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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 RESPONSE IN  
OPPOSITION TO  
PETITIONER'S MOTIONS  
FOR SUMMARY JUDGMENT

**I. MOTION AND RELIEF REQUESTED**

The Office of the Insurance Commissioner ("OIC") submits this Response in Opposition to Petitioner's Motions for Partial Summary Judgment. Long-term care insurance, which insures against bodily injury or disablement related to illness (including age-related illnesses) is the type of disability insurance governed by Chapters RCW 48.83, RCW 48.84, WAC 284-83 and WAC 284-54. Long-term care insurance is not governed by Chapter 48.19 RCW, and even if RCW 48.19.030 and RCW 48.19.040 applied, the Insurance Commissioner's actions in approving MetLife's 2014 rate filings did not violate these statutes. Petitioner does not have standing and is not entitled to summary judgment as a matter of law, therefore the OIC respectfully requests that the Chief Presiding Officer deny Petitioner's Motions for Summary Judgment.

**II. BACKGROUND**

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 because the current anticipated loss ratios

1 for these policies demonstrated that these policies will not be able to pay future claims  
2 with current premiums. *See* OIC Exhibit 1 Attached to Declaration of Scott Fitzpatrick  
3 In Support Of OIC's Motion To Dismiss, Or In The Alternative, Summary Judgment:  
4 MetLife 2014 SERFF Filings. These three long-term care policies are successive policy  
5 forms of the same product with no major change between these policies. *Id.*

6 The Insurance Code specifies various considerations that must be taken into  
7 account in the setting of rates, including past and prospective loss experience, hazards,  
8 profitability and expenses. *See* RCW 48.20, RCW 48.21, RCW 48.83, RCW 48.84,  
9 WAC 284-83 and WAC 284-54. The Office of the Insurance Commissioner's long-term  
10 care actuary, Scott Fitzpatrick, specializing in and experienced with long-term care  
11 insurance rate filings, reviewed MetLife's 2014 rate filings and supporting materials.  
12 *See* Declaration of Scott Fitzpatrick In Support Of Motion to Dismiss, Or In The  
13 Alternative, Summary Judgment.

14 These rate filings and supporting materials were no different in form or  
15 substance than any other typical rate filing. *Id.* MetLife submitted all of the actuarial  
16 data and information required by the Insurance Code to support the 2014 rate filings  
17 including over three hundred (300) pages and an Actuarial Memorandum calculating the  
18 anticipated loss ratio of the long-term care insurance product. MetLife did not submit  
19 Washington specific experience because that experience would not have been credible  
20 by actuarial and insurance industry standards. *Id.* Actuarial and insurance industry  
21 standards require that for loss ratios to be statistically credible there must be at least  
22 1,082 active claims (claims being processed at the time of the filing) in the block of  
23 insurance.<sup>1</sup> *Id.* All three of MetLife's policies combined in the state of Washington only  
24 total eight hundred and seventy-three (873) policies, of which only a small percentage  
25 would have been currently in active claim status. *See Id* and OIC Exhibit 1: MetLife  
26 2014 SERFF Filings.

MetLife had already received approval from the Insurance Commissioner to  
submit national experience during the course of a 2011 rate filing due to the inability to

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<sup>1</sup> Insurance Credibility Theory as used by insurance actuaries in evaluating  
credibility.

1 submit Washington experience that would meet actuarial and insurance industry  
2 standards to be credible. Mr. Fitzpatrick was not the actuary who approved the 2011  
3 MetLife rate filings.<sup>2</sup> However, Mr. Fitzpatrick reviewed and agreed with OIC's  
4 previous acceptance of national rates during Petitioner's prior case that contested  
5 MetLife's 2011 rate filings. *See* Decl. of Scott Fitzpatrick, OIC Exhibit 2: MetLife 2011  
6 SERFF Filing. OIC Docket #14-0187, OIC Exhibit 3: Actuary Emails and OIC Exhibit  
7 4: Prior Declarations of Scott Fitzpatrick. The Insurance Commissioner accepted  
8 MetLife's national experience because it was the only experience that was credible. *Id.*  
9 Nor did Petitioner dispute the use of national experience when he contested the approval  
10 of these rate filings.

