

DRISCOLL, LEO

OIC NO. 16-0002 / SIMBA NUMBER 1339824

# EXHIBIT 10

*EXH 10 – 11/07/2014 OIC Staff's Motion for Summary Judgment with Exhibits*

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STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

*In the Matter of*

Docket No. 14-0187

LEO J. DRISCOLL and MARY T. DRISCOLL,

OIC STAFF'S MOTION FOR SUMMARY JUDGMENT

Application for Hearing.

I. MOTION AND RELIEF REQUESTED

Office of the Insurance Commissioner's ("OIC") staff requests entry of an order dismissing Leo and Mary Driscoll's Demand for Hearing as a matter of law.

II. SUMMARY

The Office of the Insurance Commissioner, among other duties to regulate the insurance industry, approves (or disapproves) rate filings under the comprehensive directives found in RCW 48.19, including rate filings for long-term care insurance policies. In 2002, Mary and Leo Driscoll (Petitioners) purchased long-term care insurance policies, which were assumed by Metropolitan Life Insurance Company (MetLife) in 2004. *See OIC Exhibit 1: MetLife Premium Rate Schedule Increase Filing, pg. 1 and Request for Hearing, Decl. of Mary Driscoll, pg. 36.* In 2011, MetLife submitted a rate filing to the Office of the Insurance Commissioner that increased the premium rates for a long-term care insurance product line based upon the anticipated loss ratio. *See OIC Exhibits 1 & 2: MetLife Insur. Co., Premium Rate Schedule Increase and Actuarial Memorandum, 2011.* The MetLife rate filing advised that the increase would only be implemented after approval of the Office of the Insurance Commissioner with a 60 day notice to policyholders prior to the first effective date of the rate change.

1 See *OIC Exhibit 1: MetLife Premium Rate Schedule Increase Filing*, pg. 2. As a result,  
2 the MetLife rate filing could not take effect without specific approval from the Office of  
3 the Insurance Commissioner, effectively waiving its rights to a determination within  
4 thirty (30) days. No prior rate increase for these long-term care policies had been filed  
5 and the rate, to this date, has not increased since 2011. See *OIC Exhibit 1: MetLife*  
6 *Premium Rate Schedule Increase Filing*, pg. 1 and *Decl. of Scott Fitzpatrick In Support*  
7 *of OIC Staff's Motion for Summary Judgment*, pg. 3.<sup>1</sup>

8 However, policyholders were not forced to choose between paying the new rate  
9 and terminating coverage. In the alternative, MetLife advised policyholders that they  
10 could lessen or avoid the impact of the new premium rate by choosing an alternative  
11 option. See *OIC Exhibit 1: MetLife Premium Rate Schedule Increase Filing*, pg. 2. In  
12 the alternative, policyholders could reduce coverage or stop payment on the policy while  
13 retaining a level of benefits commensurate with the premiums paid (exercising  
14 nonforfeiture coverage). *Id.*

15 On June 10, 2011, MetLife submitted all required information to support the rate  
16 filing. *Decl. of Scott Fitzpatrick*, pg. 2-3. The Office of the Insurance Commissioner's  
17 actuarial staff, experienced with insurance rate filings, reviewed the request and  
18 supporting materials. Despite the fact that MetLife rate filing increased the premium  
19 rates for policyholders, the Office of the Insurance Commissioner did not have a legal  
20 basis to deny the rate filing because it was not excessive, inadequate or unfairly  
21 discriminatory. See RCW 48.19.020. The rate request was approved on June 22, 2011.  
22 See *OIC Exhibit 3: OIC Actuary Staff Emails Regarding Approval*, pg. 5. MetLife also  
23 submitted modified policy forms to reflect the 2011 rate filing. These were approved on  
24 August 17, 2011. *Id.*, pg. 4. That same day, the Disposition was entered and posted. See  
25 *OIC Exhibit 4: Disposition – Approval of Rate Filing*, pg. 1. MetLife was notified that  
26 the Insurance Commissioner approved the MetLife rate filing and related forms. *Id.*  
Generally, even if the rate filing is approved by actuaries before the forms are approved

<sup>1</sup> OIC Actuary Lee Michelson who conducted actuarial review of the 2011 MetLife Rate filing now works for another employer. In order to provide responses to the Demand for Hearing, OIC Actuary Scott Fitzpatrick conducted a review of the MetLife rate filing. *Decl. of Scott Fitzpatrick*, pg. 2.

1 for use, the Disposition should approve or deny the entire filing (both the rates filing and  
2 forms filing). See *OIC Exhibit 3: OIC Actuary Staff Emails Regarding Approval*, pg. 4.  
3 This ensures that communications and policy changes to be sent to policyholders are  
4 reviewed and approved prior to use by insurers. When a rate change affects long-term  
5 care insurance policies, review of policyholders' ability to exercise nonforfeiture  
6 provisions is especially important. In this rate and form filing, the nonforfeiture policy  
7 provisions required detailed review to ensure compliance with regulations enacted in late  
8 2008 (RCW 48.83.120 and WAC 284-83-130) that provided policyholders with greater  
9 nonforfeiture protections. *Id.*

10 On December 9, 2011, Petitioners received notice from MetLife that the 2011  
11 rate filing had been approved. *Demand for Hearing*, pg. 8. Notices to policyholders  
12 were required to be sent sixty (60) days prior to the policyholder's next policy term,  
13 when the new premium rates would begin. See *OIC Exhibit 1: MetLife Premium Rate*  
14 *Schedule Increase Filing*, pg. 2. After receiving this notice, policyholders such as the  
15 Petitioners, took actions to reduce their coverage, pay the new premium, or exercise the  
16 nonforfeiture coverage as allowed under the policy. On September 19, 2014, Petitioners  
17 filed a Demand for Hearing disputing the approval of this rate filing.

18 Over three years have passed since the MetLife rate filing was approved by the  
19 Office of the Insurance Commissioner. Some Washington policyholders may now be  
20 relying on their policy for long-term care coverage in 2014; others may be relying on the  
21 stability of their policy and policy premium. In the meantime, MetLife based all  
22 subsequent rate reviews on the premium policy amounts approved in 2011.

23 Even if Petitioners could have been considered to be aggrieved by the approval  
24 of the rate increase, the Office of the Insurance Commissioner has no jurisdiction to  
25 conduct a hearing in this matter because statutory limitations bar Petitioners from filing  
26 this untimely Demand for Hearing. Policyholders and the insurer have since relied on  
the approved rate filing.

The Demand for Hearing misconstrues the governing statutes and raises non  
justiciable issues upon which no effective relief can be granted. OIC staff therefore  
respectfully submits the Demand for Hearing is subject to dismissal as a matter of law.

### III. STATEMENT OF FACTS

#### A. Overview of Long-Term Care Insurance

A long-term care insurance policy is a contract primarily advertised, marketed, or designed to provide long-term care services over a prolonged period of time, which services may range from direct skilled medical care performed by trained medical professionals as prescribed by a physician or qualified case manager in consultation with the patient's attending physician to rehabilitative services and assistance with the basic necessary functions of daily living for people who have lost some or complete capacity to function on their own. WAC 284-54-015. Long-term care insurance provides benefits for a wide range of medical, personal and social services for people with prolonged illnesses or disabilities that require help with daily activities. Policies can include home health care, adult day care, nursing home care, and group living facility care.

Long-term care insurance is generally structured around a number of benefit options selected by enrollees. *LONG-TERM CARE INSURANCE, Carrier Interest in the Federal Program, Changes to Its Actuarial Assumptions, and OPM Oversight*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (July 2011),

<http://www.gao.gov/assets/330/322553.pdf>. (Last visited Nov. 1, 2014), ("*GAO Report*") pg. 8. These include: the types of services covered (such as care in the home or in a nursing home or both), the daily benefit amount, the benefit period (which can range from 1 year to a lifetime), the length of the waiting period before insurance will provide coverage, and inflation protection to help insurance daily benefit amount remain commensurate with costs of care. *Id.*

Long-term care insurance premiums are affected by many factors. Carriers charge higher premiums for more expensive benefits, for example higher daily benefit amounts, longer benefit periods, and higher levels of inflation protection will increase premiums. *Id.*, pg. 9. In addition, carriers establish premiums on the basis of actuarial assumptions – including lapse, mortality, morbidity, and return on investment assumptions. *Id.* and See Dawn Helwig, *The Cost of Waiting*, AMERICAN

1 ACADEMY OF ACTUARIES, CONTINGENCIES (NOV/DEC. 14),  
2 <http://www.contingenciesonline.com/contingenciesonline/20141112#pg22>. (Last  
3 visited Nov. 5 2014), ("Actuarial Article"). The lapse assumption reflects the  
4 expected portion of policyholders who drop their coverage each year. *GAO Report*,  
5 *pg. 9*. The mortality assumption is based upon the life expectancies of the enrollee  
6 population by age. *Id.*, *pg. 10*. The morbidity assumption is based upon the amount of  
7 claims costs expected for enrollees, by age, and accounts for the portion of enrollees of  
8 each age who file a claim and the duration of those claims. *Id.* The return on  
9 investment assumption reflects the expected interest rate earned on invested assets. *Id.*  
Actuarial assumptions are projections about the future, and as a result, can change over  
time as carriers gain more claims experience, especially with newer products.

10         Setting premiums at an adequate level to cover future costs has been a challenge  
11 for some carriers. *Id.* and *See Actuarial Article*. Long-term care insurance is a relatively  
12 new insurance product that started developing between 1970 and 1989. *Id.* and  
13 Kimberly Lankford, *Long-Term-Care Rate Hikes Loom*, KIPLINGER (January 2011),  
14 [http://www.kiplinger.com/article/insurance/T036-C000-S002-long-term-care-rate-hikes-](http://www.kiplinger.com/article/insurance/T036-C000-S002-long-term-care-rate-hikes-loom.html)  
15 [loom.html](http://www.kiplinger.com/article/insurance/T036-C000-S002-long-term-care-rate-hikes-loom.html). (Last visited Nov. 1, 2014), ("Kiplinger Article"). Furthermore, it may take  
16 several decades before enrollees submit claims and for carriers to obtain data on how  
17 their enrollees will use their policies. *GAO Report*, *pg. 10*. As a result, many carriers  
18 have lacked and potentially continue to lack sufficient data to accurately estimate the  
19 revenue needed to cover the costs of the policies. *Id.*, *pgs. 10-11* and *See Actuarial*  
20 *Article*. This has led to changes in the marketplace; many insurers left the marketplace,  
21 or consolidated to form larger companies, and most of the remaining companies have  
22 raised premiums to account for initial actuarial assumptions that did not adequately  
23 cover current projected costs. *Id.*, Chad Terhune, *CalPERS Plans 85% Rate Hike for*  
24 *Long-Term-Care Insurance*, LOS ANGELES TIMES (February 21, 2013),  
25 <http://articles.latimes.com/2013/feb/21/business/la-fi-calpers-longterm-care-20130222>.  
26 (Last visited Nov. 1, 2014), ("LA Times") and Howard Gleckman, *What's Killing The*  
*Long-Term Care Insurance Industry*, FORBES (August 29, 2012),

1 [http://www.forbes.com/sites/howardgleckman/2012/08/29/whats-killing-the-long-term-](http://www.forbes.com/sites/howardgleckman/2012/08/29/whats-killing-the-long-term-care-insurance-industry)  
2 [care-insurance-industry](http://www.forbes.com/sites/howardgleckman/2012/08/29/whats-killing-the-long-term-care-insurance-industry). (Last visited Nov. 1, 2014), (“Forbes”).

3 In 2013, California Public Employees Retirement System (CalPERS) informed  
4 policyholders that their long-term care insurance premiums would increase eighty-five  
5 percent (85%). *LA Times*. The CalPERS program, like many plans sold by private  
6 insurers, experienced higher-than-expected claims, lower investment returns and poor  
7 pricing. *Id.* Insurance regulators have found that long-term care insurers too often  
8 underestimated the cost of care and the number of customers who would hold onto these  
9 policies. *Id.* Pricing long-term care policies accurately has been a long-standing  
10 challenge as people continue to live longer and medical costs keep rising. *Id.*, and *See*  
11 *Actuarial Article*. Compounding the difficulties, historically low-interest rates have  
12 contributed to lower investment returns, which are used to pay claims. *Id.*, Ann Carns,  
13 *Premiums Rise for Long-Term Care Insurance. Keep It or Drop It?*, THE NEW YORK  
14 *TIMES* (March 21, 2014), [http://www.nytimes.com/2014/03/21/your-money/premiums-](http://www.nytimes.com/2014/03/21/your-money/premiums-rise-for-long-term-care-insurance-keep-it-or-drop-it.html)  
15 [rise-for-long-term-care-insurance-keep-it-or-drop-it.html](http://www.nytimes.com/2014/03/21/your-money/premiums-rise-for-long-term-care-insurance-keep-it-or-drop-it.html), (Last visited Nov. 1, 2014),  
16 (“NY Times Article”) and *See Actuarial Article*.

17 These combined factors have caused some insurers to exit the long-term care  
18 insurance business. *Id.* “Those remaining in the business are trying to stem the tide of  
19 red ink by seeking approval from state insurance commissions for premium increases.”  
20 *NY Times Article*. Marianne Harrison, President of John Hancock’s Long-Term Care  
21 Division voiced concerns of long-term care insurers that “[t]his won’t be a viable  
22 product if we don’t have sufficient funds to pay claims in the long term.” *Kiplinger*  
23 *Article*.

24 The Office of the Insurance Commissioner is very concerned about long-term  
25 care insurance premium rate increases, its affect on consumers, and the future  
26 problems for policyholders if there are not enough funds to cover benefits to be  
provided. 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 48.19.030, RCW 48.19.040, WAC 284-54-630. All of these materials are  
reviewed by OIC staff actuaries. OIC actuaries can request further information if

1 needed to evaluate the rate filing. *Id.* When all information is reviewed, the Insurance  
2 Commissioner disapproves the rate filing if it is excessive, inadequate or unfairly  
3 discriminatory. *See* RCW 48.19.020. Alternatively, the rate filing is approved  
4 provided it is supported by the required information and is not excessive, inadequate  
5 or unfairly discriminatory. *See* RCW 48.19.030, RCW 48.19.040, WAC 284-54-630.  
6 The Insurance Commissioner continues to try to find solutions to problems  
7 surrounding long-term care insurance, independently in the State of Washington, and  
8 nationally with the National Association of Insurance Commissioners ("NAIC").

