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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

LEO J. DRISCOLL,

Petitioner.

Docket No. 16-0002

OIC'S MOTION TO DISMISS,
OR IN THE ALTERNATIVE,
SUMMARY JUDGMENT

I. MOTION AND RELIEF REQUESTED

The Office of the Insurance Commissioner ("OIC") submits this motion requesting entry of an order dismissing Leo J. Driscoll's Demand for Hearing as a matter of law, or in the alternative, entry of an order finding that there is no genuine issue of material fact and that the OIC is entitled to summary judgment dismissing Petitioner's Demand for Hearing as matter of law.

II. STATEMENT OF FACTS

The Office of the Insurance Commissioner, among other duties to regulate the insurance industry, approves or disapproves long-term care insurance rate filings under the comprehensive directives found in RCW 48.20, RCW 48.83 and RCW 48.84. On August 14, 2014, MetLife submitted three rate filings to the Office of the Insurance Commissioner that sought to increase premium rates to ensure coverage of all future claims for three long-term care policies based upon the anticipated loss ratios for these policies. See OIC Exhibit 1 Attached to Declaration of Scott Fitzpatrick: MetLife 2014 SERFF Filings. These three long-term care policies are successive policy forms of the same product with no major change between these policies. In this instance, these three policies are distinguished within the product line as LTC.02, LTC.03, and LTC.04.

1 MetLife's filings also included modified policy forms for the Insurance Commissioner's
2 approval, such as nonforfeiture notification letters to be sent to consumers, as required
3 with long-term care rate filings.

4 The Office of the Insurance Commissioner ensures that all rate filings with
5 premium rate increases are submitted with evidence supporting each filing. MetLife
6 submitted all of the actuarial data and information required by the Insurance Code to
7 support the 2014 rate filings including an Actuarial Memorandum calculating the
8 anticipated loss ratio of the long-term care insurance product. *See* WAC 284-83-090.
9 Loss ratio is a measure of the relationship between claims and premiums. *See* WAC
284-54-610.

10 The Insurance Code specifies various considerations that must be taken into
11 account in the setting of rates, including past and prospective loss experience, hazards,
12 profitability and expenses. *See* RCW 48.83, RCW 48.84, WAC 284-83 and WAC 284-
13 54. The Office of the Insurance Commissioner's long-term care actuary, Scott
14 Fitzpatrick, specializing in and experienced with long-term care insurance rate filings,
15 reviewed MetLife's 2014 rate filings and supporting materials. *See* Declaration of Scott
Fitzpatrick In Support of Motion to Dismiss, Or In The Alternative, Summary Judgment.

16 These rate filings and supporting materials were no different in form or
17 substance than any other typical rate filing. *Id.* MetLife did not submit Washington
18 specific experience because that experience would not have been credible by actuarial
19 and insurance industry standards. *Id.* Actuarial and insurance industry standards require
20 that for loss ratios to be statistically credible there must be at least 1,082 active claims
21 (claims being processed at the time of the filing) in the block of insurance. *Id.* All three
22 of MetLife's policies combined in the state of Washington only total eight hundred and
23 seventy-three (873) policies, of which only a small percentage would have been
24 currently in active claim status. *See Id* and OIC Exhibit 1: MetLife 2014 SERFF Filings.

25 MetLife had already received approval from the Insurance Commissioner to
26 submit national experience during the course of a 2011 rate filing due to the inability to
submit Washington experience that would meet actuarial and insurance industry

1 standards to be credible.¹ Mr. Fitzpatrick was not the actuary who approved the 2011
2 MetLife rate filings. However, Mr. Fitzpatrick reviewed and agreed with OIC's previous
3 acceptance of national rates during Petitioner's prior case that contested MetLife's 2011
4 rate filings. *See* Decl. of Scott Fitzpatrick, OIC Exhibit 2: MetLife 2011 SERFF Filing.
5 OIC Docket #14-0187, OIC Exhibit 3: Actuary Emails and OIC Exhibit 4: Prior
6 Declarations of Scott Fitzpatrick. The Insurance Commissioner accepted MetLife's
7 national experience because it was the only experience that was creditable.

8 MetLife's 2014 rate filings provided detailed actuarial information that showed
9 that MetLife had already paid out claims that amounted to 54.4% of collected premiums
10 for this product line. *See* Decl. of Scott Fitzpatrick and OIC Exhibit 1: MetLife 2014
11 SERFF Filings. If the OIC did not approve MetLife's rate filing, actuarial calculations
12 directed that the policies would be operating at a 170.7% loss ratio, making the policies
13 virtually insolvent in the future. *Id.*

14 The OIC has concerns that even with this change in premiums, the products will
15 still be operating at a projected 98.4% loss ratio. *Id.* Operating at such a high loss ratio
16 potential could violate the protections of WAC 284-83-230(6) which require that loss
17 ratios must provide for future reserves and must account for the maintenance of such
18 reserves for future needs. However, OIC concerns regarding the effect of premium
19 changes on policyholders outweighed the potential concerns regarding loss ratio.

20 The OIC spent a significant amount of time and diligence in reviewing MetLife's
21 August 14, 2014 rate filings and the actuarial information contained in these rate filings.
22 MetLife's rate filings were not approved until July 10, 2015. *Id.* MetLife submitted all
23 required information to support these rate filings and the rate filings were not excessive,
24 inadequate or unfairly discriminatory. *Id.* That same day, the Dispositions were posted
25 in SERFF and MetLife was notified that the Insurance Commissioner approved the rate
26 filings. *Id.*

As required by law, MetLife could not automatically implement the premium
rate increase. The premium rate increase could only be implemented at the next renewal

¹ This is a closed block of insurance. Only existing policies can be renewed and
no other policies can be sold in this product line.

1 term of each individual's long-term care insurance contract. This protects consumers by
2 ensuring that their contract does not change during their contract term.

3 Long-term care insurance consumers have additional protections in Washington.
4 The Legislature and OIC recognized the special nature of long-term care insurance and
5 developed regulations to protect consumers who choose not to renew a long-term care
6 insurance contract due to a premium rate increase. These consumers are not forced to
7 choose between paying the new premium rate or not renewing coverage, rather long-
8 term care insurance carriers are required to provide nonforfeiture options to Washington
9 consumers as an alternative to renewal or non-renewal. In accordance with these
10 provisions, at least sixty (60) days prior to a premium increase at renewal of a policy,
11 MetLife advised policyholders that they could lessen or avoid the impact of the new
12 premium rate by choosing an alternative option such as reducing coverage on the policy
or not renewing the contract while retaining a level of benefits commensurate with the
premiums paid.

