

DRISCOLL, LEO

OIC NO. 16-0002 / SIMBA NUMBER 1339824

EXHIBIT 9

EXH 9 – 09/15/14 Driscoll's request for consolidated hearing

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

FILED

2014 SEP 22¹⁹ A 9:11
etc

September 15, 2014

Honorable Mike Kreidler
Washington State Insurance Commissioner
5000 Capitol Blvd. SE,
Tumwater, WA 98501

Commissioner Kreidler:

Enclosed please find my signed application of this date for filing pursuant to WAC 10-08-030 and and review under RCW 34.05.419, seeking a consolidated Adjudicative Proceeding under RCW 34.05.413 as to four (4) related counts.

Also enclosed is a Table of Contents to the Application.

Please acknowledge receipt. I am not represented in this application. You or your designate may contact me in relation to the matter- by mail addressed to me at my above or by telephone at (509) 747 7468.

Thank you in advance for your courtesy and response.


Leo J. Driscoll

FILED

BEFORE THE WASHINGTON STATE INSURANCE COMMISSIONER

Application for an Adjudicative Proceeding under RCW 34.05.413 with four (4) counts: 2011 SEP 19 PAC

- Count 1: Constitutional Challenges to Processes and Procedures applicable to a Rate-Increase
- Count 2: Seeking Information from insurer pursuant to RCW 48.19.300, good faith, and fairness
- Count 3: Claim seeking Cessation of Use of the existing "Policy Schedule" form and other relief
- Count 4: Claim for partial relief under RCW 48.19.120 or adjudication as to the futility of the claim

Demand for hearing as to Count 1, 3 and 4.
 Request for hearing as to Count 2..
 Request for an Administrative Law Judge as to all Counts.

Applicant's name is Leo J. Driscoll. I reside at 4511 E. North Glengrae Ln., Spokane, WA 99223. I am not represented in these proceedings. I am a retired, inactive member of the Washington State Bar without prior experience in or exposure to the insurance laws and regulations that govern the subject-matter of this application.

I hereby apply to the Washington State Insurance Commissioner (the "Commissioner" or the "agency" herein) for an adjudicative proceeding under RCW 34.05.413 to adjudicate four (4) closely-related counts of this application. Each count arises from a 41% rate-increase in premiums for individual long-term care insurance policy forms, series LTC.04(WA), that were issued by TIAA-CREF Life Insurance Company ("T-C Life") including policies issued to applicant and to applicant's spouse, Mary T. Driscoll, in 2002.

The rate-increase was initiated by **Metropolitan Life Insurance Company** ("MetLife"), reportedly the 100% indemnitor-reinsurer and administrative agent for T-C Life as to the subject policies. MetLife electronically submitted the rate-increase request to the Office of the Insurance Commissioner ("OIC") via the SERFF process, State Tracking Number 230615 on June 10, 2011.

- **PREFATORY**

1. Nature and Scope of Count 1:

1-A. Count 1 seeks adjudication: that the 41% rate-increase was unfounded, i.e., was insufficiently supported by information showing it complied with all applicable laws and regulations; that the agency's failure to timely disapprove the unfounded request resulted in *deemed* approval, filing, and legal effectiveness of the increase by force of state statutes and thereby provided the state's imprimatur for the insurer to implement the unfounded increase; that such resulted in unconstitutional deprivations of applicant's property rights protected by due process guaranteed by

the WA state and U.S. constitutions; that such deprivations are, in significant part, fairly attributable to the state; that applicable state procedures denied policyholders procedural due process by inadequate notice of the pendency of the requested increase and lack of necessary information and meaningful opportunity to be heard and present objections;¹ that state procedures failed to consider and balance competing interests in the matter as required by *Mathews v. Eldridge*, 424 U.S. 319, 335, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976) and *Ritter v. Board of Comm'rs of Adams Cy. Pub. Hosp. Dist. 1*, 96 Wn.2d 503, 511, 637 P.2d 940 (1981).

1-B. Count 1, at Part L, alleges unconstitutional delegation, abdication, and surrender of legislative power to the private proponent of the premium increase; alleges that statutory procedures that were automatically triggered sequentially by the agency's inaction and default failure to timely disapprove the premium rate-increase request, also rendered inapplicable to that category of requests the established state standards that normally apply to premium-increase requests² and that are required by the "standards doctrine" and by *Barry & Barry v. Dept. of Motor Vehicles*, 155 Wn.2d 155, 159 (1972) for a constitutional delegation of legislative power, further, that the legislative processes for that category of requests does not provide essential *Mathews v. Eldridge* procedural safeguards and balancing of competing interests, likewise contrary to *Barry & Barry*, and in violation of the WA State and U.S. constitutions.

1-C. Count 1 also seeks adjudication that the subject individual "long-term care insurance" is subject to most provisions of Ch. 48.19 RCW, and that specified provisions of it were applicable to agency review and approval or disapproval of the subject rate-increase request together with relevant provisions of Ch. 48.18 RCW and Ch. 284-60 WAC.

2. Nature and Scope of Count 2

Count 2 seeks an administrative order directing the insurer T-C Life to provide specified documentary information to applicant pertaining to the rates of the LTCI policies of applicant (and spouse Mary) that have been affected by the 41% rate-increase, as initially requested from the insurer pursuant to RCW 48.19.300, and subsequently requested as a matter of good faith and fairness. As to the latter, applicant relies on RCW 48.01.030 and WA court rulings that impose controlling duties upon the insurer and that are owing to the insured.

¹ *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983): "... prior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." " [Quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)].

² Standards that assure that the premium-increase request complies with the Code and with applicable regulations.

Counts 1 and 2 present the common issue of whether individual long-term care insurance, of vintage here involved,³ is or is not "disability insurance" within the meaning of RCW 49.19.010(1)(b).

3. Nature and Scope of Count 3:

Count 3 seeks remedy under Ch. 48.18 RCW on grounds additional to and/or alternative to those of Count 1.

In Count 3, applicant alleges that any approval of the subject rate-increase by OIC and "changed Policy Schedule" forms relating thereto (by whatever means such approval occurred) was erroneous because the approval was and is ungrounded as previously stated. Count 3 alleges that the Commissioner has authority, grounds, cause, and duty to hold a hearing and to issue of an order from the Commissioner pursuant to RCW 48.18.100(3) and (4) and RCW 48.18.110(1) that directs the insurer to cease use of and withdraw the changed Policy Schedule forms and other appropriate prospective relief.

4. Nature and Scope of Count 4:

Count 4 seeks prospective relief from the 41% rate-increase under RCW 48.19.120 on the grounds that the rate-increase request was not and is not supported by information showing that it complied with applicable laws and regulations and/or in the alternative adjudication as to the futility of pursuing that remedy because of the provisions of RCW 49.19.120(2) and applicability thereof to an order under RCW 48.19.120(1) in relation to the subject policy forms. Applicant seeks to access and exhaust available administrative remedies, if any, and to invoke primary jurisdiction of the agency, if any, in respect to such matters.

5. Jurisdiction and Constitutional Right to Hearing of Count 1:

5-A. The Commissioner has jurisdiction of the Count 1 allegations of (a) unconstitutional state deprivations of applicant's property rights constitutionally-protected by due process; and (b) unconstitutional delegation, abdication, and surrender of legislative authority and power to the proponent of the premium-increase without benefit of requisite standards and without providing adequate procedural

³ The policy forms here involved were issued between 2001 and 2004. Different WA laws apply to LTCI policies issued before 1/01/09 than to those issued on or after that date..

safeguards for the competing interests of policyholders (including applicant), in violation of both the WA state and federal constitutions.

5-B. Subsection (2) of RCW 34.05.413 provides: *"When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding."* Applicant seeks to access and exhaust administrative remedies in respect to alleged constitutional violations and to invoke primary jurisdiction of the agency, if any, in respect to Count 1.

5-C. Applicant has a "constitutional right" to a hearing before the agency [Conway v. Dep't of Soc. & Health Servs. 131 Wn. App. 406, 418- 419 (Div.I, 2005)] for purposes of being heard with respect to Count 1 and to seek such administrative relief as is available from the agency in respect to Count 1.

6. Jurisdiction and Discretionary Authority to Hear Count 2: The Commissioner has jurisdiction, authority, and discretion to conduct the adjudicative proceeding for Count 2 pursuant to the first sentence of RCW 48.04.010.

7. Jurisdiction and Implied Right to Hearing of Count 3: The Commissioner has jurisdiction of Count 3 which seeks the Commissioner's withdrawal of approval of the changed "Policy Schedule" forms for the subject LTC.04(WA) that are insured by T-C Life, regardless of the means by which such approval occurred. RCW 48.18.100(3) provides that the Commissioner *"may withdraw any approval at any time"* for cause. RCW 48.18.110(1) mandates that the Commissioner *"shall"* withdraw previous approval on specified grounds

Count 3 is based on one of those specified grounds. By necessary implication of those laws, and by rights of affected parties to procedural due process in respect thereto, applicant has the right to be heard as to the alleged cause and specified grounds for withdrawal of approval of the changed Policy Schedule.

8. Jurisdiction and Conditional Right to Hearing of Count 4: The Commissioner has jurisdiction of the subject matter of Count 4 under RCW 48.19.120. Subsection (3) thereof requires that the Commissioner hold a hearing as required in subsection (1) if the 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 such grounds otherwise justify holding the hearing, he or she shall, within thirty days after receipt of the application, hold a hearing as required in subsection (1) of this section." Applicant anticipates that it will be adjudicated that it is futile to seek an order for relief under RCW 48.19.120 (given the seemingly-apparent applicability of provisions of

subsection (2) to the subject policies), applicant seeks agency adjudication as to the availability or the futility of seeking relief under RCW 48.19.120. Applicant in good faith seeks to satisfy the attending applicable requirements for exhaustion of remedies and the primary jurisdiction doctrine.

