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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

January 4, 2016

Hearings Unit
Office of the Insurance Commissioner
5000 Capitol Blvd.
Tumwater, WA 98502

From: Leo J. Driscoll
4511 E. North Glenngrae Ln., Spokane, WA 99223
Telephone: (509) 747 7468

A. Application for Adjudicative Proceeding and Demand for Hearing

1. The undersigned applicant hereby applies to the Insurance Commissioner for an adjudicative proceeding and demands a hearing before the Insurance Commissioner to consider and adjudicate this challenge to action *[effectively an "order" as defined by RCW 34.05.010(11)]* of the Office of the Insurance Commissioner ("OIC") that authorized and/or approved an unfounded request for a 22.69% rate increase in the premiums of long-term care insurance ("LTCI") series LTC.04 policy forms issued to applicant and to applicant's spouse Mary T. Driscoll ("Mary"), as described below. Applicant is a person aggrieved by such action (order) in particulars hereinafter set forth. RCW 48.04.010(1)(b) requires the Commissioner to hold the requested hearing.

B. Notice to Applicant of the OIC's action ("order")

2. On October 21, 2015, applicant first received notice of the existence of the OIC's action approving such requested increase. RCW 34.05.413(2) provides that "[w]hen required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding."

3. Applicant invokes his statutory and constitutional rights under the due process clauses of the WA state constitution and the Constitution of the United States of America to notice and opportunity to be heard in the administrative hearing to address and seek correction of the agency's erroneous approval of the unfounded rate increase request. As further detailed below, such hearing and correction is needed to avoid and/or minimize the unlawful deprivation of the intangible property rights and interests of applicant and spouse Mary in their LTCI policies and the premium-rate stability thereof without due process of law, which increase is in process of implementation.

C. Applicant here acts for and on behalf of the marital community of Leo and Mary Driscoll

4. LTCI policies that are subject to the premium increase include policies issued to applicant and spouse Mary which are our community property, all premiums therefore having been paid with community-owned funds (pkoa). [1] Mary's written approval to applicant's filing and pursuit of this application accompanies this application. Applicant submits and pursues this application on behalf of the marital community in keeping with RCW 4.08.030.

D. Insured, insurer, and insurance policies identified.

5. Leo and Mary Driscoll's LTCI policies were issued by **TIAA-CREF Life Insurance Company** ("T-C Life"). The request for the 22.69% rate increase was submitted to the OIC by **Metropolitan Life Insurance Company** ("MetLife") , reportedly as administrator of such policies acting on behalf of T-C Life. MetLife is also the 100% indemnitor-reinsurer of T-C Life as to all like LTCI policies that T-C Life issued and as to which T-C Life continues to be the direct insurer.

6. T-C Life" issued and continues to be the direct insurer of individual LTCI policy No. 09852450 insuring against LTCI risks to be incurred by applicant and individual LTCI policy No. 09852468 insuring against LTCI risks to be incurred by Mary (pkoa). Both policies include optional riders identical in form and coverage; premium rates for the policies differ based on the age of each insured (pkoa). Both policies identifies 8/01/2002 as the effective date of the policy (pkoa). Both policies have been in force continuously since 8/01/2002 (pkoa).

E. OIC's Authorization of a 22.69% Increase Request and MetLife's Notice to Applicant

7. Applicant's first received notice of such rate-increase on October 21, 2015 (pkoa). The information was received from a third person previously designated by applicant to receive notice from the insurer of an unintended lapse of the policy issued to applicant (pkoa). See WAC 284-54-253. On October 21, 2015, that designate advised applicant that he had previously received in the U.S. mail a writing from MetLife that referred to a rate increase in applicant's policy (pkoa). Later on October 21, 2014, the designate e-mailed to applicant an electronically-scanned copy of the writing that the third person had received in the U.S. Mail: ir is dated October 9, 2015 (pkoa). That writing states in part that the OIC had authorized a 22.69% increase in the premium rate of the policy form issued to applicant and other policyholders (pkoa).

