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Personal Insurance Federation of California,
6 American Insurance Association, Property Casualty
Insurers Association of America dba Association of
7 California Insurance Companies, National
Association of Mutual Insurance Companies, and
8 Pacific Association of Domestic Insurance
Companies

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SACRAMENTO

12 MERCURY CASUALTY COMPANY,

13 Petitioner and Plaintiff,

14 v.

15 DAVE JONES, IN HIS OFFICIAL
CAPACITY AS THE INSURANCE
16 COMMISSIONER OF THE STATE OF
CALIFORNIA,

17
18 Respondent and Defendant.

19
20
21 CONSUMER WATCHDOG,

22 Intervenor.

Case No. 34-2013-80001426

Assigned to: Hon. Eugene L. Balonon, Dept. 14

**DECLARATION OF VANESSA WELLS IN
SUPPORT OF MOTION FOR LEAVE TO
INTERVENE**

Date: September 13, 2013

Time: 11:00 a.m.

Dept.: 14

Action Filed: March 1, 2013

1 I, Vanessa Wells, hereby declare as follows:

2 1. I am an attorney licensed to practice by the State of California before this Court. I
3 am a partner in the firm Hogan Lovells US LLP, attorneys of record for Proposed Intervenors
4 Personal Insurance Federation of California, American Insurance Association, National
5 Association of Mutual Insurance Companies, Property Casualty Insurers Association of America
6 dba Association of California Insurance Companies, and Pacific Association of Domestic
7 Insurance Companies (hereinafter the "Trades") in this action. I am making this declaration in
8 support of the Trades' Motion for Leave to Intervene.

9 2. Attached hereto as Exhibit 1 is a true and correct excerpted copy of the Summary
10 of and Response to Public Comment Received Prior to September 13, 2006 Public Comment
11 Deadline, CDI File No. RH05042749, Prior Approval Regulations. This document, which was
12 retrieved at my direction from the California Department of Insurance's website, is available at
13 <http://www20.insurance.ca.gov/pdf/REG/90430.pdf>.

14 3. Attached hereto as Exhibit 2 are true and correct copies of the 2011 California
15 Property & Casualty Market Share Reports for Private Passenger Auto Liability, Private
16 Passenger Auto Physical Damage, and Homeowners Multiple Peril. These reports, which were
17 retrieved from the California Department of Insurance's website at my direction, are available at
18 <http://www.insurance.ca.gov/0400-news/0200-studies-reports/0100-market-share/index.cfm>.

19 4. Attached hereto as Exhibit 3 is a true and correct copy of the Trades' Proposed
20 Complaint in Intervention.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct and that this declaration was executed on April 26, 2013 at Palo
23 Alto, California.


24 
25 Vanessa Wells

EXHIBIT 1

SUMMARY OF AND RESPONSE TO PUBLIC COMMENT RECEIVED PRIOR TO SEPTEMBER 13, 2006, PUBLIC COMMENT DEADLINE

Introductory, Concluding, and/or General Remarks Not Specific to a Particular Section

Commentor: Sherman Sitrin, on behalf of American International Group (AIG),
September 12, 2006, Cover page;
Mary B. Gaillard, on behalf of AIG, page 1;
Oral statements by Sherman Sitrin and Mary Gaillard, AIG, September 13,
2006, transcript pages 36-37.

Summary: Introductory comments.

Response: Because this portion of the comment is not specifically directed at the Commissioner's proposed revised regulations or to the procedures followed in proposing the revised regulations, no response is necessary. To the extent the comment generally describes the focus of the comments, a detailed response is provided below in connection with the summary of and response to the more detailed comment.

Commentor: Mary B. Gaillard, on behalf of AIG, September 12, 2006, page 1;
William K. Johanneson, on behalf of Farmers Insurance Group, September
13, 2006, page 2.

Summary: "One-size-fits-all" and non-pliable methods have the potential to result in the unfair treatment of insurers. In turn, this treatment creates a disincentive for insurers to compete to provide the best possible products to consumers.

