, most PRA exemptions are "permissive rather than mandatory." WAC 44-
23 14-06002 (quoting AGO 1980 No. 1, at 4-6 (Jan. 3, 1980) (citing *Chrysler Corp. v. Brown*, 441
24 U.S. 281 (1979)); *see generally* *Corey v. Pierce County*, 154 Wn. App. 752, 765-67, review
25 denied, 170 Wn.2d 1016 (2010) (rejecting claim that the PRA created a cause of action for
26 releasing exempt records). Given the pro-disclosure approach of the PRA, the law requires an
27 exemption from disclosure to be narrowly construed in favor of disclosure. RCW 42.56.030.
28 An exemption from disclosure must specifically exempt a record or part of a record from
29 disclosure. RCW 42.56.070(1). An exemption will not be inferred or presumed. *Progressive*

1 *Animal Welfare Soc'y. v. Univ. of Wash.*, 125 Wn.2d 243, 262 (1994). Thus, a record or
2 portion of a record must fit squarely within a specific statutory exemption in order to be
3 withheld.

4 Moreover, agencies cannot create or shape exemptions. An agency cannot define the
5 scope of a statutory exemption through rule making or policy. *Servais v. Port of Bellingham*,
6 127 Wn.2d 820, 834 (1995). An agency agreement or promise not to disclose a record cannot
7 make a disclosable record exempt from disclosure. RCW 42.56.070(1). *Spokane Police Guild*
8 *v. Liquor Control Bd.*, 112 Wn.2d 30, 40 (1989); *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 137
9 (1978); *see also Brouillet v. Cowles Publ'g Co.*, 114 Wn.2d 788, 794 (1990) (rejecting
10 argument that state regulation mandating confidentiality of records merited deference in court's
11 determination of exemption from disclosure).

12 Each record that Commonwealth seeks to conceal is used by the Insurance
13 Commissioner to determine whether redomestication is in the public interest. Thus, members
14 of the public who have an interest in understanding the impact of Commonwealth's
15 redomestication have an interest in said records. Commonwealth has not provided an adequate
16 basis for concealing records from the public or for preventing the Insurance Commissioner
17 from disclosing the public records.

18 **B. Privacy**

19 Under the PRA, "[t]here is no general 'privacy' exemption." WAC 44-14-06002(2)
20 (attorney general's Public Records Act Model Rules). To withhold information based on
21 "privacy," a party must establish that disclosure is "highly offensive to a reasonable person"
22 and "is not of legitimate concern to the public." RCW 42.56.050. This concept of privacy
23 requires a reasonable expectation of privacy, which a person must establish by showing that
24 the information is not publicly available. *See Van Buren v. Miller*, 22 Wn. App. 836, review
25 denied, 92 Wn.2d 1021 (1979) (noting that the unrecorded farmland lease data was known by
26 at least three parties - the lessor, lessee, and assessor - and so could not be deemed "private").
There is no "legitimate public concern" where the public's interest is harmed by disclosure
more than it is served. *Dawson v. Daly*, 120 Wn.2d 782, 798 (1993). RCW 42.56.050 does not
allow any balancing of an individual's privacy interest against the public interest. *Id.* Rather, it

1 is a public interest versus public interest balancing, and the burden is on the opponent of
2 disclosure to show that public interest weighs in favor of withholding the public record. *See id.*

3 In fact, the PRA takes a very narrow view of personal information. *See* RCW 42.56.590
4 (defining “personal information” for purposes of the section as a person’s name in combination
5 with a social security number, driver’s license or Washington identification number, or credit
6 or debit card numbers). There is no specific exemption in the PRA for the “personal
7 information” that Commonwealth seeks to withhold from public view.

8 Here, Commonwealth asserts that its directors and officers “have a reasonable concern”
9 regarding disclosure of certain public records, which does not meet the “highly offensive”
10 standard they must establish to protect the information from disclosure. In fact, some of the
11 information that Commonwealth seeks to redact is readily available online. *See e.g.*,
12 Washington’s Secretary of State Corporations Division’s Online Registration Data Search
13 Records for Commonwealth (attached as Ex. 2). Further, court records are quintessential public
14 documents. *See* Wash. Const. art. I, §10; *State v. Richardson*, 177 Wn.2d 351, 360 (noting that
15 “court records are presumptively open”). Thus, a blanket exemption from disclosure is
16 inappropriate and Commonwealth’s redomestication application materials should be published
17 with redaction procedures guided by the PRA.