9. Demands/Requests for Hearing: Applicant respectfully demands a hearing of Counts 1, 3, and 4. Applicant respectfully requests a hearing of Count 2.
10. Factors favoring a consolidated hearing of all Counts: Counts 1 and 2 are closely related; adjudication of the applicability of Ch. 48.19 RCW to LTCI is a key issue in each and both counts. Counts 1 and 2 arise from common facts, and all counts arise from or are related to the premium-increase. Economy of time, effort and expense for all concerned, as well as consistency in rulings, will best be achieved if all matters are adjudicated by the same hearing officer in a single adjudicative proceeding.
11. Timeliness: All counts are timely. None challenge agency action or an agency order. Count 1 seeks review of the constitutionality of "agency inaction" and default failure of the agency to timely act upon a premium-increase request resulting in statutory *deemed* approval, effectiveness, and filing, of the requested 41% rate increase. No 'order' of the agency within the meaning of RCW 34.05.010(11)(a) was issued and none is challenged. Count 2 does not address or challenge agency action but rather seeks agency adjudication of issues between private parties and enforcement of the Insurance Code and applicable law. Counts 3 and 4 seek prospective agency action and statutory remedies only, if and as available.
12. Applicant requests an Administrative Law Judge be appointed to conduct the proceeding as provided in Ch. 34.12 RCW. Allegations of agency inaction and failure to timely act on the rate increase request objectively warrant appointment of an independent, impartial administrative law judge to hear such matters. Legal issues are dominant in each count.
13. WA State Attorney General: Applicant believes the WA state attorney general should be served with copies of this application and notice of the adjudicative proceedings because of the constitutional challenges to state statutes and procedures alleged in Count 1.
14. Known other parties to be served with a copy of the application and notice of the adjudicative proceedings include (a) TIAA-CREF Life Insurance Company, a corporation, and (b) Metropolitan Life Insurance Company, a corporation. Both

companies are foreign corporations domiciled in the state of New York. Both are insurers who have been authorized by the Commissioner to issue insurance in WA and presumably each has designated the Commissioner as its agent and/or attorney to receive process on its behalf pursuant to RCW 48.05.200.

15. Notice to other Policyholders: Applicant does not know the identity of or have access to the names or addresses of other policyholders of the LTC.04(WA) policy forms, reportedly approximately 55 in number ⁴, as to whom T-C Life is the insurer. Such names and addresses are known only by T-C Life and/or by MetLife. Applicant proposes that those policyholders be notified regarding this proceeding if and after their names and addresses are disclosed by T-C Life or by MetLife.
16. Allegations of fact herein based on personal knowledge of applicant are identified by the abbreviation "(pkoa)" in the application. Other allegations are based on the information and belief of applicant.

**Count 1: Constitutional Challenges to the State's Procedures
Applicable to the Premium-Increase Request
that was Not Timely Disapproved by the Agency**

For Count 1, applicant alleges:

A. Insured, Insurer, and Insurance policies identified.

- 1.1 Applicant Leo J. Driscoll is a party aggrieved by a 41% rate increase in premiums of long-term care insurance ("LTCI") policies issued to applicant and to applicant's spouse Mary T. Driscoll ("Mary"). Mary's written approval to applicant's filing and pursuit of this application to protect our community-owned policies is attached as the last page of this application.
- 1.2 Applicant and Mary lawfully intermarried in WA in 1972 and have been husband and wife and residents of Spokane County, WA, at all times since then (pkoa).
- 1.3 In 2002 TIAA-CREF Life Insurance Company ("T-C Life") issued individual LTCI policy No. 09852450 insuring against LTCI risks to be incurred by applicant and individual LTCI policy No. 09852468 insuring against LTCI risks to be incurred by Mary (pkoa). The policies including optional riders were identical in form and coverage; premium rates for the policies differed based on the age of each insured

⁴ The SERFF OIC State Tracking file #230615 summary form indicates that 55 policyholders are affected by the increase.

(pkoa). Each policy form identifies the effective date of the policy as being 8/01/2002 (pkoa).

- 1.4 The policies and property interests therein are the community property of applicant and Mary, all premiums having been paid with community-owned funds (pkoa). Applicant submits and pursues this application on behalf of the community in keeping with RCW 4.08.030. Additionally, apart from the community-owned interest in each policy, applicant has contractual interests in each policy: the "Shared Care Benefit Option Rider" of each policy conditionally and effectively makes the spouse of the insured a beneficiary of the policy issued to the named insured, and the "Spousal Discount" rider" of each policy conditionally and contractually benefits the named-Insured's spouse (pkoa).
- 1.5 Each policy was issued by T-C Life on a form identified as "TCL-LTC.04(WA)" policy form (pkoa), herein abbreviated as "LTC.04(WA)".⁵ In addition to coverage for basic LTCI benefits as offered, each of the policies has a 5% compound inflation protection rider, a shared care benefit rider, and a spousal discount rider (pkoa). Each policy form states that it is a "level premium" policy and is "guaranteed renewable" if the scheduled premiums are timely paid. (pkoa). The term "guaranteed renewable" was not defined by the policy form and thus has its common, ordinarily accepted meaning.
- 1.6 No insurance agent was involved in the sale of the policy forms (pkoa). T-C Life was a direct response provider to consumers of such policy forms.
- 1.7 The policy was not negotiated between the parties thereto. The form and pricing of the policy was solely determined by the insurer. The policy form was delivered to the consumer on a *60 day review, take-it or leave-it* (return the policy and request refund of initial premium paid) basis.
- 1.8 On February 10, 2012 applicant made an e-mail inquiry of OIC asking whether OIC had approved the rate increase and, if so, the basis for the approval. OIC responded *generically*, stating in substance and effect that LTCI is a relatively-new product, that in pricing LTCI insurers had little or no claims experience, that fewer-than expected of the insured cancelled their policies resulting in more claims than had been assumed, and that, by and large, LTCI policies had been underpriced "*compared to the fast growing costs of health care, particularly in recent years*", and that

⁵ T-C Life reportedly issued LTCI policies "nationwide" that are collectively referenced as "LTC.04" policy forms. The nature and extent of any state- by-state variations in form and/or in rates of the LTC.04 forms from those of the LTC.04(WA) form have not been disclosed to policyholders and are unknown to applicant.

"If we just denied the rate hikes arbitrarily in an effort to protect consumers, it would have been a false and short-lived victory. The companies have the right to go to a hearing before an administrative judge, which they would almost certainly win, and the rate hikes would proceed anyway."

B. MetLife's Initiation of a 41% Premium Rate-Increase; Notice of the Increase

- 1.9 The 41% premium-rate increase was initiated by written request submitted to OIC on June 10, 2011 by Metropolitan Life Insurance Company ("MetLife") which company reportedly is the reinsurer, 100% indemnitor, and administrator for T-C Life in respect to LTC.04(WA) forms as to which MetLife had *not* become insurer by assumption and novation, as to which, T-C Life remains insurer.
- 1.10 As proposed by MetLife to OIC, the increase was to apply *"to policies on their policy anniversary date following at least a 60-day notification period following approval"*.⁶ August 1 is the anniversary date of the policies issued to applicant and applicant's spouse and the rate-increase has been implemented as to those policies beginning and since August 1, 2012 (pkoa).
- 1.11 A MetLife form notice bearing date 12/09/2011 notified Mary of the 41% rate-increase. The notice was addressed to Mary and was delivered to our mailbox (pkoa) presumably within a few days thereafter. Like notice to applicant was not delivered to applicant until months later but applicant became aware of the notice addressed to Mary at a date uncertain and in any event prior to 2/10/12 when applicant telephoned MetLife regarding lack of written notice to applicant (pkoa).
- 1.12 The 12/09/2011 notice form did not include information as to the reasons or justification for the 41% rate increase other than to assert that *"The long-term care insurance industry has faced significant challenges as it relates to pricing these types of policies"* (pkoa). The 12/09/2011 notice also asserted that the insurer of the LTC.04(WA) form *"reserve the right to increase rates in the future, subject to applicable law"* (pkoa).
- 1.13 The 12/09/2011 notice form effectively gave the policyholder the option of selecting one of three Hobson-like choices, each financially detrimental: (a) *"Continue your current coverage by paying the new premium"*; (b) *"Reduce your coverage"* by paying revised-but-higher premiums than previously, or (c) *"Cancel your coverage"* in return for a "Limited Coverage Upon Lapse" endorsement that

⁶ Quoted excerpt from Section 21, page 8, of 6/06/11 Actuarial Memorandum submitted to OIC by MetLife 6/10/11.

provides drastically reduced benefits, thereby forfeiting all other entitlement to the initially-scheduled benefits and premiums previously paid (pkoa).

