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STATE OF WASHINGTON,
OFFICE OF THE INSURANCE COMMISSIONER

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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

In the Matter of)	Hearings Unit Case No. 16-0002
)	
Leo J. Driscoll,)	APPLICANT'S MOTIONS FOR
Applicant)	PARTIAL SUMMARY JUDGMENT;
)	
_____)	MEMORANDA IN SUPPORT OF MOTIONS

Table of Contents

- I. First Motion for Partial Summary Judgment . . . 1
- II. Second Motion for Partial Summary Judgment . . . 2
- III. Third Motion for Partial Summary Judgment . . . 2
- IV. Memorandum in Support of First Motion for Partial Summary Judgment
 - A. Insurer's Failure to Provide the OIC with Sufficient Information Required by RCW 48.19.040 and Failure to Meet the Requirements of RCW 48.19.030(3)(a). . . . 2
 - B. The Lewin Group Report #2002 gives insights as to the downside of relying on "nationwide" loss experience with respect to LTCI rather than to seek and use loss experience of states of the United States which *"are likely to produce loss experience similar to that in this state"* as provided by RCW48.19.030(3)(a). . . . 6
 - C. The Provisions of Ch. 48.19 RCW in play here are unambiguous, mandatory, and are to be interpreted to mean what they say . . . 8
- V. Memorandum In Support of Second Motion for Partial Summary Judgment. . . 9
 - A. Applicant is Aggrieved by the OIC's Unwarranted Approval of MetLife's Unsupported Request for the 22.69% Premium Increases of the LTCI Policies of the Species Issued to Leo and Mary Driscoll and has Standing to Seek Relief from That Approval 9
 - B. The Elements of Standing Considered 13
- VI. Memorandum In Support of Third Motion for Partial Summary Judgment14
 - Long-Term Care Insurance As Defined by RCW 48.84.020 is not "Disability Insurance" or " an insurance appertaining thereto" within the meaning of RCW 48.11.030 . . 14

STATE OF WASHINGTON,
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of)	Hearings Unit Case No. 16-0002
)	
Leo J. Driscoll,)	Applicant's Motions for Partial Summary
Applicant)	Judgment and Memoranda in Support
)	
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I. First Motion for Partial Summary Judgment: Applicant moves that the Presiding Officer enter a partial summary judgment that in substance and effect finds, adjudicates, and determines:

A. That the information submitted by Metropolitan Life Insurance Company ("MetLife") to the Office of the Insurance Commissioner (the "OIC") in support of MetLife's request for a 22.69% increase in the premium-rates for the series LTC.02, LTC.03, and LTC.04 long-term care insurance policies issued in WA and in force as of 12/31/2013 was insufficient to permit the Commissioner to determine that it meets the requirements of Ch. 48.19 RCW, as required by RCW 48.19.040(1) and (2), and in particular, that *due consideration* had been given by MetLife and by the OIC to the requirements of RCW 48.19.030 which 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: 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." (bold emphasis added)*

B. That the above referenced provisions of RCW 48.19.040 and of RCW 48.19.030 are plain and unambiguous; further, that those provisions are mandatory and not optional or discretionary in their application to the subject 22.69% premium rate increase filings by MetLife with the OIC and review thereof by the OIC.

C. That, under RCW 48.19.030(3)(a), in circumstances where it is determined that loss experience within the state of Washington alone is not available or is not statistically credible, the provisions of RCW 48.19.030(3)(a) do not permit the use of nationwide loss experience in lieu of using "loss experience in those states which are likely to produce loss experience similar to that in this state."

- D. That the information submitted by MetLife to the OIC in support of MetLife's request for a 22.69% increase in the premium-rates for the series LTC.02, LTC.03, and LTC.04 long-term care insurance policies issued in WA and in force as of 12/31/2013 did not disclose the loss experience of such policies in this state alone or in those states of the United States which are likely to produce loss experience similar to that in this state.
- E. That in its' review and approval of MetLife's 22.69% increase submission, the OIC did not acquire, require, or seek information as to the loss experience of such polices in those states of the United States which are likely to produce loss experience similar to that in this state.
- II. Second Motion for Partial Summary Judgment: Applicant further moves that the Presiding Officer enter a partial summary judgment that in substance and effect finds, adjudicates, and determines: That applicant is aggrieved by the OIC's actions of approving MetLife's requests for the 22.69% premium-rate increases in the long-term care policy forms that were issued to applicant and his spouse and that applicant has standing to challenge such approval in these proceedings.
- III. Third Motion for Partial Summary Judgment: Applicant further moves that the Presiding Officer enter a partial summary judgment that in substance and effect finds, adjudicates, and determines that "long term care insurance" as defined by RCW 48.84.020 is not "disability insurance" or "an insurance appertaining thereto" within the meaning of RCW 48.11.030.

[A listing of Applicant's Exhibits that are referenced herein is attached to this pleading]

IV. MEMORANDUM IN SUPPORT OF FIRST MOTION FOR PARTIAL SUMMARY JUDGMENT

A. Insurer's Failure to Provide the OIC with Sufficient Information Required by RCW 48.19.040 and Failure to Meet the Requirements of RCW 48.19.030(3)(a)

1. Introductory Facts: (a).The filing made to the OIC by MetLife for the 22.69% increase in premiums of policies as to which MetLife has become insurer by novation appear in OIC State Tracking file #275017 (Applicants Exhibit 8).