9 In response to the growing number of premium increases in long-term care  
10 insurance, the NAIC has continued its work to determine the best practices to address  
11 the complex issues surrounding long-term care insurance. *State Insurance Regulators*  
12 *Work on Long-Term Care Insurance*, NAIC (June 11, 2013),  
13 [http://www.naic.org/Releases/2013\\_docs/state\\_insurance\\_regulators\\_work\\_long\\_term\\_c](http://www.naic.org/Releases/2013_docs/state_insurance_regulators_work_long_term_care_insurance.htm)  
14 [are\\_insurance.htm](http://www.naic.org/Releases/2013_docs/state_insurance_regulators_work_long_term_care_insurance.htm). (Last visited Nov. 1, 2014). The NAIC is the U.S. standard-setting  
15 and regulatory support organization created and governed by the chief insurance  
16 regulators from the 50 states, District of Columbia and five U.S. territories. Through the  
17 NAIC, state regulators establish standards and best practices, conduct peer review and  
18 coordinate their regulatory oversight. In 2011, the NAIC again revised its model long-  
19 term care insurance regulation, a model law that is used by most states as a foundation to  
20 regulate long-term care insurers. *Id.* The State of Washington, as a member of the  
21 NAIC, has adopted the revised model long-term care insurance regulation. The NAIC  
22 has since continued working with state regulators to identify a way to address this  
23 national problem. *Id.*

#### 24 B. Long-Term Care Insurance Regulations

25 All insurance in Washington, including long-term care insurance is regulated  
26 under the Washington Insurance Code in Title 48 of the Washington Revised Code.  
The Insurance Code authorizes the Insurance Commissioner to "make reasonable rules  
and regulations for effectuating any provision of the code." RCW 48.02.060. The  
Insurance Code, in combination with the Washington Administrative Code (WAC

1 284), provides the requirements for rate filings, including rate filings affecting  
2 disability insurance premiums. See RCW 48.19.<sup>2</sup> Washington law defines disability  
3 insurance to include long-term care insurance. Specifically, RCW 48.11.030 defines  
4 disability insurance as “insurance against bodily injury, disablement or death by  
5 accident, against disablement resulting from sickness, and every insurance  
6 appertaining thereto including stop loss insurance.” As a result, most statutes and  
7 rules pertaining to long-term care insurance fall primarily under the statutes and rules  
8 applicable to disability insurance. However, statutes and rules specific to long-term  
9 care insurance supplement the general provisions for disability insurance. See RCW  
10 48.83, RCW 48.84, WAC 284-54, and WAC 284-83.

11 The Insurance Code specifies various considerations that must be taken into  
12 account in the setting of rates, including past and prospective loss experience, hazards,  
13 profitability, and expenses. See *Id.* Washington’s insurance statutes and rules also  
14 provide detailed guidelines for determining whether a rate filing is justified, excessive,  
15 inadequate or discriminatory. See RCW 48.19.030, WAC 284.24.065 and WAC 284-  
16 54-060. Moreover, the Code directs the Insurance Commissioner to conduct a review  
17 of the rate filings and requires insurers to submit extensive documentation in support  
18 of their rate filing, such as loss experience and other pertinent information. See  
19 RCW.19.040. The Insurance Commissioner undertakes a review of a rate filing as  
20 soon as reasonably possible. See RCW 48.19.060 and RCW 48.19.100. The  
21 Insurance Commissioner can approve or disapprove a rate filing. See RCW 48.19.060,  
22 RCW 48.19.100.

23 “Furthermore, the Code anticipates consumer involvement, and provides a  
24 mechanism for their input on rate-setting.” *Blaylock v. First Am. Title Ins. Co.*, 504 F.  
25 Supp 2d 1091, 1095 (W.D. Wash. 2007). Pursuant to a written request and a  
26 reasonable fee, insurers are required to provide affected consumers “all pertinent  
information” related to the rate. See *Id.* and RCW 48.19.310. Insurers are also

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<sup>2</sup> RCW 48.19.010(1) originally excluded disability insurance from this section; however RCW  
48.19.010(2) placed disability insurance within the purview of this regulatory section.

1 required to provide "reasonable means" by which "any persons aggrieved" by a rate  
2 filing may be heard, in person or written request to review the manner in which such a  
3 rating system has been applied in connection with their insurance. *Id.* If the rating  
4 organization or insurer fails to grant or reject such request within thirty (30) days, the  
5 applicant may proceed in the same manner as if his or her application had been  
6 rejected. *Id.* Afterwards, the aggrieved party may appeal to the Insurance  
7 Commissioner within thirty (30) days, who after a hearing may affirm or reverse. *Id.*

8 C. The 2011 MetLife Premium Rate Request

9 On May 1, 2004, MetLife entered into assumption reinsurance agreements and  
10 indemnity reinsurance agreements with Teachers Insurance and Annuity Association  
11 (TIAA). *See Exhibit 1: MetLife Premium Rate Schedule Increase Filing, pg. 1.*

12 Pursuant to these agreements, MetLife agreed to assume the direct obligations under  
13 TIAA's long-term care policies. *Id.* As a result, MetLife became the administrator of  
14 these policies, authorizing MetLife to submit rate filings on behalf of TIAA. *Id.*

15 On June 10, 2011, MetLife submitted three separate filings for rate increases  
16 related to three long-term care policies assumed by MetLife. *Id.* These three long-term  
17 care policies are actually part of one plan (also call a "product"). In this instance,  
18 policies are distinguished within the product line as LTC.02, LTC.03, and LTC.04. *Id.*  
19 These were successive policy forms of the same product with no major change between  
20 these policies. *See OIC Exhibit 3: OIC Actuary Staff Emails Regarding Approval, pg.*  
21 *9.* In accordance with WAC 284-60-040, experience of these three similar policies were  
22 aggregated by actuaries to prevent discrimination in pricing and ensure protection of  
23 consumers. This ensures that one policy is not subject to extremely high rate changes by  
24 requiring the actuarial experience to be based upon generations of a product. WAC 284-  
25 60-040. A deviation from this methodology would need to be requested by the insurer.  
26 *Id.* This deviation can only be granted if the actuarial information presented by the  
insurer can justify to the satisfaction of the Insurance Commissioner that a different  
grouping is more equitable. *Id.*

1 As required by the Office of the Insurance Commissioner, the MetLife rate  
2 filing included an Actuarial Memorandum calculating the anticipated loss ratio of the  
3 long-term care insurance product. WAC 284-83-090. Loss ratio is a measure of the  
4 relationship between claims and premiums. See WAC 284-54-610. As of the 2011  
5 rate filing, MetLife had already paid out claims that amounted to 37.2% of collected  
6 premiums. See *OIC Exhibit 2: Actuarial Memorandum 2011*, pg. 12. The claims  
7 experience and related factors for actuarial assumptions determined that the projected  
8 future experience would result in a loss ratio of 208.4% over the premiums paid. *Id.*  
9 At the present moment, actuarial calculations indicated that the policies were operating  
10 at a 99.9% loss ratio, making the policies virtually insolvent should any catastrophic  
11 claim impact the policies. *Id.*

12 Under Washington law, insurers are required to operate policies at a loss ratio  
13 no less than 60% depending upon the policy and number of enrollees. WAC 284-60-  
14 050. This ensures that rates are stabilized because the total amount of the claims to be  
15 paid will be at least 60% of the premiums to be paid. *Id.*

16 OIC staff actuaries reviewed the rate filing, and supporting materials, including  
17 the actuarial calculations. Petitioners allege in paragraphs 1.31 through 1.57.2 that  
18 MetLife failed to provide certain information in the rate filing. *Demand for Hearing*,  
19 *pgs. 14-18*. However, this is a mistaken interpretation of how this information is  
20 provided to the Office of the Insurance Commissioner. This information is provided as  
21 actuarial calculations that are located within the Actuarial Memorandum. *Decl. of*  
22 *Scott Fitzpatrick*, pg. 3. For example, information alleged to be missing in Petitioners'  
23 paragraphs 1.32, 1.33, 1.34, 1.36, 1.37 are found in pages 12-15 of the Actuarial  
24 Memorandum and the actuarial calculations related to Petitioner's paragraph 1.35 can  
25 be found in the Actuarial Memorandum at page 10. *Id.* This rate filing and supporting  
26 materials was no different in form or substance than any other typical rate filing. *Id.*,  
*pg. 3*. The rate filing was determined to be supported by the calculations. *Id.*, *pgs. 2-4*  
and See *OIC Exhibit 3: OIC Actuary Staff Emails Regarding Approval*, pg. 10.

The purpose of the 2011 MetLife rate filing was to ensure that the policies  
contained enough funds to cover losses. See *OIC Exhibit 2: Actuarial Memorandum*

1 2011. OIC staff actuaries still have concerns that even with this change in premiums;  
2 the products would be presently operating at an 88.2% loss ratio. *Decl. of Scott*  
3 *Fitzpatrick, pg.4*. Operating at such a high loss-ratio potential could violate the  
4 protections of WAC 284-83-230(6) which requires that loss ratios must provide for  
5 future reserves, and must account for the maintenance of such reserves for future  
6 needs. However, concerns regarding the effect of premium changes on policyholders  
7 outweighed the potential concerns regarding the loss ratio. A Disposition was entered  
8 approving the rate filing because the filing was not excessive, inadequate, or unfairly  
9 discriminatory.

#### 10 IV. ARGUMENT AND AUTHORITY

##### 11 D. Motion for Summary Judgment

12 As a preliminary matter, a party may move to dismiss a complaint for lack of  
13 subject matter jurisdiction. Absent subject matter jurisdiction, a court may do nothing  
14 except enter an order of dismissal. *Ricketts v. Washington State Bd. of Accountancy*, 111  
15 Wn. App. 113, 116, 43 P.3d 548 (2002). For purposes of a motion to dismiss or motion  
16 for summary judgment, the facts in the petition are generally presumed to be true.  
17 However, Petitioners have no first-hand or personal knowledge of the events  
18 surrounding the approval of MetLife's rate filing. As a result, the Demand for Hearing  
19 consists primarily of factual and legal conclusions that are not supported by the record  
20 and deserve no such presumption.<sup>3</sup>

21 Even if it is assumed that the factual allegations in the Demand for Hearing are  
22 true for the purposes of this Motion, it must be dismissed. Petitioners failed to state a  
23 justiciable claim. There is no subject matter jurisdiction because the statutory time

24 <sup>3</sup> For example, Petitioners allege factual interpretations of events concerning the approval of the rate filing  
25 and make erroneous legal arguments that are not supported by the record. These conclusory legal  
26 arguments and mistaken factual allegations are not entitled to the presumption of truth that first-hand,  
personal knowledge factual assertions are usually afforded in a motion to dismiss or summary judgment.  
Petitioners' incorrect factual assumptions are addressed in this motion to provide a correct record, not to  
create issues of material fact. Petitioners' mistaken facts do not affect the arguments within the Motion  
for Summary Judgment.

1 limits to demand a hearing have long since passed. Furthermore, Petitioners are not an  
2 aggrieved party and do not have standing to demand a hearing. Therefore, the Demand  
3 for Hearing should be dismissed.

4 E. The Demand for Hearing is Untimely and Cannot be Heard

5 Petitioners' demand for hearing is untimely under the statutory filing deadlines,  
6 therefore it must be dismissed as a matter of law. Compliance with a statutory filing  
7 deadline is a jurisdictional requirement. *Snohomish County Fire Prot. Dist. No. 1 v.*  
8 *Wash. State Boundary Review Bd. For Snohomish County*, 121 Wn. App. 73, 82, 87  
9 P.3d 1187 (2004) aff'd, 155 Wn.2d 70, 117 P.3d 348 (2005). A mandatory filing  
10 period acts as a jurisdictional bar. *Graham Thrift Group, Inc. v. Pierce County*, 75  
11 Wn. App. 263, 267-268, 887 P.2d 228 (1994). The Office of the Insurance  
12 Commissioner, as an administrative agency, only has those powers either expressly  
13 granted or necessarily implied by the legislature. The legislature has expressly granted  
14 the Office of the Insurance Commissioner jurisdiction to hear appeals from aggrieved  
15 persons. Specifically, the Office of the Insurance Commissioner has express  
16 jurisdiction to hear appeals concerning a rate filing. The process to appeal a rate filing  
17 determination is provided for under RCW 48.04.010(1)-(3). Petitioners did not timely  
18 file a demand for hearing in accordance with this process and now Petitioners'  
19 untimely Demand for hearing must be dismissed as a matter of law.

20 The Washington Administrative Procedure Act (APA) provides administrative  
21 agencies with a procedural framework for hearing processes, such as limitations  
22 governing the timely filing of hearing request. When required by law or constitutional  
23 right, and upon timely application of any person, an agency shall commence an  
24 adjudicative proceeding. RCW 34.05.413(2). An agency may require by rule that an  
25 application be in writing and that it be filed at a specific address, in a specific manner,  
26 and within specific time limits. RCW 34.05.413(3). The APA also provides that an  
agency shall allow at least twenty (20) days to apply for an adjudicative proceeding  
from the time notice is given of the opportunity to file such an application. RCW  
34.05.413(3).

1           Petitioners' Demand for Hearing is untimely under the Insurance Code, which  
2 provides that a request for hearing must be filed within ninety (90) days from the issue  
3 of a Disposition order; therefore Petitioners are barred from now demanding a hearing.  
4 See RCW 48.04.010(1)-(3). Under the Insurance Code, RCW 48.04.010(1)-(3)  
5 provides that the Insurance Commissioner shall hold a hearing upon written demand  
6 for a hearing made within ninety (90) days by any person aggrieved by an act,  
7 threatened act or failure to act, or by any report, promulgation or order. An "order"  
8 without further qualification, means a written statement of particular applicability that  
9 finally determines the legal rights, duties, privileges, immunities, or other legal  
10 interests of a specific person or persons. RCW 34.05.010(11)(a). "Person" means any  
11 individual, partnership, corporation, association, governmental subdivision or unit  
12 thereof, or public or private organization or entity of any character, and includes  
13 another agency. RCW 34.05.010(14). A Disposition order was entered on August 17,  
14 2011 that approved the MetLife rate filing. *See OIC Exhibit 4: Disposition, pg. 1.*  
15 This Disposition notice was a written statement of particular applicability that finally  
16 determined the legal rights, duties, privileges, immunities, or other legal interests of  
17 MetLife. *Id.* If the Disposition had instead disapproved the rate filing, MetLife would  
18 have exercised its rights to appeal that Disposition determination under RCW  
19 48.04.010(3).