Response: The "one-size-fits-all" argument was rejected by the California Supreme Court in *20th Century*. Indeed, both the *Calfarm* and *20th Century* courts made it clear that the Commissioner has the legal authority to take those steps reasonably necessary to make the job of rate regulation manageable. (*20th Century*, (quoting *Calfarm*) 8 Cal. 4th 216, 245; 32 Cal. Rptr. 807, 824.) With that said, the regulation is replete with revisions, as is explained in detail herein, allowing for the application of company-specific data. And, as is also explained in detail herein, various constitutional safety-valves, known as variances, have been revised or added to the regulations to increase flexibility. All told, what detractors have referred to as the "cookie-cutter" characteristic of the regulations has been addressed.

Commentor: Mary B. Gaillard, on behalf of AIG, September 12, 2006, Page 1; oral statement of Mary Gaillard (AIG), transcript, pages 37-38;
William K. Johanneson, on behalf of Farmers Insurance Group, September
13, 2006, page 2.

Summary: The use of industry averages and one ratemaking methodology for all lines of business seems to contradict the Casualty Actuarial Society's "Statement of Principles

Commentor Richard J. Roth, Jr., Bickerstaff, Whatley, Ryan & Burkhalter, Inc.;
September 11, 2006, page 6.

Summary: This section should be deleted. It appears innocent, but is not. It is difficult for actuaries to estimate IBNR amounts on a reinsurance contract. In a hearing, this issue could turn the hearing into a farce. If it is covered by reinsurance, why does it matter? The only thing that matters is the Annual Statement Schedule P, Part 2.

Response: Section 2644.25 references reinsurance recoverables. Therefore, a definition of that term clarifies the meaning of the regulations. This is a standard actuarial definition. The commentor does not indicate why he believes it is difficult for actuaries to estimate IBNR amounts on a reinsurance contract. However, even if it is difficult to estimate, IBNR is typically and appropriately included. It is also unclear why the commentor believes a hearing will become a farce. However, the Department believes that the administrative law judge will not allow that to be the case.

Commentor Shawna Ackerman, Pinnacle Actuarial Resources, Inc., on behalf of
ACIC, PIFC, AIA; September 13, 2006; page 18 – 19;
Kent R. Keller and Steven H. Weinstein, Barger & Wolen, on behalf of
AIA, ACIC, PIFC; September 13, 2006; page 19.

Summary: This definition appropriately includes loss adjustment expense since many reinsurance agreements do contain provisions for the recovery of loss adjustment expenses. CDI treats loss adjustment expenses differently depending on whether it is defense and cost containment expense or adjusting and other expense. The full amount of company specific DCCE is allowed in the rate formulation, whereas A&OE is capped along with other expenses via the efficiency standards. The full reflection of the loss adjustment expense in the recoverables creates a potential mismatch. The expense component will contain a capped expense allowance for A&OE. The recoverables, which are subtracted from the formula, will contain uncapped A&OE. This provision lacks clarity, consistency and authority.

Response: The Commissioner has determined that this does not create a mismatch. The definition of reinsurance recoverables only applies to the section 2644.25 calculation.

Commentor Hilary N. Rowen, Thelen Reid & Priest, and Richard A. Derrig, OPAL
Consulting, on behalf of four specific insurers; September 13, 2006; page 20.

Summary: There are no specific problems with this section.

Response: A specific response is not required.

Section 2644.27 Variance Request

The 20th Century Court emphasized the importance of variances and stated time and time again that the variances expressly provided for in the regulations are the final mechanism for rate adjustments necessary to avoid confiscation before the final rate determination is made. The Commissioner recognizes the importance of variances and is fully cognizant that the Court in 20th Century relied on variances as an extremely important protection against confiscation. Both the *Calfarm* and 20th Century Courts made it clear that the Commissioner has the legal authority to take those steps reasonably necessary to make the job of rate regulation manageable. (20th Century, (quoting *Calfarm*) , 8 Cal. 4th 216, 245; 32 Cal. Rptr. 807, 824.) The Commissioner is also aware that insurers must be allowed an opportunity to earn a fair and reasonable rate of return. Variances are important as the constitutional safety valves. However, a variance cannot be created for every possible contingency. The Commissioner has determined that variances must be carefully considered, otherwise the exceptions will swallow the rule making meaningful rate regulation impossible. And the opposite is also true. The regulations must contain enough of these safety valves to ensure insurers may avoid confiscation.

Commentor Mary B. Gaillard, on behalf of AIG, September 12, 2006, page 5 – 6.

Summary: A variance should be added for “demonstrated changes in the company distribution systems.”