8. Applicant's spouse Mary likewise was unaware of the 22.69% increase and/or of OIC authorization or approval thereof before October 21, 2015. No writing from MetLife or from T-C Life addressed to either Mary or Leo Driscoll that referenced the 22.69% increase was delivered to the U.S. rural mailbox of Leo and Mary Driscoll at any time prior to January 2, 2016 (pkoa).

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[1] Allegations herein based on the personal knowledge of applicant are referenced by the abbreviation "(pkoa"). Other allegations are based on information and belief of applicant.

9. Each policy issued by T-C Life to applicant and to Mary is of a form identified as a series "TCL-LTC.04(WA)" policy form (pkoa), herein abbreviated as "LTC.04(WA)" or "LTC.04". [2] In addition to coverage for the LTCI benefits offered, each of the policies has a 5% compound inflation protection rider, a shared care benefit rider, and a spousal discount rider (pkoa), Each policy form states that it is a "level premium" policy and is "guaranteed renewable" if the scheduled premiums are timely paid. (pkoa).

10. No insurance agent was involved in the sale of the subject LTCI policy forms (pkoa). T-C Life was a direct response provider to consumers of such policy forms. The policies were not negotiated between the parties thereto; the form and terms of such policy forms was solely determined by the insurer; the policies were delivered to applicant and spouse on a *60 day review, take-it or leave-it* (return the policy and request refund of initial premium paid) basis (pkoa).

F. Information Disclosed by OIC in Response to Applicant's 11/19/2015 Public Records Act Request

11. In response to applicant's 11/19/2015 Public Records Act request, on 11/24/2015 the OIC provided to applicant copies in PDF form of each of the records submitted to OIC by MetLife that are included in OIC's *SERFF state Tracking Files #275017, #275018, and #275019*. Each of those filings include records that disclose in substance and effect that on 7/10/2015 OIC authorized and approved the premium-rate increase filings submitted to OIC by MetLife on 8/29/2014 for a common 22.69% increase in the premium-rates of LTCI policy forms issued in WA issued to and affecting **eight hundred seventy three (873) policyholders.**

12. Those 873 policy forms consisted of LTC.04 policy forms issued in the state of **WA** by T-C Life and LTC.02 and LTC.03 policy forms issued in **WA** by T-C Life's parent corporation, **Teachers Insurance and Annuity Association** ("TIAA"). MetLife later became (a) the insurer by novation, or (b) the 100% indemnitor-reinsurer and administrator, of each of those forms.

a. The *#275017* filing is a filing by MetLife to OIC on MetLife's own behalf that sought OIC approval of a 22.69% premium rate increase for **Two Hundred Forty One (241) policy forms consisting of** *series LTC.02* series policy forms, LTC.03 policy forms, and series LTC.04 policy forms that the MetLife submissions state were issued in WA as to which MetLife

[2] T-C Life reportedly issued LTCI policies "nationwide" that are collectively referenced in MetLife's submissions to OIC that are hereinafter referenced as the "**LTC.04**" policy forms. The nature and extent of state- by-state variations in the form and/or in the rates of those **LTC.04** forms from those of the **LTC.04(WA)** form issued to applicant and spouse were not disclosed in the aforementioned submissions to OIC and are unknown to applicant.

became the insurer and that were in force as of 12/31/2013. The number of each of those three (3) separate forms is not disclosed in the MetLife submissions to the OIC.

b. The *#275018* filing is a filing by MetLife for and on behalf of T-C Life that sought OIC approval of a 22.69% premium rate increase for **fifty-one (51)** *series LTC.04 policy forms* issued by T-C Life in **WA** that MetLife reported were in force as of 12/31/2013 as to which T-C Life continues to be the direct insurer.

c. The *#275019* filing is a filing by MetLife to OIC for and on behalf of T-C Life's parent corporation, **Teachers Insurance and Annuity Association** ("TIAA") that sought OIC approval of a 22.69% premium rate increase for the *series* LTC.02 policy forms and the Series LTC.03 policy forms issued by TIAA in WA as to which TIAA continued to be the direct insurer that were in force as of 12/31/2013. That filing states in substance and effect that a combined total of **Five Hundred Eighty One (581)** of those two (2) policy forms that were issued in WA were in force as of 12/31/2013; however, the number of each of the LTC.02 and LTC.03 policy forms is not specified in MetLife's submissions to the OIC.