(b).The filing made to the OIC by MetLife for the 22.69% increase in premiums of policies as to which "T-C Life" continues to be the insurer appear in OIC State Tracking file #275018 (Applicants Exhibit 9).

c). The filing made to the OIC by MetLife for the 22.69% increase in premiums of policies as to which Teachers Insurance and Annuity Association (“Teachers”) continues to be the insurer appear in OIC State Tracking file #275019 (Applicant’s Exhibit 10)

2. The rate increase filing letters filed by MetLife in each of those filings appear in Applicant’s Exhibit 8 at pp. 88-91; in Applicant’s Exhibit 9 at pp 89-91; and, in Applicant’s Exhibit 10 at pp. 90-92.

3. MetLife filed in each of those rate filings a copy of the same “Actuarial Memorandum” (each identical in form and content and each signed by MetLife Actuary and Vice President William P. Bigelow, dated August 27, 2014, with the same Exhibits I, II, and III attached thereto). That actuarial memorandum (with its Exhibits I, II, and III) is found: in OIC State Tracking file #275017 at pp, 45-59 (Applicant’s Exhibit 8); in OIC State Tracking file #275018 at pp, 46-60, (Applicant’s Exhibit 9); and, in OIC State Tracking file #275019, at pp, 47-61 (Applicant’s Exhibit 10).

4. (a). Section 1 of the Actuarial Memorandum ¹ identifies its purpose:

“This actuarial memorandum has been prepared for the purpose of demonstrating that the anticipated loss ratio standard of this product meets the minimum loss ratio standards of your state and may not be suitable for any other purpose.”

(b). Section 19 of the Actuarial Memorandum ² is entitled “Loss Ratio Compliance Demonstration”:

“Projected experience assuming the increase is implemented is shown in Exhibit 1. As shown in Exhibit 1, the expected lifetime loss ratio with and without the requested rate increase exceeds the minimum loss ratio of 60%.”

(c) Section 5 of the Actuarial Memorandum ³ is entitled “Actuarial Assumptions” and subparagraph (e) thereof states as follows regarding projected operational expenses:

“Expenses: Expenses have not been explicitly projected. It is assumed that the originally filed expense assumptions remain appropriate.”

(d) Given that 60% of LTCI premiums are allocated to projected claim payments and with no projected increase in operational expenses, the insurer’s profit margin share in premiums of the subject policies, is enhanced by any increase in the premiums of those policies. Conversely, the policyholders of those policies solely carry the burden of the increased premiums.

¹ For example, see Applicant’s Exhibit 9, pg. 47 of 101

² For example, see Applicant’s Exhibit 9, pp. 53-54 of 101

³ For example, see Applicant’s Exhibit 9, pp. 48 of 101

(e). The terms of the LTCI policies issued to Leo and Mary Driscoll reserve to the insurer the right to increase premiums without specifying or limiting cause or reason for any such increase (Applicant's Exhibit 1 and 2) and subject only to the implied application of laws that are then in force and effect in Washington at the time of formation of the contract, no contrary intent having been expressed in the contract. ⁴

(f). Such circumstance render policyholders of the subject LTCI policy forms highly vulnerable to unfounded premium increases proposed by an insurer who will profit from such an increase; policyholders such as applicant and spouse (unaware of the pendency of the premium-increase proposal) were dependent upon the OIC to disapprove the unfounded requests for the increase in premiums of such policies, as alleged in paragraphs 29-32 of the application for adjudicative proceedings filed in this matter.

5 (a). OIC State Tracking file #275017 at pp. 1-15 (Applicant's Exhibit 8) include the written communications between MetLife and the OIC relating to the progress, status, and/or disposition of the premium-rate increase requests of policies that are the subject of that filing.

(b). (OIC State Tracking file #275018 at pp. 1-15 (Applicant's Exhibit 9) include the written communications between MetLife and the OIC relating to the progress, status and/or disposition of the premium-rate increase requests of policies that are the subject of that filing.

(c). OIC State Tracking file #275019 at pp. 1-16 (Applicant's Exhibit 10) include the written communications between MetLife and the OIC relating to the progress, status, and/or disposition of the premium-rate increase requests of policies that are the subject of that filing.

6. The OIC's 11-24-2015 and 12-28- 2015 e-mail responses to Leo Driscoll's 11-19-2015 and 11-27-2015 e-mail Public Records Act requests to the OIC (Applicant's Exhibits 15 and 16) did not include any information of relevance to the issues addressed by this motion that was not included in OIC State Tracking files #275017, #275018, and/or #275019.

7. A detailed review of the OIC State Tracking files #275017, #275018, and #275019 files by the Presiding Officer (or by other objective, impartial reviewer) will disclose that the information provided by MetLife and included in such files was insufficient to permit the Commissioner to determine that any of those filings meets the requirements of Ch. 48.19 RCW, as provided by RCW 48,19.040(1) and (2), and in particular, that

⁴ See *Wagner v. Wagner*, 95 Wn.2d 94, 624 P. 2d 1279 (1980) and *Corpus Juris Secundum*, Vol. 17A, Contracts, 2011 edition, section 439, pp. 342-343.

due consideration had been given by MetLife and by the OIC to the requirements of RCW 48.19.030 which 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: **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.**" (bold emphasis added).