11 MetLife's 2014 rate filings provided detailed and updated actuarial information  
12 that showed that MetLife had already paid out claims that amounted to 54.4% of  
13 collected premiums for this product line. *See* Decl. of Scott Fitzpatrick and OIC Exhibit  
14 1: MetLife 2014 SERFF Filings. If the Insurance Commissioner did not approve  
15 MetLife's rate filing, actuarial calculations directed that the policies would be operating  
16 at a 170.7% loss ratio, making the policies virtually insolvent in the future and resulting  
17 in future claims, such as Petitioner's potential claims, being denied. *Id.* Even with this  
18 change in premiums, the products will still be operating at a projected 98.4% loss ratio.  
19 *Id.*

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 in  
25 SERFF and MetLife was notified that the Insurance Commissioner approved these rate  
26 filings. *Id.*

Long-term care insurance consumers are not forced to choose between paying  
the new premium rate or not renewing coverage, rather long-term care insurance carriers

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<sup>2</sup> The actuary who had approved MetLife's 2011 rate filings had left the agency  
prior to Petitioner's 2014 Demand for Hearing regarding those rate filings.

1 are required to provide nonforfeiture options to Washington consumers as an alternative  
2 to renewal or non-renewal. *See* RCW 48.83 and WAC 284-83. In accordance with these  
3 provisions, at least sixty (60) days prior to a premium increase at renewal of a policy,  
4 MetLife advised policyholders that they could lessen or avoid the impact of the new  
5 premium rate by choosing an alternative option such as reducing coverage on the policy  
6 or not renewing the contract while retaining a level of benefits commensurate with the  
7 premiums paid.

8 After receiving this notice, Petitioner filed a Demand for Hearing disputing the  
9 approval of these rate filings on January 4, 2016. While Petitioner seeks to have  
10 MetLife's rate filings disapproved, he has not included MetLife in this action. MetLife is  
11 a necessary party and is the only party that can dispute many of the facts, particularly  
12 those related to his contract, asserted by Petitioner in his Motions for Summary  
13 Judgment.

### 13 III. ARGUMENT AND AUTHORITY

#### 14 1. Response In Opposition To Petitioner's Third Motion For Partial Summary 15 Judgment: Long-Term Care Insurance Is A Type Of Disability Insurance<sup>3</sup>

16 Long-term care insurance is a type of disability insurance and disability  
17 insurance is exempt from the provisions of Chapter 48.19 RCW. Petitioner mistakenly  
18 asserts that the definition of disability insurance excludes long-term care insurance on  
19 the basis that aging is not a sickness. However, Petitioner misunderstands the nature of  
20 long-term care insurance and disability insurance. Long-term care insurance is classified  
21 as disability insurance in the Insurance Code and long-term care insurance is not limited  
22 to use only by elderly persons. Further, Petitioner's argument is self-defeating because  
23 if long-term care insurance was not a form of disability insurance and if the provisions

24  
25 <sup>3</sup> In response to Petitioner's motions, I am addressing Petitioner's third motion  
26 before his first motion in order to address the classification of long-term care insurance  
first before addressing applicable and inapplicable statutes and regulations.

1 of Chapter 48.19 RCW applied, then MetLife's rate upon filing would have been  
2 implemented upon filing and would have already been in effect since August, 2014.

3 Disability insurance is defined as insurance against bodily injury, disablement,  
4 or death by accident, against disablement resulting from sickness, and every insurance  
5 relating thereto, including stop loss insurance. RCW 48.11.030. Long-term care  
6 insurance is insurance against the risk of disablement or sickness that lasts a long-time  
7 or lifetime. The Insurance Code specifically identifies this as disability insurance under  
8 Chapter 48.21A RCW entitled "Disability Insurance – Extended Health." This Chapter  
9 ensures that home health care and hospice care are offered as optional coverage to  
10 consumers.