G. Information that MetLife failed to submit to the OIC to support the increase

13. MetLife's submissions to the OIC in support of the above referenced filings with OIC failed to comply with subsection (2) of RCW 48.19.040 which provides that every such filing "*must be accompanied by sufficient information to permit the commissioner to determine whether it meets the requirements of this chapter*", including RCW 48.19.030, which in part provides that:

" Rates shall be used, subject to the other provisions of this chapter, ***only*** *if made in accordance with the following provisions: . . . * * * "(3) Due consideration in making rates for all insurances shall be given to: (a) Past and prospective loss experience* ***within this state*** *for experience periods acceptable to the commissioner"* **(bold emphasis added)**, and which further provides

> *" If that information is not available or is not statistically credible,, the insurer may use loss experience* ***in those states which are likely to produce loss experience similar to that in this state"*** **(bold emphasis added).**

14. The MetLife submissions to OIC accompanying the three requests for the 22.69% increase of the eight hundred seventy three (873) series LTC.02, LTC.03, and LTC.04 policy forms that were issued in the state of Washington, and that were in force as of 12/31/2013, did not include the past and prospective loss experience of those policy forms within the state of Washington and did not show or demonstrate that such information was not available and/or was not statistically credible.

15. Further, the MetLife submissions to the OIC in support of the rate increase did not include or use the loss experience within WA coupled with loss experience of similar forms of ". . *those states which are likely to produce loss experience similar to that in this state.",* as conditionally-permitted by RCW 48.19.030(3)(a); and did not show or demonstrate that such information was not available or was not statistically credible..

16. The submissions made to OIC by MetLife that appear in OIC's state Tracking files #275017, #275018, and/or #275019 disclose that MetLife submitted to OIC the ***nationwide*** loss experience of **Thirty Four Thousand Nine Hundred Ten (34,910)** LTC.02, LTC.03, and LTC.04 forms as a group comprised of:
    - 8,395 LTC.02 forms issued nationwide (of which 581 were issued in WA);
    - 16,424 LTC.03 forms issued nationwide (of which 241 were issued in WA);
    - 10,091 LTC.04 forms issued nationwide (of which 51 were issued in WA).

17. MetLife's submissions made to OIC that appear in OIC's state Tracking files #275017, #275018, and/or #275019 did not disclose the past and/or prospective loss experience of the LTC.02, LTC.03, and LTC.04 policy forms as a group in WA or as a group in each or any of the other states of the nation in which such policy forms were issued.

H. MetLife's ambiguous exercise of *normalizing* the premium from all states to reflect and conform with the prior WA rate action

18. The MetLife Actuarial Memorandum dated August 27, 2014 that is included in the submissions made to OIC by MetLife appearing in OIC's state Tracking files #275017, #275018, and #275019 each include Exhibits I, II, and III attached thereto which purport to provide information as to the loss experience of the LTC.02, LTC.03, and LTC.04 policy forms through an exercise of artificially *normalizing* premium from all states to reflect prior rate action in WA rather than the differing actions of other states, to-wit.:

    a. The first page of Exhibit I provides *"Nationwide Experience Projections"* for the LTC.02, LTC.03, and LTC. 04 policy forms with *"Premium Normalized to Include Prior 41% increase and With No Future Increase."* The 2nd page of Exhibit I provides *"Nationwide Experience Projections"* of those policy forms with *"Premium Normalized to Include Prior 41% increase and with 22.69% future increase".* Both pages includes this footnote: *"Note: Exhibit I normalizes the premium from all states to reflect the prior rate action approved by WA rather than the prior rate action approved by other states."*

    b. The 1st and 2nd pages of that Exhibit 1 are each represented to be a "*Loss Ratio Demonstration"* with *'Historical Experience"* shown in two categories, i.e., "*Without Interest"* and *"With Interest".* each of which sets forth by Calendar Year ***nationwide***

historical loss ratio data for the years 1991 to 2014 inclusive of Policy Forms LTC.02, LTC.03, and LTC.04.

