

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

FILED

2016 JAN 27 A 10:10

In the Matter of:

LEO J. DRISCOLL,

Applicant.

Docket No. 16-0002

NOTICE OF 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
Mandy Weeks, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

This Notice is provided pursuant to RCW 48.04.010 and RCW 34.05.434.

On January 4, 2016, Leo J. Driscoll ("Applicant") filed a 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. 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. In his Demand, Applicant states that the OIC's approval of the 22.69 percent rate increase was erroneous because:

- MetLife's submissions to the OIC failed to comply with RCW 48.19.040(2), and specifically RCW 48.19.030(3) and WAC 284-60-050, because they did not include the past and prospective loss experience of the policies at issue within the state of Washington, and did not show that such information was unavailable or not statistically credible;
- As conditionally permitted by RCW 48.19.030(3)(a), MetLife's submissions to the OIC did not include the loss experience of similar forms of those states which are likely to produce loss experience similar to that in the state of Washington;

- Rather, MetLife's submissions to the OIC included the nationwide loss experience of 34,910 long-term care insurance policies T-C Life issued consumers;
- The actuarial memorandum which accompanied MetLife's submissions purports to provide information as to the loss experience of T-C Life's long-term care insurance policies through an exercise of artificially normalizing the differing actions of other states;
- The long-term care insurance policies that T-C Life issued Applicant did not state that T-C Life could exercise the premium-increase provision in its contracts with Applicant and others for any reason, with or without cause; and did not state specify grounds or reasons that would justify a rate increase. The rate increase represents an unconstitutional deprivation of property without due process of law;
- The applicable provisions of RCW Chs. 48.18 and 48.19, and WAC Ch. 284-60, conferred upon Applicant, and others similarly situated, constitutionally protected property interests. In particular, RCW 48.19.030(3)(a), which requires the OIC to review past and prospective loss experience of the policies at issue within the state of Washington, is a "substantive predicate" or "particularized standard or criteria. . . to guide the discretion of decisionmakers." As is WAC 284-60-040(1) and its requirement that consideration be given to give factors when grouping similar policy forms for ratemaking purposes, so as "to enhance statistical reliability and improve the likelihood of premium adequacy. . . ."
- In sum, such statutes constitute standards or rule that create property interests for Applicant that are protected by the state and federal constitutions.

On January 26, 2016, the undersigned held a first prehearing conference. The OIC was represented by Mandy Weeks, Insurance Enforcement Specialist, of the OIC's Legal Affairs Division. Applicant appeared pro se.

After considering the views of the Parties, I enter the following Order:

The parties shall complete all discovery, including interrogatories, requests for production, and requests for admissions, by March 25, 2016.

By April 29, 2016, the parties shall serve and file dispositive Motions. By May 13, 2016, the parties shall serve and file Responses to such Motions. By May 20, 2016, the parties shall serve and file Replies to such Responses. I expect to rule without oral argument as soon as possible after briefing is complete.

Assuming this matter is not resolved based upon the dispositive Motions, a hearing will be held at the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, WA, beginning on June 2, 2016, at 9:00 a.m., Pacific Standard Time. The hearing is expected to require less than one day, but will continue until completed. The purpose of the hearing is to consider whether the OIC's approval of a 22.69 percent increase in the premiums for long-term care insurance policies T-C Life issued to Applicant and his wife (and submitted to the OIC by MetLife on T-C Life's behalf) was lawful.

By May 26, 2016, the parties shall exchange copies of witness and exhibit lists, briefs and any other documents they expect to offer into evidence at the evidentiary hearing. Any witness and

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exhibit lists, briefs and documents so provided should also be provided to the Hearings Unit at the address below.

The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08 WAC. All parties may be represented and may examine witnesses, respond, and present evidence and argument on all relevant issues.

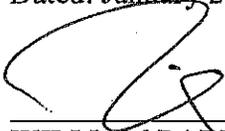
A party who fails to attend or participate in the hearing or another stage of this proceeding may be held in default in accordance with Chapter 34.05 RCW. *See*, RCW 34.05.434(2)(i).

William Pardee, Presiding Officer, has been designated by the Insurance Commissioner to hear and determine this matter. The hearing will be held under the authority granted by the Insurance Commissioner under Chapter 48.04 RCW.

Pursuant to WAC 284-02-070(1)(c), accommodation will be made for persons needing assistance due to difficulty with language or disability. Further, pursuant to WAC 10-08-040(2) and in accordance with Ch. 2.42 RCW, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by Ch. 2.42 RCW. A Request for Accommodation form, with instructions, is attached to the original of this Notice.

All case related documents and correspondence shall be directed to the Hearings Unit, Office of Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255. All interested individuals and entities who have questions or concerns concerning this proceeding should direct them to the Hearings Unit paralegal, Dorothy Seabourne-Taylor, at the same address. Ms. Seabourne-Taylor's telephone number is (360) 725-7002.

Dated: January 27, 2016



WILLIAM PARDEE
Presiding Officer

CERTIFICATE OF SERVICE

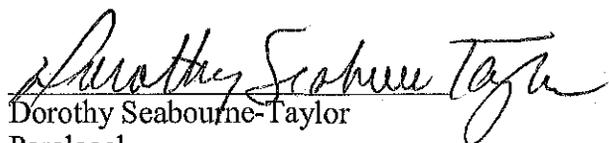
The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action,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

On the date given below I caused to be filed and served the foregoing Notice of 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 27th day of January, 2016, in Tumwater, Washington.


Dorothy Seabourne-Taylor
Paralegal
Hearings Unit

OFFICE OF INSURANCE COMMISSIONER
HEARINGS UNIT
Fax: (360) 664-2782

To request an interpreter, complete and mail this form to:

Presiding Officer
Hearings Unit
Office of Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

REQUEST FOR ACCOMMODATION FOR LANGUAGE OR DISABILITY

I am a party in Matter No.16-0002 before the Insurance Commissioner.

I request accommodation for the following disability (insert your disability):

I request an interpreter for myself or a witness who will be testifying at the evidentiary hearing.

Please check the statements that apply:

I am a non-English-speaking person and cannot readily speak or understand the English language. My primary language is _____ (insert your primary language). I need an interpreter who can translate to and from the primary language and English.

I am unable to readily understand or communicate the spoken English language because:

- I am deaf.
- I have an impairment of hearing.
- I have an impairment of speech.

[Please state below or on the reverse side any details which would assist the Commissioner or Presiding Officer in arranging for a suitable accommodation for your disability, an interpreter or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: _____

Signed: _____

Please print or type your name: _____

Address: _____

Telephone: _____