11 Despite Petitioner's assertions, long-term care insurance is not merely for or  
12 used by elderly persons. Many people have needed and have used long-term care  
13 insurance before they are elderly, for example, persons involved in a serious accident or  
14 those with a chronic illness or genetic disease. Long-term care insurance is even required  
15 to be offered and available for use from losses resulting from an accident. *See* RCW  
16 48.84.040. Furthermore, simply aging does not create the need for long-term care.  
17 Rather, age-related sicknesses, such as stroke, Alzheimer's disease, and others typically  
18 cause the need for long-term care insurance. Many people age without ever experiencing  
19 the need for long-term care because they did not have an age-related sickness that  
20 rendered them in need of care.

21 Additionally, long-term care insurance cannot be used simply for aging.  
22 Eligibility for benefits of a long-term care insurance policy often requires that an  
23 individual be medically determined to be chronically ill or have a severe cognitive  
24 impairment. *See* Applicant's Motion for Partial Summary Judgment Exhibit 1, page 12.  
25 Chronic illnesses and cognitive impairments are medical illnesses, not simply resulting  
26 from aging.

Furthermore, if long-term care insurance was not classified as a type of disability  
insurance and if it was subject to Chapter 48.19 RCW, it would not be bound by the  
prior approval rules that are applicable to disability insurance which ensure that any rate  
filing must be approved prior to use by an insurer. Instead, long-term care insurance

1 would be subject to the file and use requirements, which only require that an insurer file  
2 a rate or form filing prior to using it without obtaining approval from the Insurance  
3 Commissioner first. *See* RCW 48.19.040. This would likely invalidate the Petitioner's  
4 claims as Petitioner's new rate would have been implemented two years ago. The  
5 Insurance Commissioner would have had no opportunity to evaluate MetLife's rate  
6 filings prior to implementation, rather these new premium rates would have been  
7 immediately in effect. It is very important that long-term care insurance be subject to  
8 the prior approval rules as provided for in disability rate filing statutes and regulations,  
9 not only because it is the appropriate classification, but because of the detailed,  
10 extensive and time-consuming review that is conducted by the OIC of long-term care  
11 insurance rate filings prior to the implementation of a long-term care rate. Therefore,  
12 Petitioner's First Motion for Partial Summary Judgment should be denied because long-  
13 term care insurance is a type of disability insurance in that it provides for the costs  
14 associated with a long-term sickness, but also because it is important to Petitioner that  
15 the OIC have the ability to approve long-term care insurance rate filings prior to  
16 implementation as provided for under the Insurance Code's exception to "file and use"  
17 rate filings for disability insurance.

18 2. Response In Opposition To Petitioner's First Motion For Partial Summary  
19 Judgment: RCW 48.19.030 and RCW 48.19.040 Do Not Apply To Long-Term  
20 Care Insurance, Even If They Did, The Insurance Commissioner's Actions Did  
21 Not Violate These Statutes.

22 Chapter 48.19 RCW specifically exempts disability insurance from the  
23 application of its provisions. This exception is in the introduction of Chapter 48.19  
24 which outlines the scope of the chapter and provides that except as expressly provided  
25 for the provisions of this chapter apply to all insurance except life insurance and  
26 disability insurance. RCW 48.19.010. RCW 48.19.030 and RCW 48.19.040 do not  
expressly state that it is applicable to disability insurance.

1 Rather than specifically stating that these statutes are expressly applicable to  
2 long-term care insurance, RCW 48.19.030 and RCW 48.19.040 contain clauses that  
3 indicate that these specific statutes do not apply to long-term care disability insurance.  
4 RCW 48.19.030 states that rates shall be used subject to the other provisions of the  
5 Chapter, which includes RCW 48.19.010 exempting disability insurance from the  
6 Chapter. Additionally, application of RCW 48.19.040 would be directly in  
7 contravention to the scope of the chapter as detailed in RCW 48.19.010 which only  
8 requires that the manual of classification, manual of rules and rates and any  
9 modification thereof be filed. Instead, RCW 48.19.040 details all the filing  
10 requirements for other insurance and mandates filing of classification, manuals,  
11 manuals of rates, rating schedule, minimum rate, class rate, rating rule and every  
12 modification of the foregoing. This is extensively beyond the strict limitations of RCW  
13 48.19.010(2) which only requires filing of three of those items for disability insurance.  
14 As a result, the specific provisions of RCW 48.19.030 and RCW 48.19.040 clarify that  
15 they are not applicable to disability insurance.