20           Similarly, any other aggrieved party who alleges that their rights have been  
21 affected by the Disposition must appeal within ninety (90) days notice of the  
22 determination. *Id.* However, even counting ninety (90) days from December 9, 2011  
23 (the date the Petitioners received notice of the rate filing approval), statutory  
24 limitations now preclude the Office of the Insurance Commissioner from hearing  
25 Petitioners' untimely Demand for Hearing. *Demand for Hearing, pg. 8.* Petitioners,  
26 like MetLife, are required to timely exercise their rights to appeal and demand a  
hearing within ninety (90) days from notice. The Office of the Insurance  
Commissioner has no jurisdiction over an untimely demand for hearing.

          It may have also been possible for Petitioners to file a demand for hearing  
under another statutory provision (RCW 48.19.310); however Petitioners' Demand for

1 Hearing remains untimely under that statutory deadline as well. See RCW 48.19.310.  
2 Policyholders, such as the Petitioners, can dispute the applicability of rate filings under  
3 the process provided for in RCW 48.19.310, entitled "Complaints of insureds." Any  
4 party aggrieved by the application of a rate filing must first request a hearing with the  
5 insurer to review the rates within thirty (30) days notice of the rate change. See RCW  
6 48.19.310. After the insurer's denial or failure to respond to this request within thirty  
7 (30) days, an aggrieved party then has thirty (30) days to request a hearing with the  
8 Office of the Insurance Commissioner. *Id.*

9 Petitioners did not avail themselves of the processes that might have been  
10 available under RCW 48.04.010 or RCW 48.19.310, and instead seek relief under  
11 RCW 48.19.120(3), which provides that any aggrieved persons may in good faith  
12 request a hearing to dispute a rate filing then in effect. However, RCW 48.19.120(3)  
13 does not stand separately from other hearings provisions provided for in the Insurance  
14 Code. This is especially true since RCW 48.19.120(3) lacks critical elements  
15 necessary for a petitioner to access the hearings process, such as the statutory time  
16 limits in which an aggrieved person may request a hearing. Rather, the Insurance  
17 Code, similar to other statutes, is intended to be read together. "In construing a statute,  
18 we give effect to all its language so that no portion is rendered meaningless or  
19 superfluous." *Friends of Columbia Gorge, Inc. v. Wash. State Forest Practices*, 129  
20 Wn. App. 35, 47 (2005).

21 Utilizing RCW 48.19.120(3) as a stand alone statute, without the related  
22 insurance hearings statutes and rules, would create erroneous results and irreparable  
23 harm. As rate filings are not required to be changed, a rate filing could potentially go  
24 unchanged from its creation. If RCW 48.19.120(3) was applied without the overlay of  
25 the related statutes and rules, an aggrieved person could request a hearing at any point  
26 in time prior to a future rate change. For example, prior to 2011, MetLife had not  
submitted a rate filing on this long-term care insurance product (purchased by the  
Petitioners in 2002) since its creation.

This interpretation of RCW 48.19.120(3) would render it meaningless if not  
read as a part of the other hearings provisions within the insurance statutes and rules.

1 This interpretation of RCW 48.19.120(3) would provide no closure or certainty to a  
2 rate filing. No stability could be ascertained or guaranteed under Petitioners'  
3 interpretation. Insurers would be driven to overwhelm the Office of the Insurance  
4 Commissioner with additional rate filings to simply ensure certainty of the rate filings.  
5 Furthermore, if it were not read together, this statute would contradict RCW  
6 48.19.310, RCW 48.04.010 and WAC 284-02-070 that set the time limitations for  
7 hearings processes.

8 Even if the hearing processes afforded under RCW 48.04.010 and 48.19.310  
9 were not the appropriate remedy for policyholders, the general hearings provisions  
10 under 48.04 and WAC 284-02-070(1)(b)(ii) supplement critical missing elements from  
11 RCW 48.19.120(3) to provide that a written demand for hearing be made by any  
12 person aggrieved by an act of the Commissioner, or failure to act within ninety (90)  
13 days notice of the act or failure to act. See RCW 48.04(1)-(3) and WAC 284-02-  
14 070(1)(b)(ii).

15 Petitioners allege that because the Insurance Commissioner can disapprove a  
16 rate filing at any time, Petitioners can submit a demand at any time, even years after  
17 approval. However, simply because the Insurance Commissioner has the authority to  
18 disapprove a rate filing at any time, does not provide an aggrieved person with the  
19 ability to indefinitely extend the time limits to demand a hearing. Rather, RCW 48.04  
20 and WAC 284-02-070(1)(b)(ii), which provide the general guidelines for hearing and  
21 appeals, supplements RCW 48.19.120(3) with the missing information, including the  
22 statutory time limits in which to request a hearing. Under each of the relevant  
23 statutory filing deadlines, Petitioners have failed to timely file and the Demand for  
24 Hearing must be dismissed because compliance with a filing deadline is a  
25 jurisdictional requirement.<sup>4</sup>

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<sup>4</sup> The crux of the Petitioners' Demand for Hearing is to contest the application of  
the rate filing and to obtain relief from that rate filing. Regardless of the hearing  
provisions provided, "[t]he Washington Insurance Code governs the regulation of  
insurance and does not itself provide protection or remedies for individual interests."  
*Pain Diagnostics and Rehabilitation Associates, P.S. v. Brockman*, 97 Wn App. 691,

1  
2 F. The Plaintiffs Do Not Have Standing to Demand A Hearing

3 The Plaintiffs do not have standing to demand a hearing because Petitioners are  
4 not aggrieved persons and have not timely filed the Demand for Hearing as required to  
5 obtain standing under the APA, RCW 48.04.010, RCW 48.19.120(3) and RCW  
6 48.19.310. The APA defines standing only for the purposes of judicial review. RCW  
7 34.05.530. The APA does not define standing for persons who are entitled to request  
8 and receive an adjudicative proceeding or hearing. However, standing in administrative  
9 hearings is evaluated similarly to standing for judicial review. This is in part due to the  
10 definition of adjudicative proceeding under the APA at 34.05.010(1).

11 An adjudicative proceeding means a proceeding before an agency  
12 in which an opportunity for hearing before that agency is required by  
13 statute or constitutional right before or after the entry of an order by the  
14 agency. Adjudicative proceedings also includes all cases of licensing and  
15 rate making in which an application for a license or rate change is denied  
16 except as limited by RCW 66.08.150, or a license is revoked, suspended,  
17 or modified, or in which the granting of an application is contested by a  
18 person having standing to contest under the law. 34.05.010(1).

19 The standing requirement for judicial review and its related tests are especially  
20 relevant in this matter because the standing requirement under the Insurance Code is  
21 identical to the APA's standing requirement. A person has standing to obtain review of  
22 agency action if that person is aggrieved by the agency action. See RCW 34.05.530.  
23 Similarly, a Demand for Hearing under the Insurance Code requires that a person must  
24 be aggrieved in order to obtain standing. See RCW 48.04.010, RCW 48.19.120, and  
25 RCW 48.19.310.

26 A person is aggrieved or adversely affected only when all three of the following  
factors are present: (1) the petitioner has suffered a concrete and particularized injury  
that the agency action has actually caused or will cause; (2) that person's asserted

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697, 988 P.2d 972 (1999). Protection of individual interests and remedies for violations  
of the insurance statutes and regulations must be brought under the Consumer Protection  
Act, including actions to recover excess premiums. *Id.*

1 interests are among those that the agency was required to consider when it engaged in  
2 the agency action challenged; and (3) a judgment in favor of that person would  
3 substantially eliminate or redress the prejudice to that person caused or likely to be  
4 caused by agency action. *Seattle Bldg. & Constr. Trades Council*, 129 Wash.2d 787,  
5 794, 920 P.2d 581 (1996). The first condition and third conditions often called the  
6 "injury-in-fact" requirement, and the second condition is known as the "zone of interest"  
7 test. *Id.*

8 The first test determines whether a party is within the zone of interest to confer  
9 standing and requires that the agency has caused or will cause harm to the petitioner.  
10 Generally, in administrative adjudications, a person has standing when the agency  
11 takes some form of action involving that person. *Id.* In this instance, the rate was  
12 filed by MetLife. The persons whose rights would be determined by the order would  
13 be MetLife. Furthermore, RCW 34.05.010 expressly limits the standing regarding rate  
14 filings to the applicants (MetLife) who submitted the rate filing and to those who  
15 obtain a right to standing from the denial or approval of the application. *See* RCW  
16 34.05.010(1).

17 Simply because the rate filing may have affected policyholders does not confer  
18 standing to those policyholders; Petitioners must have a substantial interest in the  
19 agency action. *Seattle Bldg. & Constr. Trades Council*, 129 Wash.2d 787, 794, 920  
20 P.2d 581 (1996). However, policyholders are not required to obtain insurance nor are  
21 they required to pay the changed rate, rather policyholders remain free to contract. In  
22 this instance, policyholders were even offered a number of options to avoid the impact  
23 of the rate increase. Therefore, policyholders, such as the Petitioners, do not have a  
24 substantial property interest sufficient to acquire standing.

25 The second test limits review to those for whom it is most appropriate. *Id.*  
26 The test focuses on whether the legislature intended the agency to protect the party's  
interest when taking the action at issue. *Id.* "The Washington Insurance Code governs  
the regulation of insurance and does not itself provide protection or remedies for  
individual interests." *Pain Diagnostics and Rehabilitation Associates, P.S. v.*  
*Brockman*, 97 Wn. App. 691, 697, 988 P.2d 972 (1999). Instead, protection for

1 individual interests and remedies for violations of the insurance statutes and  
2 regulations must be brought under the Consumer Protection Act (CPA). Attempts to  
3 recover excess premiums, such as Petitioners Demand for Hearing, must be brought  
4 under CPA not the Insurance Code. *Id.* Therefore, Petitioners cannot be aggrieved  
5 because the intent of the Legislature was to regulate insurance and Petitioners are not  
6 within that zone of interest.

7 Finally, Petitioners also cannot pass the last test which requires that a judgment  
8 in favor of that person would substantially eliminate or redress the prejudice to that  
9 person caused or likely to be caused by agency action for two reasons. First, Petitioners  
10 are barred by statutory time deadlines from demanding a hearing in this matter, therefore  
11 no judgment can be issued that would eliminate or redress any alleged prejudice caused  
12 by the agency. Second, the Demand for Hearing, even if successful, would only result in  
13 the same findings; that the rate filing was approved because it was not excessive,  
14 inadequate, or unfairly discriminatory based upon the actuarial experience.

15 Furthermore, any order that would reverse the approved rate filing would only drive the  
16 product closer to insolvency, violating WAC 284-83-230(6) which requires that loss-  
17 ratios must provide for future reserves, and must account for the maintenance of such  
18 reserves for future needs.

19 Even if the Petitioners could be found to be aggrieved by the Insurance  
20 Commissioner's actions, a judgment cannot be issued because Petitioners have not  
21 timely filed the demand for hearing and that order could not redress the alleged harm  
22 without violating WAC 284-83-230(6). Therefore, Petitioners are not aggrieved persons  
23 as defined by law and do not have standing to demand a hearing.

24 Petitioners demand a hearing pursuant 48.19.120(3) (among other citations), but  
25 are not aggrieved persons and have not to met the additional prima facie elements for  
26 standing under that statute. A hearing can only be held if the Insurance Commissioner  
finds that the application is made in good faith, that the applicant would be so aggrieved  
if his or her grounds are established, and that the grounds provided by the petitioner  
would justify holding the hearing. *See* RCW 48.19.120(3). Petitioners are not persons  
who are considered to be "aggrieved" by the approval of the rate filing, which is the first

1 prima facie standing element. Furthermore, Petitioners have not submitted the Demand  
2 for Hearing in good faith. Years have passed since the approval of the rate filing. Good  
3 faith requires, in part, that the matter was timely pursued. Finally, Petitioners have not  
4 submitted any evidence that contests the actuarial findings. There is no proof that the  
5 rates were inaccurately projected by analysts, or discriminatory. Petitioners merely  
6 dispute the methods used to evaluate the rate filing. This is not sufficient grounds to  
7 justify a hearing, particularly in light of the delayed filing.

8 **RESPONSE TO ALLEGED FACTS AND LEGAL ARGUMENTS RAISED IN**  
9 **THE DEMAND FOR HEARING<sup>5</sup>**

10 A. Petitioners Have Not Been Deprived of Any Constitutionally Protected Interest  
11 In This Matter: Therefore Petitioners Cannot Invoke Due Process Protections.

12 In this matter, Petitioners cannot invoke due process protections because they  
13 cannot claim deprivation of a constitutionally protected interest arising under federal,  
14 state or local law. Constitutional due process protections stem from both the state and  
15 federal constitutions. The Fourteenth Amendment to the United States Constitution  
16 requires that no state "shall... deprive any person of life, liberty, or property, without  
17 due process of law..." Washington courts have consistently applied federal due process  
18 law, since Washington's due process clause (Const. art. I, § 3) generally provides no  
19 greater protection than its federal counterpart. *See, e.g., In re Dyer*, 143 Wn.2d 384,  
20 394, 20 P.3d 207 (2001). ("Washington's due process clause does not afford broader  
21 due process protection than the Fourteenth Amendment.").

22 Constitutionally protected interests may also arise under state or local law.  
23 Statutes and regulations can create such interests, including state-issued licenses,  
24 permits, certifications, other similar forms of authorization required by law. *See RCW*

25 <sup>5</sup> Although the facts and arguments are addressed, each of the following arguments raised by  
26 Petitioners remains barred by a lack of jurisdiction due to the failure to meet statutory time frames and  
Petitioners' inability to fulfill standing requirements.

1 RCW 34.09.010(9) (defining "license") and RCW 34.05.422 (providing a process to  
2 revoke, suspend or modify a license). A party invoking due process "must first establish  
3 a legitimate claim of entitlement to the life, liberty or property at issue." *Willoughby v.*  
4 *Dep't of Labor & Indus.*, 147 Wn.2d 725, 732, 57 P.3d 611 (2002). RCW  
5 34.05.570(1)(a). "Naked castings into the constitutional sea are not sufficient to  
6 command judicial consideration and discussion." *In re Pers. Restraint of Rosier*, 105  
7 Wn.2d 606, 616, 717 P.2d 1353 (1986) (quoting *United States v. Phillips*, 433 F.2d  
8 1364, 1366 (8<sup>th</sup> Cir. 970), cert. denied, 401 U.S. 917 (1971).