8. The above referenced provisions of RCW 48.19.040 and of RCW 48.19.030 are plain and unambiguous; further, those provisions are mandatory and are not optional or discretionary in their application to the subject 22.69% premium rate increase filings by MetLife with the OIC and review thereof by the OIC.

9. In Hearings Unit Docket No. 14-0187, involving the previous 41% premium increase of the LTCI policies that are the subject of the instant 22.69% rate increase, the OIC acknowledged the applicability of RCW 48.19.030 and RCW 48.19.040 to rate increases for LTCI by stating that the OIC

"is very concerned about long-term care insurance premium rate increases, its affect [sic] on consumers, and the future problems for policyholders if there are not enough funds to cover benefits. As a result, the Office of the Insurance Commissioner ensures that all rate filings with premium rate increases are submitted with evidence supporting the filing. See RCW 48.19.930, RCW 48.19.040, WAC 284-54-630. All these materials are reviewed by OIC staff actuaries. OIC actuaries can request further information if needed to support the rate filing. *Id.* When all information is reviewed, the Insurance Commissioner disapproves the rate filing if it is excessive, inadequate, or unfairly discriminatory. See RCW 48.19.020. Alternatively, the rate filing is approved provided it is supported by the required information and is not excessive, inadequate, or unfairly discriminatory. See RCW 48.19.030, RCW 48.19.040, WAC 254-60-630." Applicant's Exhibit 17.

10. if it is determined by the insurer that loss experience within the state of Washington alone is not available or is not statistically credible, the provisions of that statute do not provide for the insurer to use nationwide loss experience in lieu of using "*loss experience in those states which are likely to produce loss experience similar to that in this state.*" That was a policy choice made by the legislature. "It is not the province of the judiciary to concern itself with questions of legislative policy where the provisions of the statute leave no room for construction. *Hardy v. Herriott*, 11 Wash. 460 (1895).

11. Applicant respectfully submits that, likewise, is not the province of this administrative tribunal acting in a quasi-judicial capacity to question the policy choice made by the legislature in addressing the extent of permission given an insurer by RCW 48.19.030(3)(a) .
12. The Presiding Officer's review of the information submitted by MetLife to the OIC that is included in OIC State Tracking files #275017, #275018, and/or #275019 will show that MetLife did not include information as to the loss experience of such policies in this state alone or in those states of the United States which are likely to produce loss experience similar to that in this state.
13. The Presiding Officer's review of the OIC State Tracking files #275017 (Applicant's Exhibit 8), #275018 (Applicant's Exhibit 9), and #275019 (Applicant' Exhibit 10) will not disclose any information or indication that the OIC acquired, required, or sought information as to the loss experience of such polices in states of the United States which are likely to produce loss experience similar to that in this state.
 - B. The Lewin Group Report #2002 gives insights as to the downsides of relying on "nationwide" loss experience with respect to LTCI rather than to seek and use loss experience of states of the United States which *"are likely to produce loss experience similar to that in this state"* as provided by RCW48.19.030(3)(a);.
14. Applicant's Exhibit 13 submitted herewith is a true copy of the Lewin Group Report #2002 dated February 2002 entitled *"Long-Term Care Insurance: An Assessment of States' Capacity to review and Regulate Rates"* . Segments of the report, cited in the subparagraphs immediately below, evidence certain negatives that arise in relying on *"nationwide"* loss ratio experience for purposes of LTCI rate setting rather than to seek and to "use loss experience in those states which are likely to produce loss experience similar to that in this state" as provided in RCW 48.19.030(3)(a).
 - a. Prior to summer of 1999, the AARP Public Policy Institute commissioned The Lewin Group, a healthcare research and policy consulting firm, "to conduct a survey of state regulatory practices in the area of reviewing initial rate setting and premium increases" with respect to LTCI. ⁵
 - b. Page 5 of the Lewin Group Report #2002 states that during July, August and September 1999 the Lewin Group conducted a survey of all state insurance departments (except for California which declined to participate) plus the District

⁵ Source: See first page of the Foreword to the Lewin Group Report.

of Columbia. Numerous tables and summaries in the report compare and rank the similarities and differences in practices, capacities, resources, and authority of state regulatory agencies in regulating LTCI rates. At page 6 to 27, the Lewin Report identifies its findings from the survey, which include at p. 6 this finding regarding the regulatory capacity of the WA OIC as compared to that of other states:

*“ Table 1 presents the composite scores on the summary measures for each of the states. According to these composite measures, states with the strongest regulatory capacity are Florida, New York, Illinois, **Washington**, and North Dakota. The states with the least regulatory capacity are Alaska, Louisiana, Hawaii, Wyoming, and Missouri.” (bold emphasis added)*

c. Page v of the Foreword to the report includes this finding and explanation:

“Only a small number of states exercise their regulatory authority to disapprove premium increases. Another recent study found that only about half of the states surveyed had ever disapproved, or required a modification of, a LTCI premium increase. [Footnoted reference is omitted here] Only seven states had objected to 10 percent or more of all rate increase filings. We hypothesized that states with the strictest regulatory standards and the most thorough review of rates would have the highest propensity to disapprove or modify insurers’ proposed rate increases. Analysis of the rate increase data showed that a composite measure of regulatory capacity was positively and significantly related to the proportion of rate increases disapproved or modified. States actively regulating LTCI find some premium increases are unjustified. This implies that unjustified rate increases may be occurring in all states, but that many states lack the necessary authority, resources, or will to stop these increases.”