- 1.14 During the 10 years between 8/01/2002 (the effective date of our policies) and 8/01/2012 (the date when the 41% rate increase first became applicable to our policies), applicant and spouse Mary invested and paid more than \$60,000 in premiums for the policies (pkoa). Meanwhile, our investments in the 5% annual compound inflation protection rider of each policy had increased all of the initially-scheduled dollar benefit maximums of each policy: For example, the initial "Lifetime Benefit Maximum" of each policy had increased from \$200,750.00 as of 8/01/02 to \$325,324.50 as of 8/01/12 (pkoa). Daily dollar benefit maximums likewise had increased by the same annual compound rate (pkoa).
- 1.15 Given the advancement in ages of applicant (b. 11/14/26) and of Mary (b. 8/15/31) and adverse changes in physical condition and health history of each since our policies were issued to us, we concluded that we would be unable to obtain substitute coverage from another insurer, much-less equivalent benefits at previously paid rates (pkoa). Accordingly, acting under duress and written protest dated 8/08/12, each exercised what we viewed to be the least-worst option for us, i.e., the first of the three options offered, by which premium payments for the policy insuring applicant increased from \$298.90/month to \$421.45/month from and after 8/01/12 and payments for the policy insuring Mary increased from \$209.33/month to \$298.14/month from and after 8/01/12, which increases have been and are being paid by us under protest to keep the policies in good standing in accordance with their original terms (pkoa).
- 1.16 After the policyholder exercised one of the options given to the policyholder (and presumably after failure of a policyholder to exercise an option), MetLife issued, used, and delivered to each policyholder a changed "Policy Schedule" form, effective as of the anniversary date of the policy, that updated the increased cost and/or reduced benefits of the original policy in keeping with the 41% increase notice.
- 1.17 A changed "Policy Schedule" form applicable to policy # 09852468 was issued to Mary by letter received July 27, 2012, which letter was incorrectly-dated July 3, 2012 (pkoa). A changed "Policy Schedule" form applicable to policy #09852450 issued to applicant was received at about the same time or subsequently (pkoa). [N.B.: Neither changed "Policy Schedule" form includes the name of the insurer or the policy number to which it pertains (pkoa)].

1.18 The 12/09/2011 notice made no mention of the LTC.02 or LTC.03 policy forms that had been issued by TIAA nor mention that MetLife had combined and grouped those forms with the LTC.04 policy forms issued by T-C Life for purposes of a common 41% rate increase applicable to all (pkoa) by use of a methodology in respect to that grouping that applicant summarizes and references at Part F herein, as the "MetLife Methodology".

C. MetLife's parallel agreements with T-C Life and with T-C Life's parent company

1.19 On May 1, 2004, Metropolitan Life Insurance Company ("MetLife") and T-C Life reportedly entered into three agreements relating to the series LTC.04 policy forms, each of which agreements likewise is applicable to the series LTC.04(WA) forms, namely:

(a) An Indemnity Reinsurance Agreement under which T-C Life ceded 100% of the liability on such forms to MetLife and as to which MetLife became reinsurer on a 100% indemnity reinsurance basis and which Agreement had other requirements that have not been disclosed to policyholders of the LTC.04(WA) policy forms;

(b) An Assumption Reinsurance Agreement that gave MetLife the right to offer to Policyholders of such forms that MetLife become the insurer of such forms by novation, which Agreement required MetLife to use its best efforts to effectuate that novation subject to regulatory requirements ; and

(c) An Administration Agreement under which T-C Life transferred to MetLife rights of administration and control over the series LTC.04(WA) policy forms of policyholders who did not agree to the novation. The full extent of the control transferred to MetLife has not been disclosed to those policyholders. Reportedly that 2004 agreement authorized MetLife to make written or oral communications on behalf of T-C Life (including the submission of written materials) to and with all state insurance departments (including OIC) relating to future premium-rate increase requests for such forms that MetLife may decide to submit to state insurance departments.

1.20 Facts not disclosed by T-C Life in the LTC.04(WA) policy form or in the disclosure form for that policy form include: (a) *That T-C Life is a wholly-owned subsidiary of Teacher's Insurance and Annuity Association ("TIAA"), a corporation domiciled in the state of New York;* (b) *that during 1991 to 2000, TIAA issued LTCI policies in WA identified as series LTC.02(WA) policy form;* and (c) *that during 2000*

to 2002, TIAA issued LTCI policies in WA identified as the series LTC.03(WA) policy form (pkoa).

- 1.21 The LTC.02(WA) and LTC.03(WA) policies (with optional riders) issued by TIAA differed in material aspects from each other and each differed in material aspects from the LTC.04(WA) policy forms (with optional riders) that T-C Life issued during 2001 to 2004.
- 1.22 On or about May 1, 2004, the parent corporation TIAA reportedly also entered into three agreements with MetLife relating to the LTC.02 and LTC.03 policy forms [i.e., an Indemnity Reinsurance Agreement, an Assumption Reinsurance Agreement, and an Administration Agreement]. Each of those is applicable to the series LTC.02(WA) and series LTC.03(WA) policy forms. Applicant reasonably believes that those agreements include terms and provisions that are parallel to or are counterparts of the agreements between MetLife and T-C Life previously alleged which relate to the LTC.04 policy forms including the LTC.04(WA) forms.
- 1.23 T-C Life discontinued selling and issuing LTCI in WA and elsewhere in 2004. TIAA discontinued selling and issuing LTCI in WA in 2002 and elsewhere at least by 2004.

D. MetLife became Insurer of some LTC.04(WA) forms by Assumption and Novation

- 1.24 In late October, 2008, written materials from MetLife addressed to Mary were received in the mail that proposed that consent be given to MetLife becoming the insurer by assumption and novation of the LTCI policy issued to Mary (pkoa). Similar materials addressed to applicant, if any, were not received by applicant at or about that time (pkoa). Applicant and Mary discussed the novation and we concluded that we would not give our consent to the novation proposal (pkoa).
- 1.25 The materials forwarded by MetLife reflected that MetLife's financial ratings were lower than those of T-C Life (pkoa). Applicant also concluded that T-C Life (as part of the "TIAA CREF" umbrella organization) would be motivated to deal fairly with their insured so as to maintain TIAA CREF's reputation and financial relationships with many of the insured, including applicant (pkoa). We had no prior connection with or knowledge of MetLife (pkoa).
- 1.26 Through the assumption/novation process, MetLife became insurer of those series LTC.02(WA), LTC.03(WA), and LTC.04(WA) policy forms that were issued to policyholders who (unlike applicant and Mary) affirmatively gave written consent to the novation and transfer.

**E. MetLife Grouped and Treated the Three Different Policy Forms as
"one block of business" for Purposes of a Common Rate-Increase for All Three Forms**

- 1.27 In June 2011, MetLife concurrently made three separate filings with OIC requesting a 41% increase applicable to all series LTC.02(WA) forms, all series LTC.03(WA) forms, and all LTC.04(WA) forms. The three filings were 1st: A MetLife filing *"for the TIAA and T-C Life long-term care policies assumed by MetLife"*. 2nd: A MetLife filing for the LTCI policies *"that MetLife indemnity reinsures for TIAA ((policy series LTC.02 and LTC.03))"*. 3rd: A MetLife filing for the T-C Life series LTC.04 LTCI policies *"issued by T-C Life in your state that MetLife reinsures on an indemnity reinsurance basis."*⁷
- 1.28 MetLife's 3rd filing referenced above pertains to the LTC.04(WA) policy forms issued to policyholders who (like applicant and Mary) did not agree to have MetLife become their insurer by assumption and novation and as to which T-C Life continued to have status as the insurer ("The Subject Forms" herein).
- 1.29 On or about July 16, 2012, applicant first became aware that electronic records of that rate-increase application and of information submitted to OIC in support of it were available electronically in SERFF state Tracker file #230615 (pkoa). Aided by OIC, applicant's subsequently accessed that #230615 filing and applicant's review thereof disclosed the following materials (pkoa):
- (a) MetLife's 6/10/11 rate increase filing letter to OIC from Carolyn J. Roth ("Roth"), then Director of Institutional Business Contracts for Met Life, which in part requested *"that the policies to which the three filings relate be treated as one block of business for purposes of review and approval and consistency in the amount of the rate increase which is ultimately approved."*
- (b) A 5/02/11 memorandum from Steven Maynard, Vice President and Chief Operating Officer for T-C Life to "All State Insurance Departments" which describes limited aspects of MetLife's status and relationship to the policies subject of the rate increase filings and which in relevant part authorized MetLife to communicate 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 thereof *"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 Administration Agreement. ."* [but which referenced *"applicable terms and conditions"* were not disclosed].
- (c) A 6/06/11 Actuarial Memorandum (including Exhibits I, II, and III appended thereto), signed and certified by Jonathan E. Trend ("Trend"), Assistant Vice-

⁷ MetLife's Carolyn J. Roth's 6/10/11 letter references the concurrent filings; all quotations are from that letter.

President and Actuary for MetLife. The Actuarial Memorandum stated in part that *"for purposes of this actuarial memorandum and review and approval of our schedule of premium rate increase, we are treating the policies to which the three filings relate as one block of business."* Rate tables for the LTC.02, LTC.03, and LTC.04 forms also were included with that 6/06/11 Actuarial Memorandum.

d) A seven-page *SERFF* electronically generated summary with entries by MetLife and by OIC that include, among other items, "Company Rate Information" (presumably provided by MetLife to OIC) that identifies the "# of Policy Holders Affected for this program" as being 55 in number.

1.30 The above-referenced materials in OIC State Tracker File #230615 included all information that was submitted to OIC in support of the request for the 41% increase in premium-rates for The Subject Forms.

F. The "MetLife Methodology" employed in aid of the rate increase

1.31 As to the proposed increase for The Subject Forms, the 6/06/11 Actuarial Memorandum signed by MetLife's pricing actuary employed a methodology (the "*MetLife Methodology*" herein) that included these elements: The methodology

(a) Combined (grouped all "in force" LTC.04 policy forms that had been issued *nationwide* by T-C Life with all "in force" LTC.02 and LTC.03 policy forms that had been issued *nationwide* by TIAA;

(b) *Aggregated* the *nationwide* past and expected loss ratio experiences of those three policy forms and divided those *combined nationwide* totals by the total number of policies in force for the three forms nationwide for purposes of calculating a common, identical rate increase for each and all three forms;

(c) *Omitted* disclosure of the past and/or expected loss ratio experience of each of the three policy forms *singularly in WA* and/or *singularly nationwide* and provided no explanation or justification to OIC for those omissions.