16 Even if RCW 48.19.040 and RCW 48.19.030(3) were applicable, the OIC  
17 followed all requirements that apply to the Insurance Commissioner. RCW 48.19.030  
18 applies to insurers and provides only that:

19 “Rates shall be used, subject to the other provisions of this chapter, only if  
20 made in accordance with the following provisions:

21 (1) In the case of insurances under standard fire policies and that part of  
22 marine and transportation insurances not exempted under RCW  
23 48.19.010, manual, minimum, class or classification rates, rating  
24 schedules or rating plans, shall be made and adopted; except as to  
25 specific rates on inland marine risks individually rated, which risks are  
26 not reasonably susceptible to manual or schedule rating, and which  
risks by general custom of the business are not written according to  
manual rates or rating plans.

(2) In the case of casualty and surety insurances:

(a) The systems of expense provisions included in the rates for  
use by any insurer or group of insurers may differ from those of  
other insurers or groups of insurers to reflect the requirements  
of the operating methods of any such insurer or group with  
respect to any kind of insurance, or with respect to any  
subdivision or combination thereof for which subdivision or  
combination separate expense provisions are applicable.

1 (b) Risks may be grouped by classifications for the  
2 establishment of rates and minimum premiums. Classification  
3 rates may be modified to produce rates for individual risks in  
4 accordance with rating plans which establish standards for  
5 measuring variations in hazards or expense provisions, or both.  
6 Such standards may measure any differences among risks that  
7 can be demonstrated to have a probable effect upon losses or  
8 expenses.

9 (3) Due consideration in making rates for all insurances shall be given  
10 to:

11 (a) Past and prospective loss experience within this state for  
12 experience periods acceptable to the commissioner. If the  
13 information is not available or is not statistically credible, an  
14 insurer may use loss experience in those states which are likely  
15 to produce loss experience similar to that in this state.

16 (b) Conflagration and catastrophe hazards, where present.

17 (c) A reasonable margin for underwriting profit and  
18 contingencies.

19 (d) Dividends, savings and unabsorbed premium deposits  
20 allowed or returned by insurers to their policyholders, members,  
21 or subscribers.

22 (e) Past and prospective operating expenses.

23 (f) Past and prospective investment income.

24 (g) All other relevant factors within and outside this state.

25 (4) In addition to other factors required by this section, rates filed by an  
26 insurer on its own behalf may also be related to the insurer's plan of  
operation and plan of risk classification.

(5) Except to the extent necessary to comply with RCW 48.19.020  
uniformity among insurers in any matter within the scope of this section  
is neither required nor prohibited.”

There are a number of errors made by Petitioner in interpreting RCW  
48.19.030 as mandatory upon the Insurance Commissioner to only accept Washington  
experience. First, 48.19.030 is applicable to the insurer, not the Insurance  
Commissioner. It is instructive to the insurer as to what is preferred experience.  
Second, the language is not mandatory upon the insurer. Instead, RCW 48.19.030(3)  
merely provides that *due consideration* in making rates shall be given to experience in  
Washington. RCW 48.19.030(3) does not instruct that an insurer shall submit  
Washington experience, it only states that an insurer should give due consideration to  
Washington experience when making rates. Further, RCW 48.19.030(3) acknowledges

1 that Washington based experience is often not available or is not statically credible and  
2 provides for the insurer to give consideration to a larger set of states in order to gain  
3 credibility. Petitioner is merely interpreting the statute in an overly restrictive way to  
4 benefit his Demand for Hearing and Motions for Summary Judgment, but this  
5 extremely restrictive interpretation does not meet the plain intent of the statute to  
6 provide preferred directives to a carrier on what to consider when creating rates.