Response: Section 2644.12(b) provides that efficiency standard shall be set separately for each insurance line, and separately for insurers distributing through independent agents and brokers, through exclusive agents, and through employees of the insurer selling insurance on a direct basis. The October 5 version of the regulations adds language indicating that for an insure using more than one distribution system, the efficiency standard shall consist of an average weighted by earned premium for each distribution system. This new language should address the concerns expressed in the comment.

Commentor Mary B. Gaillard, on behalf of AIG, September 12, 2006, pages 5-6.

Summary: A variance should be added where “the insurer employs the same methodology in setting rate levels as when calculating its reserves, and the methodology in Section 2644.6 would, if utilized, yield substantial differences to the financial statements.

Response: This comment is rejected for the reasons set forth in connection with similar comments made by the commentor regarding section 2644.6 above.

Commentor Mary B. Gaillard, on behalf of AIG, September 12, 2006, pages 5-6.

Summary: A variance should be added where there is “rapid growth or reduction in a book of business.”

Response: The situation as described in the comment would likely be addressed by

EXHIBIT 2

Market Share Report for Calendar Year 2011

Preface

Since the passage of Proposition 103 in 1988, the Rate Specialist Bureau has produced an annual Market Share Report for all lines of business conducted by licensed property and casualty insurers in the State of California. Every year, these reports have generated increased interest from the public as well as from the insurers. These reports are posted on the Department's website (<http://www.insurance.ca.gov/>) so that all departmental personnel and the public may make avail of this information.

For Calendar Year 2011, we are releasing four (4) volumes of the Market Share Report in a similar format as the 2010 version. To the best of our knowledge, all licensed insurers who wrote Property or Casualty insurance in California are included in this report.

As always, companies that had no written premium (reporting either zero premium or negative premium) have been excluded. Additionally, as in previous reports, we have included two additional lines of data: Combined Private Passenger Automobile [Line 19.2 + Line 21.1] and Combined Commercial Automobile [Line 19.4 + Line 21.2].

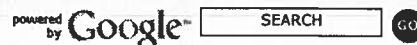
This year again, we added a section in Volume 1 to include data for the Risk Retention Groups (RRG) that had business in California during Calendar Year 2011. We began publishing RRG data for Calendar Year 2009. These RRG's were formed pursuant to California Insurance Code 125 et. seq. and the Federal Liability Risk Retention Act of 1986.

The four volumes of this report are:

- Volume 1:
- (i) Summary Pages of the California P&C Industry for the past 21 Years, from 1991 to 2011, for All Lines.
 - (ii) Historical Premiums and Losses (Data and Graphs) from 1991 to 2011 for Each Line of Business.
 - (iii) * List of All Insurance Groups, sorted by Market Share.
* Concentration Level Report, for each of the Top 25 Groups within California.
- Volume 2:
- (i) 2011 California Market Share Report by Company, sorted by Company Name.
 - (ii) 2011 California Market Share Report by Company, sorted by Market Share.
- Volume 3:
- 2011 Market Share Report by Group, and by companies within the group, sorted by Group Name.
- Volume 4:
- 2011 Market Share Report by Group, and by companies within the group, sorted by Market Share.

We hope that this report will be useful to you. If you have any questions or comments, please feel free to contact us.

George Yen
Chief, Rate Specialist Bureau
May 1, 2012



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NEWS: 2011 CA PROPERTY & CASUALTY MARKET SHARE

The following reports are for the 2011 Market Share of Property & Casualty Insurers licensed to do business in California. The data are from the National Association of Insurance Commissioner's (NAIC) database, for California licensed companies only. The information is the same as reported on the State Page (page 19) of the Insurer's Annual Statement or known as the Statutory Page 14 data. Only CA licensed companies actively doing business in California (with Direct Written Premium greater than \$0) are included.

The reports are "by line of business" on an individual company basis and on a group basis, and are sorted alphabetically by company (or group) name, and by their written premium. The Top 25 Groups' report shows their breakdown of business written by concentration level, which is defined by the percentages of premium written in 2011 by line of business with respect to that group's total business written. These Top 25 Groups represent 77.27% of California's property and casualty industry. Lastly, we have included the Historical Loss & LAE Ratios of a selected 20 Insurers (1997 to 2011) in California for three major lines of business, Homeowners, PPA Liability, and PPA Physical Damage.