c. Exhibit II provides *"Nationwide Calendar Year Experience" of* the LTC.02, LTC.03, and LTC. 04 policy forms and includes this footnote: "Actual or projected experience normalizes the premium from all states to reflect the prior rate action approved by WA rather than the prior rate action approved by other states."

d. Exhibit III includes this footnote: *"Exhibit III normalizes the premium from all states to reflect the prior rate action approved by WA rather than the prior rate action approved by other states."*

19. MetLife's above-described exercise that purportedly *"normalizes"* (i.e., purports to treat as normal or constant) *"the prior rate action approved by WA* rather than the prior rate action approved by other states " nationwide for the LTC.02, LTC.03, and LTC.04 policy forms is a futile effort to render irrelevant and inconsequential; the significant differences that exist among the states of the nation in their requirements and procedures for review and regulation of rates and modification of rates of LTCI policy forms such as those at issue here. In reality there was and is no unified *"prior rate action approved by other states "* for the subject forms.

20. MetLife's above-described exercise fails to specify the WA past and projected loss ratio experience of the **873 WA** forms that are regulated by WA; rather, it blends such loss ratio experience with the *nationwide* past and projected loss ratio experience of **34,034** similar forms that are regulated (if at all) by the different and varying laws and processes of other states of the United States, which laws and processes MetLife has not specified in its submissions to the OIC.

21. In that context, review of MetLife's submissions to OIC referenced above and the previously-referenced MetLife notice dated 10/9/2015 disclose that MetLife is not implementing a common 22.69% increase in the premiums of all LTC.02, LTC.03, and LTC.04 policy forms issued and in force *nationwide*. Rather, as stated by MetLife in that 10/9/2015 notice *"the percentage of the increase will vary by state, and state filings are in process. Final amounts are subject to any applicable regulatory approvals."*

22. In other words, the varying rate increases in policies issued in states which approve MetLife's varying request for premium-increase may reduce or eliminate the need for increase in states which do not approve MetLife's request for increase pending before any such state (or, alternatively, possibly generate an additional, further request for increase in policies issued in states such as WA which have approved MetLife's current request for increase).

23. MetLife's above-described exercise does not negate or fulfill the WA statutory and regulatory *loss ratio* requirements of RCW 48.19.030(3) and WAC 284-60-050(5) [or alternatively WAC 284-54-030(5)] that govern the subject rate increase request in WA and OIC's review and approval or disapproval thereof.

I. OIC"s Duties to Review a Premium-Increase Request and to Disapprove if Non-Compliant

24. At all times that are relevant to MetLife's submission of the requested rate-increase filing to the OIC, RCW 48.19.060(1) has mandated that: *"The commissioner shall review a filing as soon as reasonably possible after made, to determine whether it meets the requirements of this chapter."*

25. Ch. 284-60 WAC has been in full force and effect at all times since 9/1/83. Provisions thereof that infer and imply the agency's duty of review include:

    (a) WAC 284-60-040(1) which requires that grouping of policies for rate setting purposes "*shall. . .. .. be satisfactory to the commissioner";*

    (b) WAC 284-60-050(1) which requires that the calculating period for loss ratio purposes chosen by the insurer be "shall satisfactory to the commissioner;

    (c) WAC 284-60-050(5), applicable to *"a rate increase submitted during the calculating period"*, as was the case here, which requires that the submittal "*include*" specified loss ratio *"comparison"* information, *"a demonstration of any contributions to and support from reserves"* and other mandatory requirements designed to show that *"the experience justifies the increase"* and warrants ending the existing calculating period.

26. Thus, by clear implication, the OIC had a duty to review the information submitted in support of the proposed increase and the duty to approve or disapprove the request based on the information that was submitted. Consistently, WAC 284-60-050(6) authorized the commissioner to ". . . *approve a series of two or three smaller rate increases in lieu of one large increase"* subject to fulfillment of requirements *"satisfactory to the commissioner. . "*, which infers the duties to review and to approve or disapprove.