13 After receiving this notice, Petitioner filed a Demand for Hearing disputing the
14 approval of these rate filings on January 4, 2016. While Petitioner seeks to have
15 MetLife's rate filings disapproved, he has not included MetLife, a necessary party, in
16 this action.

17 III. BACKGROUND OF LONG-TERM CARE INSURANCE

18 1. Overview of Long-Term Care Insurance

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

1 include home health care, adult day care, nursing home care, and group living facility
2 care.

3 Long-term care insurance is generally structured around a number of benefit
4 options selected by enrollees. *LONG-TERM CARE INSURANCE, Carrier Interest in the
5 Federal Program, Changes to Actuarial Assumptions, and OPM Oversight*, U.S.

6 GOVERNMENT ACCOUNTABILITY OFFICE (July 2011),- [http://www-
7 .gao.gov/assets/330/322553.pdf](http://www-gao.gov/assets/330/322553.pdf) (Last visited Nov. 1, 2014), (“GAO Report”)

8 pg. 8. The benefit options include: the types of services covered (such as care in the
9 home or in a nursing home or both), the daily benefit amount, the benefit period (which
10 can range from one (1) year to a lifetime), the length of the waiting period before
11 insurance will provide coverage, and inflation protection to help the insurance daily
12 benefit amount remain commensurate with costs of care. *Id.*

13 Long-term care insurance premiums are affected by many factors. Carriers
14 charge higher premiums for more expensive benefits, for example higher daily benefit
15 amounts, longer benefit periods, and higher levels of inflation protection will increase
16 premiums. *Id.*, pg. 9. In addition, carriers establish premiums on the basis of actuarial
17 assumptions, including lapse, mortality, morbidity, and return on investment
18 assumptions. *Id.* and See Dawn Helwig, *The Cost of Waiting*, AMERICAN
19 ACADEMY OF ACTUARIES, CONTINGENCIES (NOV|DEC. 14),
20 <http://www.contingenciesonline.com/contingenciesonline/20141112#pg22> . (Last visited
21 Nov. 5, 2014), (“Actuarial Article”). The lapse assumption reflects the expected portion
22 of policyholders who drop their coverage each year. *GAO Report*, pg. 9. The mortality
23 assumption is based upon the life expectancies of the enrollee population by age. *Id.*,
24 pg. 10. The morbidity assumption is based upon the amount of claims costs expected for
25 enrollees, by age, and accounts for the portion of enrollees of each age who file a claim
26 and the duration of those claims. *Id.* The return on investment assumption reflects the
expected interest rate earned on invested assets. *Id.* Actuarial assumptions are
projections about the future, and as a result, can change over time as carriers gain more
claims experience, especially with newer products, such as long-term care insurance.

1 Setting premiums at an adequate level to cover future costs has been a challenge
2 for some carriers. *Id.*, and *See Actuarial Article*. Long-term care insurance is a
3 relatively new insurance product that started developing between 1970 and 1989. *Id.*
4 and Kimberly Lankford, *Long-Term-Care Rate Hikes Loom*, KIPLINGER (January
5 2011), [http://www.kiplinger.com/article/insurance/T036-C000-S002-long-term-care-](http://www.kiplinger.com/article/insurance/T036-C000-S002-long-term-care-rate-hikesloom.html)
6 [rate-hikesloom.html](http://www.kiplinger.com/article/insurance/T036-C000-S002-long-term-care-rate-hikesloom.html). (Last visited Nov. 1, 2014), ("Kiplinger Article"). Furthermore, it
7 may take several decades before enrollees submit claims and for carriers to obtain data
8 on how their enrollees will use their policies. *GAO Report*, pg. 10. As a result, many
9 carriers have lacked and potentially continue to lack sufficient data to accurately
10 estimate the revenue needed to cover the costs of the policies. *Id.*, pgs. 10-11 and *See*
11 *Actuarial Article*. This has led to changes in the marketplace; many insurers left the
12 marketplace, or consolidated to form larger companies, and most of the remaining
13 companies have raised premiums to account for initial actuarial assumptions that did not
14 adequately cover current projected costs. *Id.*, Chad Terhune, *CalPERS Plans 85% Rate*
15 *Hike for Long-Term-Care Insurance*, LOS ANGELES TIMES (February 21, 2013).
16 <http://articles.latimes.com/2013/feb/21/business/la-fi-calpers-longterm-care-20130222>
17 (Last visited Nov. 1, 2014), ("LA Times") and Howard Gleckman, *What's Killing The*
18 *Long-Term Care Insurance Industry*, FORBES (August 29, 2012),
19 [http://www.forbes.com/sites/howardgleckman/2012/08/29/whats-killing-the-long-](http://www.forbes.com/sites/howardgleckman/2012/08/29/whats-killing-the-long-termcare-insurance-industry)
20 [termcare-insurance-industry](http://www.forbes.com/sites/howardgleckman/2012/08/29/whats-killing-the-long-termcare-insurance-industry) (Last visited Nov. 1, 2014), ("Forbes").

21 In 2013, California Public Employees Retirement System (CalPERS) informed
22 policyholders that their long-term care insurance premiums would increase eighty-five
23 percent (85%). *LA Times*. The CalPERS program, like many plans sold by private
24 insurers, experienced higher-than-expected claims, lower investment returns and poor
25 pricing. *Id.* Insurance regulators have found that long-term care insurers too often
26 underestimated the cost of care and the number of customers who would hold onto these
policies. *Id.* Pricing long-term care policies accurately has been a long-standing
challenge as people continue to live longer and medical costs keep rising. *Id.*, and *See*
Actuarial Article. Compounding the difficulties, historically low-interest rates have
contributed to lower investment returns, which are used to pay claims. *Id.*, Ann Carms,

1 *Premiums Rise for Long-Term Care Insurance. Keep It or Drop It?*, THE NEW YORK
2 TIMES (March 21, 2014), [http://www.nytimes.com/2014/03/21/vour-
4 money/premiums-rise-for-long-term-care-insurance-keep-it-or-drop-it.html](http://www.nytimes.com/2014/03/21/vour-
3 money/premiums-rise-for-long-term-care-insurance-keep-it-or-drop-it.html) (Last visited
5 Nov. 1, 2014), ("NY Times Article") and *See* Actuarial Article.