9 Petitioners appear to allege that because the Insurance Code has set forth a  
10 specific means for regulating insurers that this creates a constitutionally protected  
11 property interest for the Petitioners or that Petitioners have a constitutionally protected  
12 contract right applicable to agency actions.<sup>6</sup> However, as previously cited, Washington  
13 courts have held that "[t]he Washington Insurance Code governs the regulation of  
14 insurance and does not itself provide protection or remedies for individual interests."  
15 *Pain Diagnostics and Rehabilitation Associates, P.S. v. Brockman*, 97 Wn App. 691,  
16 697, 988 P.2d 972 (1999). Instead, protection and remedies for individual interests for  
17 violations of the insurance statutes and regulations must be brought under the CPA. *Id.*  
18 Attempts to recover excess premiums, such as Petitioners Demand for Hearing, must be  
19 brought under CPA not the Insurance Code. *Id.*

20 Petitioners do not have a constitutionally protected interest involved in the  
21 approval of a rate filing. A constitutionally protected interest is not established merely  
22 because the insurance industry is regulated. Buyers are free to stop paying premiums,  
23 purchase other insurance, or decline coverage. Petitioners have not met the burden of  
24 proof that they have a constitutionally protected interest in this matter. The absence of a  
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<sup>6</sup> Petitioners cite a number of cases in support of this contention including "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.s. 593, 599-601 (1972)." This case actually stands in opposition to the Petitioners' contentions. This case involved a lawsuit by a non-tenured employee claiming a constitutionally protected interest in his employment contract. The Court dismissed the employee's case, finding that there was no constitutionally protected interest involved.

1 constitutionally protected interest is fatal to Petitioners' ability to invoke due process  
2 protections.

3 However, even when a constitutionally protected right is established, due process  
4 analysis is not complete. Once a constitutional right is established, due process requires  
5 an examination of the nature of the interest at stake; whether it rises to the level of a  
6 protected life, liberty or property interest, and the form and timing required for the  
7 hearing. See *Hewitt v. Grabicki*, 596 F. Supp. 297, 303 (E. D. Wash. 1984), aff'd, 794  
8 F.2d 1373 (9<sup>th</sup> Cir. 1986). Three factors must be considered when a due process issue is  
9 presented: (1) the nature of the interest that will be affected by the official action; (2) the  
10 risk of erroneous deprivation incurred using the existing procedures, and the value of  
11 additional procedural safeguards; and (3) the government's interest involved – including  
12 fiscal and administrative burdens that additional safeguards would entail. *Mathews v.*  
13 *Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18, 33 (1976).

14 Even assuming Petitioners have presented a constitutionally protected interest in  
15 the regulation of insurance or that rates are not subject to change, the procedural  
16 safeguards present are sufficient to protect that interest when analyzed under the three  
17 factor test for due process. The first factor concerns the nature of the interest affected by  
18 the agency action. The nature alleged by the Petitioners is not a Fourteenth Amendment  
19 constitutionally protected right but merely an alleged property interest arising from the  
20 regulation of an industry.

21 The second factor, the risk of any erroneous deprivation, is nullified by the  
22 protections set for in the comprehensive statutes and rules governing insurers, rate  
23 filings and long-term care insurance. Washington courts have already found that the  
24 comprehensive Insurance Code anticipates consumer involvement and provides a  
25 mechanism for their input on rate-setting. *Blaylock v. First Am. Title Ins. Co.*, 504 F.  
26 Supp 2d 1091, 1095 (W.D. Wash. 2007). Pursuant to a written request and a reasonable  
fee, insurers are required to provide affected consumers "all pertinent information"  
related to the rate. See RCW 48.19.120 and RCW 48.19.300. Insurers are also required  
to provide reasonable means by which any persons aggrieved by a rate filing may be  
heard in person upon written request to review the manner in which such a rating system

1 has been applied in connection with their insurance. If the rating organization or insurer  
2 fails to reject or respond to such request within thirty (30) days, the applicant may  
3 proceed in the same manner as if his or her application had been rejected. RCW  
4 48.19.310. Afterwards, an aggrieved party may appeal to the Commissioner within  
5 thirty (30) days, who after a hearing may affirm or reverse. RCW 48.19.320.  
6 Additionally, the APA provides further protections, such as judicial review. See RCW  
7 34.05. Furthermore, protection for individual interests and remedies for violations of the  
8 insurance statutes and regulations are brought under the Consumer Protection Act. *Id.*  
9 These comprehensive regulations governing insurance ensure that there is no risk of any  
10 erroneous deprivation.

11 Finally, even when due process protections are applicable, due process only  
12 requires notice and an opportunity to be heard are provided appropriate to the nature of  
13 the case prior to a government deprivation of protected interest. See *Cleveland Bd. Of*  
14 *Educ. V. Loudermill*, 470 U.S. 532, 542, 105 S. Ct.1487, 84 L. Ed. 2d 494 (1985)  
15 (quoting *Mullane v. Cent. Hanover Bank & Trust*, 339 U.S. 306, 313, 70 S. Ct. 652, 94  
16 L. Ed. 865 (1950). This opportunity was provided. When rate filings are approved they  
17 are not effective for at least sixty (60) days after notification is provided to the affected  
18 policyholders. After receiving notice, aggrieved parties can request a hearing pursuant  
19 to RCW 48.04.010 or RCW 48.19.310. Each of these provides an opportunity to be  
20 heard before the effective date of any increase. Petitioners simply failed to avail  
21 themselves of the protections provided under Washington law and are now barred from  
22 arguing any related claims due to a lack of standing and the untimely submission of  
23 Demand for Hearing.

24 **B. Petitioners Have Not Been Deprived of Property Nor Has Any Taking Occurred**  
25 **To Invoke Constitutional Takings Protections.**

26 The Office of the Insurance Commissioner has not deprived the Petitioners of  
any property used for the public good that requires just compensation under the Takings  
Clause. Even if Petitioners could allege a protected property interest, Petitioners have  
not alleged how this protected property was used for the public good. The Federal

1 Takings Clause, also commonly known as the Just Compensation Clause of the Fifth  
2 Amendment of the United States Constitution, forbids the taking of private property by  
3 the government without just compensation. Specifically, the Federal Takings Clause  
4 states: "nor shall private property be taken for public use, without just compensation."  
5 *U.S. CONST. AMEND. V.* The Fifth Amendment does not proscribe the taking of  
6 private property; it proscribes the taking without just compensation. *Brown v. Legal  
Found. Of Wash.*, 538 U.S. 216, 235, 123 S. Ct. 1406, 155 L. Ed. 2d 376 (2006).

7 The threshold is to determine if a protected property interest is at stake, whether  
8 that interest was used for the public good and then determine what the just compensation  
9 should be. *Id.* Petitioners have no protected property interest at stake in this matter nor  
10 were any property interests taken and used for the public good, therefore Petitioners  
11 cannot avail themselves of the Takings Clause of the Fifth Amendment. The absence of  
12 a taking of a purported property interest is fatal to Petitioners' Fifth Amendment Claim  
13 and should be dismissed. *See Id.* Petitioners have not provided evidence as the  
14 purported property interest and how that property was used for the public good,  
15 therefore the Takings Clause of the Fifth Amendments cannot be invoked to obtain just  
16 compensation.

17 C. The Rate Filing Was Not Deemed Approved. Even if the Rate Filing Was Briefly  
18 Deemed Approved Prior to the Approval. This is Not an Unconstitutional  
19 Delegation of Power.

20 On June 10, 2011, MetLife submitted three separate filings for rate increases  
21 related to three long-term care policies assumed by MetLife. *See OIC Exhibit 1:*  
22 *MetLife Premium Rate Schedule Increase Filing, pg. 1.* MetLife's rate filing waived the  
23 right and possibility that the rate filing could be deemed approved. *See Id.* MetLife's  
24 filing could only be implemented after approval from the Office of the Insurance  
25 Commissioner with a sixty (60) day notice to policyholders prior to the first effective  
26

1 date of the increase. *Id.* As a result, the rate filing could not take effect without specific  
2 approval from the Office of the Insurance Commissioner.<sup>7</sup>

3 Pursuant to Washington state law requirements, the rate request included an  
4 Actuarial Memorandum calculating the anticipated loss ratio of the long-term care  
5 insurance product. WAC 284-83-090 and *OIC Exhibit 2: Actuarial Memorandum,*  
6 *2011.* MetLife submitted all required information to support a request for a rate  
7 change. *Decl. of Scott Fitzpatrick, pgs. 2-3.* The supporting documentation submitted  
8 is exactly identical to type of information submitted by other long-term care insurers to  
9 support a request to increase premiums. *Id.*

10 As of the 2011 rate request, MetLife had already paid out claims that amounted  
11 to 37.2% of collected premiums. *See OIC Exhibit 2: Actuarial Memorandum 2011,*  
12 *pg. 12.* Based on this claims experience and related factors for actuarial assumptions,  
13 it was determined that the projected future experience would result in a loss ratio of  
14 208.4% over the premiums paid. *Id.* At the present moment, actuarial calculations  
15 indicated that the policies were operating at a 99.9% loss ratio, making it virtually  
16 insolvent should any catastrophic claim impact the policies. *Id.*

17 OIC staff actuaries, experienced with insurance rate filings, reviewed the request  
18 and supporting materials, including the actuarial information. The rate increase was  
19 supported by the calculations and materials submitted. The purpose of the request was to  
20 ensure that the policies contained enough funds to cover losses. The rate request was  
21 determined to be justified and the rate filing was approved on June 22, 2011 because it  
22 was not excessive, inadequate, or unfairly discriminatory based upon the actuarial  
23 experience. *See OIC Exhibit 3, OIC Actuary Staff Emails Regarding Approval, pg. 5.*  
24 The changes to the related policy forms were approved on August 17, 2011. *Id.* That  
25 same day, the Disposition was entered approving the rate filing and related forms. *See*  
26 *OIC Exhibit 4, Disposition, pg. 1.* If the Commissioner found that the rate filing was

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<sup>7</sup> Furthermore, as a practical matter, carriers do not deem rate filings approved. Carriers desire approval before implementing changes that could be costly to undo if the Commissioner disapproved the rates afterwards. *Decl. of Scott Fitzpatrick, pg. 3.*

1 not justified or that the filing was excessive, inadequate, or unfairly discriminatory; the  
2 Office of the Insurance Commissioner could have simply entered a Disposition  
3 disapproving of the rate filing on August 17, 2011, instead entering a Disposition  
4 approving the rate filing. See RCW 48.19.120(1). Regardless of timing, MetLife's rate  
5 request was not deemed approved; the rate filing was approved by the Insurance  
6 Commissioner.<sup>8</sup>

7 D. Count 2: An Order Directing the Insurer to Produce Documents Is A Remedy  
8 Appropriate for a Matter Under the CPA, not a Demand for Hearing.

9  
10 Petitioners have not alleged any authority for the Office of the Insurance  
11 Commissioner to issue an Order directing an insurer to provide documents to Petitioners.  
12 Instead, Petitioners assert that MetLife breached its duty of good faith by not providing  
13 requested documents. "Count 2 does not address or challenge agency action but rather  
14 seeks agency adjudication of issues between private parties and enforcement of the  
15 insurance code and applicable law." *Demand for Hearing*, pg. 5. However, the Office  
16 of the Insurance Commissioner does not conduct adjudications between insurers and  
17 insureds.

18 Furthermore, a breach of the duty of good faith cannot be litigated under the  
19 Insurance Code, breaches of good faith are provided for under the CPA. *Pain*  
20 *Diagnostics and Rehabilitation Associates, P.S. v. Brockman*, 97 Wn App. 691, 697, 988  
21 P.2d 972 (1999). Private causes of action for violations of the insurance statutes and  
22 regulations must be brought under the CPA. *Id.* Attempts to recover excess premiums,  
23 such as Petitioners' Demand for Hearing, must be brought under CPA not the Insurance  
24 Code. *Id.* Furthermore, the CPA prohibits unfair methods of competition and unfair or  
25 deceptive acts or practices in the conduct of any trade or commerce. *Id.* Any insured  
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<sup>8</sup> Petitioners also failed to avail themselves of the protections provided under Washington law and are now barred from arguing any related claims due to a lack of standing and the untimely Demand for Hearing.

1 may bring an action against his or her insurer for breach of the duty of good faith under  
2 the CPA. *Id.* Petitioners' remedy for a breach of the duty of good faith is available  
3 under the CPA, not the Insurance Code.

4 The Office of the Insurance Commissioner does have the ability to provide  
5 records under WAC 284-03, which provides the public a means of obtaining information  
6 through a public records request. The purpose of the public records act is to provide the  
7 public full access to information concerning the conduct of government, mindful of  
8 persons' privacy rights and the desirability of the efficient administration of government.  
9 WAC 284-03-005. Petitioners have already submitted a number of public records  
10 requests beginning on July 16, 2012 with the Office of the Insurance Commissioner.  
11 *See Decl. of Stephanie Farrell In Support of Motion for Summary Judgment, pgs.2-3.*  
12 Petitioners have obtained all documents that the Office of the Insurance Commissioner  
13 has pertaining to the 2011 Metlife rate filing. *Id.*

14 Despite this, Petitioners appear to ask for a blanket order instructing an insurer to  
15 produce documents. There is no limitation to the documents sought in the Demand for  
16 Hearing. Not only is this type of remedy not available under the Insurance Code, but a  
17 blanket order would violate the Insurance Commissioner's authority under WAC 284-  
18 03-030 which specifically prohibits the Office of the Insurance Commissioner from  
19 releasing documents exempted from the public records act such as insurer's report,  
20 confidential and proprietary information, material acquisitions and statistical summaries.  
21 A blanket order would also violate WAC 284-04 provisions protecting consumers'  
22 privacy of financial and health information. The Insurance Commissioner cannot issue  
23 an order that would violate its own provisions, nor can he provide this remedy under the  
24 Insurance Code.<sup>9</sup>

## 25 V. CONCLUSION

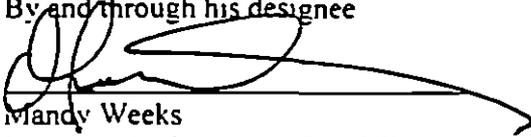
26 <sup>9</sup> Petitioners failed to avail themselves of the protections provided under Washington law and are  
now barred from arguing any related claims due to a lack of standing and the untimely Demand for  
Hearing.