27. The agency's duty to review and disapprove a non-compliant request was and is expressly provided by RCW 48.18.110(1)(a) and by RCW 48.19.100 which have been in full force and effect at all relevant times.

28. That duty is impliedly imposed by RCW 48.19.020 (effective at all times since 1983) and by WAC 284-60-020 (if, as to the latter, the policy form is not expected to return a reasonable proportion of the premiums in the form of benefits).

29. The required level or extent of agency review of a rate increase request applicable to the subject request for increase is and was that which was reasonably needed to determine that the information provided in support of the request complied with *all* applicable provisions of the Insurance Code and *all* applicable regulations of the Commissioner. At all times relevant to review of the subject request, RCW 48.02.060(2) has provided: "*The commissioner must execute his or her duties and must enforce the provisions of this code.*"

J. Applicant's protected property rights created by contract

25. Applicant's constitutionally-protected property rights include rights created by the contract between the parties as to which applicant has a *legitimate claim of entitlement.* [3] Such include applicant's rights to the *continuation* of the previously scheduled premiums and benefits set forth in the *"Policy Schedule"* of the insurance contract (i.e., the policy form), <u>except</u> as was otherwise expressly or impliedly agreed by the parties.

K. Incomplete express agreement as to the insurer's right to increase premiums

26. The LTC.04(WA) contract (policy) includes this premium-increase provision:

> " **We have a limited right to increase premiums. Your** premium will not increase due to a change in **Your** health or age. **We** can increase **your** premium but only if **we** increase the premiums for all similar policies issued on the same form as this Policy. If the premium increases, the increase will only be made as of an anniversary of the Policy Effective Date. **We** will give you at least 30 days written notice before **We** increase **your** premium."

27. The policy did not state that the insurer could exercise the premium-increase provision for any or no reason or *with or without cause*; it would have been anathema to sales of the policies had it done so. The policy did not specify grounds or reasons that would justify exercise of the premium-increase provision, such being a material and essential element of the contract.

28. The policy form did not express how or by what means the amount of a premium increase was to be determined or ascertained (e.g., by a designated, impartial, neutral

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[3] Board of Regents v. Roth, 408. U.S. 564, at 507 (1972) as quoted in Conard v. University of Washington, 119 Wn. 2d 519 , 529(1992). Perry v. Sindermann, 408 U.S. 593, 599-601 (1972).

source or otherwise), such being a material and essential element of the contract. The policy did not state, infer, or imply that by accepting the policy form with the premium-increase provision, the purchasing consumers agreed to *waive* constitutional rights, including right to adequate notice with meaningful opportunity to be heard in respect to the reasons and grounds for exercise of the premium-increase provision and/or amount of premium-increase. [4]

L. Laws then existing and applicable to the contract impliedly became part of the contract. Such laws regulate and control essential elements of the contract that were not *expressly* agreed to by the insurer and the insured; they also govern WA regulatory approval of the subject premium increase.

29. In addition to express terms of the insurance policy contract, established law recognizes that laws that are applicable to the contract at the time of its formation impliedly are a part of the contract unless a contrary intent is clearly expressed by the parties. [5] No such contrary intent is clearly expressed in the LTC.04(WA) insurance policy contract.

30. WA laws in existence during 2001-2004, the period during which the LTC.04(WA) contracts were issued, included RCW 48.19.030 (enacted and in force since 1989) and Ch. 284-60 WAC (adopted and in force since 1983). Those provisions of the Insurance Code apply to and govern WA state regulatory approval of premium-increases for the contract, including approval of the grounds for and amount of a proposed premium increase, matters as to which the parties to such contracts had not expressly assented.

31. But for the applicability of such statutes and regulations, the subject LTC.04(WA) insurance contracts (and/or the premium-increase provision thereof) would be legally unenforceable for lack of mutual assent of the parties to essential elements of such contracts (and/or the premium-increase provision thereof).

32. Laws that were part of the LTC.04(WA) contracts at the time of formation of such contracts also included the WA and U.S. constitutions, [6] including provisions thereof that prohibit unconstitutional deprivation of property without due process of law, all of which were in full force and effect at that time.