(d) *Omitted* disclosure of the claims experience, reserves, margins for contingencies, expenses and profits⁸ for each of the LTC.02(WA), LTC.03(WA), LTC.04(WA) forms *singularly* and for the LTC.02, LTC.03, and LTC.04 forms *nationwide singularly*; and,

⁸ Listed factors to be considered in grouping policies for rate increase purposes as per WAC 284-60-040(1)

(e) Indirectly and effectively *represented to OIC* ⁹, that an Initial pricing schedule was developed for the series LTC.02(WA), LTC.03(WA), and LTC.04(WA) forms that was based on same actuarial pricing assumptions for each of those, ¹⁰ without disclosing all material differences that existed between the actuarial pricing assumptions that were used in initially pricing the LTC.02(WA) forms and those that were used in initially pricing the LTC.03(WA) forms and/or the LTC.04(WA) forms.

G. Insufficient Information Submitted to Show that the Rate-Increase Request Complied with the Code and Regulations

1.32 The limited information (designedly limited by the MetLife Methodology) provided to OIC in support of the 41% rate-increase request was insufficient to show that the request complied with the applicable requirements of the Insurance Code and regulations, which insufficiencies and non-compliances are specified below.

1. Non-Compliance with Ch. 48.19 RCW Information Requirements

1.33 RCW 48.19.040(1) requires that every insurer that proposes modification of a class rate shall file such proposal with the Commissioner. Subsection (2) provides that every such filing "*must be accompanied by sufficient information to permit the commissioner to determine whether it meets the requirements of this chapter.*"

1.34 The MetLife submissions to OIC accompanying the request did not address past and prospective loss experience of the series LTC.04(WA) policy forms singularly and within the state. RCW 48.19.030(3)(a) mandates that: "*Due consideration in making rates for all insurances shall be given to: (a) Past and prospective loss experience within the state for experience periods acceptable to the commissioner. If the information is not available or is not statistically credible, an insurer may use loss experience in those states which are likely to produce loss experience similar to that in this state.*"

1.35 The 6/06/11 Actuarial Memorandum did not include information to OIC as to the "*past and prospective loss experience within the state*" of any of the three forms singularly and made no showing that the omitted information as to the LTC.04(WA) policy form

⁹ See first sentence of section 18, page 6 of the 6/06/11 Actuarial Memorandum, which reads: "*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.*"

¹⁰ That representation is inconsistent with those made in a 9/25/1998 letter by TIAA actuary Larry Schelinson, to the then WA Insurance Commissioner that lists material modifications in actuarial pricing assumptions for the proposed LTC.03(WA) forms from those used for the series LTC.02(WA) policy forms.

within the state "is not available or is not statistically credible" as required by RCW 48.19.030(3)(a).

1.36 The 6/06/11 Actuarial Memorandum did not identify or use loss experience limited to ". . . those states which are likely to produce loss experience similar to that in this state.", as conditionally-permitted by RCW 48.19.030(3)(a), but, instead, aggregated the nationwide loss experience of all three forms combined regardless of whether such included the experience of states that were not likely ". . . to produce loss experience similar to that in this state", contrary to the intent and directive of the legislature.

1.36.1 The MetLife submissions to OIC in support of the request did not suffice to comply with the requirement of RCW 48.19.040(2) that the insurer provide "sufficient information to permit the commissioner to determine whether it meets the requirements of this chapter."

1.37 The submissions to OIC in support of the request did not show that the insurers of the series LTC.04(WA) policy form singularly, and the series LTC.04 policy form nationally, had insufficient loss experience to support the proposed 41% rate increase for those forms and thus the submissions to OIC did not qualify to meet the requirements of RCW 48.19.040(3) for submitting loss experience for similar exposures of another insurer.

2 Applicability of Provisions of Ch. 284-60 WAC

1.38 The "Long-Term Care Insurance Act" enacted in 1986, applicable to LTCI policies issued prior to 2009, appears in Ch. 48.84 RCW. RCW 48.84.010 provides in part: "This chapter. . . is intended to govern the content and sale of long-term care insurance and long-term care benefit contracts issued before January 1, 2009, as defined in this chapter." LTC.04(WA) policies constitute "long-term care insurance" as defined by RCW 48.84.020, subsection (1).

1.39 RCW 48.84.030(1) mandated that "The commissioner shall adopt rules requiring reasonable benefits in relation to the premium or price charged for long-term care policies and contracts which rules may include but are not limited to the establishment of minimum loss ratios." WAC 284-54-600 to -680 appear to be responsive to that mandate in respect to contracts for long-term care services but, surprisingly, do not appear to be applicable to long-term care insurance policies.

1.40 Following inquiry by applicant, a staff representative of OIC informally advised applicant in substance and effect that Ch. 284-60 WAC applies to LTCI policies. WAC 284-60-010 is consistent with that interpretation because it states in part that *"This regulation, WAC 284-60-010 through WAC 284-60-100, applies to all insurers . . . [except for specified exceptions not relevant here]"*.

1.41 Accordingly, and by process of elimination, applicant concludes and alleges that Ch. 284-60 WAC was applicable to the 41% rate-increase request submitted by MetLife for The Subject Forms.

3 Non Compliance with Ch. 284-60 WAC Information Requirements for Grouping Forms

1.42 WAC 284-60-040(1) provides: *"The actuary responsible for setting premium rates shall group similar policy forms, including forms no longer being marketed, in the pricing calculations. Such grouping shall rely on the judgment of the pricing actuary and be **satisfactory to the commissioner**. Among the factors which shall be considered are similar claims experience, types of benefits, reserves, margins for contingencies, expenses and profit, and equity between policyholders. Such grouping shall enhance statistical reliability and improve the likelihood of premium adequacy without introducing elements of discrimination in violation of RCW 48.18.480."* (emphasis added)

1.43 WAC 284-60-040(1) in substance and effect requires that in rate setting the responsible actuary group *similar* policy forms and to that end minimally submit information to the Commissioner relevant to each of the listed six (6) factors for each of the forms being grouped, thereby permitting comparisons of the forms at least in respect to each of those specified factors, and whether grouping the forms as proposed, enhances statistical reliability and adequacy of the proposed premiums, or not.

1.44 Forms issued by the same issuer or by related issuers, e.g., by parent and by subsidiary, are not presumptively *similar* to be grouped under WAC 284-60-040 for rate-making or rate increase purposes and cannot lawfully be deemed to be sufficiently *similar* for such purposes without the requisite submission and consideration of information as to each the six (6) factors listed in subsection (1) thereof.

1.45 The 6/06/11 Actuarial Memorandum proposed grouping of the LTC.02(WA) and LTC.03(WA) forms issued by the parent corporation TIAA with the LTC.04(WA) forms issued by the subsidiary T-C Life without providing information as to the factor

of "equity between policyholders" under WAC 284-60-040(1) and without disclosing that neither the series LTC.04(WA) disclosure form nor policy form disclosed (a) the existence of the parent-subsidiary relationship between TIAA and T-C Life, and/or (b) that TIAA had previously issued LTCI policies, and/ or (c) that the similarity of those forms would be relevant to exercise of the rate-increase provision of the LTC.04(WA) policy forms

1.46 Information as to the aggregated loss experience of the several forms being grouped, without also revealing the component loss experience of each of those forms, does not permit the comparison and determination of similarity of the forms being grouped that is intended and required by WAC 284-60-040(1).

1.47 The 6/06/11 Actuarial Memorandum did not include information needed to consider or to compare any or all of the six factors for each or any of the LTC.02(WA), LTC.03(WA), and LTC.04(WA) policy forms singularly in WA and/or for each of the LTC.02, LTC.03, and LTC.04 forms singularly nationwide. The 6/06/11 Actuarial Memorandum did not provide sufficient information minimally needed to enable the Commissioner to rationally conclude and objectively find that the grouping of the three forms by the pricing-actuary was "satisfactory to the commissioner" under WAC 284-60-040(1).

4 Non-Compliance with WAC requirements for providing loss ratio information

1.48 WAC 284-60-050(5) required submission to OIC of a "comparison of the actual to expected loss ratios".¹¹ The 6/06/11 Actuarial Memorandum, at section 14, p. 5, and Exhibit I attached thereto, provided information as to the expected loss ratios for the LTC.02, LTC.03, and LTC.04 policy forms combined (with and without the 41% rate increase).

1.49 The 6/06/11 Actuarial Memorandum, at section 14, p. 5, and Exhibit II attached thereto, included information of the "Nationwide Calendar Year Experience with No Increase, Actual to Expected Ratios" for the LTC.02, LTC.03, and LTC.04 policy forms combined. However, no information was provided to OIC as to the "actual to the

¹¹ Ambiguity exists as to the applicability of WAC 284-60-050 here in that it states it "applies to individual disability insurance forms" without mention of other forms, whereas WAC 284-60-010(1) states that "This regulation, WAC 284-60-010 through 284-60-100, applies to all insurers, and to every disability policy form filed for approval in this state after August 31, 1983 except [for forms not relevant here]" [underling emphasis added]

expected loss ratios" of the series LTC.04(WA) form singularly. MetLife made no showing to OIC that the omitted information was not available or was statistically unreliable.

5 Non-Compliance with WAC Requirements to Provide Information as to Reserves

1.50 WAC 284-60-040(1) requires consideration of reserves for purposes of rate-making. WAC 284-60-050(5) required that a rate increase request submitted during the calculating period, as was done here, "*shall include a demonstration of any contributions to and support from the reserves*" of the series policy forms for which a rate increase was requested. The 6/06/11 Actuarial Memorandum at section 14, p. 5, and Exhibit III attached thereto, provided information to OIC i as to the "Historical Loss Ratio with Active Life Reserves Nationwide Experience, without interest" for the LTC.02, LTC.03, and LTC.04 policy forms *combined*, with and without the 41% rate increase.

