

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

FILED

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In the Matter of:

LEO J. DRISCOLL,

Applicant.

Docket No. 16-0002

ORDER ON APPLICANT'S MOTION
TO AMEND DEMAND FOR
HEARING

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

TO: Leo J. Driscoll
4511 E. North Glenngrae Lane
Spokane, WA 99223

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
Molly Nollette, Deputy Commissioner, Rates and Forms Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
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Background.

On February 18, 2016, Leo J. Driscoll ("Applicant") filed a motion to amend his Demand for Hearing ("Demand") challenging the Office of Insurance Commissioner's ("OIC's") approval of a premium increase of 22.69 percent for long-term care insurance policies TIAA-CREF Life Insurance Company ("T-C Life") issued to Applicant and his wife Mary T. Driscoll ("Motion"). Applicant's Demand states that Metropolitan Life Insurance Company ("MetLife"), as administrator of the T-C Life policies, and indemnitor-reinsurer of such policies, submitted the request for rate increase to the OIC on T-C Life's behalf.

Applicant explains that in his original Demand, at Paragraphs 16 and 41.e., he erroneously indicated that MetLife issued 581 LTC.02 forms, 241 LTC.03 forms, and 51 LTC.04 forms, in Washington State. However, Applicant now indicates that of the 873 forms MetLife issued in Washington State, the proper assignment of those forms to either an LTC.02, LTC.03, or LTC.04 designation is unknown. Applicant's Motion now requests leave to amend his Demand to correct this error. However, Applicant states in his Motion that OIC's request that he encapsulate his amendments to the original Demand in a single new Demand that includes both the amendments and the remaining original Demand language is "unduly burdensome, an unnecessary waste of ink

and paper, but it is one that applicant will accomplish if the Presiding Officer deems it to be the customary practice.”

On February 23, 2016, the OIC filed its response to Applicant’s Motion (“Response”). In its Response, at 1:14-18 and 3:13-15, the OIC requests the undersigned enter an order requiring Applicant to file an amended Demand that contains the amendments above “prior to entry of an order denying or granting the [Motion].” (Brackets added). In its Response, the OIC relies upon both WAC 10-08-035 and CR 15 as the basis for its position.

On February 26, 2016, Applicant filed its reply to the Response (“Reply”). In his Reply at Paragraph A, Applicant cites WAC 284-02-070(2)(d), and its emphasis on the informal nature of adjudicative proceedings before the OIC, and that compliance with the formal rules of pleading is not required, to argue that to require pro se litigants such as himself “to re-state the entirety of their application to the Commissioner when any element of it is to be amended would be at odds with the informality which has been ordered by the Commissioner.” At Paragraph B of its Reply, in response to OIC’s position that the “[Demand] should contain the entire demand,” Applicant notes that Paragraph 1 of its Demand contains its entire demand, and that amending Paragraphs 16 and 41 e. will not alter the demand. In its Reply, Applicant states: “The process proposed by the OIC’s counsel is burdensome, unnecessary, and at odds with what appears to be the intent and goals of WAC 284-02-070(2)(d).”

Law and Analysis.

RCW 48.04.010(1)(b) provides that the Commissioner shall hold a hearing “upon written demand for a hearing made by any person aggrieved by any act, threatened act, or failure of the commissioner to act. . . .” See also WAC 284-02-070(1)(b). RCW 48.04.010(2) provides what content must be included in a demand for hearing, and states: “Any such demand for a hearing shall specify in what respects such person is so aggrieved and the grounds to be relied upon as a basis for the relief to be demanded at the hearing.” WAC 284-02-070(1)(b)(ii) adds: “Demands for hearing must be in writing and delivered to the Tumwater office of the OIC. . . . A hearing is considered demanded when the demand for hearing is received by the commissioner.” See also WAC 10-08-035.

Applicant previously filed the Demand in this matter which triggered the instant adjudicative proceeding under RCW 48.04.010(1)(b) and WAC 284-02-070(1)(b). The Demand included the requisite contents outlined in in RCW 48.04.010(2), and was both in the proper format and delivered to the OIC as required by WAC 284-02-070(1)(b)(ii). The question pending though is whether the amendments to the Demand proposed by Applicant must be submitted in a single updated Demand per the requirements in CR 15, and before Applicant’s Motion may be granted. The law dictates a negative answer to this inquiry.