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For these reasons, OIC staff requests that its motion for summary judgment be granted and that the Administrative Law Judge enter an order dismissing the Demand for Hearing as a matter of law.

DATED this 7th day of November, 2014.

MIKE KREIDLER  
Insurance Commissioner  
By and through his designee



Mandy Weeks  
Insurance Enforcement Specialist  
Legal Affairs Division

CERTIFICATE OF MAILING

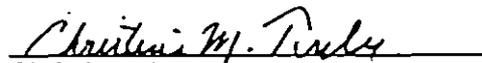
The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing OIC STAFF'S MOTION FOR SUMMARY JUDGMENT on the following individuals in the manner indicated:

Leo Driscoll and Mary Driscoll  
4511 E. North Glengrae Ln.  
Spokane, WA 99223  
[oleod1@msn.com](mailto:oleod1@msn.com) (Parties have electronic service agreement)  
Via U.S. Mail and Email

OIC Hearings Unit  
Attn: George A. Finkle, Presiding Hearings Officer  
Washington State Insurance Commissioner  
5000 Capitol Blvd  
Tumwater, WA 98501  
[hearings@oic.wa.gov](mailto:hearings@oic.wa.gov)  
Via Hand Delivery and Email

SIGNED this 7<sup>th</sup> day of November, 2014, at Tumwater, Washington.

  
Christine M. Tribe

DRISCOLL, LEO  
OIC NO. 14-0187 / SIMBA NUMBER: 1221629

# EXHIBIT 1

*MetLife Premium Rate Schedule Increase Filing  
(June 10, 2011)*

Metropolitan Life Insurance Company  
1095 Sixth Avenue  
New York, NY 10036  
Tel 212 578-2944 Fax 212 578-3874  
[www.metlife.com](http://www.metlife.com)

**MetLife**<sup>®</sup>

Carelyn J. Roth  
Director  
Institutional Business Contracts

June 10, 2011

Washington State Office of the Insurance Commissioner  
Insurance 5000 Building  
5000 Capitol Way  
Tumwater, WA 98501

Re: TIAA-CREF Life Insurance Company ("T-C Life")  
Individual Long-Term Care Insurance – Premium Rate Schedule Increase Filing  
T-C Life NAIC Company No. is 60142  
T-C Life FEIN is 13-3917848

Dear Sir/Madam:

The referenced filing is being submitted by Metropolitan Life Insurance Company ("MetLife") as administrator on behalf of T-C Life, under an administrative agreement between MetLife and T-C Life that became effective on May 1, 2004. A letter authorizing MetLife to submit this filing on behalf of T-C Life is included in this filing.

#### Background on Reinsurance Transactions

On May 1, 2004, MetLife entered into indemnity reinsurance agreements with each of T-C Life and Teachers Insurance and Annuity Association ("TIAA" and together with T-C Life, "Teachers"), pursuant to which MetLife agreed to reinsure all of Teachers' long-term care insurance business on an indemnity reinsurance basis.

Concurrently with entering into the indemnity reinsurance agreements, MetLife entered into assumption reinsurance agreements with each of TIAA and T-C Life, pursuant to which MetLife agreed to assume Teachers' direct obligations under their long-term care insurance policies on the terms and conditions set forth in the assumption reinsurance agreements.

All required approvals were obtained for these transactions.

This filing for approval only pertains to those long-term care insurance policies issued by T-C Life in your state that MetLife reinsures on an indemnity reinsurance basis. Concurrently with this filing, we are submitting the following filings to request approval of premium rate schedule increases for:

- a filing to request approval of premium rate schedule increases for the long-term care policies that MetLife indemnity reinsures for TIAA (policy form series LTC.02 and LTC.03); and
- a filing to request approval of premium rate schedule increases for the TIAA and T-C Life long-term care policies assumed by MetLife.

Although we are submitting three separate filings for rate increases related to the Teachers long-term care business, we are requesting that the policies to which the three filings relate be treated as one block of business for purposes of review and approval of our premium rate schedule increase filings and consistency in the amount of the rate increase which is ultimately approved.

#### Request for Approval of Inforce Premium Rate Schedule Increase

We are filing, for your review and approval, a request for a premium rate schedule increase on the following T-C Life long-term care insurance policy forms series:

W11-27 TL (TC-LIFE - Rates)



FINANCIAL SERVICES  
FOR THE GREATER GOOD™

Steven Maynard, FLMI, ChFC, CLU, PAIP  
VP, COO (Chief Operating Officer)  
TIAA-CREF Life Insurance Company  
8500 Andrew Carnegie Boulevard  
Charlotte, NC 28262-8500  
Tel: 704-983.6757  
[smaynard@tiaa-cref.org](mailto:smaynard@tiaa-cref.org)

May 2, 2011

RE: TIAA-CREF Life Insurance Company ("TIAA-CREF Life")  
Company NAIC # 60142

TO: All State Insurance Departments

This letter sets forth the conditions under which Metropolitan Life Insurance Company ("MetLife"), or any designee thereof, is authorized to act on behalf of TIAA-CREF Life Insurance Company ("TIAA-CREF Life") with respect to the individual long-term care insurance rate filing referenced above (the "LTC Rate Filings"), and outlines the relationship between MetLife and or TIAA-CREF Life with respect to the LTC Rate Filings.

Please be advised that MetLife is the reinsurer of the TIAA-CREF Life long-term care insurance policies ("Reinsured Policies"), which are the subject of the LTC Rate Filings, pursuant to an Indemnity Reinsurance Agreement and an Assumption Reinsurance Agreement entered into by MetLife and TIAA-CREF Life on May 1, 2004. In addition, pursuant to the terms of that Assumption Reinsurance Agreement, MetLife has used its reasonable best efforts to effectuate the novation of the Reinsured Policies subject to required and appropriate regulatory approval. Those Reinsured Policies which have not been novated and which are the subject of the LTC Rate Filings are currently reinsured by MetLife on a 100% indemnity coinsurance basis, and MetLife also serves as the administrator of those policies pursuant to an Administration Agreement entered into by MetLife and TIAA-CREF Life on May 1, 2004.

In connection with the LTC Rate Filings, and subject to MetLife's agreement to act in accordance with the applicable terms and conditions of the Indemnity Reinsurance Agreement, the Administration Agreement, and the Assumption Reinsurance Agreement referenced above, TIAA-CREF Life hereby authorizes MetLife to enter into written and/or oral communication, including the submission and receipt of written materials, with all state insurance departments, for the purpose of completing the rate filing process with respect to the LTC Rate Filings and responding to each department's review of the LTC Rate Filings.

Sincerely,

DRISCOLL, LEO  
OIC NO. 14-0187 / SIMBA NUMBER: 1221629

# EXHIBIT 2

*Actuarial Memorandum, 2011*  
(June 6, 2011)

**METROPOLITAN LIFE INSURANCE COMPANY**

**New York, NY**

**Actuarial Memorandum**

**June 6, 2011**

This actuarial memorandum pertains to individual long-term care policies for which:

- Metropolitan Life Insurance Company ("MetLife") acts as administrator on behalf of Teachers Insurance and Annuity Association ("TIAA"), under an administrative agreement between MetLife and TIAA that became effective on May 1, 2004;
- MetLife acts as administrator on behalf of TIAA-CREF Life Insurance Company ("T-C Life") under an administrative agreement between MetLife and T-C Life that became effective on May 1, 2004; or
- MetLife is the direct insurer through assumption reinsurance agreements with TIAA and T-C Life.

Although three separate filings are being submitted for rate increases related to the above described long-term care policies (due to the fact that there are currently three different insuring entities involved – TIAA, T-C Life and MetLife), for purposes of this actuarial memorandum and review and approval of our premium rate schedule increase, we are treating the policies to which the three filings relate as one block of business.

**Policy Forms**

**Policy Form Series Originally Issued by TIAA**

These policies are either administered by MetLife on behalf of TIAA or assumed by MetLife:

LTC.02 Policy Form Series - this policy form series is referred to as LTC.02 throughout this actuarial memorandum and includes the following policy form(s):

LTC-WA.02 Ed. 2-94  
LTC-E-WA.02 Ed. 2-94  
LTC-WA.02 Ed. 4-97  
LTC-E-WA.02 Ed. 4-97  
QLTC-WA.02 Ed. 4-97  
QLTC-E-WA.02 Ed. 4-97

LTC.02 also includes any riders or endorsements approved for issue with the above listed policies.

LTC.03 Policy Form Series - this policy form series is referred to as LTC.03 throughout this actuarial memorandum and includes the following policy form(s):

LTC.03 (WA)

LTC.03 also includes any riders or endorsements approved for issue with the above listed policy.

**METROPOLITAN LIFE INSURANCE COMPANY**

**New York, NY**

**Actuarial Memorandum**

**June 6, 2011**

**Policy Form Series Originally Issued by T-C Life**

These policies are either administered by MetLife on behalf of T-C Life or assumed by MetLife:

TCL-LTC.04 Policy Form Series - this policy form series is referred to as LTC.04 throughout this actuarial memorandum and includes the following policy form(s):

TCL-LTC.04 (WA) Ed. 4/00

LTC.04 also includes any riders or endorsements approved for issue with the above listed policy.

**Dates of Issue**

LTC.02, LTC.03 and LTC.04 are no longer being issued. LTC.02 forms were issued in WA from 1992 to 2000. LTC.03 forms were issued in WA from 2000 to 2002. LTC.04 forms were issued in WA from 2001 to 2004. Nationwide, the last policies were issued in 2004.

**1. Purpose of Filing**

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

**2. Description of Benefits**

Each of LTC.02, LTC.03 and LTC.04 is a comprehensive long-term care insurance policy form series. These long-term care policy forms provide benefits for care in a facility and care at home for insureds who are unable to perform a certain number of activities of daily living or who suffer cognitive impairment. Each of the series has optional benefits, including, but not limited to, nonforfeiture and inflation protection benefits.

**3. Renewability**

These policy forms are guaranteed renewable for life.

**4. Applicability**

This filing is applicable to inforce policies only, as these policy forms are no longer being sold in the market. The premium changes will apply to the base forms as well as all applicable riders.

METROPOLITAN LIFE INSURANCE COMPANY

New York, NY

Actuarial Memorandum

June 6, 2011

5. Actuarial Assumptions

- a. Expected Claim Costs are the product of attained age frequency rates and continuance curves, adjusted by utilization factors and underwriting selection factors based on actual experience through September 2009.
- b. Voluntary Termination Rates vary by duration as developed from actual experience through September 2009 and are shown in the following table:

Policy Duration	Lapse Rate
1	5.00%
2	4.50%
3	3.00%
4	2.00%
5	1.50%
6	1.25%
7	1.00%
8	1.00%
9+	0.90%

In the year of rate increase implementation, it is assumed that an additional 2.5% of policies lapse and there is a 2.5% net reduction to premiums and benefits due to benefit downgrades.

- c. Mortality. 82% of Annuity 2000 Basic Table with selection consistent with experience.
- d. Adverse Selection. No adverse selection is assumed.
- e. Expenses. Expenses have not been explicitly projected. It is assumed that the originally filed expense assumptions remain appropriate.

The above assumptions are based on actual inforce experience of MetLife and are deemed reasonable for these particular policy forms. The assumptions used in this filing were developed from the actual experience on these forms and supplemented, as needed, based on the experience of other forms.

In establishing the assumptions described in this section, the policy design, underwriting, and claims adjudication practices for the above-referenced policy forms were taken into consideration.

**METROPOLITAN LIFE INSURANCE COMPANY**

**New York, NY**

**Actuarial Memorandum**

**June 6, 2011**

**6. Marketing Method**

These policy forms were marketed through direct response methods without the use of agents or brokers.

**7. Underwriting Description**

Individual medical underwriting was performed based on health status, functional capacity, and other health data.

**8. Premiums**

Premium rates are level premiums from the date of issue except when Periodic Inflation Additions are taken. Premiums do not vary by occupation or sex. Premiums do vary by plan design, payment method, and the selection of additional riders.

**9. Issue Age Range**

These policy forms were issued up to age 84.

**10. Area Factors**

Area factors are not used for this product.

**11. Premium Modalization Rules**

The following modal factors and nationwide percent distributions (based on inforce count as of 6/30/2010) are applied to the annual premium (AP):

Premium Mode	Modal Factors for Direct Payment Methods	Modal Factors for Automatic Payment Methods	Percent Distribution
Annual	1.00*AP	1.00*AP	22.6%
Semi-Annual	0.51*AP	0.50699*AP	8.7%
Quarterly	0.26*AP	0.25527*AP	27.4%
Monthly	0.088*AP	0.08549*AP	41.3%

**12. Reserves**

# METROPOLITAN LIFE INSURANCE COMPANY

New York, NY

## Actuarial Memorandum

June 6, 2011

Active life reserves have not been used in this rate increase analysis except as described in Exhibit III. Claim reserves as of June 30, 2010 have been discounted to the incurral date of each respective claim and included in historical incurred claims. Incurred but not reported reserve balances as of June 30, 2010 have been allocated to a calendar year of incurral and included in historical incurred claims.

### 13. Trend Assumptions

As this is not medical insurance, we have not included any explicit medical cost trends in the projections.

### 14. Past and Future Policy Experience

Nationwide experience for all policy forms combined is shown in Exhibit I.

Historical experience is shown by claim incurral year. Claim payments and reserves were discounted to the mid-point of the year of incurral at the weighted average maximum valuation interest rate for contract reserves which is 4.51%. Incurred but not reported reserves were allocated based on judgment.

Annual loss ratios are calculated, with and without interest, as incurred claims divided by earned premiums.

A lifetime loss ratio as of 6/30/2010 is calculated as the sum of accumulated past experience and discounted future experience where accumulation and discounting occur at the weighted average maximum valuation interest rate for contract reserves, which is 4.51%.

Exhibit II provides a comparison of actual to expected historical experience. Exhibit III provides historical experience including active life reserves.