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

12 The Office of the Insurance Commissioner is very concerned about long-term
13 care insurance premium rate increases, its effect on consumers, and the future problems
14 for policyholders if there are not enough funds to cover claims. As a result, the Office of
15 the Insurance Commissioner ensures that all rate filings with premium rate increases are
16 submitted with evidence supporting the filing. OIC actuaries review all of these
17 materials. OIC actuaries can also request further information if needed to evaluate the
18 rate filing. *Id.* OIC actuaries also review prior rate filings for additional information
19 and background. After all of this information is reviewed, the Insurance Commissioner
20 disapproves the rate filing if it is excessive, inadequate or unfairly discriminatory, or
21 approves the rate filing.

22 The Insurance Commissioner continues to try to find solutions to problems
23 surrounding long-term care insurance, independently in the state of Washington, and
24 nationally with the National Association of Insurance Commissioners ("NAIC"). In
25 response to the growing number of premium increases in long-term care insurance, the
26 NAIC has continued its work to determine the best practices to address the complex
issues surrounding long-term care insurance. *State Insurance Regulators
Work on Long-Term Care Insurance*, NAIC (June 11, 2013),
http://www.naic.org/Releases/2013_docs/state_insurance_regulators_work_long
[term_care_insurance.htm](http://www.naic.org/Releases/2013_docs/state_insurance_regulators_work_long) (Last visited Nov. 1, 2014). The NAIC is the U.S. standard-
setting and regulatory support organization created and governed by the chief insurance

1 regulators from the fifty (50) states, District of Columbia and five (5) U.S. territories.
2 Through the NAIC, state regulators establish standards and best practices, conduct peer
3 review and coordinate their regulatory oversight. In 2011, the NAIC again revised its
4 model long-term care insurance regulation, a model law that is used by most states as a
5 foundation to regulate long-term care insurers. *Id.* The state of Washington, as a
6 member of the NAIC, has adopted the revised model long-term care insurance
7 regulation. The NAIC has since continued working with state regulators to identify
8 ways to address this national problem. *Id.*

9 IV. ISSUE STATEMENT

- 10 1. Should the Demand for Hearing be dismissed for failing to join MetLife, an
11 indispensable party, who would be impacted by a decision in this matter and
12 whose filing and actuarial information is at the center of this action?
- 13 2. Should the Demand for Hearing be dismissed because the Petitioner is not an
14 aggrieved party as the new rate has not been implemented and because he
15 remains free to cancel the policy prior to the increase while retaining a number of
16 benefits from prior policy payments?
- 17 3. Should the Demand for Hearing be dismissed because the Petitioner has failed to
18 state a ground upon which relief can be granted as Petitioner has not alleged any
19 harm?
- 20 4. Should OIC's Motion for Summary Judgment be granted because Petitioner has
21 not met his burden to show that the OIC's approval of MetLife's rate filing was
22 invalid?
- 23 5. Should OIC's Motion for Summary Judgment be granted because the OIC
24 followed the statutes and regulations governing rate increases for long-term
25 insurance?

26 V. ARGUMENT AND AUTHORITY

1. Petitioner's Demand For Hearing Should Be Dismissed For Failing To Join An
Indispensable Party

1
2 In this matter, Petitioner seeks to overturn the Insurance Commissioner's
3 approval of MetLife's rate filings on the basis that MetLife provided national
4 experience and actuarial information to the OIC. See Demand for Hearing, pg. 5 and
5 Declaration of Mary T. Driscoll (attached to Demand for Hearing). Petitioner alleges
6 that MetLife did this intentionally for the purpose of "normalizing rates." *Id.*
7 Petitioner also seeks to litigate issues relating to the policy contract between the
8 Petitioner and MetLife, among other assertions. See Demand for Hearing, pg 8,
9 Section K. However, the Petitioner has not joined MetLife in this proceeding and
10 Petitioner even declined joining MetLife at the Prehearing Conference.

11 The OIC cannot provide evidence to dispute these assertions in the place of
12 MetLife because the OIC does not have this information. The OIC has no information
13 relating to the contract between Petitioner and MetLife other than that provided by
14 Petitioner. By Petitioner's actions to decline joining MetLife in this matter, MetLife
15 has been prevented from protecting its interest in its own rate filings and its interest in
16 the approved premium rates. Furthermore, MetLife has been prevented from
17 defending itself from these accusations. Therefore, MetLife is an indispensable party
18 and this matter must be dismissed for Petitioner's failure to join an indispensable
19 party.

20 Washington Civil Rule 12(b)(7) allows dismissal for failure to join a party
21 under Washington's Civil Rule 19. Joinder of Persons for A Just Adjudication (CR
22 19) provides a two part analysis of parties who must be joined for an adjudication.
23 First, a determination must be made whether the parties are needed for a just
24 adjudication. See CR 19(a). In this matter, MetLife is a necessary party because they
25 have an interest relating to the subject of the action and in the disposition of this
26 action. MetLife's absence from this matter will impair or impede MetLife's ability to
protect its interest in MetLife's rate filings, earnings, and potential insolvency of these
policies if a rate increase is not implemented.

The second part of CR 19's test requires that if the absent parties are necessary
but are not joined, then the court must determine whether in equity and good

1 conscience the action should proceed among the parties before it or be dismissed
2 because the absent party is indispensable. *Id.* The tribunal considers the following
3 factors in determining whether a party is indispensable: (1) the extent to which a
4 judgment rendered in the party's absence might be prejudicial to that party or to those
5 already parties; (2) the extent to which the prejudice can be lessened or avoided by
6 protective provisions in the judgment; (3) whether a judgment rendered in the party's
7 absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if
8 the action is dismissed for nonjoinder. *See* CR19(b). Any of these factors can be
9 dispositive. *See Mudarri v. State*, 147 Wn. App. 590, 605; 196 P.3d 153 (2008).

10 The only entity that could rebut many of the Petitioner's factual assertions and
11 present defenses to those assertions is MetLife. Additionally, MetLife must be
12 afforded the opportunity to protect its rights in its rate filings and economic interests,
13 especially since the issue in controversy is MetLife's own rate filing and because
14 MetLife's rate filing is likely already in effect for some policyholders and overturning
15 the approved rate filings present serious financial consequences to MetLife.² Further,
16 the Petitioner's Demand for Hearing requests that approval of MetLife's rate filings be
17 overturned and no judicial order could reduce or lessen the prejudice to MetLife if its
18 rates were now disapproved. There simply is no other remedy for MetLife. Therefore,
19 MetLife must be a party in this matter.