d. Page 27 of the Report includes these **“Policy Lessons and Considerations**

- Many states do not require prior approval of LTCI premium rates, and five states have no authority to regulate premiums;
- Individuals reviewing rates in many states may lack adequate knowledge and skills to ensure thorough reviews;
- Most states are not collecting all information necessary to conduct a comprehensive rate review;
- Existing criteria for determining whether policies are appropriately priced may not be adequate;
- States have only limited ability to monitor trends in LTCI premiums;
- Few states exercise their regulatory authority to disapprove premium increases; and
- Consumers have little ability to determine whether a policy is accurately priced.”

C. The Provisions of Ch. 48.19 RCW in play here are unambiguous, mandatory, and are to be interpreted to mean what they say

15. As to the meaning and intent of the statutes in play here, the words "**shall**" used in RCW 48.19.040 (1) and the word "**must**" used in RCW 48.19.040(2) clearly reflect the mandatory nature and intent of those provisions.⁶

Likewise, the words "**shall be used**" and "**only if made in accordance with the following provisions**", as used in RCW 48.19.030(3)(a), clearly reflect the mandatory nature and intent of those provisions.⁷

16. The quoted provisions of RCW 48.19.040(1) and (2) and of RCW 48.19.030(3)(a) likewise are plain and unambiguous. *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn. 2d 392, 396, (2000) includes these rulings regarding interpretation of unambiguous statutes: "Statutory interpretation is a question of law that is reviewed de novo. *W. Telepage, Inc. v. City of Tacoma Dep't of Fin.* , 140 Wn.2d 599 , 607, 998 P.2d 884 (2000). Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency. *Bravo v. Dolsen Cos.* , 125 Wn.2d 745 , 752, 888 P.2d 147 (1995); *Wash. Fed'n of State Employees v. State Pers. Bd.* , 54 Wn. App. 305 , 309, 773 P.2d 421 (1989). A statute is ambiguous if "susceptible to two or more reasonable interpretations," but "a statute is not ambiguous merely because different interpretations are conceivable." *State v. Hahn* , 83 Wn. App. 825 , 831, 924 P.2d 392 (1996).

Yousoufian v. Office of King County Executive 152 Wn.2d 421, 437 (2004): "[When interpreting a statute, our primary duty is to give effect to the legislature's intent. *State v. J.P.* , 149 Wn.2d 444 , 450, 69 P.3d 318 (2003). "If the statute's meaning

⁶ RCW 48.19.040(1) in relevant part requires that "*Every insurer ...shall before using, file with the commissioner every classifications manual, . . . * * * rating plan, rating schedule, minimum rate, class rate, . . . * * and every modification of any of the foregoing which it proposes*". Subsection (2) of RCW 48.19.040 in relevant part requires that every such filing "*must be accompanied by sufficient information to permit the commissioner to determine whether it meets the requirements of this chapter*". **(bold emphasis added)**

⁷ RCW 48.19.030 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. 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.*" **(bold emphasis added)**

is plain on its face, then courts must give effect to its plain meaning as an expression of what the Legislature intended." *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). Furthermore, we will not "add words or clauses to an unambiguous statute when the legislature has chosen not to include that language." *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

Davis v. Department of Licensing, 137 Wn.2d 957, 964(1999): "The initial principle of statutory construction is we do not construe unambiguous statutes: "In judicial interpretation of statutes, the first rule is 'the court should assume that the legislature means exactly what it says. Plain words do not require construction'." *State v. McCraw*, 127 Wn.2d 281, 288, 898 P.2d 838 (1995) (quoting *City of Snohomish v. Joslin*, 9 Wn. App. 495, 498, 513 P.2d 293 (1973)), superseded by statute as cited in *State v. Bolar*, 129 Wn.2d 361, 917 P.2d 125 (1996)." At Ftn. 1 of the decision, the Davis decision stated: "1" We do not inquire what the legislature meant; we ask only what the statute means." Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417, 419 (1899). "It seems axiomatic that the words of a statute--and not the legislators' intent as such--must be the crucial elements both in the statute's legal force and in its proper interpretation." LAURENCE H. TRIBE, *CONSTITUTIONAL CHOICES* 30 (1985).

V. Memorandum In Support of Second Motion for Partial Summary Judgment

A. Applicant is Aggrieved by the OIC's Unwarranted Approval of MetLife's Unsupported Request for the 22.69% Premium Increases of the LTCI Policies of the Species Issued to Leo and Mary Driscoll and has Standing to Seek Relief from That Approval

1. All premiums paid since August 1, 2002 to this date for the LTCI policies issued to Leo and Mary Driscoll have been paid with their community-owned funds from their community-owned bank account and all rights and interests in such policies are deemed by each of them to be their community-owned property. *Leo J. Driscoll's April 27, 2016 Declaration* (Appl. Exhibit 11. Para.4; *Mary T, Driscoll's April 27, 2016 Declaration* (Appl. Exhibit 12).
2. The Application for Adjudicative Proceeding and Demand for Hearing filed herein was filed by Leo J. Driscoll on behalf of the marital community composed of himself and Mary T. Driscoll in keeping with RCW 4.08.030 (*Para 6 of Leo J.Driscoll's 4/27/2016 Decl.*, Appl. Exhibit 11). RCW 4.08.030 provides that "Either spouse or either domestic partner may sue on behalf of the community: PROVIDED, That (1) When the action is for personal injuries, the spouse or the domestic partner having sustained personal injuries is a necessary party;(2) When the action is for compensation for services rendered, the spouse or the domestic partner having rendered the services is a necessary party."