### 15. Projected Earned Premiums and Incurred Claims

Earned premiums for projection years 2010 through 2070 are developed by multiplying each prior period's earned premium (starting with June 30, 2010 actual earned premium) by a persistency factor. For a year in which the rate increase is effective, the earned premium prior to the increase is multiplied by 1 plus the rate increase percent and an effectiveness factor.

Each projection year claim amount is calculated by multiplying incidence, continuance and utilization factors by the policy and rider benefits on a seriatim basis.

METROPOLITAN LIFE INSURANCE COMPANY

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Present and accumulated values in the lifetime projections in Exhibit I are determined at the average maximum valuation interest rate for contract reserves applicable to LTC business issued in the years in which the applicable business of this filing were issued. The maximum valuation interest rate averages 4.51%.

The assumptions used in the projections in Exhibit I were developed from the company's LTC insurance experience.

16. History of Previous Rate Increases

There have been no previous rate increases on these policy forms. Policy form series LTC.02 had a rate reduction upon introduction of the LTC.03 policy form series.

17. Requested Rate Increase

The company is requesting an increase of 41% for all policyholders. Corresponding rate tables reflecting the 41% increase are included with this filing. Please note that the actual rates implemented may vary slightly from those filed due to implementation rounding algorithms.

18. Analysis Performed

The initial premium schedule was based on pricing assumptions believed to be appropriate, given the information available at the time the initial rate schedule was developed. The original pricing assumptions for claim costs, voluntary termination rates, mortality, and interest were as follows:

- a. Incidence and continuance rates for nursing home care were based on a study published by the Society of Actuaries based on the 1985 NNHS with modifications. Home health care incidence and continuance rates were based on the nursing home care rates with modifications.
- b. Voluntary termination rates vary by duration and issue age as shown in the following table<sup>1</sup>.

Duration	Issue Age											
	25	35	42	47	52	57	62	67	72	77	82	87+
1	5.00%	6.00%	6.00%	6.00%	6.00%	6.00%	4.00%	3.00%	3.00%	3.00%	3.00%	0.00%
2	4.50%	5.50%	5.50%	5.50%	5.50%	5.50%	3.50%	3.00%	3.00%	2.50%	2.50%	0.00%

<sup>1</sup> For certain younger issue ages with specific inflation options only, policy form series LTC.02 had slightly higher lapse rates in some durations.

METROPOLITAN LIFE INSURANCE COMPANY

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3	4.00%	5.00%	5.00%	5.00%	5.00%	5.00%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
4	3.50%	4.50%	4.50%	4.50%	4.50%	4.50%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
5	3.00%	4.00%	4.00%	4.00%	4.00%	4.00%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
6	2.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
7	2.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
8	1.50%	2.50%	2.50%	2.50%	2.50%	2.50%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
9	1.00%	2.30%	2.30%	2.30%	2.30%	2.30%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
10	1.00%	2.00%	2.00%	2.00%	2.00%	2.00%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
11	1.00%	1.80%	1.80%	1.80%	2.00%	2.00%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
12	1.00%	1.50%	1.50%	1.50%	2.00%	2.00%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
13	1.00%	1.30%	1.30%	1.50%	2.00%	2.00%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
14	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	3.00%	3.00%	3.00%	2.00%	2.00%	0.00%
15	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	0.00%
16	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	0.00%
17	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	0.00%
18	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	0.00%
19	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	0.00%
20	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	0.00%
21	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	0.00%
22	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	0.00%
23	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	0.00%
24	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	0.00%
25+	1.00%	1.00%	1.00%	1.50%	2.00%	2.00%	2.00%	1.00%	1.00%	1.00%	1.00%	0.00%

c. Mortality was assumed based on TIAA's own 1983 Table A Merged Gender Mod 1 (with ages set back 4.5 years)

Age	Mortality
22	0.000348
27	0.000435
32	0.000548
37	0.000664
42	0.000857
47	0.001356
52	0.002327
57	0.003694
62	0.005352
67	0.007955
72	0.012906
77	0.021114
82	0.035309
87	0.059251
92	0.097039
97	0.149565

**METROPOLITAN LIFE INSURANCE COMPANY**

New York, NY

**Actuarial Memorandum**

June 6, 2011

102	0.363419
107	0.480274
110	1.000000

d. Investment earnings rate was assumed at 5.75%.

As part of the inforce management of the business, MetLife monitors the performance of the business by completing periodic analyses of lapse rates, mortality rates, claim incidence rates, claim continuance rates and claim utilization rates. The findings from these analyses were used in projecting the inforce business to determine the effect of experience on the projected lifetime loss ratio.

Actual voluntary lapse rates have been lower than that assumed in pricing. Mortality rates have been similar to that assumed in pricing. Morbidity levels have been slightly worse than assumed in pricing. The combined result of past experience and future projections based on current assumptions is a loss ratio that far exceeds both the original and state minimum requirements.

The experience analysis, management's view of when a change to the original rate schedule may be considered and the seriatim inforce and claim data used in developing the projections in Exhibit I have been relied upon by the actuary in the development of this memorandum.

**19. Loss Ratio Requirement Compliance Demonstration**

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

**20. Average Annual Premium**

The average premium before and after the requested 41% increase are:

Before increase: \$1,660  
After increase: \$2,341

**21. Proposed Effective Date**

This rate increase will apply to policies on their policy anniversary date following at least a 60-day policyholder notification period following approval.

**22. Nationwide Distribution of Business as of 6/30/2010 (based on inforce count)**

METROPOLITAN LIFE INSURANCE COMPANY

New York, NY

Actuarial Memorandum

June 6, 2011

By Policy Form:

Policy Form	Count	Percent
LTC.02	9,963	25%
LTC.03	18,330	47%
LTC.04	10,821	28%
Total	39,114	100%

By Issue Age:

Issue Ages	Count	Percent
<40	132	0%
40-49	1,428	4%
50-59	10,208	26%
60-64	9,965	25%
65-69	9,492	24%
70-74	5,763	15%
75-79	1,826	5%
>79	300	1%
Total	39,114	100%

By Elimination Period:

Elimination Period	Count	Percent
30-day	3,254	8%
60-day	1,062	3%
90-day	33,318	85%
100-day	194	1%
365-day	1,286	3%
Total	39,114	100%

By Benefit Period:

**METROPOLITAN LIFE INSURANCE COMPANY**

New York, NY

**Actuarial Memorandum**

June 6, 2011

Benefit Period	Count	Percent
3 Year	9,739	25%
5 Year	11,048	28%
7 Year	8,471	22%
Lifetime	9,856	25%
<b>Total</b>	<b>39,114</b>	<b>100%</b>

By Inflation Option:

Inflation Option	Count	Percent
3% Capped	290	1%
5% Capped	483	1%
5% Uncapped	5,214	13%
No Inflation	33,127	85%
<b>Total</b>	<b>39,114</b>	<b>100%</b>

By Home Care Percentage:

HC%	Count	Percent
50%	12,896	33%
100%	26,218	67%
<b>Total</b>	<b>39,114</b>	<b>100%</b>

**23. Number of Policyholders**

As of 6/30/2010, the number of policies inforce and 2010 annualized premium that will be affected by this increase are:

	Number of Insured	2010 Annualized Premium
WA	983	\$1,506,753
Nationwide	39,114	\$64,944,995

**METROPOLITAN LIFE INSURANCE COMPANY**

New York, NY

**Actuarial Memorandum**

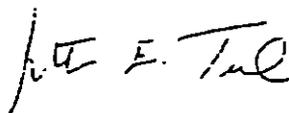
June 6, 2011

**24. Actuarial Certification**

I am a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries, and I meet the Academy's qualification standards for preparing health rate filings and to render the actuarial opinion contained herein.

This memorandum has been prepared in conformity with all applicable Actuarial Standards of Practice, including ASOP No. 8.

I hereby certify that, to the best of my knowledge and judgment, this rate submission is in compliance with the applicable laws and regulations of WA. Furthermore, the actuarial assumptions are appropriate and the gross premiums bear reasonable relationship to the benefits.



---

Jonathan E. Trend, FSA, MAAA  
Assistant Vice President and Actuary, Metropolitan Life Insurance Company

Worksheet: Life Insurance Company  
 Worksheet: Financial Statements with the Insurance  
 Policy Number: 100 001 010 00 1 00 00

Policy No.	Face Amount	Cash Value				Reserve				Total Reserve	Policy Loan	Unpaid Dividends	Unpaid Premiums	Total Assets	Total Liabilities	Total Equity	Total Assets - Liabilities	Total Assets - Liabilities - Equity
		Unpaid Premiums	Unpaid Dividends	Unpaid Interest	Unpaid Other	Unpaid Premiums	Unpaid Dividends	Unpaid Interest	Unpaid Other									
100001	100,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
100002	200,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000
100003	300,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000	30,000
100004	400,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000
100005	500,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
100006	600,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000	60,000
100007	700,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000	70,000
100008	800,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000	80,000
100009	900,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000
100010	1,000,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000



**Exhibit II**  
**Metropolitan Life Insurance Company**  
**Nationwide Calendar Year Experience with No Increase**  
**Actual to Expected Ratios**  
**Policy Forms: LTC.02, LTC.03, LTC.04**

	Calendar Year	Actual or Projected Experience			Expected Pricing Experience			G=C/F Actual to Expected Ratio	Accumulative Loss Ratio		
		A Earned Premium	B Incurred Claims	C = B / A Loss Ratio	D Earned Premium	E Incurred Claims	F = E / D Loss Ratio		H Actual/Projected at 4.31% (on C)	I Expected at 5.75% (on F)	J = H / I Actual to Expected Ratio
Historical Experience	1991	237,773	0	0.0%	260,162	1,010	0.4%	0.00	0.0%	0.4%	0.00
	1992	1,004,476	16,244	1.6%	837,208	18,238	2.2%	0.74	1.3%	1.7%	0.75
	1993	1,841,034	546	0.0%	1,529,540	60,050	3.9%	0.01	0.0%	3.0%	0.19
	1994	2,583,972	85,227	3.3%	2,261,908	123,957	5.5%	0.60	1.8%	4.1%	0.43
	1995	4,007,341	206,203	5.1%	3,813,030	213,189	5.6%	0.92	3.1%	4.7%	0.66
	1996	8,035,304	272,877	3.4%	7,089,398	378,479	5.3%	0.64	3.2%	5.0%	0.65
	1997	11,474,751	508,105	5.2%	9,922,362	689,952	7.0%	0.75	4.0%	5.7%	0.70
	1998	10,003,445	924,535	5.5%	14,301,101	1,085,231	7.6%	0.72	4.5%	6.3%	0.71
	1999	28,823,538	1,576,349	5.5%	25,814,655	1,702,107	6.6%	0.83	4.8%	6.4%	0.75
	2000	38,554,751	2,829,175	7.3%	44,450,515	2,894,570	6.5%	1.13	5.0%	6.5%	0.87
	2001	48,878,008	4,219,109	8.6%	59,932,064	4,859,447	8.1%	1.06	6.5%	7.0%	0.93
	2002	55,793,045	6,381,505	11.4%	66,214,233	7,201,172	10.9%	1.05	7.6%	8.0%	0.96
	2003	61,698,460	10,459,303	17.0%	70,316,530	9,585,469	13.6%	1.24	9.5%	9.1%	1.04
	2004	64,819,094	14,416,885	22.2%	71,143,618	12,287,182	17.2%	1.29	11.6%	10.4%	1.11
	2005	64,018,203	21,692,899	33.9%	67,509,528	15,228,037	22.6%	1.50	14.6%	11.8%	1.22
	2006	63,322,804	26,776,558	42.3%	63,855,233	18,455,250	28.9%	1.47	17.7%	13.7%	1.30
	2007	62,998,740	35,295,842	56.0%	60,452,205	22,129,440	36.6%	1.53	21.5%	15.6%	1.38
2008	62,720,531	55,524,143	88.5%	56,882,878	26,147,852	45.9%	1.93	27.2%	17.7%	1.54	
2009	62,269,538	72,511,212	116.4%	53,539,948	30,354,717	56.7%	2.05	33.8%	19.9%	1.70	
2010	31,134,768	40,868,122	131.3%	25,061,898	17,251,171	68.8%	1.91	37.2%	21.2%	1.76	

\* Historical experience through June 30, 2010

**Exhibit B1**  
**Metropolitan Life Insurance Company**  
**Historical Loss Ratio with Active Life Reserves**  
**Nationwide Experience, without Interest**  
**Policy Forms: LTC.02, LTC.03, LTC.04**

	Calendar Year	Earned Premium	Incurred Claims	Change in Active Life Reserve	Loss Ratio
Historical Experience	1991	237,773			0.0%
	1992	1,004,478	16,244		1.6%
	1993	1,841,034	548		0.0%
	1994	2,583,972	85,227		3.3%
	1995	4,007,341	208,203		5.1%
	1996	6,035,304	272,877		3.4%
	1997	11,474,751	598,185		5.2%
	1998	16,903,445	924,535		5.5%
	1999	28,623,536	1,576,349		5.5%
	2000	38,554,751	2,829,175		7.3%
	2001	49,878,006	4,219,109		8.6%
	2002	55,793,045	6,361,585		11.4%
	2003	61,628,460	10,459,303		17.0%
	2004	64,819,994	14,416,865		22.2%
	2005	64,018,203	21,692,899	298,763,102*	497.4%
	2006	63,322,804	26,776,556	94,966,821	197.3%
	2007	62,958,740	35,295,842	54,171,369	142.0%
	2008	62,720,531	55,524,143	52,824,213	172.7%
	2009	62,255,536	72,511,212	61,733,795	215.6%
	2010	31,134,768	40,858,122	24,432,535	209.7%
	<b>Total</b>	<b>630,920,470</b>	<b>254,634,979</b>	<b>584,838,835</b>	<b>127.3%</b>

\* Cumulative change, prior years are not available

DRISCOLL, LEO  
OIC NO. 14-0187 / SIMBA NUMBER: 1221629

# EXHIBIT 3

*OIC Actuary Staff Emails Regarding Approval*

**From:** Barday, Lee (OIC)  
**To:** Michelson, Lee (OIC)  
**Subject:** RE: LTCI Rate Increase Requests: Metropolitan Life Insurance Company, Teachers Insurance and Annuity Association of America, and TIAA-CREF Life Insurance Company  
**Date:** Wednesday, August 17, 2011 9:25:48 AM

---

OK

---

**From:** Michelson, Lee (OIC)  
**Sent:** Wednesday, August 17, 2011 9:11 AM  
**To:** Barday, Lee (OIC)  
**Subject:** LTCI Rate Increase Requests: Metropolitan Life Insurance Company, Teachers Insurance and Annuity Association of America, and TIAA-CREF Life Insurance Company

The 4.1% rate increase requests for LTCI policies issued by Teachers Insurance and Annuity Association of America and TIAA-CREF Life Insurance Company, administered and in some cases assumed by Metropolitan Life Insurance Company, have already been referred to Mike Bryant for review of the contingent nonforfeiture forms; there were no outstanding rates issues. Today Mike is approving the forms. Unless you object, I am going to file the rates. The rates should be filed promptly to keep the forms and rates actions in synch.