20 However, MetLife cannot now be joined as a party in this matter. Petitioner
21 has failed to seek joinder of MetLife within the statutory period of ninety (90) days.
22 As a result, the law requires dismissal of the action with prejudice. *See Nat'l*
23 *Homeowners Ass'n v. City of Seattle*, 82 Wn. App. 640, 919 P.2d 615, 1996 Wash.
24 App. LEXIS 226 (Wash. Ct. App. 1996). In the Nat'l Homeowners Ass'n case, the
25 court found that the association had knowledge of a developer's role in the relocation
26 plan as evidenced by the parties' involvement in another lawsuit, that the failure to

² MetLife was able to implement the rate increase upon the renewal date of each policyholder, which differs among policyholders depending upon date of purchase. It is likely that although Petitioner's premium rate increase has not been implemented yet, other policyholders' new premium rate may have been implemented already.

1 join the developer constituted inexcusable neglect, and that joinder of the land
2 developer was no longer feasible because judicial review of land matters were to be
3 promptly adjudicated. Petitioner's actions are equally egregious to MetLife. He has
4 specifically declined to join MetLife, despite knowing that they are the party that will
5 be impacted by any decision in this matter. RCW 48.04 provides a statutory time
6 period of ninety (90) days to commence a hearing. MetLife cannot now be joined as
7 ninety (90) days from the date of notification of the rate increase has passed.
8 Therefore, the Demand for Hearing must be dismissed as a matter of law because
9 MetLife is an indispensable party in this matter concerning MetLife's rate filings and
10 cannot now be joined due to Petitioner's decision to decline timely joining MetLife.

11 2. Petitioner Does Not Have Standing To Demand A Hearing. Therefore This
12 Matter Must Be Dismissed

13 Petitioner is not aggrieved by an action of the Insurance Commissioner because
14 his new rate has not yet been implemented. Petitioner also does not have standing
15 because he remains free to contract, to choose whether or not to renew or to choose
16 among his alternative options. Long-term care insurance is a year-to-year contract
17 that is renewed on its yearly renewal date at the option of the policyholder. A
18 policyholder has a guarantee against increase during the annual term of the policy, but
19 not a guarantee against an increase for the next term.

20 Currently, Petitioner is pre-contract at his option to renew the contract and has
21 not accepted the rate of the new term. Petitioner remains free to contract, such as
22 choose a new carrier, choose to pay for the new term, or choose not to accept the new
23 rate. While at first blush this may seem inequitable to accept a new rate increase or
24 forfeit money already invested in a long-term care policy, however these are not the
25 only options available to long-term care policyholders. Long-term care policyholders,
26 like Petitioner, have specific protections under the Insurance Code to ensure that
consumers have more options in order to retain some benefits from their prior contract
terms. Policyholders can also choose to lessen or avoid the impact of the new

1 premium rate by choosing an alternative option such reducing coverage on the policy
2 or not renewing the contract while retaining a level of benefits commensurate with the
3 premiums paid. Therefore, Petitioner does not have standing to challenge the rate
4 because the rate filings do not impact his present term of policy and because the
5 Petitioner remains free to contract and to choose among options presented.

6 As a preliminary matter, a party may move to dismiss a complaint for lack of
7 standing. The Insurance Code provides that anyone "aggrieved" by an action of the
8 Commissioner has the right to request a hearing from the Commissioner within ninety
9 (90) days. RCW 48.04.010 and WAC 284-02-070. A party must be aggrieved by an
10 action of the Commissioner in order to have standing to request a hearing. While the
11 Insurance Code does not define an "aggrieved" person, the APA does define an
12 aggrieved person. RCW 34.05.530. Under the APA, a person "has standing to obtain
13 judicial review of agency action if that person is aggrieved or adversely affected by the
14 agency action." RCW 34.05.530. A person is so aggrieved or adversely affected
15 when: (1) The agency action has prejudiced or is likely to prejudice that person; (2)
16 That person's asserted interests are among those that the agency was required to
17 consider when it engaged in the agency action challenged; and (3) A judgment in favor
18 of that person would substantially eliminate or redress the prejudice to that person
19 caused or likely to be caused by the agency action. These three conditions are derived
20 from federal case law and all three conditions must be met to confer standing. *St.*
21 *Joseph Hosp. & Health Care Ctr. v. Department of Health*, 125 Wn.2d 733, 739, 887
22 P.2d 891 (1995).

23 The first and third conditions are often called the injury-in-fact requirements,
24 and the second condition is known as the "zone of interest" test. *Id.* Not only are
25 these particular provisions drawn largely from federal case law, the APA expressly
26 states the Legislature's intent that "courts should interpret provisions of this chapter
consistently with decisions of other courts interpreting similar provisions of . . . the
federal government . . ." *Seattle Bldg. & Constr. Trades Council*, 129 Wash.2d 787,
794, 920 P.2d 581 (1996) citing RCW 34.05.001.

1 The first test determines whether a party is within the zone of interest to confer
2 standing and requires that the agency has caused or will cause harm to the petitioner.
3 Generally, in administrative adjudications, a person has standing when the agency
4 takes some form of action involving that person. *Id.* In this instance, the rate was
5 filed by MetLife. The persons whose rights would be determined by the order
6 approving or denying the rate filing would be MetLife. Furthermore, RCW 34.05.010
7 which discusses the right to adjudicative review limits standing regarding rate filings
8 to the applicants (MetLife) who submitted the rate filing, and only in the case of a
9 denial, or modification of the filed rate. *See* RCW 34.05.010(1).

10 Simply because a rate filing may impact policyholders who choose to renew
11 their policy for another term does not confer standing to those policyholders. Rather,
12 Petitioner must have a substantial interest in the agency action. *Seattle Bldg. &*
13 *Constr. Trades Council*, 129 Wash.2d 787, 794, 920 P.2d 581 (1996). However,
14 policyholders are not required to obtain long-term care insurance nor are they required
15 to pay the changed rate, rather policyholders remain free to contract. In this instance,
16 the rate has not yet been implemented or accepted and the policyholders are even
17 offered a number of options to avoid the impact of the rate increase. Therefore,
18 policyholders, such as the Petitioner, do not have a substantial property interest
19 sufficient to acquire standing.