1.51 No corresponding information was provided to OIC as to the series LTC.04(WA) form singularly as impliedly required. MetLife made no showing to OIC that the omitted information was not available or was not statistically reliable as impliedly required by such regulations.

1.52 WAC 284-60-070, effective and intact since 9/1/83, provides that

"Insurers shall maintain records of earned premiums and incurred benefits for each policy year for each policy, rider, endorsement and similar form which were combined for purposes of premium calculations, including the reserves. Records shall also be maintained of the experience expected in the premium calculations. Notwithstanding the foregoing, with proper justification, the commissioner may accept approximation of policy year experience based on calendar year data." [emphasts added].

1.53 WAC 284-60-050(5) requires, in relevant part, that a rate request submitted during the existing 'calculating period', as was done here, "shall include . . . a *demonstration of any contribution to and support from the reserves, and shall account for the maintenance of such reserves for future needs.*"

1.54 In addressing reserves for purposes of the subject rate increase, the 6/06/11 Actuarial Memorandum at section 12, page 5 stated: "*Active life reserves have not been used in this rate increase analysis except as described in Exhibit III*". Exhibit III omits identifying the extent of "Change in Active Life Reserve" for each of calendar years 1991 to 2005 except for a "cumulative change" entry for year 2005, without

explanation or justification for that other than a footnote to Exhibit III that reads: "Cumulative change, prior years are not available".

1.55 As to those omissions, WAC 284-60-070 required that records of reserves be maintained by the insurer "for each policy". No "justification" or explanation of any kind was provided to OIC as to why the records of the reserve changes for each of years 1991 to 2005 "are not available" as represented.

6. No showing that the loss-ratio actually experienced for the series LTC.04(WA) policy form was greater than as had been anticipated

1.57 The "2/2000" actuarial memorandum submitted to OIC in support of the initial premium rates of the series LTC.04(WA) policy form stated that "*The anticipated loss ratio (ratio of the present value of benefits to the present value of premiums) for this form is at least 70%*".

1.57.1 The actuarial memorandum dated "July, 2001" submitted to OIC in support of an Amendment to the original rate filing for the series LTC.04(WA) policy form, together with a Shared Care Benefit Option Rider and an Survivor Waiver Benefit Option Rider for such form, stated that "*The anticipated loss ratio for this form is at least 65%*."

1.57.2 The 6/06/2011 Actuarial Memorandum submitted to OIC in support of the subject 41% increase in premium rates provided no information as to whether the loss ratio actually experienced for the series LTC.04(WA) policy form was greater than as had been anticipated for the form as stated above.

H. Duties to Review a Premium-Increase Request and to Disapprove if Non-Compliant

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

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

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

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

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

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

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

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

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

1.64 RCW 48.19.060(2)(a), as it existed at all times relevant to the time allotted for agency approval or disapproval of requests to which it applied, allotted OIC 30 days (plus a possible 15 day extension) after date of submission of a rate-increase during which OIC may review and approve or disapprove the request,

and, if decision as to approval or disapproval is not made within that time, by force of law the request would be *deemed approved* as submitted. RCW 48.18.100(3) provided the same time limits for review, decision, and the same consequences of agency inaction. RCW 48.18.110(2) provided a 60 day total time limit for those functions as to requests within its' scope.

- 1.65 Applicant believes and alleges that no WA statute provided more than sixty (60) days for OIC review and decision as to approval or disapproval of the subject *request* for increase in premium rates of The Subject Forms.
- 1.66 OIC did not notify T-C Life or MetLife before August 10, 2011 in substance and effect that an extension of time was needed to review, approve, or disapprove the subject rate-increase request submitted to the agency June 10, 2011.
- 1.67 Any purported action by OIC subsequent to August 9, 2011 to affirmatively allow the deficient rate-increase request submitted to OIC June 10, 2011 for The Subject Forms was ineffective, ineffectual, unavailing, bootless and useless because of the earlier statutory *deemed* approval of such request.

I. Applicant's protected property rights created by contract

- 1.68 Applicant's constitutionally-protected property rights include rights created by the contract between the parties as to which applicant has a *legitimate claim of entitlement*.¹² Such include applicant's rights to the *continuation* of the initially-scheduled *benefits* set forth in the original "*Policy Schedule*" of the insurance contract (i.e., the policy form), except as was otherwise expressly or impliedly agreed by the parties.

1. Incomplete express agreement as to the Insurer's right to increase premiums

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

" We have a limited right to increase premiums. Your premium will not increase due to a change in Your health or age. We can increase your premium but only if we increase the premiums for all similar policies issued on the

¹² Board of Regents v. Roth, 408. U.S. 564, at 507 (1972) as quoted in Conard v. University of Washington, 119 Wn. 2d 519 , 529(1992). Perry v. Sindermann, 408 U.S. 593, 599-601 (1972).

same form as this Policy. If the premium increases, the increase will only be made as of an anniversary of the Policy Effective Date. We will give you at least 30 days written notice before We increase your premium."

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

1.69.2 The policy itself did not express how or by what means the amount of a premium increase was to be determined or ascertained (e.g., by a designated, impartial, neutral source or otherwise), such being a material and essential element of the contract. The policy did not state, infer, or imply that by accepting the policy form with the premium-increase provision, the purchasing consumers agreed to *waive* constitutional rights, including right to adequate notice with meaningful opportunity to be heard in respect to the reasons and grounds for exercise of the premium-increase provision and/or amount of premium-increase.

13

2. Laws then existing and applicable to the contract impliedly became part of the contract. Such laws regulate and control essential elements of the contract that were not *expressly* agreed to by the parties

1.75 In addition to express terms of the contract, established law recognizes that laws that are applicable to the contract at the time of its formation impliedly are a part of the contract unless a contrary intent is clearly expressed by the parties. ¹⁴ No such contrary intent is clearly expressed in the LTC.04(WA) insurance policy contract.

1.75.1 WA statutes in existence during 2001-2004, the period during which the LTC.04(WA) contracts were issued, included provisions of the Insurance Code that addressed and provided for state regulatory approval of premium-increases for the

¹³ *Fuentes v. Shevin*, 407 U.S. 67, 95-96 (1972) "*For a waiver of constitutional rights in any context must, at the very least, be clear. We need not concern ourselves with the involuntariness or unintelligence of a waiver when the contractual language relied upon does not, on its face, even amount to a waiver.*" * * * *Rather, the purported waiver provisions here are no more than a statement of the seller's right to repossession upon occurrence of certain events .*"

¹⁴ See *Wagner v. Wagner*, 95 Wn.2d 94, 621 P.2d 1279 (1980) and other like rulings. Also see *Corpus Juris Secundum*, Vol.1 17A, *Contracts*, 2011 edition, section 439, p.342-43 and representative cases cited.

contract, including approval of the grounds for and amount of a proposed premium increase, matters as to which the parties to such contracts had not expressly assented.

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

1.75.3 Laws that were part of the LTC.04(WA) contracts at the time of formation of such contracts also included the WA and U.S. constitutions,¹⁵ including provisions thereof that prohibit unconstitutional deprivations of property without due process and unconstitutional delegation or abdication of legislative power and authority, all of which were in full force and effect at that time.

J. Protected Property Interests Created by State Standards and Rules

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

1.77 The constitutional test for the creation of property interests by specific standards and rules are stated in *Conard v. University of Washington*, 119 Wn. 2d 519, 529, 834 P. 2d 17 (1992), i.e., that such standards and rules "contain 'substantive predicates' or 'particularized standards or criteria' . . . to guide the discretion of decisionmakers and which contain 'explicitly mandatory language', i.e., specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow . . . (citations omitted)." *Kentucky Dept of Corrections v. Thompson*, 490 U.S. 454, 462-63, 104 L.Ed. 2d 506, 109 S. Ct. 1904 (1989)).¹⁵

1.78 Ch. 48.18 RCW is made applicable to the subject LTCI by RCW 48.18.010. RCW 48.18.100(1) provides in relevant part that "No insurance policy form . . . may be issued, delivered, or used unless it has been filed and approved by the commissioner." RCW 48.18.110(1) mandates in relevant part that: "The commissioner shall disapprove any such form of policy . . ." on any of five (5) specified grounds "only" but including "(b) if it is in any respect in violation of or does not comply with this code or regulation of the commissioner issued pursuant to the code." (underling

¹⁵ See federal and state cases cited at __C.J.S., section 439, p.343, at footnote 7 thereof.

¹⁶ *Conard* continued: "Although *Thompson* involved a liberty interest, the above test has been applied in various contexts to determine if protected property interests have been created." (citing numerous cases from different Courts of Appeal including 5 from the 9th Circuit).

emphasis added). Thus, the provisions of RCW 48.19.030(3)(a) and WAC 284-60-040(1) and -050(5), referenced above are not mere generalized recommendations to be optionally honored or disregarded by the rate-increase proponents or by OIC. They are particularized, objective, restrictive measures by which one determines whether the increase-request complies with applicable law.

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

1.80 Likewise, WAC 284-60-050(5)¹⁷ is a particularized standard that, as to "*a rate increase submitted during the calculating period*", as here, mandates that the submission to OIC "*shall include a comparison of the actual to expected loss ratios, a demonstration of any contribution to and support from the reserves, and shall account for maintenance of such reserves for future needs.*" (emphasis added)

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

K. Inadequate information, notice, and opportunity to object and be heard before the increase was deemed approved and implemented; inadequate procedural safeguards to protect against erroneous deprivations of property rights

1.82 *City of Redmond v. Moore*, 151 Wn.2d 664, 670 (2004) holds: "Though the procedures may vary according to the interest at stake, "[t]he fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)."