We have a section for Risk Retention Groups (RRG) that had business in California in 2011. Risk retention groups are created under the federal Risk Retention Act of 1986. The Act permits an RRG to form as an insurance company and requires it follow the insurance laws of at least one state.

Note: The following reports are in PDF. You will need the Adobe Acrobat Reader to view the PDF file. You can download Acrobat Reader from our [Free Document Readers](#) website.

[Preface \(pdf\)](#)

[Market Share Summary \(pdf, 1MB\)](#)

[Market Share by Line, by Company Name \(pdf, 4MB\)](#)

[Market Share by Line, by Group Name \(pdf, 4MB\)](#)

[Market Share by Line, by Company Written Premium \(pdf, 4MB\)](#)

[Market Share by Line, by Group Written Premium \(pdf, 4MB\)](#)

[Top 25 Insurance Groups' Concentration Level \(pdf, 2MB\)](#)

[Premium & Loss Distribution Charts by Line \(pdf, 479KB\)](#)

[Historical \(1991-2011\) Premium & Loss Charts by Line \(pdf, 1.08MB\)](#)

[Homeowners: Selected 20 Loss & LAE Report \(pdf, 99KB\)](#)

[PPA Liability: Selected 20 Loss & LAE Report \(pdf, 99KB\)](#)

[PPA Physical Damage: Selected 20 Loss & LAE Report \(pdf, 99KB\)](#)

[PPA Combined Liability & Physical Damage: Selected 20 Loss & LAE Report \(pdf, 99KB\)](#)

Risk Retention Group

[RRG Premium & Loss Distribution Charts by Line](#)

[RRG Companies sorted by Line by Company Name](#)

[RRG Companies sorted by Line by Written Premium](#)

KEY: The columns of the report are as follows:

Rec #: Record Count (number of companies or groups in the report)

Group #: NAIC assigned number for the Group of companies

NAIC #: NAIC assigned number for the Individual companies

Company Name: Name of the Insurer

Written Premium: CA Direct Written Premium (DWP)

Market Share: Calculated by dividing the insurer's DWP by the Total DWP for all insurers

Concentration Level: The % of premium written in the current year by line of business with respect to the group's total business written

Earned Premium: CA Direct Earned Premium (DEP)

Incurred Losses: CA Direct Losses Incurred (DLI)