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[4] Fuentes v. Shevin, 407 U.S. 67, 95-96 (1972) *"For a waiver of constitutional rights in any context must, at the very least, be clear.* We need not concern ourselves with the involuntariness or unintelligence of a waiver when the contractual language relied upon does not, on its face, even amount to a waiver." * * * *Rather, the purported waiver provisions here are no more than a statement of the seller's right to repossession upon occurrence of certain events* ."

[5] See Wagner v. Wagner, 95Wn.2d 94, 621 P.2d 1279 (1980) and other like rulings. Also see *Corpus Juris Secundum,* Vol.17A, *Contracts,* 2011 edition, section 439, *p.342-43* and representative cases cited.

[6] See federal and state cases cited at __C.J.S., section 439, p.343, at footnote 7 thereof.

M. Protected Property Interests Created by State Standards and Regulations

33. The applicable provisions of Ch. 48.18 RCW and/or of Ch. 48.19 RCW, and applicable Ch. 284-60 WAC regulations cited and relied upon in support of the allegations above, create *constitutionally- protected property interests* conferred upon policyholders of the subject policy forms, including applicant and applicant's spouse.

34. The constitutional test for the creation of property interests by specific standards and rules are stated in *Conard v. University of Washington*, 119 Wn. 2d 519, 529, 834 P. 2d 17 (1992), i.e., that such standards and rules *"contain "substantive predicates" or "particularized standards or criteria" . . . to guide the discretion of decisionmakers and which contain "' explicitly mandatory language', i.e, specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow* ....(citations omitted.)" Kentucky Dept of Corrections v. Thompson, 490 U.S. 454, 462-63, 104 L.Ed. 2d 506, 109 S. Ct. 1904 (1989))". [7]

35. Ch. 48.18 RCW is made applicable to the subject LTCI by RCW 48.18.010. RCW 48.18.100(1) provides in relevant part that *"No insurance policy form . . . may be issued , delivered, or used unless it has been filed and approved by the commissioner."* RCW 48.18.110(1) mandates in relevant part that: *"The commissioner shall disapprove any such form of policy . . . ."* on any of five (5) specified grounds "*only*" but including *"(b) <u>if it is in any respect in violation of or does not comply with this code or regulation of the commissioner issued pursuant to the code:"</u> (underling emphasis added).* Thus, the provisions of RCW 48.19.030(3)(a) and WAC 284-60-040(1) and -050(5), referenced above are not mere generalized recommendations to be optionally honored or disregarded by the rate-increase proponents or by OIC. They are particularized, objective, restrictive measures by which one determines whether the increase-request complies with applicable law.

36. RCW 48.19.030(3)(a), which requires initial and primary attention to *"past and prospective loss experience within the state for periods acceptable to the commissioner"*, constitute *"'substantive predicates" or "particularized standards or criteria" . . . to guide the discretion of decisionmakers "* . The same is true of WAC 284-60-040(1) which requires consideration be given to of each of five (5) specified factors when grouping "*similar policy forms*" for rate-making and/or rate-increase purposes - - so as *"to enhance statistical reliability and improve the likelihood of premium adequacy without introducing elements of discrimination in violation of RCW 48.18.840."*

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[7] Conard continued: *"Although Thompson involved a liberty interest, the above test has been applied in various contexts to determine if protected property interests have been created."* (citing numerous cases from different Courts of Appeal including 5 from the 9th Circuit).

37. Likewise, WAC 284-60-050(5) [8] is a particularized standard that, as to *"a rate increase submitted during the calculating period"*, as here, mandates that the submission to OIC *"shall include a comparison of the actual to expected loss ratios, a demonstration of any contribution to and support from the reserves, and shall account for maintenance of such reserves for future needs."* (emphasis added)

38. In sum, the applicable cited statutes and regulations constitute standards and rules that have created property interests of applicant that are protected by the due process provisions of the state and U.S. constitutions in keeping with the test set forth in *Conard v. University of Washington, supra.*