3. MetLife's written notices to Leo and Mary Driscoll of the subject rate increases⁸ provided each of them the following listed options in responding to those notices:

a. **"(M)aintain your current coverage at the new increased premium" rates:**

- For the policy issued to Leo, the current monthly premiums of \$421.45 monthly will increase to \$517.02 monthly.⁹
- For policy issued to Mary, the current monthly premiums of \$295.14 monthly will increase to \$362.10 monthly.¹⁰

b. **"Coverage Decrease Options"**

- Coverage Decrease options as to the policy issued to Leo: (1) **"Reduce your Nursing Family Daily Care Benefit from \$206.37 to \$180.00. This will bring you to a revised premiums of approximately \$429.51/ monthly.";** or (2) **"Reduce your Lifetime Benefit Maximum duration from 5 years to 3 years. This will bring you to a revised premium of approximately \$448.99/ Monthly."**¹¹
- Coverage Decrease Options as to the policy issued to Mary: (1) **"Reduce my Nursing Family Daily Care Benefit from \$206.37 to \$180.00. This will change my premiums from \$362.19/monthly to \$300.10/ monthly.";** or (2) **"Reduce my Lifetime Benefit Maximum duration from 5 years to 3 years. This will change my premium from \$362.10/Monthly to \$313.80/Monthly."**¹²

c. **"Cancel Your Coverage" Option as to each policy:**

"If you elect to cancel your coverage at any time between the date of this letter and 120 days following the due date of the New Premium Amount, you will be issued a Limited Coverage Upon Lapse Endorsement ("LUCL") which provides limited coverage. (Please note that this limited coverage is not intended to replace coverage

⁸ See Appl. Exhibit 5, 3rd page, and undated letter from MetLife to Mary T. Driscoll that sets forth her options in responding to the rate increase notice, Appl. Exhibit 7.

⁹ Source: Applicant's Exhibit 3, MetLife's letter sent to Leo Driscoll at the residence address of his son Pat Driscoll who scanned and e-mailed the letter in PDF form to Leo on 10/21/2015, the date on which Leo first had notice of the proposed premium increase.

¹⁰ Source: MetLife's undated enclosures addressed to Mary T. Driscoll included in MetLife's letter of 12/28/2015 to Leo and Mary Driscoll, *Applicant's Exhibit 5*.

¹¹ Source: Quoted from Applicant's Exhibit 3, MetLife's letter sent to Leo Driscoll at the residence address of his son Pat Driscoll who scanned and e-mailed the letter in PDF form to Leo on 10/21/2015 (Leo's first notice of the proposed increase)

¹² Source: Quoted from undated enclosures addressed to Mary T. Driscoll in MetLife's letter of 12/28/2015 to Leo and Mary Driscoll, *Applicant's Exhibit 5*.

you currently have.) The amount of coverage will be the greater of the sum of all premiums paid prior to cancellation or 30 times the amount of the nursing facility care daily benefit in effect immediately prior to your cancellation date. The limited coverage provided under LCUL will not exceed the remaining Lifetime Benefit Maximum in effect immediately prior to your cancellation date.”¹³

- d. In short, Leo and Mary Driscoll will experience significant and concrete (not abstract) financial detriments to their intangible rights and interests in the LTCI policies issued to them. under each of the options offered to them by MetLife.
- e. Consider the financial benefits that Leo and Mary Driscoll will forfeit if they opt to cancel the policies in response to the notice of increase: Each “. . . will be issued a Limited Coverage Upon Lapse Endorsement (“LUCL”) which provides limited coverage.” * * * The amount of coverage will be the greater of the sum of all premiums paid prior to cancellation or 30 times the amount of the nursing facility care daily benefit in effect immediately prior to your cancellation date.”¹⁴
- f. Quantify the premiums paid prior to a lapse of the policies effective 8-1-2016:
- The premiums paid for coverage on policy 09852450 issued to Leo Driscoll were \$298.90 per month for the period August 1, 2002 to July 31, 2012 (a sub-total of \$35,868) and are \$421.45 per month for the 48 month period August 1, 2012 to July 31, 2016 (\$20,229.60), a total of \$ 56,097.60 for those combined periods. (Appl. Exhibit 11, *Leo J. Driscoll's 4/27/2016 Declaration, para. 7*).
 - The premiums paid for coverage on policy 09852468 issued to Mary T. Driscoll are \$209.32 per month for the period August 1, 2002 to July 31, 2012 (a sub-total of \$25,118.40) and are \$295.14 per month for the 48 month period August 1, 2012 to July 31, 2016 (\$25,188.40), a total of \$39,355.12 for those combined periods. Appl, Exhibit 11, *Leo J. Driscoll's 4/27/2016 Declaration, para. 8*).

