

FILED

2014 DEC -8 P 12: 29

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

STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

In re the Matter of the Redomestication of  
COMMONWEALTH INSURANCE  
COMPANY OF AMERICA,  
Authorized Domestic Insurer.

No. 14-0214  
REPLY IN SUPPORT OF MOTION FOR  
PROTECTIVE ORDER

**I. INTRODUCTION**

The OIC agrees that the personal information in the biographical affidavits submitted by Commonwealth should be redacted (Tab 13). The OIC does not dispute that the assumptions underlying Commonwealth's financial projections are protected under RCW 48.02.120(3). These are contained in both the Pro-Forma Financial Statement ("Balance Sheet") (Tab 6(b)). As to proprietary and trade-secret information, the OIC's position that the specific exemption in the PRA does not apply is contrary to case law. In addition, the elements of a trade secret under the UTSA are met. Commonwealth's proprietary and trade-secret information should not be posted on the OIC's website or otherwise made readily accessible to the public, but should be kept confidential pending a public disclosure request for the information.<sup>1</sup>

<sup>1</sup> Commonwealth acknowledges that the (1) Statement of Actuarial Opinion and (2) Management Discussion and Analysis are public documents.

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

**II. REPLY AUTHORITY AND ARGUMENT**

**A. The OIC agrees that biographical affidavit personal information should be redacted.**

Commonwealth does not seek protection of the entire biographical affidavits, but only the sensitive, personal identifying information contained in them (*see* Tab 13). The OIC recognizes and agrees that birthdates, social security numbers, current and previous home addresses, and the like should be redacted. This should include e-mail addresses, telephone numbers, place of birth, and spouse's names. Two of the biographical affidavits include records pertaining to immaterial personal court proceedings. The OIC has asserted that "members of the public who have an interest in understanding the impact of Commonwealth's redomestication have an interest in said records." However, the public has absolutely no legitimate interest in the sensitive, personal identifying information of directors, officers and spouses, as such information does not provide any insight as to the potential impact of the redomestication. When the fact that the public has no legitimate interest in this information is balanced against the potential harm that could occur from publicizing sensitive, personal identifying information, it must be determined that this information should be redacted. Accordingly, Commonwealth's motion should be granted as to this sensitive, personal identifying information (*e.g.*, birthdates, birth places, social security numbers, spouse's names, personal court history, etc.) in the biographical affidavits and the lists of directors and officers (Tab 7).

**B. Assumptions underlying financial projections should be protected.**

Commonwealth's Balance Sheet lists several specific assumptions underlying its financial projections for 2014-2016 (Tab 6(b)). The OIC does not dispute that assumptions contained in submissions to the OIC are exempt from disclosure under RCW 48.02.120(3). This information should be protected.

1 **C. Proprietary and trade-secret information should be protected pending a PRA**  
2 **request.**

3 The PRA contains a specific exemption for confidential financial, commercial, and  
4 proprietary information such as data, trade secrets, or other information relating to a vendor's  
5 unique methods of conducting business or its products or services. RCW 42.56.270(11). The  
6 OIC's assertion that this exemption applies only to information submitted to the Department  
7 of Social and Health Services was rejected by the Court of Appeals in *Robins, Geller,*  
8 *Rudman & Dowd, LLP v. State*, 179 Wn. App. 711, 734 n.14, 328 P.3d 905 (2014).  
9 Proprietary and trade-secret information can be found in Commonwealth's Balance Sheet.  
10 For instance, the Balance Sheet lists Commonwealth's assets and liabilities, capital and  
11 surplus, risk-based capital, investment income, and more (Tab 6(b)). This information should  
12 be protected under RCW 42.56.270(11); *see also* RCW 48.05.465(1) (confidentiality of RBC  
13 reports).

14 Under the separate exemption embodied in the UTSA, the OIC does not seriously  
15 dispute that Commonwealth's Balance Sheet contains confidential financial information that  
16 is not readily ascertainable from another source. While the OIC notes that "insurance  
17 company manuals are not trade secrets," the cited case of *Woo v. Fireman's Fund Insurance*  
18 *Co.*, 137 Wn. App. 480, 154 P.3d 236 (2007), involved a claims manual, which is nothing like  
19 the financial information involved here.

20 The OIC appears mainly to dispute that the information derives actual or potential  
21 economic value from its nondisclosure, noting that Commonwealth is not writing new  
22 business. This ignores that Commonwealth is a subsidiary of a larger company, TIG  
23 Insurance Company. Disclosure of Commonwealth's proprietary financial information would  
24 provide a window into the financial status of the parent corporation, the performance of its  
25 investments, how it does business, and how its subsidiaries are operated and funded. The OIC  
26 identifies no justification for making this information readily accessible to the public in the  
context of this redomestication.

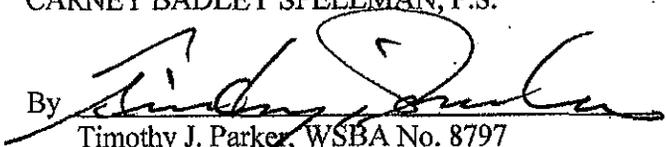
1 Finally, the OIC asserts that Commonwealth should be required to seek an injunction  
2 against disclosure by the OIC following a showing of irreparable harm under RCW  
3 42.56.540. That provision does not apply because no "request" for disclosure has been made  
4 under the PRA. See RCW 42.56.080, .520; WAC 284-03-015(4). Commonwealth seeks only  
5 to prevent disclosure of the information in advance of any request, by posting it on the OIC's  
6 website or otherwise making it readily accessible to the public. As the OIC observes,  
7 "Typically, an agency will notify a party that a request has been made for a record that  
8 pertains to the party and that the agency plans to disclose the record in ten business days,  
9 unless the party obtains an injunction blocking disclosure." See RCW 42.56.540; WAC 284-  
10 03-025(4). That is precisely the procedure Commonwealth has asked be followed here, in the  
11 event that a PRA disclosure request is made for any of the information subject to its motion.

### 12 III. CONCLUSION

13 Commonwealth has submitted an amended proposed protective order, which should be  
14 entered.

15 DATED this 8th day of December, 2014.

16 CARNEY BADLEY SPELLMAN, P.S.

17  
18 By 

Timothy J. Parker, WSBA No. 8797

19 Attorneys for Commonwealth Insurance Co. of  
20 America  
21  
22  
23  
24  
25  
26

CERTIFICATE OF SERVICE

I, Christine Williams, under oath hereby declare as follows: I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, and not a party to nor interested in this action. On December 8, 2014, I caused to be delivered via e-mail and U.S. mail a copy of the foregoing document on the following parties at the last known address as stated:

<p>OIC Hearings Unit – ORIGINAL  Office of the Insurance Commissioner  5000 Capitol Boulevard  Tumwater, WA 98501  Email: <a href="mailto:kelyc@oic.wa.gov">kelyc@oic.wa.gov</a></p> <p>Hon. George Finkle (Ret.)  Email: <a href="mailto:gfinkle@jdrllc.com">gfinkle@jdrllc.com</a>  <a href="mailto:forbes@jdrllc.com">forbes@jdrllc.com</a></p>	<p><u>Legal Affairs Division</u>  Drew Stillman  Insurance Enforcement Specialist  Legal Affairs Division  Office of the Insurance Commissioner  P.O. Box 40255  Olympia, WA 98504-0255  Email: <a href="mailto:drewst@oic.wa.gov">drewst@oic.wa.gov</a></p>
--	--

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 8<sup>th</sup> day of December, 2014, at Seattle, Washington.

Christine Williams, Legal Assistant