¹⁷ As previously noted, ambiguity exists as to the applicability of WAC 284-60-050 in that it states it "applies to individual disability insurance forms" without mention of other forms, whereas WAC 284-60-010(1) states that "*This regulation, WAC 284-60-010 through 284-60-100, applies to all insurers, and to every disability policy form filed for approval in this state after August 31, 1983 except* [for forms not relevant here [emphasis added]]

- 1.83 The MetLife notification of the premium increase dated 12/09/2011 did not include information as to the availability of (or process for) a hearing at which the policyholder could be heard regarding the subject rate increase before it became legally effective and/or was to be implemented as to her/his policy (pkoa).
- 1.83.1 Prior to such implementation, neither MetLife nor T-C Life informed policyholders affected by the rate increase as to (a) the actuarial pricing assumptions that were used in the initial pricing of each or any of the three policy forms that were combined for purposes of the rate increase, and/or (b) the forms (or detail as to the similarity or dis-similarity of the forms) that were combined. Policyholders were without adequate means of comparing those initial actuarial assumptions with the actuarial assumptions that were later used for purposes of the 41% rate increase request for each of the three forms. Likewise, policyholders were without adequate means of comparing similarity or dis-similarity of all forms that were combined.
- 1.83.2 During periods relevant to the initial pricing of each of the combined forms, RCW 48.02.030 obliged OIC to withhold from public inspection actuarial formulas, statistics, and assumptions submitted to OIC in support of the rate filing upon request of the insurer. Requests were made to OIC by the insurer that the actuarial assumptions made in initially pricing the series LTC.03(WA) not be made public and like request was made to OIC on behalf of the Insurer in respect to the LTC.04(WA) forms. Information submitted to OIC as to the series LTC.02(WA) forms. Such requests were honored by OIC.
- 1.83.3 The information submitted to OIC has not been retained by OIC and was presumably purged from OIC records long prior to the MetLife filing for the 41% rate increase.
- 1.83.4 OIC helpfully assisted applicant in applicant's 2012 search of OIC records of information that had been submitted to OIC in the initial pricing of the series LTC.02(WA), LTC.03(WA) and LTC.04(WA) forms. That searching, however, did not uncover or gain access to the actuarial memoranda and assumptions that respectively were submitted and used in initially pricing of each of the series LTC.02(WA), LTC.03(WA), and LTC.04(WA) policy forms (other than incomplete secondary references to unspecified modifications of assumptions made in pricing LTC.03(WA) forms from those previously used in pricing LTC.02(WA) forms).
- 1.83.5 Likewise, that searching did not uncover or gain access to the forms of the series LTC.02(WA) policy forms. Applicant has been unable to compare the similarity or

dis-similarity of such forms with the series LTC.03(WA) and/or LTC.04(WA) policy forms.

- 1.83.6 OIC informally advised applicant that OIC's applicable record retention policy and practice was to retain records of those kinds for eight (8) years, to purge records thereafter, and that an inquiring party would need to ask the insurer to provide a copy of information that is no longer available at OIC.
- 1.83.7 Because of (a) RCW 48.02.030's designation of such information as not-public and (b) the attending OIC record retention/purging policies and practices, applicant was unable to access at OIC the initial rate filing information submitted to OIC for the LTC.04(WA) and LTC.03(WA) policy forms and other specified information as to the LTC.03(WA) forms.
- 1.83.8 For the same reasons, applicant has been unable to access through OIC either *form* or *rate* filing information submitted to OIC by TIAA for the series LTC.02(WA) forms except as is secondarily- referenced in available correspondence relating to the LTC.03(WA) policy forms.
- 1.83.9 As more fully detailed in Count 2, applicant and applicant's spouse Mary made written requests addressed to T-C Life and MetLife seeking a copy of various documents including the foregoing referenced documents. MetLife provided some documents but not others, and did not provide any documents disclosing actuarial assumptions used in initially pricing any of the three forms) and/or the *forms* of the series LTC.02(WA) policy forms, and contended that neither MetLife nor T Life was legally required to provide the requested information. T-C Life did not acknowledge or respond to any of those requests. and did not acknowledge receipt of any of the three requests.
- 1.84 As to due process, WA laws and/or regulations applicable to that increase did not reasonably assure that adequate information regarding the rate-increase had been given to the affected policyholder by the insurer that was needed to effectively assess and/or object to the increase before it was implemented, and did not provide adequate notice and meaningful opportunity for the policyholder to be heard in a meaningful manner in respect to the increase before the increase became effective and was implemented as to her/his policy.
- 1.85 WA laws, regulations, and processes applicable to that increase did not/do not provide adequate procedural safeguards to ensure against the erroneous deprivation of property rights of a policyholder as required by constitutional due process, including

refund of premium increases and/or restoration of benefit decreases that were erroneously imposed and/or exacted.¹⁸

- 1.86 In offering and issuing the LTC.04(WA) policy form to consumers, T-C Life did not disclose to consumers nor did such consumers generally have reason to know that a proposed future rate-increase for such policies could or would be solely supported by the actuarial memorandum and certification of the proponent's actuary-officer- agent who was conflicted by duties of loyalty owing to the proponent in respect to the outcome of the rate-increase request, reflecting the "probability of unfairness"¹⁹ of the actuarial memorandum and certification.

L. Unconstitutional Delegation, Abdication, and Surrender of Legislative Power to the Financially-Interested Proponent of the Increase

1.87 The test formulated by Barry & Barry, Inc. v. Dep't of Motor Vehicles, 81 Wn.2d 155, 159, 500 P.2d 540 (1972) for a constitutionally-permissible delegation of legislative authority and power to non-representative entities or officials requires "(1) that the legislature has provided standards or guidelines which define in general terms what is to be done and the instrumentality or administrative body which is to accomplish it; and (2) that procedural safeguards exist to control arbitrary administrative action and any administrative abuse of discretionary power".

1.87.1 Consistent with the 1st part of the Barry & Barry test, the statutory and regulatory provisions detailed above define in general terms what is to be done with respect to premium-increase requests for the subject policies, i.e., standards or guidelines that objectively determine whether a request for premium-increase submitted to OIC for approval satisfies and complies with all applicable provisions of the Code and regulations of the Insurance Commissioner.

1.87.2 Likewise consistent with the 1st aspect of the Barry & Barry test, the legislature delegated to the Insurance Commissioner (or her/his designate) authority to accomplish the functions of review, approval or disapproval of a request for premium increase within a designated limited period of time after submission of the request to the agency.

¹⁸ *City of Redmond v. Moore*, 151 Wn. 2d 664, 672-677 (2004) (deprivations of property rights in driver's licenses without adequate safeguards held to violate due process).

¹⁹ See penultimate paragraph of concurring opinion of Justices Utter, Dolliver, and Dimmick in *Medical Disciplinary Board v. Johnston*, 99 Wn.2d 466, 663 P. 2d 457 (1983), citing *IN RE MURCHISON*, 349 U.S. 133, 136, 99 L. Ed. 942, 75 S. Ct. 623 (1955).

- 1.87.3** As to the *category of premium-increase requests* submitted to OIC that OIC does not approve or disapprove within the limited time legislatively-allotted to the agency to perform that function (the "*deemed-approved category*") , applicable state statutes deem such requests as approved, as legally effective, and as filed with the agency for use and for implementation (at least contingently) upon expiration of that allotted time regardless of whether such request complies or does not comply with all provisions of the Code and regulations of the Commissioner that are applicable to the requests.
- 1.87.4** Legislative standards and guidelines referenced above that otherwise are applicable to premium-increase requests submitted to the agency are rendered inoperable to rate increase proposals of the *deemed-approved category*.
- 1.87.5** The legislature did not provide substitute or replacement standards or guidelines that would be applicable to the *deemed-approved category* of requests in lieu of the existing standards and guidelines that generally apply to premium-increase requests.
- 1.87.6** That state procedure does not fulfill the requirements of the "standards doctrine" and 1st aspect of the *Barry & Barry* test that addresses the "standards doctrine" and, in the context of the premium-increase request for the subject LTC.04(WA) policy forms, constitutes an unconstitutional delegation, abdication, and surrender of legislative power to the financially-interested private proponent of the subject premium-increase request.
- 1.87.7** Inconsistent with the 2nd part of the *Barry & Barry* test, the legislature did not provide adequate safeguards to control inaction and/or arbitrary failure of the agency to perform in timely manner those delegated functions prior to deprivations of property interests of policyholders, including those of applicant.
- 1.87.8** Those state procedures that became effective as to The Subject Forms gave the state's imprimatur to a pig in a poke, to deemed approval, effectiveness, filing, contingent and ultimate implementation of the subject request for increase that was not timely disapproved by the agency, resulting in deprivations of property interests of policyholders while MetLife, the financially-interested proponent of the increase, profits therefrom.
- 1.87.9** The subject procedures (including the 12/09/11 notice of the increase) did not advise affected policyholders of any process available to them to determine the basis of the increase or for presenting objections to the increase.

1.88 The state procedure indirectly but effectively treats the 1st part of the *Barry & Barry* test as being irrelevant and inapplicable to the *deemed-approved category*, i.e. , requests for increase in rated deemed approved by RCW 48.19.060(2), by RCW 48.19.100, by RCW 48.18.100(3) and/or by RCW 48.18.110(2). As to the *deemed-approved category*, applicable WA legislation does not provide for pre-deprivation "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" ²⁰ before the subject increase became effective and was in process of being implemented.