WAC 284-02-070(2)(d) emphasizes the informal nature of adjudicative proceedings before the OIC, and states: “Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.” The rules of statutory construction apply to agency regulations as well

as statutes. *Tesoro Refining and Marketing Co. v. Dep't of Revenue*, 164 Wn.2d 310, 322, 190 P.3d 28 (2008); *Madre v. Health Care Auth.*, 149 Wn.2d 458, 472, 70 P.3d 931 (2003). As stated in *Tesoro Refining and Marketing Co. v. Dep't of Revenue*, 164 Wn.2d 310, 317, 190 P.3d 28 (2008): "The goal of statutory interpretation is to carry out the legislature's intent. *Burns*, 161 Wash.2d at 140, 164 P.3d 475. If the meaning of the statute is plain, the court discerns legislative intent from the ordinary meaning of the words." Applicant is correct to emphasize this portion of the OIC's administrative hearings rule. WAC 284-02-070(2)(d) states that during adjudicative proceedings before the OIC compliance with the formal rules of pleading, including CR 15, is not required.

CR 1 explains that the Washington Superior Court Civil Rules "govern the procedure in the superior court in all suits of a civil nature. . . ." Adjudicative proceedings before the OIC are not in superior court, and therefore arguably the Washington Superior Court Civil Rules have limited applicability, if at all, in such proceedings. Aside from WAC 284-02-070(2)(e)(i)'s incorporation by reference of most of CR 26 through 37 governing discovery, the OIC has not adopted the remaining Superior Court Civil Rules for use in its administrative proceedings. Even if we applied CR 15(a) to Applicant's Motion, Applicant arguably meets the threshold under that rule to amend his Demand.

CR 15(a) concerns amended and supplemental pleadings and states: "If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended pleading. . . ." In *Hook v. Lincoln County Noxious Weed Control Bd.*, 166 Wn. App. 145, 160, 269 P.3d 1056 (2012) the Court explained that appellant's failure to provide the amended complaint required by CR 15(a) with his motion to amend was sufficient basis to deny the motion, stating: "As observed by the court, 'I don't even have anything in front of me that would indicate what that amendment is or is intended to be.'" The Court added: "The court recognized that the county and the weed control board were prejudiced by [appellant's] request that he be granted leave to file an as-yet unprepared amended complaint." *Hook*, 166 Wn. App. at 160.

Unlike appellant in *Hook*, Applicant has provided the undersigned and the OIC with the scope of the amendment to the Demand he proposes, and the OIC does not object, provided before the undersigned grants the Motion, Applicant submit an amended Demand that includes the amended language and any remaining original language. Unlike the weed control board in *Hook*, The OIC is not prejudiced by Applicant's Motion and form it is in. Applicant simply wants to clarify that of the 873 forms MetLife issued in Washington State, contrary to what he stated in his original Demand, the proper assignment of those forms to either an LTC.02, LTC.03, or LTC.04 designation is unknown.

In *Sherry v. Financial Indemnity Co.*, 160 Wn.2d 611, 617-618, 160 P.3d 31 (2007), the Court indicated that parties to a civil action can effectively amend their initial pleadings by their actions, stating:

For clarity, it would have been better practice for the parties before us to have pleaded a declaratory judgment action either in this cause of action or another. However, under the

facts of this case where neither party objected and both parties treated the matter as if they had joined a declaratory action to a motion to confirm an arbitration award, we agree with the Court of Appeals that the parties have effectively amended their initial pleadings under CR 15(a) to better reflect the actual nature of the case. *Cf. Munden v. Hazelrigg*, 105 Wn.2d 39, 46-47, 711 P.2d 295 (1985) (noting trial court may require amended pleadings under similar circumstances).

(Emphasis added).

Under *Sherry*, even under CR 15(a), given the OIC's agreement with the substance of Applicant's Motion, save for the form it takes, I conclude that the parties have effectively agreed to amend the Demand to reflect the actual facts.

Ruling.

Applicant's Motion is granted. In doing so, Applicant is not required to submit an amended Demand that includes both his amendments and any remaining language.

Dated: March 11, 2016



WILLIAM PARDEE
Presiding Officer

CERTIFICATE OF SERVICE

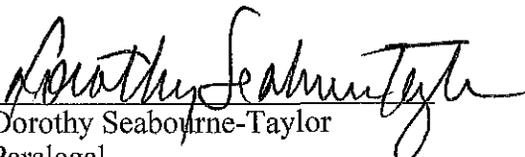
The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action,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

On the date given below I caused to be filed and served the foregoing Order on Applicant's Motion to Amend Demand for Hearing on the following people at their addresses listed below:

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

Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
Molly Nollette, Deputy Commissioner, Rates and Forms Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Mandy Weeks, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Dated this 11th day of March, 2016, in Tumwater, Washington.


Dorothy Seabourne-Taylor
Paralegal
Hearings Unit