18 **C. Trade Secrets and Related Exemptions**

19 The PRA requires agencies to make available for public inspection all public records
20 unless they fall within a specific exemption or “other statute” that exempts or prohibits
21 disclosure of specific information or records. RCW 42.56.070(1). The sole PRA authority cited
22 by Commonwealth applies only to information submitted to the Department of Social and
23 Health Services. RCW 42.56.270(11). However, the Uniform Trade Secrets Act, Chapter
24 19.108 RCW, which prohibits the disclosure of a “trade secret,” is an “other statute” and
25 therefore serves as a PRA exemption. *Prog. Animal Welfare Soc’y v. Univ. of Wash.*, 125
26 Wn.2d 243, 262 (1994). The “other statute” exception applies only to those exemptions
explicitly identified in other statutes; it does not authorize a court “to imply exemptions but
only allows specific exemptions to stand.” *Brouillet v. Cowles Publ’g Co.*, 114 Wn.2d 788, 800
(1990).

1 A trade secret is “[i]nformation, including a formula, pattern, compilation, program,
2 device, method, technique, or process that: (a) derives independent economic value, actual or
3 potential, from not being generally known to, and not being readily ascertainable by proper
4 means by, other persons who can obtain economic value from its disclosure or use; and (b) is
5 the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”
6 RCW 19.108.010(4). The information must also be “‘novel’ in the sense that the information
7 must not be readily ascertainable from another source.” *West v. Koenig*, 146 Wn. App. 108,
8 120 (2008). Notably, insurance company manuals are not trade secrets. *Woo v. Fireman's Fund*
9 *Ins. Co.*, 137 Wn. App. 480, 489 (2007). Further, actuarial opinions are public records and
subject to disclosure. *See* RCW 48.05.385(1).

10 To prevent disclosure of a trade secret, a party should seek injunctive relief pursuant to
11 RCW 42.56.540. *See Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 757 (2007). In order “to
12 impose the injunction contemplated by RCW 42.56.540, the trial court must find that a specific
13 exemption applies and that disclosure would not be in the public interest and would
14 substantially and irreparably damage a person or a vital government interest.” *Id.* (emphasis in
15 original). The party seeking to prevent disclosure bears the burden of proof. *Confed. Tribes of*
16 *Chehalis Res. v. Johnson*, 135 Wn.2d 734, 744 (1998). A party cannot meet its burden and
17 information will not be found to be a trade secret “[t]hrough general statements in
18 declarations.” *See id.* at 749. Typically, an agency will notify a party that a request has been
19 made for a record that pertains to the party and that the agency plans to disclose the record in
20 ten business days, unless the party obtains an injunction blocking disclosure. *See Seattle*
21 *Firefighters Union*, 48 Wn. App. at 131; *see also* WAC 44-14-04003(11). Still, an agency is
not required, but rather “has the option of notifying persons named in the record or to whom a
record specifically pertains, that release of a record has been requested.” RCW 42.56.540.

22 In this matter, Commonwealth does little more to support its request for a protective
23 order than to assert that the public records it wishes to withhold contain trade secrets. *See*
24 *Motion for Protective Order of Commonwealth* at 5. Commonwealth has failed to meet its
25 burden to prove that the public records it seeks to withhold from the public contain trade
secrets exempt from disclosure.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IV. CONCLUSION

Commonwealth's request for a protective order should be denied.

Dated this 5th day of December, 2014.



DREW STILLMAN
Insurance Enforcement Specialist
Legal Affairs Division

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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'S RESPONSE TO COMMONWEALTH INSURANCE COMPANY OF AMERICA'S REQUEST FOR PROTECTIVE ORDER** on the following individuals as described below.