Loss Ratio: Calculated by dividing the insurer's DLI by the DEP

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: PRIVATE PASSENGER AUTO LIABILITY [19.2]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
1	212	36404	21st Century Cas Co	9,641,868	0.0889%	73	9,445,389	5,530,318	58.55%
2	212	34789	21st Century Centennial Ins Co	379,498	0.0035%	136	248,317	21,738	8.75%
3	212	12963	21st Century Ins Co	353,082,986	3.2559%	7	359,271,489	190,467,161	53.01%
4	212	43761	21st Century Superior Ins Co	7,694	0.0001%	162	7,694	570,246	7411.57%
5	1278	15539	AAA Northern CA NV & UT Ins Exch	701,588,156	6.4696%	4	701,122,111	381,726,640	54.45%
6	1278	10921	ACA Ins Co	7,266,635	0.0670%	84	11,946,498	4,645,717	38.89%
7		11711	Access Ins Co	162,869,135	1.5019%	16	161,319,101	141,757,874	87.87%
8	313	33898	Aegis Security Ins Co	3,257,553	0.0300%	101	3,257,553	2,309,745	70.90%
9	3596	42609	Affirmative Ins Co	12,624,605	0.1164%	64	13,368,866	8,374,423	62.64%
10		10920	Alliance United Ins Co	78,465,874	0.7236%	32	76,694,455	56,530,385	73.71%
11	140	42579	Allied Prop & Cas Ins Co	61,637,236	0.5684%	36	61,978,782	36,774,379	59.33%
12	3239	22730	Allied World Reins Co	23,053	0.0002%	156	26,865	19,922	74.16%
13	8	19240	Allstate Ind Co	719,538,134	6.6351%	3	728,090,109	484,446,812	66.54%
14	8	19232	Allstate Ins Co	154,522,124	1.4249%	20	158,233,489	80,200,545	50.68%
15	140	19100	Amco Ins Co	134,710,538	1.2422%	22	137,005,991	94,717,978	69.13%
16	19	10111	American Bankers Ins Co Of FL	772,116	0.0071%	125	728,764	296,109	40.63%
17	361	23450	American Family Home Ins Co	2,718,419	0.0251%	105	1,360,647	791,846	58.20%
18	361	23469	American Modern Home Ins Co	1,263,184	0.0116%	118	1,313,584	1,049,786	79.92%
19	19	19615	American Reliable Ins Co	108,796	0.0010%	151	107,650	40,752	37.86%
20	313	17965	American Sentinel Ins Co	757,579	0.0070%	126	183,296	155,722	84.96%
21	111	37214	American States Preferred Ins Co	19,563,550	0.1804%	54	19,480,938	13,307,125	68.31%
22	28	19976	Amica Mut Ins Co	30,318,321	0.2796%	44	29,629,648	22,756,205	76.80%
23	4256	40010	Anchor Gen Ins Co	44,361,141	0.4091%	41	46,436,917	36,951,570	79.57%
24	4757	34460	Autoone Ins Co	1,233,432	0.0114%	119	1,452,647	1,046,837	72.06%
25	1281	24813	Balboa Ins Co	753,535	0.0069%	127	1,471,898	-98,379	-6.68%
26	626	18279	Bankers Standard Ins Co	5,082,456	0.0469%	94	4,386,449	3,980,735	90.75%
27	660	38342	California Automobile Ins Co	46,601,145	0.4297%	39	50,128,864	28,856,198	57.56%
28	802	13544	California Capital Ins Co	24,127,607	0.2225%	52	23,901,241	20,417,480	85.42%
29	33	20117	California Cas Ind Exch	51,587,147	0.4757%	38	52,061,591	25,640,633	49.25%
30	3703	40134	Castlepoint Natl Ins Co	968,987	0.0089%	122	437,384	250,651	57.31%
31		26905	Century Natl Ins Co	6,743,900	0.0622%	87	6,061,687	3,909,706	64.50%
32	12	19402	Chartis Prop Cas Co	2,918,592	0.0269%	104	363,239	-175,156	-48.22%
33	323	10693	Civil Serv Employees Ins Co	7,387,896	0.0681%	83	7,485,500	11,600,114	154.97%
34	4725	20532	Clarendon Natl Ins Co	180,761	0.0017%	148	213,852	-47,240	-22.09%
35	212	25089	Coast Natl Ins Co	245,158,228	2.2607%	12	230,964,116	150,745,978	65.27%
36	411	13161	Commerce W Ins Co	81,687,222	0.7533%	31	83,895,541	59,416,909	70.82%
37	225	10906	Commercial Alliance Ins Co	2,340,994	0.0216%	108	1,149,307	1,124,965	97.88%
38	661	12157	Companion Prop & Cas Ins Co	9,811,950	0.0905%	71	6,580,654	4,549,973	69.14%
39		10783	Cornerstone Natl Ins Co	8,022,749	0.0740%	81	8,448,947	7,131,155	84.40%
40	323	18953	CSE Safeguard Ins Co	9,727,015	0.0897%	72	10,338,700	8,022,997	77.60%
41	930	19269	Danielson Natl Ins Co	1,670,284	0.0154%	115	1,747,446	1,387,353	79.39%
42	140	42587	Depositors Ins Co	3,124,549	0.0288%	102	3,344,147	2,776,298	83.02%
43	831	34495	Doctors Co An Interins Exch	10,298	0.0001%	161	10,509	2,571	24.46%
44	4672	12502	Dongbu Ins Co Ltd	629,301	0.0058%	131	178,265	304,920	171.05%
45	802	12890	Eagle W Ins Co	1,480,440	0.0137%	117	1,441,014	1,244,797	86.38%
46		21261	Electric Ins Co	1,986,445	0.0183%	111	2,017,378	1,738,121	86.16%
47	8	10358	Encompass Ins Co	24,331,446	0.2244%	51	24,849,973	21,682,686	87.25%