From: Michelson, Lee (OIC)  
To: Barclay, Lee (OIC)  
Subject: LTCI Rate Increase Requests: Metropolitan Life Insurance Company, Teachers Insurance and Annuity Association of America, and TIAA-CREF Life Insurance Company  
Date: Wednesday, August 17, 2011 9:10:55 AM

---

The 4.1% rate increase requests for LTCI policies issued by Teachers Insurance and Annuity Association of America and TIAA-CREF Life Insurance Company, administered and in some cases assumed by Metropolitan Life Insurance Company, have already been referred to Mike Bryant for review of the contingent nonforfeiture forms; there were no outstanding rates issues. Today Mike is approving the forms. Unless you object, I am going to file the rates. The rates should be filed promptly to keep the forms and rates actions in synch.

From: Michelson, Lee (OIC)  
To: Bryant, Mike (OIC)  
Subject: RE: Metropolitan Life LTC Rate Increase Filing  
Date: Wednesday, August 17, 2011 8:38:52 AM

---

Yes.

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From: Bryant, Mike (OIC)  
Sent: Wednesday, August 17, 2011 8:39 AM  
To: Michelson, Lee (OIC)  
Subject: RE: Metropolitan Life LTC Rate Increase Filing

Are those rate filings ready to go? If so, I will approve the forms.

---

From: Michelson, Lee (OIC)  
Sent: Wednesday, August 17, 2011 8:29 AM  
To: Bryant, Mike (OIC)  
Subject: RE: Metropolitan Life LTC Rate Increase Filing

What about the Teachers and TIAA-CREF filings administered by Metropolitan?

---

From: Bryant, Mike (OIC)  
Sent: Wednesday, August 17, 2011 8:25 AM  
To: Michelson, Lee (OIC)  
Subject: Metropolitan Life LTC Rate Increase Filing

Lee-

This morning, I notified Metropolitan Life Insurance Company of our approval of their LTC form filing, SERFF # META-127151671, related to their proposed rate increase. In SIMBA, I note that you were prepared to approve the corresponding rate increase filing, SERFF #META-127151672. Please contact me if you have any questions – thank you.

Michael Bryant, JD  
Insurance Policy & Compliance Analyst  
Washington State Office of the Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255  
Phone: (360) 725-7123  
Email: MikeB:@oic.wa.gov

From: Michelson, Lee (OIC)  
To: Bryant, Mike (OIC)  
Subject: RE: Metropolitan Life LTC Rate Increase Filing  
Date: Wednesday, August 17, 2011 8:29:15 AM

---

What about the Teachers and TIAA-CREF filings administered by Metropolitan?

---

From: Bryant, Mike (OIC)  
Sent: Wednesday, August 17, 2011 8:25 AM  
To: Michelson, Lee (OIC)  
Subject: Metropolitan Life LTC Rate Increase Filing

Lee-

This morning, I notified Metropolitan Life Insurance Company of our approval of their LTC form filing, SERFF # META-127151671, related to their proposed rate increase. In SIMBA, I note that you were prepared to approve the corresponding rate increase filing, SERFF #META-127151672. Please contact me if you have any questions – thank you.

**Michael Bryant, JD**  
Insurance Policy & Compliance Analyst  
Washington State Office of the Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255  
Phone: (360) 725-7123  
Email: MikeB3@oic.wa.gov



From: Michelson, Lee (OIC)  
To: Berendt, Beth (OIC); Barday, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
Date: Wednesday, June 22, 2011 1:57:39 PM

---

I have referred these filings to Mike Bryant for review of the nonforfeiture endorsement.

---

From: Berendt, Beth (OIC)  
Sent: Wednesday, June 22, 2011 1:17 PM  
To: Barday, Lee (OIC)  
Cc: Michelson, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

OK to proceed

---

From: Barday, Lee (OIC)  
Sent: Monday, June 13, 2011 3:01 PM  
To: Berendt, Beth (OIC)  
Subject: FW: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Here's another one on which we'd appreciate your guidance.

**From:** Berendt, Beth (OIC)  
**To:** Barday, Lee (OIC)  
**Cc:** Michelson, Lee (OIC)  
**Subject:** RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
**Date:** Wednesday, June 22, 2011 1:17:22 PM

---

OK to proceed

---

**From:** Barday, Lee (OIC)  
**Sent:** Monday, June 13, 2011 3:01 PM  
**To:** Berendt, Beth (OIC)  
**Subject:** FW: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Here's another one on which we'd appreciate your guidance.



From: Michelson, Lee (OIC)  
To: Berendt, Beth (OIC); Barday, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
Date: Monday, June 13, 2011 3:42:03 PM

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That is what credibility theory is about: using experience of a broader block than the one being priced if doing so is expected to result in a more reliable projection. Sometimes some assumptions are based on industry studies. Experience of similar policies of sister companies is likely to be more relevant. Of course, if we think that there may be nonrandom differences that will show up in the experience, we may ask for company experience. I don't see any point in separating policies by whether Met is an assumption reinsurer or just an indemnity reinsurer and administrator. We may want to see a breakdown by issuing company, but I don't think that we actually want to treat the companies differently. TIAA-CREF is a subsidiary of Teachers. I don't think that we want to let a company avoid the requirement under WAC 234-60-040(4) to combine successive generations of similar policy forms by putting new business in a subsidiary

---

From: Berendt, Beth (OIC)  
Sent: Monday, June 13, 2011 3:17 PM  
To: Michelson, Lee (OIC); Barday, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

But how do we justify the combination of experience across companies? This makes me very uncomfortable – so what am I missing?

---

From: Michelson, Lee (OIC)  
Sent: Monday, June 13, 2011 3:11 PM  
To: Berendt, Beth (OIC); Barday, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Yes, the experience is across different companies. We have seen that in a few other cases in which sister companies issued similar policies. The combination is to increase credibility. If we want a breakdown by company, we can ask for one.

---

From: Berendt, Beth (OIC)  
Sent: Monday, June 13, 2011 3:07 PM  
To: Michelson, Lee (OIC); Barday, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Are they combining experience across different companies and submitting one exhibit? This isn't clear to me.

If so how is this acceptable?

---

From: Michelson, Lee (OIC)  
Sent: Monday, June 13, 2011 2:57 PM

To: Barclay, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Yes, they are successive policy forms with only minor changes. WAC 254-60-040(10) supports aggregating them

---

From: Barclay, Lee (OIC)  
Sent: Monday, June 13, 2011 2:34 PM  
To: Michelson, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Do you consider the aggregation appropriate?

---

From: Michelson, Lee (OIC)  
Sent: Monday, June 13, 2011 1:27 PM  
To: Barclay, Lee (OIC)  
Subject: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

We have received three related LTCI rate increase filings, which the filing company wants us to consider together. The supporting exhibits are the same aggregate exhibits in all the filings. The policies are similar, and the actuary considers the aggregation appropriate. The filing company is Metropolitan Life Insurance Company. It reinsures a block of policies issued by the sister companies Teachers Insurance and Annuity Association of America and TIAA-CREF Life Insurance Company. Some of the policies have actually been assumed by Met. For those it is filing in its own name. For the other policies, Met is filing for the issuing companies, with authorization letters.

Teachers issued policies over the period 1992-2002. TIAA-CREF issued policies over the period 2001-2004. There are 28,293 Teachers policies and 10,821 TIAA-CREF policies in force nationwide. There are a total of 983 policies in force in Washington. The filings do not break down the Washington number by issuing company. Nor do they say how much of the business has been assumed by Met. The policies have had no prior rate increases. The pending request is for a 41% rate increase.

The aggregate experience exhibit supports the requested rate increase. I am willing to file the rate increase unless you think that we need some more detailed information.

**From:** Berendt, Beth (OIC)  
**To:** Michelson, Lee (OIC); Barday, Lee (OIC)  
**Subject:** RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
**Date:** Monday, June 13, 2011 3:15:33 PM

---

But how do we justify the combination of experience across companies? This makes me very uncomfortable – so what am I missing?

---

**From:** Michelson, Lee (OIC)  
**Sent:** Monday, June 13, 2011 3:11 PM  
**To:** Berendt, Beth (OIC); Barday, Lee (OIC)  
**Subject:** RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Yes, the experience is across different companies. We have seen that in a few other cases in which sister companies issued similar policies. The combination is to increase credibility. If we want a breakdown by company, we can ask for one.

---

**From:** Berendt, Beth (OIC)  
**Sent:** Monday, June 13, 2011 3:07 PM  
**To:** Michelson, Lee (OIC); Barday, Lee (OIC)  
**Subject:** RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

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If so how is this acceptable?

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**From:** Michelson, Lee (OIC)  
**Sent:** Monday, June 13, 2011 2:57 PM  
**To:** Barday, Lee (OIC)  
**Subject:** RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Yes, they are successive policy forms with only minor changes. WAC 284-60-040(10) supports aggregating them.

---

**From:** Barday, Lee (OIC)  
**Sent:** Monday, June 13, 2011 2:34 PM  
**To:** Michelson, Lee (OIC)  
**Subject:** RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Do you consider the aggregation appropriate?

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**From:** Michelson, Lee (OIC)  
**Sent:** Monday, June 13, 2011 1:27 PM  
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**Subject:** LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-

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( )

From: Michelson, Lee (OIC)  
To: Berendt, Beth (OIC); Barclay, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
Date: Monday, June 13, 2011 3:11:27 PM

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From: Berendt, Beth (OIC)  
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From: ~~Barday, Lee (OIC)~~  
To: Michelson, Lee (OIC); Barday, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
Date: Monday, June 13, 2011 3:07:24 PM

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Are they combining experience across different companies and submitting one exhibit? This isn't clear to me.

If so how is this acceptable?

---

From: Michelson, Lee (OIC)  
Sent: Monday, June 13, 2011 2:57 PM  
To: Barday, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Yes, they are successive policy forms with only minor changes. WAC 284-60-040(10) supports aggregating them.

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From: Barday, Lee (OIC)  
Sent: Monday, June 13, 2011 2:34 PM  
To: Michelson, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

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From: Michelson, Lee (OIC)  
To: Barday, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
Date: Monday, June 13, 2011 2:57:09 PM

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Yes, they are successive policy forms with only minor changes. WAC 284-60-040(10) supports aggregating them.

---

From: Barday, Lee (OIC)  
Sent: Monday, June 13, 2011 2:34 PM  
To: Michelson, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Do you consider the aggregation appropriate?

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Sent: Monday, June 13, 2011 1:27 PM  
To: Barday, Lee (OIC)  
Subject: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

We have received three related LTCI rate increase filings, which the filing company wants us to consider together. The supporting exhibits are the same aggregate exhibits in all the filings. The policies are similar, and the actuary considers the aggregation appropriate. The filing company is Metropolitan Life Insurance Company. It reinsures a block of policies issued by the sister companies Teachers Insurance and Annuity Association of America and TIAA-CREF Life Insurance Company. Some of the policies have actually been assumed by Met. For those it is filing in its own name. For the other policies, Met is filing for the issuing companies, with authorization letters.

Teachers issued policies over the period 1992-2002. TIAA-CREF issued policies over the period 2001-2004. There are 28,293 Teachers policies and 10,821 TIAA-CREF policies in force nationwide. There are a total of 983 policies in force in Washington. The filings do not break down the Washington number by issuing company. Nor do they say how much of the business has been assumed by Met. The policies have had no prior rate increases. The pending request is for a 41% rate increase.

The aggregate experience exhibit supports the requested rate increase. I am willing to file the rate increase unless you think that we need some more detailed information.

From: Barday, Lee (OIC)  
To: Michelson, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
Date: Monday, June 13, 2011 2:33:59 PM

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Do you consider the aggregation appropriate?

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From: Michelson, Lee (OIC)  
Sent: Monday, June 13, 2011 1:27 PM  
To: Barday, Lee (OIC)  
Subject: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

We have received three related LTCI rate increase filings, which the filing company wants us to consider together. The supporting exhibits are the same aggregate exhibits in all the filings. The policies are similar, and the actuary considers the aggregation appropriate. The filing company is Metropolitan Life Insurance Company. It reinsures a block of policies issued by the sister companies Teachers Insurance and Annuity Association of America and TIAA-CREF Life Insurance Company. Some of the policies have actually been assumed by Met. For those it is filing in its own name. For the other policies, Met is filing for the issuing companies, with authorization letters.

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The aggregate experience exhibit supports the requested rate increase. I am willing to file the rate increase unless you think that we need some more detailed information.

From: Michaelson, Lee (OIC)  
To: Bandy, Lee (OIC)  
Subject: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
Date: Monday, June 13, 2011 1:25:51 PM

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We have received three related LTCI rate increase filings, which the filing company wants us to consider together. The supporting exhibits are the same aggregate exhibits in all the filings. The policies are similar, and the actuary considers the aggregation appropriate. The filing company is Metropolitan Life Insurance Company. It reinsures a block of policies issued by the sister companies Teachers Insurance and Annuity Association of America and TIAA-CREF Life Insurance Company. Some of the policies have actually been assumed by Met. For those it is filing in its own name. For the other policies, Met is filing for the issuing companies, with authorization letters.

Teachers issued policies over the period 1992-2002. TIAA-CREF issued policies over the period 2001-2004. There are 28,293 Teachers policies and 10,821 TIAA-CREF policies in force nationwide. There are a total of 983 policies in force in Washington. The filings do not break down the Washington number by issuing company. Nor do they say how much of the business has been assumed by Met. The policies have had no prior rate increases. The pending request is for a 41% rate increase.

The aggregate experience exhibit supports the requested rate increase. I am willing to file the rate increase unless you think that we need some more detailed information.