Hon. George Finkle, Chief Hearing Officer
P O Box 40255
Olympia, WA 98504-0255
hearings@oic.wa.gov
GFinkle@JDRLLC.com
Forbes@JDRLLC.com

(XXX) Via Hand Delivery and Email

Timothy J. Parker
Carney Badley Spellman
701 5th Ave Ste 3600
Seattle WA 98104-7010
parker@carneylaw.com

(XXX) Via U.S. Mail and Email

DATED this 5th day of December, 2014, at Tumwater, Washington.

SIGNED BY: Christine M. Tribe
Christine M. Tribe
Paralegal

COMMONWEALTH INSURANCE COMPANY OF AMERICA
OIC NO. 14-00214 / SIMBA NUMBER: 1233917

EXHIBIT 1

Commonwealth Insurance Company of America Statement of Actuarial Opinion
As of December 31, 2013

Commonwealth Insurance Company of America
Statement of Actuarial Opinion
As of December 31, 2013
Page 1 of 4

IDENTIFICATION

I, Michael Shane, am Chief Actuary of Commonwealth Insurance Company of America. I am a Fellow of the Casualty Actuarial Society and a Member in good standing of the American Academy of Actuaries, meeting its qualification standards for signing statements of Actuarial Opinion regarding property and casualty insurance company statutory Annual Statements. I was appointed by the Board of Directors of the Commonwealth Insurance Company of America (the Company) on December 11, 2013 to render this Opinion. The loss and loss adjustment expense reserves (unpaid claim liabilities) are the responsibility of the Company's management; my responsibility is to express an opinion on loss and loss adjustment expense reserves based on my review.

SCOPE

I have examined the undiscounted reserves listed in Exhibit A, as shown in the U.S. Statutory Annual Statement of the Company as prepared for filing with state regulatory officials, as of December 31, 2013. The amounts listed in Exhibit A reflect the Loss Reserve Disclosure Items (8) through (13) in Exhibit B. These reserves do not include an explicit risk margin.

In forming my opinion on the loss and loss adjustment expense reserves, I relied upon data provided by Sophie Duh, Senior Accountant for Northbridge Indemnity Insurance Corporation, the previous owners of the Company. I evaluated the data used directly in my analysis for reasonableness and consistency. The loss expense reserves include provisions for defense and cost containment expense as well as other adjusting expense. I have also reviewed the reconciliation of the data to Schedule P - Part 1 as of December 31, 2013.

The data used in my analysis is evaluated as of December 31, 2013. I continued to receive information from the Company through February 21, 2014; some of this additional information reflects activity between the valuation date of the data and the date it was provided to me.

In other respects, my examination included the use of such actuarial assumptions and methods and such tests of calculations as I considered necessary consistent with actuarial standards of practice for preparing an analysis of unpaid claim estimates.

OPINION

In my opinion, the amounts shown in Exhibit A for the sum of items (1) and (2) (net loss and loss adjustment expense reserves), the sum of items (3) and (4) (gross loss and loss adjustment expense reserves):

- (a) Meet the requirements of the insurance laws of Washington.

Commonwealth Insurance Company of America
Statement of Actuarial Opinion
As of December 31, 2013
Page 2 of 4

- (b) Are computed in accordance with generally accepted actuarial standards and principles.
- (c) Make a reasonable provision for all unpaid loss and loss adjustment expense obligations of the Company under the terms of its contracts and agreements.

RELEVANT COMMENT

Effective May 1, 2012, the Company was placed into runoff.

The Company primarily wrote Commercial Property and Marine exposures for which Incurred But Not Reported (IBNR) reserves are generally small. The major risks facing the company are the potential for continued claim reporting from Hurricane Sandy, which occurred in late 2012. The absence of other risk factors from this listing does not imply that additional factors will not be identified in the future as having been a significant influence on the Company's reserves.

Based on my understanding of the use of this Opinion, I evaluated materiality as the minimum of (1) 25% of statutory surplus and (2) the difference between the total adjusted capital and the Company Action Level from the Risk-Based Capital position, all as of December 31, 2013. I did not evaluate materiality in any other context. In this Opinion, I considered the potential for adverse deviation of \$4.8 million to be material. At this time, and for the reasons explained above, my assessment is that there are risks and uncertainties associated with the Company's net loss and loss adjustment expense reserves and these risks and uncertainties do not result in a significant potential for material adverse deviation.