20 The second test limits review to those for whom it is most appropriate. *Id.*
21 The test focuses on whether the Legislature intended the agency to protect the party's
22 interest when taking the action at issue. *Id.* "The Washington Insurance Code governs
23 the regulation of insurance and does not itself provide protection or remedies for
24 individual interests." *Pain Diagnostics and Rehabilitation Associates, P.S. v.*
25 *Brockman*, 97 Wn. App. 691, 697, 988 P.2d 972 (1999). The Insurance Code is not
26 intended to create a property interest in a consumer that is equivalent to a
constitutionally protected interest. Instead, protection for individual interests and
remedies for violations of the insurance statutes and regulations must be brought under
Washington's Consumer Protection Act (CPA). The remedy for Petitioner is to file a
challenge under the CPA if the Petitioner believes that MetLife is violating its contract

1 terms or is seeking to “normalize” rates in violation of the law or Petitioner’s contract
2 rights. Petitioner cannot be aggrieved by the OIC’s approval of MetLife’s rate filings
3 because the intent of the Legislature when creating the Insurance Code was to regulate
4 insurance, not create private rights of enforcement as the Legislature provided for in
the CPA.

5 Finally, Petitioner also cannot pass the last test which requires that a judgment
6 in favor of that person would substantially eliminate or redress the prejudice to that
7 person caused or likely to be caused by agency action. The Demand for Hearing, even
8 if successful, would eventually result in the same findings; that MetLife’s rate filings
9 were approved because the rates were not excessive, inadequate, or unfairly
10 discriminatory. Furthermore, any order that would reverse these approved rate filings
11 would only drive the product closer to insolvency making it unlikely that
12 policyholders, like Petitioner, could file claims against the policy in the future and
13 would violate WAC 284-83-230(6) which requires that loss-ratios must provide for
14 future reserves and must account for the maintenance of such reserves for future
needs.

15 Petitioner cannot pass these three standing requirements and does not have
16 standing to demand a hearing under the Insurance Code. The Office of the Insurance
17 Commissioner, as an administrative agency, only has those powers either expressly
18 granted or necessarily implied by the Legislature. The Legislature has expressly
19 granted the Office of the Insurance Commissioner jurisdiction to hear appeals only
20 from aggrieved persons pursuant to RCW 48.04.010. Petitioner is not aggrieved by an
21 action of the Commissioner because his new rate has not yet been implemented,
22 Petitioner has not yet accepted this rate increase, and because he remains free to
23 contract with another carrier or choose among his other options. Therefore, Petitioner
does not meet the standing requirements for an aggrieved person and the Demand for
Hearing must be dismissed as a matter of law.

24 Petitioner recognizes his lack of standing in this matter and tries to buttress his
25 standing by arguing that he has a constitutionally protected interest in the OIC’s
26 approval of MetLife’s rate filings and therefore he is entitled to due process

1 protections. However, Petitioner cannot invoke due process protections because he
2 cannot claim deprivation of a constitutionally protected interest. Constitutional due
3 process protections stem from both the state and federal constitutions. The Fourteenth
4 Amendment to the United States Constitution requires that no state “shall... deprive
5 any person of life, liberty, or property, without due process of law...” Washington
6 courts have consistently applied federal due process law, since Washington’s due
7 process clause (Const. art. I, § 3) generally provides no greater protection than its
8 federal counterpart. *See, e.g., In re Dyer*, 143 Wn.2d 384, 394, 20 P.3d 207 (2001).
9 (“Washington’s due process clause does not afford broader due process protections
10 than the Fourteenth Amendment.”).

11 While state statutes and regulations can create such interests, these interests are
12 typically limited to state-issued licenses, permits, certifications, or other similar forms
13 of authorization required by law. *See* RCW 34.05.010(9) (defining “license”) and
14 RCW 34.05.422 (providing a process to revoke, suspend or modify a license).

15 Furthermore, a party invoking due process “must first establish a legitimate claim of
16 entitlement to the life, liberty or property at issue.” *Willoughby v. Dep’t of Labor &*
17 *Indus.*, 147 Wn.2d 725, 732, 57 P.3d 611 (2002). RCW 34.05.570(1)(a). “Naked
18 castings into the constitutional sea are not sufficient to command judicial consideration
19 and discussion.” *In re Pers. Restraint of Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353
20 (1986) (quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 970), cert.
21 denied, 401 U.S. 917 (1971)).

22 Petitioner appears to allege that because the Insurance Code has set forth a
23 specific means for regulating insurers that this creates a constitutionally protected
24 property interest for the Petitioner and that this constitutionally protected property
25 interest is applicable to agency actions. However, a constitutionally protected interest
26 is not established merely because an industry is regulated, if that were true then all
consumers would have a constitutionally protected property interest in anything
regulated by the state or federal government and a right to a hearing on any action by
the federal government or state agency. To the contrary, in this instance,
policyholders are free to stop paying premiums, purchase other insurance, or choose

1 another contract option to retain the benefit of their prior contract terms. This is why
2 policyholders are notified well in advance of any changes before the new policy term,
3 so that they have the time and freedom to choose among their options.

4 Petitioner cites to *Conrad v. University of Washington* for support of his
5 contention that he has a constitutionally protected interest in the OIC's approval of
6 MetLife's rate filings. However, that case is in opposition to Petitioner's assertion.
7 The holding of that case was that the petitioners did not have a protected property
8 interest in the renewal of their scholarships. Similarly, the OIC has not approved a
9 rate that would impact Petitioner during his policy term, merely a premium rate
10 increase if he chooses to renew his contract at the new rate. Furthermore, no
11 administrative or regulatory agency was involved in that case, the only parties in that
12 case were those involved in the contract. MetLife contracted with Petitioner, not the
13 OIC. This is likely why Washington courts have held that "[t]he Washington
14 Insurance Code governs the regulation of insurance and does not itself provide
15 protection or remedies for individual interests." *Pain Diagnostics and Rehabilitation*
16 *Associates, P.S. v. Brockman*, 97 Wn App. 691, 697, 988 P.2d 972 (1999). Instead,
17 protection and remedies for individual interests for violations of the insurance statutes
18 and regulations must be brought under the CPA. *Id.* At the core of Petitioner's
19 Demand for Hearing is a desire to dispute MetLife's ability to file for a rate increase
20 and obtain disapproval of the filed rates. *See* Demand for Hearing, Section K, pg 8.
21 Petitioner does not have standing under the Insurance Code to bring his claims, these
22 claims must be brought under CPA. *Id.*

23 The absence of a constitutionally protected interest is fatal to Petitioner's
24 ability to invoke due process protections. However, even when a constitutionally
25 protected right is established, due process analysis is not complete. Once a
26 constitutional right is established, due process requires an examination of the nature of
the interest at stake; whether it rises to the level of a protected life, liberty or property
interest, and the form and timing required for the hearing. *See Hewitt v. Grabicki*, 596
F. Supp. 297, 303 (E. D. Wash. 1984), *aff'd*, 794 F.2d 1373 (9th Cir. 1986). Three
factors must be considered when a due process issue is presented: (1) the nature of the

1 interest that will be affected by the official action; (2) the risk of erroneous deprivation
2 incurred using the existing procedures, and the value of additional procedural
3 safeguards; and (3) the government's interest involved – including fiscal and
4 administrative burdens that additional safeguards would entail. *Mathews v. Eldridge*,
424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18, 33 (1976).