7 At most, the only responsibility of the Insurance Commissioner under RCW  
8 48.19.030, assuming arguendo that it applied to disability insurance, was to determine  
9 if due consideration in making the rates was accomplished by MetLife. MetLife's rate  
10 filings are comprised of over three hundred (300) pages full of actuarial information  
11 explaining the rate filing and the numbers. This rate filing was no different in form and  
12 substance than MetLife's 2011 rate filing, which also included national data because  
13 without these numbers MetLife cannot achieve statistical credibility. The Insurance  
14 Commissioner found this information sufficient and approved the rate filing. The  
15 Petitioner has not asserted that a small subset of states would have been statically  
16 credible or would have resulted in a lower premium rate. Therefore, even if RCW  
17 48.19.030 applied to disability insurance, the Insurance Commissioner did not violate  
18 this provision because an intensive review was conducted of MetLife's rate filings  
19 including a complete review of the very large amount of actuarial information  
20 supporting the rate filing submitted by MetLife.

21 Petitioner's First Motion for Summary Judgment submits two items that  
22 support OIC's Motion for Summary Judgment and warrant dismissal of this matter.<sup>4</sup>  
23 First, in Petitioner's First Motion for Summary Judgment he submits his long-term  
24 care insurance contract and cites to provisions of the contract arguing that he has been  
25 subject to "unfounded premium rate increases proposed by an insurer who will profit  
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<sup>4</sup> Petitioner also asserts that the OIC has acknowledged that RCW 48.19.030 applies in this matter simply because of a citation in a twenty-nine page brief in another matter. The OIC does not acknowledge that this statute applies, RCW 48.19.030 was not in issue during that matter. Further, mere reference to this RCW is not agency opinion nor is it binding. Only the Insurance Commissioner or the Presiding Officer may create binding precedence.

1 from such an increase." *See* Petitioner's Motions for Summary Judgment, Pages 3-4,  
2 9-12. However, the OIC's role is not to moderate actions between an insurer and a  
3 consumer with whom they have contracted. This is precisely why the Consumer  
4 Protection Act exist - to provide a venue for consumers. The Consumer Protection Act  
5 provides the appropriate venue for the Petitioner to address his concerns regarding his  
6 long-term care contract. Further, Petitioner has not included MetLife in this action.  
7 Rather, he has specifically declined to include MetLife, who likely is the only party  
8 who can actually address Petitioner's factual claims regarding his contract.

9 Petitioner also frequently cites to a report published by the AARP in support of  
10 his First Motion for Summary Judgment. However, this report is outdated. The  
11 information is over seventeen years old. The study was conducted during the summer  
12 of 1999. This was prior to enactment of NAIC's long-term care insurance model rules  
13 for reviewing rate filings of long-term care insurance. These rules standardized the  
14 processes for reviewing long-term care rate filings. Even this report acknowledges that  
15 the NAIC revisions to the Long-Term Care Insurance Model Act (that were in  
16 development during the writing of this report) would improve the regulation of long-  
17 term care premiums. *See* Petitioner's Exhibit 13 to Applicant's Motion for Partial  
18 Summary Judgment, page vi. This model has been implemented by the states and has  
19 even been improved upon since that time. Additionally, regulators meet regularly to  
20 discuss how to address this issue at a national level and have still continued to develop  
21 further requirements in the Long-Term Care Insurance Model Act. *See* Exhibit 5.  
22 Despite Petitioner's allegations that the numerous states have been working from  
23 different frameworks for approving rate filings, all states have ratified the Long-Term  
24 Care Insurance Model Rule since its development.