The Company has not made material changes in the actuarial assumptions or methods used to establish the recorded reserves from those used in the previous period.

In evaluating whether the reserves make a reasonable provision for unpaid losses and loss adjustment expenses, it was necessary to project the Company's future loss and loss adjustment expense payments. My Actuarial Report provides support and details related to these projections. Actual future losses and loss adjustment expenses may vary significantly from these projections. My estimates make no provision for the future emergence of new classes of losses or types of loss not sufficiently represented in the Company's historical database or which are not yet quantifiable, nor do they make provision for the impact of possible changes in legal interpretation or statutory rules applied on a retroactive basis.

TOPICS AFFECTING LOSS & LOSS ADJUSTMENT EXPENSE RESERVES

RETROACTIVE REINSURANCE AND FINANCIAL REINSURANCE

Management has represented to me that the Company does not currently participate in financial reinsurance or retroactive reinsurance.

Commonwealth Insurance Company of America
Statement of Actuarial Opinion
As of December 31, 2013
Page 3 of 4

REINSURANCE COLLECTIBILITY

I have relied upon Ann Weikers, Vice President of Reinsurance for the Company, and John Bator, Chief Financial Officer for the Company, to evaluate the collectability of the reinsurance recoverable. Based upon their review, I find the provision for uncollectible reinsurance to be adequate.

ASBESTOS AND ENVIRONMENTAL

Management has represented to me that the Company does not have exposure to asbestos and/or environmental impairment liability.

DISCOUNTING

The Company does not discount its loss and loss adjustment expense reserves.

SALVAGE AND SUBROGATION

The Company does not anticipate expected future salvage and subrogation recoveries in establishing its reserves.

POOLS AND ASSOCIATIONS

The Company does not participate in voluntary or involuntary pools.

EXTENDED LOSS AND EXPENSE RESERVES

Management has represented to me that the Company has not provided extended loss coverage through December 31, 2013.

NAIC IRIS TESTS

The loss and loss adjustment expense reserves shown in Exhibit A did not create any exceptional values for NAIC IRIS Tests #11 (One Year Reserve Development to Policyholders' Surplus), #12 (Two Year Reserve Development to Policyholders' Surplus) or #13 (Estimated Current Reserve Deficiency to Policyholders' Surplus).

DISCLOSURES OF ITEMS FOR
UNEARNED PREMIUM RESERVES FOR LONG DURATION CONTRACTS

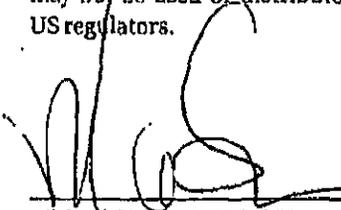
Company management represented to me that it does not have exposure to long duration contracts, defined as being single or fixed premium policies with coverage periods of thirteen months or greater, which are non-cancelable and not subject to premium adjustment (excluding financial guaranty contracts, mortgage guaranty policies, and surety contracts).

Commonwealth Insurance Company of America
Statement of Actuarial Opinion
As of December 31, 2013
Page 4 of 4

DISTRIBUTION AND USE

I will provide to the Company an Actuarial Report supporting the findings expressed in this Statement of Actuarial Opinion, including my underlying workpapers and documentation of the Schedule P reconciliation. This Report should be retained by the Company at its administrative offices for a period of seven years and should be made available for regulatory examination.

This Statement of Actuarial Opinion is provided for use in regulatory filings with state authorities and may not be used or distributed for any other purpose. The intended primary users of this document are US regulators.