1.89 Applicable laws and regulations applicable to those circumstances do not provide an administrative process for the affected LTC.04(WA) policyholders to gain retroactive relief for the past imposition of the subject premium-increase/reduction of benefits of their policies.

1.90 Deemed approval was accorded the subject rate increase request that was solely supported by the actuarial memorandum and certification of the proponent's actuary/officer/agent who was conflicted by duties of loyalty owing to the proponent in respect to the outcome of the rate-increase request, reflecting the "probability of unfairness" ²¹ of the actuarial memorandum and certification.

1.91 Applicable state procedures failed to fairly balance (1) the private interest to be protected, (2) the risk of an erroneous deprivation of that interest by the government's procedures, and (3) the state's interest in maintaining the current procedures, as required by the three-part approach of *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). ²²

1.92 Such state procedures as applied here violate the state and U.S. constitutional provisions governing delegation of legislative power and authority. The deemed approval of such increase should be adjudicated to be null and void and relief therefrom should be ordered to the full extent of the Commissioner's authority.

**Count 2: Seeking Information from insurer pursuant to RCW 48.19.300,
good faith, and fairness**

15. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 94 L. Ed. 865, 70 S. Ct. 652 (1950) quoted in *Olympic Forest Products Inc. v. Chaussee Corp.*, 82 Wn.2d 418, 422 511 P. 2d 1002 (1973)

²¹ See penultimate paragraph of concurring opinion of Justices Utter, Dolliver, and Dimmick in *Medical Disciplinary Board v. Johnston*, 99 Wn.2d 466, 663 P. 2d 457 (1983), citing *IN RE MURCHISON*, 349 U.S. 133, 136, 99 L. Ed. 942, 75 S. Ct. 623 (1955).

²² *State v. Simmons*, 152 Wn.2d, 450, 456 (2004) found the *Mathews* procedural due process balancing test to be appropriate in considering the adequacy of procedural safeguards in delegating legislative powers.

2.1 Applicant re-alleges paragraphs 1.1 to 1.75.3 and paragraphs 1.83.1 to 1.83.8 inclusive of Count 1, which allegations by this reference are incorporated into and made a part of this Count 2.

2.2 Pursuant to RCW 48.19.300, applicant and spouse Mary made written request dated 9/29/12 to T-C Life seeking specified documentary information previously filed with OIC relative to the *forms* and/or the *rates* of the three policy forms that were combined (grouped) together for purposes of the rate increase request and that is pertinent to the rates of the policies issued to and held by applicant and spouse (pkoa).

2.3 The request was also addressed to MetLife (as T-C Life's designated administrator for the subject policies) for purposes of information and coordination in responding (pkoa).

2.4 T-C Life did not reply to or acknowledge receipt of the request (pkoa). MetLife replied by letter of 11/14/12 and provided some but not all of the requested information (pkoa). As to the omitted items, MetLife's letter contended that LTCI constitutes *"disability insurance as prescribed in RCW 48.11.030"*; that RCW 48.19.300 *"does not apply to disability insurance as stated in RCW 48.19.010"* (pkoa). MetLife also volunteered opinion that *"T-C Life is not required under Washington law to send you the documents requested in your letter."* (pkoa).

2.5 By letter of 1/08/13 to T-C Life and to MetLife, with attachment, applicant (and spouse Mary) controverted the above 11/14/12 MetLife contentions, further explained the pertinence of the requested documents that had been withheld, and reiterated request for the omitted documents.

2.6 Again, T-C Life did not reply or acknowledge receipt. By letter of 2/06/13, MetLife reaffirmed its' 11/14/12 letter and stated in substance and effect that neither MetLife nor T-C Life were required to *"... to provide you with the documents requested in your letter dated 9/29/12."*

2.7 By letter dated 3/05/13 addressed to T-C Life and MetLife, applicant and spouse Mary responded to MetLife's 2/06/13 letter as follows (pkoa):

"Unfortunately, it appears that you and we are at an impasse as to whether RCW 48.19.300 is or is not applicable here.

Without waiving or prejudicing either your position or our position on that issue, we respectfully request that, in keeping with good faith and fairness in relation to the imposition of the 41% premium increase and the bundling of policy forms for purpose of that increase, the insurer promptly provide to us (or cause to be provided to us) the items of information described in the attachment to this letter. We request that information so that we may better assess and understand the reasons and justification for the premium increase. All that information was previously requested in our earlier letters of 9/12/12 and/or 1/08/13.

We will pay your reasonable costs incurred in providing the information. Please advise as to the amount. Respectfully yours,"

2.8 MetLife replied and reiterated its previous position and opinions that neither MetLife nor T-C Life was required by law to provide the requested information (pkoa). T-C Life did not reply to or acknowledge receipt of the 3/05/13 request and did not provide (or cause to be provided) the requested documents (pkoa).

2.9 Applicant addressed and mailed each of the 9/29/12, 1/08/13, and 3/05/13 letters to T-C Life at its' office address, i.e., to TIAA-CREF Life Insurance Company, 730 Third Avenue, New York, NY 10017-3206, by U.S. Mail, postage prepaid (pkoa).

2.10 Under Washington law, including RCW 48.01.030 and rulings of the Supreme Court of Washington: An insurer has quasi-fiduciary relationship with the insured that arises from the insurance contract and from the elevated level of trust that underlies the insureds' dependence on their insurers; the insurer has an elevated duty to act in good faith toward the insured that rises to a level higher than that of mere honesty and lawfulness of purpose; the insurer has a broad obligation to deal fairly with the insured and to give equal consideration to the interests of the insured in all matters as it gives to its' own interests.²³

2.11 The failures of T-C Life to reply to, to acknowledge, and to act upon each or any of the requests made for documents violated T-C Life's afore-stated duties owing to such insureds; likewise the failure of T-C Life to furnish to applicant and applicant's spouse the documents requested. Such failures unreasonably deprived applicant and applicant's spouse of information reasonably needed and requested by them that is pertinent to the increased premium rates of our policies, and unfairly dis-served our efforts and need to gain understanding of the purported basis and justification for the rate increase and grouping of policies.

²³ E.g., see *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 385-86, 715 P.2d 1133 (1986)); *Van Noy v. State Farm Mutual*, 142 Wn. 2d 784, 793 (2001),

2.12 The afore-stated duties are non-delegable duties imposed by law on the insurer. T-C Life was not excused from such duties by MetLife's responses made to the three letters.

2.13 The issue of whether the subject LTCI is "disability insurance" as defined by RCW 48.11.030 and within the meaning of RCW 48.19.010(1)(b) is also an issue for adjudication in Count 1.

2.14 Applicant seeks adjudication of the disputed issues as to the applicability of RCW 48.19.300 and an order directing T-C Life to deliver forthwith to applicant a single true and complete copy of each document listed in the attachment to the 3/05/11 letter pursuant to RCW 48.19.300 and pursuant to and as required by the enhanced and quasi-fiduciary duties of the insurer(s) to applicant and applicant's spouse as insured, together with such other relief as is proper and just in the premises.

Count 3

Seeking Ch. 48.18 RCW orders that withdraw approval of the changed "Policy Schedule" forms, cessation of use of such forms, and related orders

3.1 Applicant re-alleges paragraphs 1.1 to 1.75.3 inclusive of Count 1, which by this reference are incorporated into and made a part of this Count 3.

3.2 RCW 48.18.100(1) provides in part: "*No insurance policy form. may be issued, delivered, or used unless it has been filed with and approved by the commissioner.*" The original "Policy Schedule" forms that detailed the benefits and premiums of each of the LTC.04(WA) policy form that are insured by T-C Life was a required and integral part of each policy as such existed before the 41% rate-increase request applicable thereto was approved and implemented.

3.3 Changes in benefits and premiums of each such LTC.04(WA) policy form resulting from the 41% rate-increase, and option(s) exercised by each policyholder in respect thereto, were detailed and set forth in a changed "Policy Schedule" form delivered to each policyholder, including applicant and spouse Mary, after options accorded to the policyholder as to the 41% increase were exercised. The form stated: "*THIS POLICY SCHEDULE REPLACES ANY POLICY SCHEDULE AND ANY SCHEDULE OF ADDITIONAL BENEFITS AND PREMIUMS PREVIOUSLY ISSUED TO YOU.*"

- 3.4 Each changed Policy Schedule form effectively became part of the LTC.04(WA) policy to which it related when it was delivered to the policyholder. Since then, each such form has been and is now being used to identify and collect the increased premiums and/or identify the reduced benefits of the policy to which it relates.
- 3.5 The approval of the subject rate-increase and Policy Schedule forms (by whatever means such occurred) was unfounded because, as detailed by the re-alleged allegations of Count 1, insufficient information was provided to OIC to show that the proposed increase (reflected in each Policy Schedule form) complied with all applicable laws and all regulations issued by the Commissioner pursuant to the Insurance Code.
- 3.6 RCW 48.18.100(3) provides in relevant part: "The commissioner may withdraw any approval at any time for cause". The unqualified scope of that authority reflects that it is applicable to either the affirmative approval and/or the deemed approvals of form and content of the Policy Schedule of rates and benefits for the subject policies. RCW 48.18.100(4) provides that "The commissioner's order disapproving any form or withdrawing any previous approval must state the grounds for disapproval"
- 3.7 RCW 48.18.110(1) limits the grounds for withdrawal of approval to five (5) specified causes including "a) *If it is in any respect in violation of or does not comply with this code or any applicable order or regulation of the commissioner issued pursuant to the code*"
- 3.8 As detailed in the re-alleged paragraphs of Count 1, the rate-increase request that was the basis for each new "Policy Schedule" form [for the in force series LTC.04(WA) policy forms as to which T-C Life was insurer] was not and is not supported with information submitted to OIC showing that the request complied with applicable provisions of the insurance code and regulations of the Commissioner issued pursuant to the code. Cause is shown that the rate increase and Policy Schedule do not comply with such laws and regulations.
- 3.9 Likewise, such information submitted did not and does not show that the benefits scheduled in the changed Policy Schedule are reasonable in relation to premiums set forth in that changed form, consistent with the intent of WAC 284-54-600(2).