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: PRIVATE PASSENGER AUTO LIABILITY [19.2]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
48	1129	37915	Essentia Ins Co	2,144,153	0.0198%	110	2,068,226	-1,478,401	-71.48%
49	8	30210	Esurance Prop & Cas Ins Co	102,937,643	0.9492%	28	104,149,820	48,282,470	46.36%
50	38	35181	Executive Risk Ind Inc	14,964	0.0001%	159	14,877	37,753	253.77%
51	922	40029	Explorer Ins Co	41,947,970	0.3868%	42	51,710,426	45,253,168	87.51%
52	212	21652	Farmers Ins Exch	339,329,443	3.1291%	8	302,177,015	147,960,445	48.96%
53	38	20281	Federal Ins Co	10,197,109	0.0940%	68	9,681,673	4,836,152	49.95%
54	670	25180	Fidelity Natl Ins Co	3,885,595	0.0358%	97	4,878,332	3,102,317	63.59%
55	215	19852	Financial Ind Co	107,980,422	0.9957%	25	109,891,745	79,816,429	72.63%
56	761	21873	Firemans Fund Ins Co	13,822,018	0.1275%	62	14,269,202	5,911,109	41.43%
57	70	37710	First Amer Prop & Cas Ins Co	1,482,552	0.0137%	116	1,077,197	540,679	50.19%
58	111	24724	First Natl Ins Co Of Amer	879,258	0.0081%	124	875,950	467,852	53.41%
59	212	11185	Foremost Ins Co Grand Rapids MI	16,995,655	0.1567%	55	17,334,899	9,623,037	55.51%
60	212	11800	Foremost Prop & Cas Ins Co	311,831	0.0029%	141	306,279	210,936	68.87%
61	200	21253	Garrison Prop & Cas Ins Co	29,194,210	0.2692%	46	26,754,642	24,107,959	90.11%
62	31	41491	Geico Cas Co	95,400,164	0.8797%	30	96,196,317	56,754,107	59.00%
63	31	35882	Geico Gen Ins Co	271,940,366	2.5077%	10	269,299,400	168,559,542	62.59%
64	31	22055	Geico Ind Co	119,791,995	1.1046%	23	120,237,258	80,167,450	66.67%
65	1169	11231	Generali Us Branch	19,907	0.0002%	158	21,823	-14,999	-68.73%
66	31	22063	Government Employees Ins Co	103,786,435	0.9571%	26	104,012,983	62,165,569	59.77%
67	83	22101	Grange Ins Assn	5,865,533	0.0541%	91	5,853,288	4,244,800	72.52%
68	84	26344	Great Amer Assur Co	130,527	0.0012%	149	128,976	-300,947	-233.34%
69	1285	22322	Greenwich Ins Co	5,517	0.0001%	164	5,517	51,018	924.74%
70	303	15032	Guideone Mut Ins Co	6,910	0.0001%	163	7,688	8,513	110.73%
71	88	22292	Hanover Ins Co	14,234	0.0001%	160	14,578	1,810	12.42%
72	4725	21806	Harbor Specialty Ins Co	87	0.0000%	167	87	-3,606	-4144.83%
73	91	29424	Hartford Cas Ins Co	29,376,768	0.2709%	45	30,639,062	17,243,930	56.28%
74	91	30104	Hartford Underwriters Ins Co	75,904,025	0.6999%	33	76,757,053	44,870,884	58.46%
75	3495	10068	Hillstar Ins Co	16,154,973	0.1490%	57	15,925,510	12,718,023	79.86%
76	300	22578	Horace Mann Ins Co	15,184,686	0.1400%	59	14,932,321	11,594,551	77.65%
77	300	22756	Horace Mann Prop & Cas Ins Co	3,086,231	0.0285%	103	3,156,663	1,473,336	46.67%
78	158	25054	Hudson Ins Co	4,233,899	0.0390%	96	3,927,376	2,078,690	52.93%
79	4	29068	IDS Prop Cas Ins Co	103,470,163	0.9541%	27	103,145,112	70,878,514	68.72%
80	4381	35408	Imperium Ins Co	1,140,575	0.0105%	120	2,013,497	1,702,764	84.57%
81	3495	11738	Infinity Auto Ins Co	1,685,474	0.0155%	114	2,048,108	1,031,490	50.36%
82	3495	22268	Infinity Ins Co	312,947,483	2.8858%	9	298,354,859	166,640,143	55.85%
83	3495	20260	Infinity Select Ins Co	197,867	0.0018%	147	201,740	315,778	156.53%
84	12	19429	Insurance Co Of The State Of PA	12,032,666	0.1110%	66	14,287,471	9,908,939	69.35%
85	922	27847	Insurance Co Of The West	6,480,088	0.0598%	88	6,967,350	7,681,180	110.25%
86	2538	29742	Integon Natl Ins Co	6,338,797	0.0585%	90	2,057,624	1,547,032	75.19%
87	2538	31488	Integon Preferred Ins Co	12,837,430	0.1184%	63	13,476,857	8,911,644	66.13%
88	1318	15598	Interins Exch Of The Automobile Club	889,122,320	8.1989%	2	888,335,977	596,997,716	67.20%
89	4509	23647	Ironshore Ind Inc	298,650	0.0028%	142	162,589	32,676	20.10%
90	215	10914	Kemper Independence Ins Co	27,537,505	0.2539%	49	27,959,782	18,624,867	66.61%
91	111	23035	Liberty Mut Fire Ins Co	156,032,803	1.4388%	19	150,995,582	106,119,928	70.28%
92	4753	33855	Lincoln Gen Ins Co	122,890	0.0011%	150	289,321	-598,979	-207.03%
93	3702	12589	Loya Cas Ins Co	63,862,348	0.5889%	35	62,672,915	47,864,341	76.37%
94	411	23876	Mapfre Ins Co	228,971	0.0021%	144	93,153	43,202	46.38%