Michael Shane, FCAS, MAAA
Vice President and Chief Actuary
RiverStone Resources, LLC
Commonwealth Insurance Company of America
250 Commercial Street, Suite 5000
Manchester, NH 03101
(603) 656-2313
michael_shane@trg.com

February 25, 2014

SUPPLEMENT FOR THE YEAR 2013 OF THE Commonwealth Insurance Company of America
Exhibit B: DISCLOSURES

1
Amount

1. Name of the Appointed Actuary Michael Shanz

2. The Appointed Actuary's Relationship to the Company. Enter E or C based upon the following: E
 E if an Employee of the Company or Group
 C if a Consultant

3. The Appointed Actuary has the following designation (indicated by the letter code) F
 F if a Fellow of the Casualty Actuarial Society (FCAS)
 A if an Associate of the Casualty Actuarial Society (ACAS)
 M if not a member of the Casualty Actuarial Society, but a Member of the American Academy of Actuaries (MAAA) approved by the Casualty
 Practice Council, as documented with the attached approval letter.
 O for Other

4. Type of Opinion, as identified in the OPINION paragraph. Enter R, I, E, Q, or N based upon the following R
 R if Reasonable
 I if Inadequate or Deficient Provision
 E if Excessive or Redundant Provision
 Q if Qualified. Use Q when part of the OPINION is Qualified.
 N if No Opinion

5. Materiality Standard expressed in US dollars (Used to Answer Question 6) 4,850,000

6. Are there Significant Risks that could result in Material Adverse Deviation? Yes [] No [X] N/A []

7. Statutory Surplus (Liabilities, Col 1, Line 37) 13,392,312

8. Anticipated net salvage and subrogation included as a reduction to loss reserves as reported in Schedule P (should equal Part 1 Summary, Col
 27, Line 12 * 1000)

9. Discount included as a reduction to loss reserves and loss expense reserves as reported in Schedule P
 9.1 Nonstatutory Discount (Notes, Line 32B23, (Amounts 1, 2, 3 & 4), Electronic Filing Cols 1, 2, 3, & 4
 9.2 Tabular Discount (Notes, Line 32A23, (Amounts 1 & 2), Electronic Filing Col 1 & 2)

10. The net reserves for losses and expenses for the company's share of voluntary and involuntary underwriting pools' and associations' unpaid
 losses and expenses that are included in reserves shown on the Liabilities, Surplus and Other Funds page, Losses and Loss Adjustment
 Expenses lines

11. The net reserves for losses and loss adjustment expenses that the company carries for the following liabilities included on the Liabilities, Surplus
 and Other Funds page, Losses and Loss Adjustment Expenses lines
 11.1 Asbestos, as disclosed in the Notes to Financial Statements (Notes, Line 33A03D, ending net asbestos reserves for current year) Electronic
 Filing Col 8
 11.2 Environmental, as disclosed in the Notes to Financial Statements (Notes, Line 33D03D, ending net environmental reserves for current year),
 Electronic Filing Col 9

12. The total claims made extended loss and expense reserve (Greater than or equal to Schedule P Interrogatories).
 12.1 Amount reported as loss reserves
 12.2 Amount reported as unearned premium reserves

13. Other items on which the Appointed Actuary is providing Relevant Comment (list separately)

* The reserves disclosed in Item 11 above, should exclude amounts relating to contracts specifically written to cover asbestos and environmental exposures. Contracts specifically written to cover these exposures include Environmental Impairment Liability (post 1988), Asbestos Abatement, Pollution Legal Liability, Contractor's Pollution Liability, Consultant's Environmental Liability, and Pollution and Remediation Legal Liability.

COMMONWEALTH INSURANCE COMPANY OF AMERICA
OIC NO. 14-00214 / SIMBA NUMBER: 1233917

EXHIBIT 2

Washington's Secretary of State Corporations Division's
Online Registration Data Search Records for Commonwealth

COMMONWEALTH INSURANCE COMPANY OF AMERICA

UBI Number	601585185
Category	INS
Profit/Nonprofit	Profit
Active/Inactive	Active
State Of Incorporation	WA
WA Filing Date	10/26/1994
Expiration Date	
Inactive Date	
Duration	Perpetual
Registered Agent Information	
Agent Name	
Address	
City	
State	
ZIP	
Special Address Information	
Address	LARRY KIBBEE 468 NEZ PERCE PL
City	LA CONNER
State	WA
Zip	98257

Governing Persons

Title	Name	Address
President	WATSON, JONATHAN B	
Secretary, Treasurer	MURPHY, ELIZABETH J	
Trustee	PHILLIPS, NOEL EDWARD	
Trustee	HUNTER, EDWARD	
Vice President	HURFORD, CRAIG A	
Vice President	SCHWAB, RONALD G	