N. RCW 48.04.010(2) specification of particulars in which applicant is aggrieved by the action (or "order" of the OIC) which authorized the filing and implementation of the requested 22.69% premium increase and the grounds to be relied upon as the basis for the relief to be demanded at the hearing

39. Applicant is aggrieved by the action ("order") of the OIC authorizing the filing and implementation of the requested 22.69% premium increase in the LTC.04(WA) policy forms issued to applicant and spouse because the information submitted to OIC in support of the increase was and is legally-insufficient for such purposes, as alleged above. Unless such premium-increase authorization is set aside before August 1, 2016, applicant and spouse will experience significant financial loss beginning and after August 1, 2016, regardless of which of three (3) financially detrimental options offered to them by MetLife (on behalf of the insurer T-C Life) applicant and spouse elect to exercise, no other options being available:

a. First Option: Elect to pay an approximate 22.69% increase [9] in monthly premiums and keep the policies in force according to their present terms.

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[8] Ambiguity may exist as to the applicability of WAC 284-60-050 in that it states it "applies to individual disability insurance forms" without mention of other forms, whereas WAC 284-60-010(1) states that *"This regulation, WAC 284-60-010 through 284-60-100, applies to all insurers, and to every disability policy form filed for approval in this state after August 31, 1983 except [*for forms not relevant here [emphasis added]

[9] MetLife's notice to applicant received October 21, 2015 states that beginning August 1, 2016 the current premium of $421.45 monthly for the policy issued in applicant's name the will increase to $517.06 monthly. A notice from MetLife received January 2, 2016 states that from and after August 1, 2016, the monthly premiums for the policy issued in Mary's name will increase from the current amount of $295.14 monthly to $362.10 monthly.

b. Second Option: Elect to reduce the presently scheduled coverage and benefits under such policies (to extents now only approximated and yet to be finally determined by MetLife) and pay monthly premium in excess of those presently scheduled.

c. Third Option: Elect to cancel the coverage in which event a "Limited Coverage on Lapse Endorsement" will be issued under which the insurer agrees to pay the insured drastically reduced dollar benefits in lieu of those now scheduled under the policies.

40. The grounds to be relied upon as the basis for the relief to be demanded at the hearing are those set forth in paragraphs numbered 13-39 inclusive above.

O. Issues to be decided in the hearing

41. Specification of issues to be decided in the hearing:

a. Was the MetLife request to the OIC for the 22.69% increase in premium rates of the series LTC.02, LTC.03, and LTC.04 policy forms issued in WA and that were in force accompanied by sufficient information to permit the commissioner to determine that such submission meets the requirements of Ch. 48.19 RCW, as required by RCW 48.19. 040(1)?

b. Was the MetLife request to the OIC for approval of the 22.69% increase in premium rates of the eight hundred seventy three (873) LTC.02, LTC.03, and LTC.04 policy forms that were issued in WA that were in force as of December 31, 2013 subject to the provisions of RCW 48.19.030 and section (3)(a) thereof which provide in part: *"Rates shall be used, subject to the other provisions of this chapter, only if made in accordance with the following provisions: . . . * * * "(3) Due consideration in making rates for all insurances shall be given to: (a) Past and prospective loss experience within this state for experience periods acceptable to the commissioner. If the information is not available or is not statistically credible, an insurer may use loss experience in those states which are likely to produce loss experience similar to that in this state. "* ?

c. Did MetLife's submissions to the OIC for approval of the increase in premiums for the subject forms issued in WA show or demonstrate that *"due consideration"* had been given by the insurer to the *"Past and prospective loss experience within this state"* of the subject forms *"for experience periods acceptable to the commissioner"* as required by RCW 48.19.030(3)(a) ?

d. Did MetLife's submissions to the OIC for approval of the increase in premiums for the subject forms issued in WA show or demonstrate that the information reference immediately above was not available or was not statistically credible? If so, did MetLife's submissions to the OIC show or demonstrate loss experience *"in those states which are likely to produce loss experience similar to that in this state "* as conditionally permitted by RCW 48.19.030(3)(a) ?