25 Despite that Chapter 48.19 RCW does not apply to long-term care insurance,  
26 the Insurance Commissioner's approval of MetLife's 2014 rate filings did not violate  
these provisions. These provisions are intended for an insurer and are only instruction  
to provide the preferred means of developing rates for Washington consumers.  
However, if that information is unavailable then greater experience becomes  
necessary. There were simply not enough policies sold in Washington or a smaller set

1 of states that would have created credible experience. If the Insurance Commissioner  
2 had accepted experience that was not credible, Petitioner's premium rates would have  
3 not been accurate and could have increased dramatically based upon uncredible  
4 experience. Petitioner's First Motion for Partial Summary Judgment should be denied  
5 because Chapter 48.19 RCW does not apply to long-term care insurance and even if it  
6 did, the Insurance Commissioner's actions in approving MetLife's 2014 rate filings  
7 did not violate these provisions.

8 3. Response In Opposition To Petitioner's Second Motion For Partial Summary  
9 Judgment: Petitioner Has Not Demonstrated That He Is Aggrieved.

10 Petitioner is not aggrieved, nor has he demonstrated that he has been  
11 prejudiced by the Insurance Commissioner's actions. Petitioner cites to his contract for  
12 support of his contention that he is aggrieved and discusses his rates versus benefits of  
13 the contract and the rider that he specifically purchased. Petitioner claims that his  
14 contract is unfair and that he is aggrieved as a result of premiums versus benefits in his  
15 long-term care insurance contract.<sup>5</sup> However, Petitioner's allegations only demonstrate  
16 that he could be aggrieved by MetLife's actions and his contract with MetLife, not  
17 because of an action by the Office of the Insurance Commissioner.<sup>6</sup> Petitioner strings  
18 these facts together to support his allegation that he is aggrieved because the rate  
19 filings did not include Washington specific experience.

20 Petitioner has not contended nor demonstrated that acceptance of Washington  
21 experience would have resulted in a lower premium. Nor has he demonstrated that this  
22 information would have produced credible experience. Rather, in the state of  
23 Washington, where the long-term care insurance costs are much higher than the

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24 <sup>5</sup> The OIC has little ability to dispute Petitioner's factual assertions because the  
25 OIC is not a party to the long-term care insurance contract nor has Petitioner joined  
26 MetLife as a party to this action.

<sup>6</sup> Petitioner's claims are suited to the Consumer Protection Act. The OIC does  
not mediate between a consumer and an insurer and this is not provided for in the  
Insurance Code.

1 national average, it is in fact likely that Petitioner would benefit with a lower premium  
2 from the submission of national experience instead of Washington experience. *See for*  
3 *Example, Exhibit 6: Genworth Summary of 2016 Survey Findings.*

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

11 Currently, Petitioner is pre-contract at his option to renew the contract and has  
12 not accepted the rate of the new term. Petitioner remains free to contract, such as  
13 choose a new carrier, choose to pay for the new term, or choose not to accept the new  
14 rate. While at first blush this may seem inequitable to accept a new rate increase or  
15 forfeit money already invested in a long-term care policy, however these are not the  
16 only options available to long-term care policyholders. Long-term care policyholders,  
17 like Petitioner, have specific protections under the Insurance Code to ensure that  
18 consumers have more options in order to retain some benefits from their prior contract  
19 terms. Policyholders can also choose to lessen or avoid the impact of the new premium  
20 rate by choosing an alternative option such reducing coverage on the policy or not  
21 renewing the contract while retaining a level of benefits commensurate with the  
22 premiums paid. Therefore, Petitioner does not have standing to challenge the rate  
23 because the rate filings do not impact his present term of policy and because the  
24 Petitioner remains free to contract and to choose among options presented.

25 A party must be aggrieved by an action of the Commissioner in order to have  
26 standing to request a hearing. Under the APA, a person “has standing to obtain judicial  
review of agency action if that person is aggrieved or adversely affected by the agency  
action.” RCW 34.05.530. A person is so aggrieved or adversely affected when: (1) The  
agency action has prejudiced or is likely to prejudice that person; (2) That person's  
asserted interests are among those that the agency was required to consider when it

1 engaged in the agency action challenged; and (3) A judgment in favor of that person  
2 would substantially eliminate or redress the prejudice to that person caused or likely to  
3 be caused by the agency action. These three conditions are derived from federal case  
4 law and all three conditions must be met to confer standing. *St. Joseph Hosp. &*  
*Health Care Ctr. v. Department of Health*, 125 Wn.2d 733, 739, 887 P.2d 891 (1995).