5 Even if Petitioner had a constitutionally protected interest in the regulation of
6 insurance or future rates of a new term of contract, the procedural safeguards present
7 are sufficient to protect that interest when analyzed under the three factor test for due
8 process. The first factor concerns the nature of the interest affected by the agency
9 action. The nature alleged by the Petitioner is not a Fourteenth Amendment
10 constitutionally protected right but merely an alleged property interest arising from the
OIC's regulation of an industry.

11 The second factor, the risk of any erroneous deprivation and the third factor
12 concerning the level of the OIC's involvement in rate approvals, is nullified by the
13 protections set for in the comprehensive statutes and rules governing insurers, rate
14 filings, and in particular those involving long-term care insurance. See Chapter RCW
15 48.83, RCW 48.84, WAC 284-83 and WAC 284-54. Furthermore, protections are
16 available for individual interests including remedies for violations of the insurance
17 statutes and regulations under the Consumer Protection Act. The comprehensive
18 regulations governing insurance ensure that there is no risk of any erroneous
19 deprivation and ensure the OIC's significant involvement in rate filings. Petitioner
20 cannot establish a constitutionally protected interest in a premium rate for a future
21 contract under this three-part test and does not have standing to challenge the OIC's
approval of MetLife's rate filing.

22 3. Petitioner Has Failed To State A Claim Upon Which Relief Can Be Granted.
23 Therefore The Demand For Hearing Must Be Dismissed

24
25 For the purposes of a motion to dismiss brought under 12(b)(6), dismissal is
26 appropriate if it appears beyond doubt that the plaintiff can prove no set of facts,

1 consistent with the complaint, which would entitle the plaintiff to relief. *Gorman v.*
2 *Garlock, Inc.*, 155 Wn.2d 198, 214, 118 P.3d 311 (2005). When considering a motion
3 to dismiss, the facts in the petition are generally presumed to be true and a court may
4 consider hypothetical facts. *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881
5 P.2d 216 (1994). While a court must consider hypothetical facts when entertaining a
6 motion to dismiss for failure to state a claim, the gravamen of a court's inquiry is
7 whether the plaintiff's claim is legally sufficient. *Gorman*, 155 Wn.2d at 215. If a
8 plaintiff's claim remains legally insufficient even under his or her proffered
9 hypothetical facts, dismissal pursuant to CR 12(b)(6) is appropriate. *Id.* Further, it is
10 only the facts and not the legal conclusions contained in the complaint that are entitled
11 to this presumption. *See Trumble v. Wasmer*, 43 Wn.2d 592, 596, 262 P.2d 538
12 (1953) (in a motion for summary judgment on the pleadings, it is "only facts well
pleaded and not mere conclusions or the pleader's interpretation of statutes involved or
his construction of the subject matter" that are entitled to the presumption of truth).

13 However, Petitioner's facts as plead are not entitled to such presumption
14 because these facts are merely speculative. The Demand for Hearing is based on
15 conjecture about the OIC's approval of the rate filings and MetLife's intentions
16 regarding its rate filings. The Petitioner has no personal knowledge of the facts
surrounding the OIC's approval of the MetLife rate filing.

17 Even assuming that the facts in the Demand for Hearing are true, Petitioner's
18 only allegation that involves actions taken by the OIC is that the OIC should not have
19 accepted the use of national statistics in MetLife's rate filings under RCW 48.19.030.
20 However, RCW 48.19.030 is not applicable to long-term care insurance and the
21 Demand for Hearing has not alleged any actual harm to the Petitioner. Decl. of Scott
Fitzpatrick.

22 Long-term care insurance is a type of disability insurance governed generally
23 by Chapter 48.20 RCW, and more specifically in Chapters 48.83 RCW, 48.84 RCW,
24 284.54 WAC, and 254-83 WAC. Disability insurance, including long-term care
25 insurance, is specifically exempted from Chapter 48.19, except for the requirement to
26 file a manual of rates and any changes to a manual of rates. *See* RCW 48.19.010. The

1 provision at the heart of Petitioner's claims, RCW 48.19.030, specifically details how
2 an insurer of property and casualty insurance files a specific rate filing and sets rates
3 (health care insurance and disability insurance, including long-term care insurance
4 rate filings are governed by chapters related to that type of insurance). This provision
5 is not applicable to long-term care insurance. The language is clear: disability
6 insurance is exempt from the provisions of Chapter 48.19 RCW.

7 Even if RCW 48.19.030 was applicable to long-term care insurance, the OIC's
8 actions were not in violation of that regulation. Petitioner became aware of the reasons
9 why MetLife submitted national statistics and why they were accepted by the OIC
10 during Petitioner's Demand for Hearing regarding MetLife's 2011 rate filings. See OIC
11 Exhibits 3 and 4. MetLife submitted and the OIC accepted national statistics because of
12 the small number of policies sold in this product line. *Id.* and Decl. of Scott Fitzpatrick.
13 There simply are not enough policies to gain statistical and actuarial accuracy to support
14 a rate filing in a smaller number of states. *Id.* Petitioner did not contest the acceptance
15 of national rates at that time, however the OIC then explained the reasons why national
16 rates were submitted and accepted. Petitioner now contests this acceptance for the first
17 time years later in another attempt to overturn the new premium rate if he chooses to
18 accept it at the next contracting term.