e. In conducting its regulatory review and in making response to the MetLife request for the 22.69% increase in premium rates for the WA policy forms, did the OIC have legally-sufficient factual basis and legal authority to disregard non-compliance with the above-stated provisions of 48.19.030 and section (3) (a) thereof and instead accept and rely on *nationwide* loss ratio experience of Thirty Four Thousand Nine Hundred Ten (34,910) LTC.02, LTC.03, and LTC.04 forms issued nationwide comprised of:

8,395 LTC.02 forms issued nationwide (of which 581 were issued in WA);
16,424 LTC.03 forms issued nationwide (of which 241 were issued in WA); and
10,091 LTC.04 forms issued nationwide (of which 51 were issued in WA)?

f. Does applicant have standing to contest the action of the OIC granting the request of MetLife for OIC approval of the subject premium increase that is applicable to the LTCI policies issued to applicant and his spouse in WA?

g. Should the OIC's action of 7/10/2015 authorizing the rate increases for the LTC.04 policies issued in WA and that were in force as of 12/31/2013 (including the policies issued to applicant and spouse) be set aside as legally unfounded and unenforceable?

Respectfully submitted,

Leo J. Driscoll

Table of Contents to Application and Demand for Hearing re 22.69% Premium increase

A. Application for Adjudicative Proceeding and Demand for Hearing . . p. 1
B. Notice to Applicant of the OIC's action ("order') . . p.1
C. Applicant here acts for and on behalf of the marital community of Leo and Mary Driscoll . . p.2

D. Insured, insurer, and insurance policies identified . . . p.2
E. OIC's Authorization of a 22.69% Increase Request and MetLife's Notice to Applicant . .p.2
F. Information Disclosed by OIC in Response to Applicant's 11/19/2015 Public Records Act Request. . p.3

G. Information that MetLife failed to submit to the OIC to support the increase . . p.4
H. MetLife's ambiguous exercise of *normalizing* the premium from all states to reflect and conform with the prior WA rate action. . . .p.5

I. OIC"s Duties to Review Premium-Increase Request and to Disapprove if Non-Compliant . p.7

J. Applicant's protected property rights created by contract . . p. 8

K. Incomplete express agreement as to the insurer's right to increase premiums Laws then existing and applicable to the contract impliedly became part of the contract. Such laws regulate and control essential elements of the contract that were not *expressly* agreed to by the parties . . . p.8

L. Laws then existing and applicable to the contract impliedly became part of the contract. Such laws regulate and control essential elements of the contract that were not *expressly* agreed to by the insurer and the insured; they also govern WA regulatory approval of the subject premium increase. . p. 9

M. Protected Property Interests Created by State Standards and Regulations. . p.10

N. RCW 48.04.010(2) specification of particulars in which applicant is aggrieved by the action (or "order" of the OIC) which authorized the filing and implementation of the requested 22.69% premium increase and the grounds to be relied upon as the basis for the relief to be demanded at the hearing . . p.11

O. Issues to be decided in the hearing . . .p.12.

Declaration of Mary T. Driscoll

Mary T. Driscoll hereby declares:

1. I am of adult age. I reside at 4511 E. North Glenngrae Ln., Spokane, WA 99223.. Leo J. Driscoll ("Leo") and I lawfully intermarried In Spokane, WA on November 24, 1972. We are now and have been married and residents of Spokane County at all times since then.

2. In 2002 long-term care insurance policy Number 09852468 insuring long-term care insurance risks to be incurred by me was issued and mailed to me by TIAA-CREF Life Insurance Company, and policy Number No. 09852450 insuring long-term risks to be incurred by Leo was issued and mailed to Leo by the same company. Both policies have an effective date of August 1, 2002.

3. All premiums for such policies have been paid with our community-owned funds from our community-owned bank account and such policies are our community property.

4. I approve of Leo's pursuit of the Application and Demand for Hearing which he is currently submitting to the Insurance Commissioner of the State of Washington relating to and seeking to cancel a scheduled 22.69% increase in the premium rates of such policies. I consider those steps to be needed and proper to protect our property interests in our above-described insurance policies.

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

Signed by me in Spokane County, Washington on January 4, 2016.

Mary T. Driscoll

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