¹³ Sources: Letter dated 10-9-2015 from MetLife received by Leo Driscoll 10-21-2015 (Applicant's Exhibit 5) and undated letter to Mary Driscoll from MetLife included in MetLife's 12-28-2015 letter to Leo and Mary Driscoll (Applicant's Exhibit 7).

¹⁴ Sources: MetLife 10-9-2015 letter (Applicant's Exhibit 5) and undated letter to Mary Driscoll from MetLife included in MetLife's 12-28-2015 letter to Leo and Mary Driscoll (Applicant's Exhibit 7).

- During that first 10-year period (August 1, 2002 to August 1, 2012-- because of the operation of the 5% annual compound inflation rider to each policy computed on the anniversary dates of each policy -- the "Lifetime Benefit Maximum" of each of the two policies increased from the originally scheduled \$200,750.00 to \$325,324.50 as of August 1, 2012 according to the changed "Policy Schedule" forms issued in August 2012 (*Appl. Exhibits 3 and 4*). The "Lifetime Benefit Maximum" of each of the two policies thereafter increased on each anniversary of each policy by 5% compounded annually (*id. and Appl. Exhibits 1 and 2*). The Lifetime Benefit Maximum for each of the two Driscoll policies will exceed \$1 Million on August 1, 2016, the magic of the concept of compounding.¹⁵
 - Various "Daily Benefit Maximums" were also increased by operation of the 5% compound inflation rider (for example the "Nursing Care Daily Benefit Maximum" which increased from an original \$110.00 per day to \$178.26 per day as of August 1, 2012 (changed Policy Schedules", *Appl. Exhibits 3 and 4*), and thereafter continued to increase on each anniversary after August 1, 2012 by 5% compounded annually as long as applicable premiums are fully paid and the policy is in force. (*Appl. Exhibits 1 and 2*).
- g. Thus, if coverage lapses effective August 1, 2016 (for policy 09852450, the Limited Coverage Upon Lapse Endorsement ("LUCL") for that policy would be the amount of the premiums paid on that policy(i.e., \$ 56,097.60) instead of the many-multiples of that amount which will exist if that policy is kept in force.¹⁶
- h. Likewise, if coverage lapses effective August 1, 2016 for policy 09852468 the Limited Coverage Upon Lapse Endorsement ("LUCL") would be the amount of the premiums paid on that policy(i.e., \$39,355.12) instead of the many-multiples of that amount which will exist if that policy is kept in force.

¹⁵ Compounding at 5% at a one year frequency could or will cause the Lifetime Benefit Maximum to grow to astronomical proportions in some circumstances creating a relentless but unsustainable need for more premium-increases payable by the bewildered policyholders.

¹⁶ As previously stated, the Lifetime Benefit Maximum of each policy increased from \$200,750.00 to \$325,324.50 as of 8-01-2012 and has been increasing on each anniversary date that occurred thereafter by 5% compounded annually, Other benefits under the policies that have been increasing at a 5% compound rate will be forfeited if we opt to cancel the policies.

B. The Elements of Standing Considered

1. RCW 34.05.530 provides: "A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:

- (1) The agency action has prejudiced or is likely to prejudice that person;
- (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
- (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action."

- 1.1 As to the first of the "conditions" of RCW 34.05.530, applicant contends that:

- a. The OIC's action of approving MetLife's request for approval of MetLife's submissions for a 22.69% increase in the LTCI policies which were issued to applicant and to his spouse Mary T. Driscoll has prejudiced or is likely to prejudice applicant within the meaning of RCW 34.05.530.
- b. MetLife's filings with the OIC for that increase did not provide the OIC with information required by RCW 48.19.040(1) and (2) in that MetLife did not provide information to the OIC showing that due consideration was or is given to loss experience of the series LTC.02, LTC.03, and LTC.04 policy forms within the state of Washington alone or in states of the United States likely to have loss experience similar to this state, as required by RCW 48.19.030(3).
- c. Matters which are presented herewith to support Applicant's First and Second Motions for Partial Summary Judgment collectively also serve to fulfill and satisfy condition "(1)" listed in RCW 34.05.530.

- 1.2 As to the second of the "conditions" of RCW 34.05.530, applicant contends that:

- a. When the OIC engaged in approving MetLife's legally-insufficient submissions in support of the proposed premium-rate increases, that "*agency was required to consider*" the effects of that approval on WA policyholders of any of series LTC.02, LTC.03, and LTC.04 policy form that would be "affected" by such increases, including policyholders such as applicant and his spouse.
- b. Such policyholders are not mere on-lookers, not merely citizens or members of the public who may or may not have concerns with the rates of LTCI policies. Instead such policyholders are and will be directly and concretely impacted by the agency's approval of a legally-insufficient submission made by or on behalf of the insurer of such a policy,

- c. The regulation of insurance, including approval or disapproval of rates for LTCI, in this state is not merely matter between the OIC and the insurer. The Insurance Code is structured to protect consumers of insurance. The requirements of RCW 48.19.020 that *"Premium rate for insurance not be excessive, inadequate, or unfairly discriminatory"* not only regulates insurers but also protects policyholders. Applicant's Exhibit 17 contains an express acknowledgement by the OIC of the concerns that the OIC has about the effects on consumers caused by rate increases of LTCI. RCW 48.84.030 (1) directs that *"The commissioner shall adopt rules requiring reasonable benefits in relation to the price charged for long-term care policies and contracts which rules may include but are not limited to the establishment of minimum loss ratios."*
- d. The Commissioner has adopted Ch. 284-54 WAC and Ch.284-60 WAC with mirror like provisions that appear to consider the interests of policyholders, there being some uncertainty as to which of those is applicable here but less uncertainty that one or the other applies to premium- rate increases of LTCI of the vintage here in issue.