19 Even assuming that the facts in the Demand for Hearing are true, Petitioner has
20 not alleged that the data from a smaller subset of states would have been statistically
21 accurate or that the OIC's acceptance of national statistics would have produced any
22 different results. Petitioner has not alleged and demonstrated any harm in the
23 acceptance of national experience. Instead, Petitioner merely speculates on the
24 reasoning why MetLife submitted the rate filing and why the OIC approved the rate
25 filing. Petitioner has not submitted expert testimony from an actuary demonstrating that
26 the use of national experience has harmed him nor has he demonstrated in any other way
that he has been harmed by the use of national experience. Therefore, Petitioner cannot
demand a hearing in this matter because he has not demonstrated that he is aggrieved by
the OIC's actions.

1 Regardless that RCW 48.19.030 does not apply to long-term care insurance,
2 the OIC accurately accepted national statistics to support the rate filing because those
3 are the best statistics that can produce accurate actuarial information given the small
4 number of policies sold. Further, Petitioner has failed to demonstrate that a smaller
5 subset of states would have been statistically more accurate and that it would have
6 produced any different results that would have aggrieved the Petitioner. The person
7 challenging an administrative decision bears the burden of establishing his or her
8 standing to contest the decision. Petitioner has not met his burden to demonstrate
9 harm, therefore Petitioner's Demand for Hearing must be dismissed as a matter of law.

10 4. The OIC Followed The Statutes And Regulations Governing Long-Term Care
11 Insurance When It Approved The MetLife Rate Filing. Therefore The Demand
12 for Hearing Should Be Summarily Dismissed As A Matter Of Law.

13
14 When it approved the 2014 MetLife rate filings, the OIC followed all
15 procedures as required by the Insurance Code. Even if RCW 48.19.030 was
16 applicable to long-term care insurance, RCW 48.19.030 does not create a mandatory
17 duty on the Commissioner to only accept rates that use Washington experience.
18 Contrary to Petitioner's assertions, RCW 48.19.030 is not mandatory nor nearly as
19 restrictive as Petitioner is inclined to believe. Rather, RCW 48.19.030 is instructional
20 to an insurer. RCW 48.19.030 provides that "due consideration in making rates for all
21 insurances shall be given to past and prospective loss experience within this state for
22 experience periods acceptable to the commissioner. If the information is not available
23 or is not statistically credible, an insurer may use loss experience in those states which
24 are likely to produce loss experience similar to that in this state." Washington
25 experience was not creditable for these rate filings; the most credible loss experience
26 given the small number of policies sold in the product line was to account for all of the
policies sold. MetLife was permitted by statute to submit this information because
Washington experience was not creditable. As provided for in RCW 48.19.030,

1 MetLife would have even been able to submit other experience if Washington
2 experience was simply not available and would still comply with this statute, if RCW
3 48.19.030 would have been applicable.

4 Furthermore, the only mention of any role of the Insurance Commissioner has
5 in RCW 48.19.030 is to find the submitted experience acceptable to him. This is not
6 mandatory language. It does not create an obligation or duty upon the Insurance
7 Commissioner to only accept Washington experience; rather the statute provides that it
8 is within the Insurance Commissioner's discretion to determine what he finds
9 acceptable. The Insurance Commissioner determined that MetLife's submission of
10 national experience was acceptable back in 2011 and when MetLife filed a
11 modification of that experience in 2014, nothing persuaded the Insurance
12 Commissioner that this experience was now inaccurate or unacceptable.

13 The Office of the Insurance Commissioner's long-term care actuary, Scott
14 Fitzpatrick, specializing in and very experienced with long-term care insurance rate
15 filings, reviewed MetLife's 2014 rate filing and materials submitted supporting the
16 rate filings. Mr. Fitzpatrick already knew detailed historical information about this
17 particular MetLife product line, which was obtained during the course of Petitioner's
18 prior case against the OIC filed in 2014 involving MetLife's 2011 rate filings for the
19 same product. While Mr. Fitzpatrick was not the actuary who approved that rate filing,
20 Mr. Fitzpatrick reviewed the entire filing, approved the actions taken by that actuary in
21 accepting the 2011 rate filings, submitted declarations regarding those rate filings for
22 the purposes of that hearing and was prepared to provide testimony in that case.³

23 MetLife previously received approval to submit nationwide experience during
24 the course of the 2011 rate filing due to the inability to submit Washington experience
25 that would meet actuarial and insurance industry standards to be statistically credible.
26 Actuarial and insurance industry standards require that for loss ratios to be statistically
credible there must be at least 1,082 active claims (claims being processed at the time

³ The actuary who approved the 2011 MetLife rate filing had left the agency before a hearing demand was submitted by Petitioner in 2014.

1 of the filing) in the block of insurance.⁴ See Decl. of Scott Fitzpatrick. The total
2 number of policies in Petitioner's particular policy line was only fifty-five (55) at that
3 time (there were other policies in the product block, but all three policies combined in
4 the state of Washington in 2011 only total nine hundred and eighty-three (983)
5 policies, of which only a small percentage would have been in active claim status. See
6 OIC Exhibit 2: MetLife 2011 SERFF Filings.

7 As a result, in 2011, the Insurance Commissioner found MetLife's national
8 experience acceptable because it was the loss experience that was most creditable.
9 OIC actuaries specifically discussed this during the course of that rate filing and
10 determined that this would be the most creditable experience. Later, as a result of
11 Petitioner's first demand for hearing, Mr. Fitzpatrick reviewed and agreed with OIC's
12 decision to accept this experience to ensure that the most creditable experience was
13 available in accordance with insurance and actuarial standards. *Id.* and OIC Docket
14 #14-0187.

15 MetLife's 2014 rate filings and supporting materials were no different in any
16 other form or substance than any other typical rate filing. Decl. of Scott Fitzpatrick.
17 The purpose of MetLife's rate filings was to ensure that the policies contained funds to
18 cover future claims. In reviewing MetLife's entire rate filing and with knowledge of
19 the previous acceptance, Mr. Fitzpatrick was aware that MetLife could not submit
20 Washington specific experience as it would not be creditable and that it needed to
21 submit national experience because it would be most accurate experience given the
22 small number of these policies sold. *Id.*

23 As disclosed in the 2014 MetLife rate filings, MetLife had already paid out
24 claims that amounted to 54.4% of collected premiums in this product line. OIC
25 Exhibit 1: MetLife 2014 SERFF Filings. If the OIC did not approve MetLife's rate
26 filing, actuarial calculations indicated that the policies would be operating at a 170.7%
loss ratio, making the policies virtually insolvent in the future. *Id.*

⁴ This refers to the Creditability Theory as used by actuaries.