3.10 The ongoing use of the changed Policy Schedule forms unfairly and inequitably profits MetLife (and/or MetLife and T-C Life) from the legally-insufficient submissions to the agency in support of the changed Policy Schedule forms at the expense of policyholders including applicant and spouse Mary.

3.11 Accordingly, the Commissioner has authority, grounds, cause, and duty under RCW 48.18.100 and 48.18.110(1) to withdraw approval of the Policy Schedule forms that reflect the 41% increased premiums/decreased benefits of the subject LTC.04(WA) policy forms.

3.12 Applicant is adversely impacted and aggrieved by the ongoing use of the changed "Policy Schedule" form issued to applicant and applicant's spouse (pkoa).

3.13 Cause exists within the meaning of RCW 48.18.100 (2) and (3) and RCW 48.18.110 for the Commissioner to issue a notice to all parties affected by the proposed withdrawal of approval of the changed Policy Schedule form, hold a hearing, and after making findings of fact and conclusions of law, issue an order pursuant to RCW 48.18.100(3) and (4) and RCW 48.18.110(1)(a) that:

(a) Withdraws approval of the rate filing for the 41% increase prospectively pursuant to RCW 48.18.100(3);

(b) Directs that T-C Life cease use of the changed "Policy Schedule" forms that replaced the original Policy Schedule form originally applicable to the LTC.04(WA) policy forms as to which T-C Life is insurer, including those issued to applicant and applicant's spouse Mary;

(c) Directs reinstatement, use, and applicability of the original "Policy Schedule" form of each policy until otherwise ordered by the Commissioner; and,

(d) Provides related relief as is just and proper.

Count 4: Seeking prospective relief under RCW 48.19.120 or alternatively for findings and order as to the futility of pursuing that remedy

4.1 Applicant re-alleges paragraphs 1.1 to 1.75.3 inclusive of Count 1 which, by this reference, are incorporated into and made a part of this Count 4.

4.2 Within the meaning of RCW 48.19.120(3), applicant is a party aggrieved by the 41% rate-increase that is in effect for the LTC.04(WA) policy forms issued to applicant and his spouse and here seeks administrative relief, if available, by order issued under RCW 48.19.120(1) on the grounds that the rate-increase request was not and is not

supported by adequate information showing that it complied with all laws and regulations applicable thereto, as detailed in the preceding allegations.

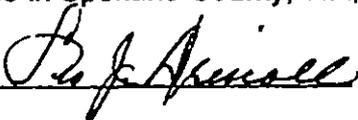
- 4.3 The alleged facts constitute grounds for the Commissioner to issue an order under RCW 48.19.120(1), after notice to and hearing of all necessary parties, that the 41% rate increase filing that is in effect is no longer applicable and to order *"that the filings shall be deemed to be no longer effective"* as stated in that section.
- 4.4 However, RCW 48.19.120(2) provides: *"Such order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order."* The LTC.04(WA) policy forms issued by T-C Life to applicant and spouse Mary were issued in 2002 and reportedly all LTC.04(WA) policy forms were issued between 2001 and 2004.²⁴
- 4.5 Accordingly, it seems futile for applicant to pursue remedy under RCW 48.19.120; however, the Insurance Code and applicable regulations are complex and applicant has an incomplete understanding of them. Further, it is authoritatively stated that *"the Washington Courts have a strong bias toward requiring exhaustion which cannot be overcome by a subjective feeling of plaintiff that remedies are futile."*²⁵
- 4.6 Applicant seeks adjudication, findings, and order for any available administrative relief, if any, or in the alternative, adjudication, findings, and order as to the futility of pursuing that remedy.

Prayer: Applicant requests hearing, adjudication, findings, and orders under each of Counts 1, 2, 3 and 4 as are just proper and warranted in the premises.

Verification and Signature: Leo J. Driscoll, the applicant, hereby confirms and verifies that all matters alleged in the foregoing Application that are noted by use of the abbreviation 'pkoa' are true and correct and that all other matters alleged in this Application are based on information which I believe to be true and correct to the best of my knowledge and belief.

Signed and dated by me in Spokane County, WA, September 15, 2014.

Leo J. Driscoll

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²⁴ As stated in the 6/06/11 Actuarial Memorandum.

²⁵ William R. Andersen, *The 1988 Washington Administrative Procedures Act - An Introduction*, 64 Wash. Law Review, 781, 829 (1989) [case citation omitted].

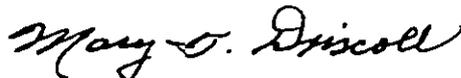
Declaration of Mary T. Driscoll

Mary T. Driscoll hereby declares:

1. I am of adult age. I reside at 4511 E. North Glenngrae Ln., Spokane, WA 99223.. Leo J. Driscoll ("Leo") and I lawfully intermarried In Spokane, WA on November 24, 1972. We are now and have been married and residents of Spokane County at all times since then.
2. In 2002 long-term care insurance policy Number 09852468 insuring long-term care insurance risks to be incurred by me was issued and mailed to me by TIAA-CREF Life Insurance Company, and policy Number No. 09852450 insuring long-term risks to be incurred by Leo was issued and mailed to Leo by the same company. Both policies have an effective date of August 1, 2002.
3. All premiums for such policies have been paid with our community-owned funds from our community-owned bank account and such policies are our community property.
4. I approve of Leo's submission and pursuit of the attached "*Application for an Adjudicative Proceeding under RCW 34.05.413 with four (4) counts*" to the Insurance Commissioner of the State of Washington. I consider those steps to be needed and proper to protect our property interests in our above-described insurance policies.

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

Signed and dated by me in Spokane County, Washington this 15th day of September, 2014.



Mary T. Driscoll

Table of Contents to Driscoll Application to the Insurance Commissioner

Listing of Parts and page where each begins

Application and Prefatory	1
1. Nature and Scope of Count 1	1
2. Nature and Scope of Count 2	2
3. Nature and Scope of Count 3	3
4. Nature and Scope of Count 4	3
5. Jurisdiction and Constitutional Right to Hearing of Count 1	3
6. Jurisdiction and Discretionary Hearing of Count 2	4
7. Jurisdiction and Implied Right to Hearing of Count 3	4
8. Jurisdiction and Conditional Right to Hearing of Count 4	4
9. Demands/Requests for Hearing	5
10. Factors favoring a consolidated hearing of all Counts	5
11. Timeliness	5
12. Applicant requests an Administrative Law Judge	5
13. WA State Attorney General	6
14. Known other parties to be served	6
15. Notice to other policyholders	6
16. Abbreviation for allegations based on personal knowledge of applicant (pkoa)	6
Count 1: Constitutional Challenges to the State's Procedures Applicable to the Deficient Premium-Increase Request that was Not Timely Disapproved by the Agency	6
A. Insured, insurer, and insurance policies identified	6
B. MetLife's Initiation of a 41% Premium Rate-Increase; Notice of the Increase	8
C. MetLife's parallel agreements with T-C Life and with T-C Life's parent company	9
D. MetLife became the Insurer of some LTC.04(WA) forms by Assumption and Novation	11
E. MetLife Grouped and Treated Three Different Policy Forms as "one block of business" for Purposes of a Common Rate-Increase for All Three Forms	11
F. The "MetLife's Methodology" employed in aid of the rate increase	13
G. Insufficient Information Submitted to Show the Rate-Increase Request Complied with the Code and Regulations	14
1. Non Compliance with Ch. 48.19 RCW Information Requirements	14
2. Applicability of Provisions of Ch. 284-60 WAC	15
3. Non Compliance with Ch. 284-60 WAC Information Requirements for Grouping Forms	16
4. Non Compliance with WAC requirements for providing loss ratio information	17
5. Non Compliance with WAC Requirements to Provide Information as to Reserves	18
6. No showing that the loss-ratio actually experienced for the series LTC.04(WA) policy form was greater than as had been anticipated for the form	19

H. Duties to Review Premium-Increase Request and to Disapprove If Non-Compliant . .	19
I. Protected Property Rights Created by Contract . .	21
1. Incomplete express agreement as to the insurer's right to increase premiums . .	21
2. Laws then existing and applicable to the contract impliedly became part of the contract. Such laws regulate and control essential elements of the contract that were not expressly agreed to by the parties . .	22
J. Protected Property Rights Created by Particularized Standards and Rules . . .	23
K. Inadequate information, notice, and opportunity to object and be heard before the increase was deemed approved and was implemented; Inadequate procedural safeguards to protect against erroneous deprivations of property rights. . .	24
L. Unconstitutional Delegation, Abdication, and Surrender of Legislative Power to the Financially- Interested Proponent of the Increase . . .	27
 Count 2: Seeking information from insurer pursuant to RCW 48.19.300 and pursuant to good faith and fairness. . .	29
 Count 3: Seeking Ch. 48.18 RCW orders withdrawing approval of the changed "Policy Schedule" forms, cessation of use of such forms, and related orders . . .	32
 Count 4: Seeking prospective relief under RCW 48.19.120 or alternatively for findings and order as to the futility of pursuing that remedy . . .	34
 Declaration of Mary T. Driscoll approving submission and pursuit of the Application . . .	36