1.2 As to the third of the "conditions" of RCW 34.05.530, a judgment in favor of the applicant that sets aside the OIC approval of MetLife's legally-insufficient submissions in support of the proposed premium-rate increases before such take effect *"would substantially eliminate or redress the prejudice to"* applicant that is *"caused or likely to be caused by the agency action"* that applicant challenges.

Conclusion: The indisputable facts prove that applicant has *standing* to challenge the OIC's approval of MetLife's insufficient submissions for the rate increase.

VI. Memorandum In Support of Third Motion for Partial Summary Judgment

Long-Term Care Insurance, as Defined by RCW 48.84.020, is not
 "Disability Insurance" or "an insurance appertaining thereto"
 within the meaning of RCW 48.11.030

1. RCW 48.19.010(1) expressly excepts disability insurance from the provisions of Ch. 48.19 RCW. However, RCW 48.19.010(2) requires that *"every insurer shall, as to disability insurance, before using file with the commissioner its manual of classification, manual of rules and rates, and any modification thereof"*. That requirement impliedly subjected disability insurance premium-rate modifications to the requirements of RCW 48.19.030 and RCW 48.19.040.

2. None of those statutes state or imply that "long-term care insurance" is "disability insurance" or "an insurance appertaining" to disability insurance within the meaning of RCW 48.11.030.
3. "Insurance" is defined by RCW 48.01.040: "Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies."
4. RCW 48.84.020 defines LTCI : "Long-term care insurance" or "long-term care benefit contract" means any insurance policy or benefit contract primarily advertised, marketed, offered, or designed to provide coverage or services for either **institutional or community-based convalescent, custodial, chronic, or terminally ill care** * * * ".

[Bold emphasis added to identify the 'determinable contingencies' insured against by LTCI, i.e., coverage for the specified determinable contingencies which give rise to the need for "care"].

5. RCW 48.11.030 defines "disability insurance" as follows: "Disability insurance" is insurance against **bodily injury, disablement or death by accident, against disablement resulting from sickness, and every insurance appertaining thereto** including stop loss insurance. "Stop loss insurance" is insurance against the risk of economic loss assumed under a self-funded employee disability benefit plan."

[Note: The bold print emphasis and underlining emphasis are added. In bold print are the determinable contingencies insured against; the underlined words enlarge to a limited extent what is otherwise meant by 'disability insurance'].

6. Clearly, the determinable contingencies insured against by 'disability insurance', as defined by RCW 48.11.030, do not include any requisite element that the insured incur need for *care* - - *care* of any kind whatsoever. As to disability insurance, as so defined, the incurrance of *care* is a non-issue. And not every disablement is embraced within the statutory definition of 'disability insurance'. It does not include naturally-occurring disablement, It includes only those disablements caused by accident or sickness.
7. Conversely, the determinable contingencies insured against by LTCI as defined by RCW 48.84.020 do not include any requisite element of *injury, accident, or sickness*. Those are non-issues as to LTCI. Indeed, the need for long-term care often arises from natural aging, enfeeblement, or other causes which cannot be linked to injury, accident, or sickness. Thus, the determinable contingencies - - the essential, requisite elements - - of disability insurance, as per RCW 48.11.030, and of LTCI, as per RCW 48.84.020, are distinctly-different.

8. The words "and every insurance appertaining thereto" in RCW 48.11.030 modify the meaning of 'disability insurance' . The ordinary, accepted meaning of the word *appertain* is: *to belong to as a part, right, possession* [The Random House Dictionary of the English Language (The Unabridged Edition) Copyright 1966, by Random House).
9. The RCW 48.11.030 definition of 'stop loss' insurance" (i.e., insurance against risk of loss "under a self-funded employee disability benefit plan.") clearly *belongs to*, is *part of*, the 'disability' species of insurance . LTCI, so differently defined by RCW 48.84.020, does not appropriately or logically belong to the disability species. LTCI serve different purposes: LTCI protects the insured policyholder against the spiraling costs of elder care; disability insurance protect the insured policyholder against the loss of income resulting from accident or sickness.

Conclusion: "long term care insurance" as defined by RCW 48.84.020 is not "disability insurance" or "an insurance appertaining thereto" within the meaning of RCW 48.11.030, and the Presiding Officer should enter a Partial Summary Judgment to that effect.

Respectfully signed and submitted April 28, 2016,



Leo J. Driscoll, Applicant
4511 E. North Glenngrae Ln
Spokane, WA 99223

List of Applicant's Exhibits Submitted with the Applicant's Motions for Partial Summary Judgment

Applicant's Exhibit 1: True and complete photocopy of LTCI policy 09852450 issued to Leo J. Driscoll by TIAA- CREF Life Insurance Company ("T-C Life") effective as of 8-01-2002 (except for (i) personal medical information that is confidential and is not relevant to any issue in this proceeding and (ii) social security number and bank check identification information contained therein the disclosure of which could subject Leo and Mary Driscoll to the risk of identity theft and which has been redacted from such exhibit.