1 The OIC still has concerns that even with this change in premiums; the
2 products will be operating at a projected 98.4% loss ratio. See OIC Exhibit 1 MetLife
3 2014 SERFF Filing and Decl. of Scott Fitzpatrick. Operating at such a high loss-ratio
4 could potentially violate the protections of WAC 284-83-230(6) which requires that
5 loss ratios must provide for future reserves, and must account for the maintenance of
6 such reserves for future needs. However, OIC concerns regarding the effect of
7 premium changes on policyholders outweighed the potential concerns regarding this
8 loss ratio.

9 The OIC determined that MetLife submitted all required information to support
10 these rate filings and approved the rate filings because they were determined not to be
11 excessive, inadequate or unfairly discriminatory. The OIC spent a significant amount
12 of time and diligence in reviewing MetLife's August 14, 2014 rate filings and the
13 actuarial information contained in those rate filings. These rate filings were not
14 approved until July 10, 2015. That same day, Dispositions were entered and MetLife
15 was notified that the Insurance Commissioner approved the rate filing. See OIC
16 Exhibit 1: MetLife 2014 SERFF Filings.

17 Even if RCW 48.19.030 was applicable to long-term care insurance, it only
18 provides guidance for insurers in creating rates. It provides that when a carrier is
19 evaluating a rate, Washington experience is preferred, but that a carrier may provide
20 other experience in order to achieve creditable experience or may even submit other
21 experience if Washington experience is not available. RCW 48.19.030 recognizes that
22 it is not always possible to gather enough experience to be creditable utilizing only
23 Washington State experience and provides discretion to allow other experience data in
24 order to gain statistically creditable experience. Due to the small number of policies
25 sold in this product line, the only way to ensure creditable experience is to encompass
26 all available policies sold. The OIC followed the Insurance Code when evaluating the
2014 MetLife rate filings, therefore summary judgment should be entered finding that
there are no material facts in dispute and dismiss Petitioner's Demand for Hearing as a
matter of law.

1 5. A Rate Filing Once Approved Is Per Se Reasonable And Petitioner Has Not
2 Proven That The Rate Is Invalid, Therefore The Demand For Hearing Should
3 Be Dismissed On Summary Judgment As A Matter of Law

4 A rate filed with and approved by the governing regulatory agency is per se
5 reasonable. *McCarty Fin., Inc. v. Premera*, 182 Wn.App. 1,8, 328 P.3d 940 (2014).
6 This holding is the basis of the filed rate doctrine, which is court-created rule that
7 usually operates as a barrier to suits against insurers by policyholders (in this instance,
8 MetLife and Petitioner).⁵ The purpose of the filed rate doctrine, especially the
9 presumption that a rate once approved is per se reasonable, is to recognize the
10 agency's expertise in approving filed rates. *Id.* Several public policies are advanced
11 by the filed rate doctrine, including (1) reinforcing the agency's authority, (2)
12 deferring to the agency's expertise in a particular industry, (3) recognizing and
13 preserving the Legislature's determinations as to the regulatory scheme by allowing
14 for enforcement by statutorily designated state officers, and (4) preventing actions
from disrupting the statutory and regulatory scheme for uniformity of rates. *Id.*

15 The filed rate doctrine is applicable to insurance and to the Insurance
16 Commissioner's approval of insurance rate filings, such as long-term care insurance
17 rate filings. *See Id.* Petitioner has put forth no evidence or alleged any facts that
18 overcome the presumption that the approved rate in this case is per se reasonable.
19 Instead, Petitioner simply alleges that the OIC should not have accepted MetLife's
20 filing because the loss experience was national experience. Petitioner did not allege or
21 demonstrate that a combination of different sets of states would have been more
22 creditable or that he was harmed in any way by the OIC's discretionary acceptance of
23 MetLife's loss experience. Petitioner merely speculates on the reasoning of why
24 MetLife submitted this experience and why the Insurance Commissioner permitted the
use of this experience without any first-hand knowledge of the events surrounding the
rate filing or any actual evidence supporting his allegations.

25 _____
26 ⁵ The filed rate doctrine does not bar CPA claims. *Id.* The Office of the
Insurance Commissioner does not conduct adjudications between insurers and insureds.

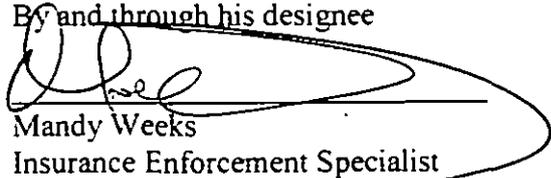
1 The OIC is the governing regulatory authority for long-term care insurance and
2 rate filings approved by the OIC are *per se* reasonable. There was no evidence or facts
3 submitted or harm alleged by the Petitioner that would undermine this presumption.
4 The public policies advanced by this presumption are especially poignant to the
5 difficult nature of long-term care insurance and are served by its application to this
6 matter, including (1) reinforcing the agency's authority, (2) deferring to the agency's
7 expertise in a particular industry, (3) recognizing and preserving the legislature's
8 determinations as to the regulatory scheme by allowing for enforcement by statutorily
9 designated state officers, and (4) preventing actions from disrupting the statutory and
10 regulatory scheme for uniformity of rates. The Insurance Commissioner's acceptance
11 of MetLife's experience is *per se* reasonable, and Petitioner has not submitted facts or
12 proven that the Insurance Commissioner's approval of the rate filing was
13 law.

14 VI. CONCLUSION

15
16 For these reasons, OIC staff requests entry of an order dismissing Petitioner's
17 Demand for Hearing as a matter of law, or in the alternative, entry of an order finding
18 that there is no genuine issue of material fact and that the OIC is entitled to judgment as
19 a matter of law.

20 DATED this 29th day of April, 2016.

21
22 MIKE KREIDLER
23 Insurance Commissioner
24 By and through his designee

25 
26 Mandy Weeks
Insurance Enforcement Specialist
Legal Affairs Division

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CERTIFICATE OF MAILING

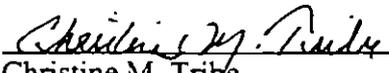
The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action,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

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

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

OIC Hearings Unit
Attn: William Pardee, Chief Presiding Hearings Officer
Office of the Insurance Commissioner
5000 Capitol Blvd
Tumwater, WA 98501
hearings@oic.wa.gov
Via Hand Delivery and Email

SIGNED this 29th day of April, 2016, at Tumwater, Washington.


Christine M. Tribe