From: Sandy Lee (OIC)  
To: Berenson, Beth (OIC)  
Subject: FW: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
Date: Monday, June 13, 2011 3:01:03 PM  
Attachments: RE LTCI Rate Increase Requests Teachers Insurance and Annuity Association of America TIAA-Cref Life Insurance Company and Metropolitan Life Insurance Company.msc

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Here's another one on which we'd appreciate your guidance.

From: Michelson, Lee (OIC)  
To: Barday, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company  
Date: Monday, June 13, 2011 2:57:09 PM

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Yes, they are successive policy forms with only minor changes. WAC 284-60-040(10) supports aggregating them.

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From: Barday, Lee (OIC)  
Sent: Monday, June 13, 2011 2:34 PM  
To: Michelson, Lee (OIC)  
Subject: RE: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

Do you consider the aggregation appropriate?

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From: Michelson, Lee (OIC)  
Sent: Monday, June 13, 2011 1:27 PM  
To: Barday, Lee (OIC)  
Subject: LTCI Rate Increase Requests: Teachers Insurance and Annuity Association of America, TIAA-Cref Life Insurance Company, and Metropolitan Life Insurance Company

We have received three related LTCI rate increase filings, which the filing company wants us to consider together. The supporting exhibits are the same aggregate exhibits in all the filings. The policies are similar, and the actuary considers the aggregation appropriate. The filing company is Metropolitan Life Insurance Company. It reinsures a block of policies issued by the sister companies Teachers Insurance and Annuity Association of America and TIAA-CREF Life Insurance Company. Some of the policies have actually been assumed by Met. For those it is filing in its own name. For the other policies, Met is filing for the issuing companies, with authorization letters.

Teachers issued policies over the period 1992-2002. TIAA-CREF issued policies over the period 2001-2004. There are 28,293 Teachers policies and 10,821 TIAA-CREF policies in force nationwide. There are a total of 983 policies in force in Washington. The filings do not break down the Washington number by issuing company. Nor do they say how much of the business has been assumed by Met. The policies have had no prior rate increases. The pending request is for a 41% rate increase.

The aggregate experience exhibit supports the requested rate increase. I am willing to file the rate increase unless you think that we need some more detailed information.

From: Michelson, Lee (OIC)  
To: Hendrix, Julia (OIC); O'Leary, Mary (OIC); Holland, Mamean (OIC); Bryant, Mike (OIC); Stoner, Bianca (OIC)  
Subject: LTCI Rate Increase: Teachers Insurance and Annuity Association of America, TIAA-CREF Life Insurance Company, and Metropolitan Life Insurance Company  
Date: Wednesday, August 17, 2011 10:03:43 AM  
Attachments: Revised.rtf

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We are allowing a 41% rate increase on policy series LTC.02 and LTC.03, issued by Teachers Insurance and Annuity Association of America, and LTC.04, issued by TIAA-CREF Life Insurance Company. Metropolitan Life Insurance Company administers the policies and has assumed some of them.

The rate increase will be effective on the policy anniversary following 60 days' notice.

The company will offer several benefit reduction options in lieu of the rate increase, as well as a contingent nonforfeiture benefit on lapse.

My spreadsheet listing LTCI rate increases since its inception is attached.

DRISCOLL, LEO  
OIC NO. 14-0187 / SIMBA NUMBER: 1221629

# EXHIBIT 4

*Disposition – Approval of Rate Filing*  
(Disposition Date: 08/17/2011)

### Disposition for META-127150316

**SERFF Tracking Number:** META-127150316      **State:** Washington  
**Filing Company:** TIAA-CREF Life Insurance Company      **State Tracking Number:** 230615  
**Company Tracking Number:** W11-27 TL (TC-LIFE - RATES) CC  
**TOI:** LTC06 Long Term Care - Other      **Sub-TOI:** LTC06.000 Long Term Care - Other  
**Product Name:** Long Term Care Insurance  
**Project Name:** LCUL.04-TCL

**Disposition** 08/17/2011

**Date:**

**Implementation** 10/16/2011

**Date:**

**Status:** • Filed

**Comments:**

You have been selected to take part in our online customer survey. Please take a minute or two to give us your feedback so we can better serve you. The survey is completely voluntary and confidential.

Take the survey at: <http://www.sesrc.wsu.edu/PugetSound/RatesandForms>

**Add Rate Data?** Yes

**Company Rate Information**

Company Name:	Overall %	Overall % Rate	Written Premium Change for this Program:	Number of Policy Holders Affected for this Program:	Written Premium for this Program:	Maximum % Change (where required):	Minimum % Change (where required):
TIAA-CREF Life Insurance Company	41.000 %	41.000 %	\$ 35747	55	\$ 87187	41.000 %	41.000 %
<b>Change Period for Approved Rate:</b>							

Schedule Items			
Item Type	Item Name	Item Status	Public Access
Supporting Document	Actuarial Memorandum		Yes
Supporting Document	Long Term Care Rates		Yes
Supporting Document	Cover Letter		Yes
Supporting Document	Authorization Letter		Yes
Rate	Generic Rates		Yes

State: Washington Filing Company: TIAA-CREF Life Insurance Company  
 TOI/Sub-TOI: LTC06 Long Term Care - Other/LTC06.000 Long Term Care - Other  
 Product Name: Long Term Care Insurance  
 Project Name/Number: LCUL04-TCLAW11-27 TL (T-C LIFE)

**Disposition**

Disposition Date: 08/17/2011  
 Implementation Date: 10/16/2011  
 Status: Filled

**Comment:**

You have been selected to take part in our online customer survey. Please take a minute or two to give us your feedback so we can better serve you. The survey is completely voluntary and confidential.

Take the survey at: <http://www.sosrc.wsu.edu/PugotSound/RatesandForms>

Company Name:	Overall % Indicated	Overall % Rate	Written Premium Change for this Program:	Number of Policy Holders Affected for this Program:	Written Premium for this Program:	Maximum % Change (where req'd):	Minimum % Change (where req'd):
TIAA-CREF Life Insurance Company	41.000%	41.000%	\$35,747	55	\$87,187	41.000%	41.000%

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document	Actuarial Memorandum		Yes
Supporting Document	Long Term Care Rates		Yes
Supporting Document	Cover Letter		Yes
Supporting Document	Authorization Letter		Yes
Rate	Generic Rates		Yes

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STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

*In the Matter of*  
**LEO J. DRISCOLL and MARY T.  
DRISCOLL**  
Application for Hearing.

Docket No. 14-0187  
DECLARATION OF  
STEPHANIE FERRELL IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT

I, Stephanie Ferrell, declare as follows:

1. I am over the age of 18 and make this declaration based on my personal knowledge.
2. I am employed by the Washington State Office of the Insurance Commissioner as a Forms and Records Analyst 3 in the Operations Division.
3. As a Records Analyst 3, I am responsible for the management, disposal, and disclosure of agency information in adhering to both the Public Records Act and records management statutes. I also respond to various public records requests. I am responsible for gathering responsive documents from various divisions throughout the Office of the Insurance Commissioner. I also conduct searches based on search criteria in the Discovery Accelerator (email vault) and databases for documents. Following receipt of responsive documents from various divisions through out the Office of the Insurance Commissioner, documents are then provided to the requestor. I am experienced and familiar with

DECLARATION OF STEPHANIE  
FERRELL IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT

1221629

State of Washington  
Office of Insurance Commissioner  
Insurance 5000 Building  
PO Box 40255  
Olympia, WA 98501-0255

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Chapter 42.56 RCW, the Public Records Act (the "Act"), and the Office of the Insurance Commissioner's obligations under the Act.

4. The Office of the Insurance Commissioner maintains copies of all Public Records Requests and documents produced as a result of requests for a period of 6 years.

5. I have knowledge of, and access to, the documents pertaining to the three Public Records Requests ("Records Request" or "PDR") submitted by Leo Driscoll ("Petitioner"), (PDR 4605, PDR 5472, and PDR 5496). I make this declaration based upon my personal knowledge and in my capacity as an employee of the Office of the Insurance Commissioner.

6. On July 16, 2012, I received an email request from Leo Driscoll for information pertaining to TIAA-Cref Life Insurance Company rate filing. This public records request was numbered PDR 4605. The records request was fulfilled with all documents relating to the request on July 16, 2012.

On August 27, 2012, I received a follow-up email from Mr. Driscoll. This follow-up email requested an index to individual long-term care insurance filings by Teachers Insurance and Annuity Association ("TIAA") from 1990 to date. Since this was a follow-up to the July 16, 2012 request, the request remained number PDR 4605. This follow-up records request was fulfilled with all documents relating to the request on August 28, 2012.

7. On July 9, 2014, I received another email request from Mr. Driscoll for any and all correspondence relating to SERFF Washington State Tracking Number 230615. This public records request was numbered PDR 5472. The records request was fulfilled with all documents relating to the request on July 24, 2014.

8. On July 25, 2014, I received a fourth email request from Mr. Driscoll for any correspondence relating to Metropolitan Life Insurance Company and/or to TIAA-CREF Life Insurance Company regarding premium rate

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as it relates to SERFF Tracking Number 127150316, State Tracking Number 230615. This public records request was numbered PDR 5496. The records request was fulfilled with all documents relating to the request on August 4, 2014.

- 9. All information with the Office of the Insurance Commissioner pertaining to the TIAA-CERF (aka MetLife) rate filing has been provided to Mr. Driscoll.

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

Executed on the 7<sup>th</sup> day of November, 2014, at Tumwater, Washington.

  
Stephanie Ferrell  
Forms and Records Analyst 3  
Office of the Insurance Commissioner

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STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER

*In the Matter of*  
**LEO J. DRISCOLL and MARY T.  
DRISCOLL**  
Application for Hearing.

Docket No. 14-0187  
DECLARATION OF SCOTT  
FITZPATRICK IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT

I, Scott Fitzpatrick, declare as follows:

1. I am over the age of 18 and make this declaration based on my personal knowledge.
2. I am employed by the Washington State Office of Insurance Commissioner as an Actuary 3 with the Company Supervision and Rates and Forms Divisions. I am a Fellow of the Society of Actuaries and a Member of the American Academy of Actuaries.
3. Actuaries, like myself, specialize in particular practice areas corresponding to their training and credentials. I am a life actuary, specializing in disability and long-term care insurance.
4. It is part of my primary responsibilities to review companies' rate filings for disability and long-term care insurance to make sure that the companies' proposed rates are justified actuarially and meet statutory requirements. Rate filing review and correspondence with the filers is all

DECLARATION OF SCOTT  
FITZPATRICK IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

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State of Washington  
Office of Insurance Commissioner  
Insurance 5000 Building  
PO Box 40255  
Olympia, WA 98504-0255

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electronic through the NAIC's System for Electronic Rate and Form Filing (SERFF).

5. I am experienced and familiar with the Insurance Code and the Office of the Insurance Commissioner obligation under the statutes and rules pertaining to insurance, especially the statutes and rules governing disability and long-term care insurance.
6. I am experienced and familiar with the NAIC's System for Electronic Rate and Form Filing (SERFF).
7. I have knowledge of, and access to, the documents 2011 TIAA-Cref (MetLife) rate filing that is the subject of the Demand for Hearing.
8. All rate filing materials are reviewed by Office of the Insurance Commissioner staff actuaries who specialize in reviewing particular rating filings that corresponds to their training and credentials.
9. I am not the Actuary who conducted the actuarial review of the 2011 MetLife rate filing. Lee Michelson, who approved the MetLife rate filing, left the Office of the Insurance Commissioner for other employment. Lee Michelson, like all Office of the Insurance Commissioner staff actuaries, specialized in reviewing particular rating filings that corresponded to his training and credentials, which were disability and long-term care insurance.
10. In order to provide responses to the Demand for Hearing, I conducted a thorough review of the 2011 MetLife rate filing.
11. On June 10, 2011, MetLife submitted all information required under the applicable insurance statutes and rules to support the rate filing.
12. I have reviewed the MetLife Premium Rate Schedule Increase Filing. A true and correct copy of the MetLife Premium Rate Schedule Increase Filing is attached hereto as OIC Exhibit 1: MetLife Premium Rate Schedule Increase Filing.
13. I have reviewed the Actuarial Memorandum in support of the MetLife Premium Rate Schedule Increase Filing. A true and correct copy of the

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Actuarial Memorandum is attached hereto as OIC Exhibit 2: Actuarial Memorandum, 2011.

- 14. As a practical matter, carriers do not deem rate filings approved. Carriers desire approval before implementing changes that could be costly to undo if the Commissioner disapproved the rates afterwards.
- 15. I have reviewed the OIC actuary staff email communications regarding the 2011 MetLife rate filing. A true and correct copy of these emails is attached hereto as OIC Exhibit 3: OIC Actuary Staff Emails Regarding Approval.
- 16. I have reviewed the Disposition provided to MetLife regarding the 2011 rate filing. A true and correct copy of this Disposition is attached hereto as OIC Exhibit 4: Disposition – Approval of Rate Filing.
- 17. No prior rate increase for these long-term care policies had been filed and the rate, to this date, has not increased since 2011.
- 18. Leo and Mary Driscoll (Petitioners) allege in paragraphs 1.31 through 1.57.2 that MetLife failed to provide certain information in the rate filing. *Demand for Hearing*, pgs. 14-18. However, this is a mistaken interpretation of how this information is provided to the Office of the Insurance Commissioner. This information is provided as actuarial calculations that are located within the Actuarial Memorandum and not as a written explanation. For example, information alleged to be missing in Petitioners’ paragraphs 1.32, 1.33, 1.34, 1.36, 13.7 are found on pages 12 through 15 of the Actuarial Memorandum and details alleged to be missing in paragraph 1.35 can be found in the Actuarial Memorandum at page 10.
- 19. The 2011 MetLife rate filing and supporting materials were no different in form or substance than any other typical rate filing. The rate filing was accurately determined to be supported by the calculations.

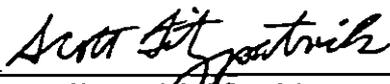
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20. I have concerns that even with this change in premiums; the products would be presently operating at an 88.2% loss ratio. This loss ratio is higher than most insurance products.

21. However, I affirm the approval of the 2011 MetLife rate filing because the rate filing was not excessive, inadequate or unfairly discriminatory as defined by the relevant insurance statutes and rules.

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

Executed on the 7<sup>th</sup> day of November, 2014, at Tumwater, Washington.

  
\_\_\_\_\_  
Scott Fitzpatrick FSA, MAAA  
Analyst 3  
Office of the Insurance Commissioner