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

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

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

1           The second test limits review to those for whom it is most appropriate. *Id.* The  
2 test focuses on whether the Legislature intended the agency to protect the party's  
3 interest when taking the action at issue. *Id.* "The Washington Insurance Code governs  
4 the regulation of insurance and does not itself provide protection or remedies for  
5 individual interests." *Pain Diagnostics and Rehabilitation Associates, P.S. v.*  
6 *Brockman*, 97 Wn. App. 691, 697, 988 P.2d 972 (1999). The Insurance Code is not  
7 intended to create a property interest in a consumer that is equivalent to a  
8 constitutionally protected interest. Instead, protection for individual interests and  
9 remedies for violations of the insurance statutes and regulations must be brought under  
10 Washington's Consumer Protection Act (CPA). The remedy for Petitioner is to file a  
11 challenge under the CPA if the Petitioner believes that MetLife is violating its contract  
12 terms or is seeking to "normalize" rates in violation of the law or Petitioner's contract  
13 rights. Petitioner cannot be aggrieved by the OIC's approval of MetLife's rate filings  
14 because the intent of the Legislature when creating the Insurance Code was to regulate  
15 insurance, not create private rights of enforcement as the Legislature provided for in  
16 the CPA.

17           Finally, Petitioner also cannot pass the last test which requires that a judgment  
18 in favor of that person would substantially eliminate or redress the prejudice to that  
19 person caused or likely to be caused by agency action. The Demand for Hearing, even  
20 if successful, would eventually result in the same findings; that MetLife's rate filings  
21 were approved because the rates were not excessive, inadequate, or unfairly  
22 discriminatory. Furthermore, any order that would reverse these approved rate filings  
23 would only drive the product closer to insolvency making it unlikely that  
24 policyholders, like Petitioner, could file claims against the policy in the future and  
25 would violate WAC 284-83-230(6) which requires that loss-ratios must provide for  
26 future reserves and must account for the maintenance of such reserves for future  
needs. A judgment in favor of the Petitioner would not redress the alleged harm and it  
would violate other provisions of the Insurance Code.

          Petitioner cannot pass these three standing requirements and does not have  
standing to demand a hearing under the Insurance Code. Petitioner is not aggrieved by

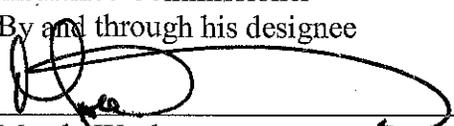
1 an action of the Commissioner because his new rate has not yet been implemented,  
2 Petitioner has not yet accepted this rate increase, and because he remains free to  
3 contract with another carrier or choose among his other options. Therefore, Petitioner  
4 does not meet the standing requirements for an aggrieved person and Petitioner's  
5 Second Partial Motion for Summary Judgment should be denied.

6 **IV. CONCLUSION**

7 For these reasons, OIC staff requests entry of an order denying Petitioner's  
8 Partial Motions for Summary Judgment (First, Second, and Third) and entry of an order  
9 dismissing Petitioner's Demand for Hearing as a matter of law.

10 DATED this 13th day of May, 2016.

11  
12 MIKE KREIDLER  
13 Insurance Commissioner  
14 By and through his designee

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16 Mandy Weeks  
17 Insurance Enforcement Specialist  
18 Legal Affairs Division  
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CERTIFICATE OF MAILING

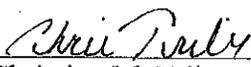
The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action,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

On the date given below I caused to be served the foregoing OIC'S RESPONSE IN OPPOSITION TO PETITIONER'S MOTIONS FOR 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](mailto: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](mailto:hearings@oic.wa.gov)  
**Via Hand Delivery and Email**

**SIGNED** this 13<sup>th</sup> day of May, 2016, at Tumwater, Washington.

  
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Christine M. Tribe