Applicant's Exhibit 2: True and complete photocopy of LTCI policy 09852468 issued to Mary T. Driscoll by T-C Life) effective as of 8-01-2002 (except for (i) personal medical information that is confidential and not relevant to any issue in this proceeding and (ii) social security number and bank check identification information contained therein the disclosure of which could subject Leo and Mary Driscoll to the risk of identity theft and which has been redacted from such exhibit.

Applicant's Exhibit 3: True and complete photocopy of the changed "Policy Schedule" received by Leo J. Driscoll from MetLife in July 2012 that became effective from and after August 1, 2012 for the LTCI Policy issued to Leo J. Driscoll that is the subject of Exhibit 1 above.

Applicant's Exhibit 4: True and complete photocopy of the changed "Policy Schedule" received by Mary T. Driscoll from MetLife in July 2012 that became effective from and after August 1, 2012 for the LTCI Policy issued to Mary T. Driscoll that is the subject matter of Exhibit 2 above.

Applicant's Exhibit 5: True and complete photocopy of a 10/21/2015 e-mail sent to Leo Driscoll by his son Patrick Driscoll, together with a true and complete hard photocopy of the PDF document that is referenced in that e-mail. That PDF document is addressed to Leo Driscoll at the residence address of Patrick Driscoll, is dated October 9, 2015, appears to be on MetLife's stationary, and is captioned "Re: Notice of Long Term Care Insurance Premium Adjustment for Policy 09852450".

Applicant's Exhibit 6: True and complete photocopy of letter dated 12-11- 2015 from Leo and Mary Driscoll to T-C Life and to MetLife, which letter: (a) relates to the notice of the pending 22.69% premium increases for policies 09852450 and 09852468; (b) relates to the accuracy of the insurers' records of the Driscoll's' residence address; and, (c) requested a form for Mary's use in designating a Lapse Notice Designate for the LTCI policy.

Applicant's Exhibit 7: Original of letter dated 12-28-2015 later received by Leo J. Driscoll and Mary T. Driscoll from MetLife with enclosures that: (a) State in substance and effect that MetLife had updated its' records to show the current address of Leo and Mary Driscoll as of that date; (b) Enclosed photocopies of MetLife's "Notice of Long Term Care Adjustment" of the premiums of the **09852450** and **09852468** policy forms and describes the options which the policyholder has in responding to such notice of adjustments in premiums; and (c) Included a Lapse Designate form for use by Mary T. Driscoll for the 09852468 policy form issued to Mary T. Driscoll

Applicant's Exhibit 8: A true and complete photocopy of the OIC's SERFF State Tracking files #275017 (with pages numbered 1 to 100 as provided to applicant by the OIC.).

Applicant's Exhibit 9: A true and complete photocopy of the OIC's SERFF State Tracking files #275018 (with pages numbered 1 to 101 as provided to applicant by the OIC).

Applicant's Exhibit 10: A true and complete photocopy of the OIC's SERFF State Tracking files #275019 (with pages numbered 1 to 103 as provided to applicant by the OIC).

Applicant's Exhibit 11: *Leo J. Driscoll's April 27, 2016 Declaration.*

Applicant's Exhibit 12: *Mary T. Driscoll's April 27, 2016 Declaration.*

Applicant's Exhibit 13: A true and complete hard photocopy of the Lewin Group Report #2002 dated February 2002 entitled "Long-Term Care Insurance: An Assessment of States' Capacity to review and Regulate Rates" which is available online (last visited 4/18/2016 by applicant at http://assets.aarp.org/rgcenter/il/2002_02_ltc.pdf (a hard copy of which applicant previously provided to the OIC on 3/18/2016).

Applicant's Exhibit 14: True and complete photocopy of Leo Driscoll's 11-19-2015 Public Records Act Requests sent to the OIC by e-mail seeking all identifiable public records and writings relating to OIC's then recent reported authorization of a 22.69% increase in the premium rates of LTCI policies issued by T-C Life in the state of Washington during 2001-2004.

Applicant's Exhibit 15: True and complete photocopy of the OIC's e-mail responses to Leo Driscoll's 11-19-2015 Public Records Act request (including the 11-24-2015 e-mail response of OIC's Stephanie Ferrell which identified, referenced, and included in PDF form copies of OIC's SERFF State Tracking files #275017, #275018, and #275019 but which referenced numbers do not appear on the hard photocopy print of that 11-24-2015 e-mail that is depicted in this exhibit.

Applicant's Exhibit 16: True and complete photocopy of Leo Driscoll's additional Public Records Act Request in Word form dated 11-27-2015 sent to OIC's Stephanie Ferrell by e-mail dated 11-27-2015 and Ms. Ferrell's e-mail response thereto dated 12-28-2015.

Applicant's Exhibit 17 is a true and complete photocopy of pages 6 and 7 of "OIC STAFF's MOTION FOR SUMMARY JUDGMENT" dated November 7, 2014 served, and filed in OIC Hearings Unit Docket No. 14-0187 by Ms. Mandy Weeks, attorney of record in such proceedings. The segment thereof appearing at Line 20, page 6, to Line 7, page 7, includes statements regarding the applicability of RCW 48.19.030 and RCW 48.19.040 to long-term care insurance premium rate increases.

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