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: PRIVATE PASSENGER AUTO LIABILITY [19.2]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
95	785	28932	Markel Amer Ins Co	550,779	0.0051%	133	587,635	123,976	21.10%
96	1326	33650	Mendota Ins Co	5,288,421	0.0488%	92	8,355,366	6,640,321	79.47%
97	660	11908	Mercury Cas Co	160,677,107	1.4817%	18	162,201,946	94,883,321	58.50%
98	660	27553	Mercury Ins Co	693,991,081	6.3996%	5	689,361,003	408,707,579	59.29%
99	1281	24821	Meritplan Ins Co	519,443	0.0048%	135	1,167,754	134,822	11.55%
100	241	25321	Metropolitan Drt Prop & Cas Ins Co	57,809,997	0.5331%	37	54,523,345	41,749,480	76.57%
101		40150	MGA Ins Co Inc	312,133	0.0029%	140	415,981	197,655	47.52%
102	2538	38660	MIC Gen Ins Corp	5,157,214	0.0476%	93	5,469,968	4,142,838	75.74%
103	212	21687	Mid Century Ins Co	608,579,666	5.6120%	6	646,985,000	410,958,160	63.52%
104	930	23671	National Amer Ins Co of CA	3,859,910	0.0356%	98	3,909,587	3,289,190	84.13%
105	2538	23728	National Gen Ins Co	30,774,194	0.2838%	43	31,570,679	16,816,648	53.27%
106	84	32620	National Interstate Ins Co	351,232	0.0032%	139	388,710	44,991	11.57%
107	31	20052	National Liab & Fire Ins Co	905,343	0.0083%	123	574,177	552,371	96.20%
108		19119	National Unity Ins Co	1,032,360	0.0095%	121	523,957	163,464	31.20%
109		13127	Nations Ins Co	8,448,026	0.0779%	79	6,833,643	4,090,532	59.86%
110	140	25453	Nationwide Ins Co Of Amer	67,208,205	0.6198%	34	67,028,694	43,882,131	65.47%
111	3548	24015	Northland Ins Co	5,110	0.0000%	165	6,448	4,202	65.17%
112	225	23248	Occidental Fire & Cas Co Of NC	9,620,360	0.0887%	74	9,861,455	7,588,719	76.95%
113	4051	12360	Ocean Harbor Cas Ins Co	6,956,053	0.0641%	86	7,832,727	5,002,304	63.86%
114	3678	39098	Omni Ins Co	59,822	0.0006%	153	80,624	-23,631	-29.31%
115	645	14907	Oregon Mut Ins Co	2,525,426	0.0233%	106	2,510,981	1,503,034	59.86%
116		40550	Pacific Pioneer Ins Co	365,053	0.0034%	138	46,201	246,207	532.90%
117	408	11048	Pacific Prop & Cas Co	9,974,176	0.0920%	70	9,910,144	8,488,661	85.66%
118	2898	37850	Pacific Specialty Ins Co	8,383,640	0.0773%	80	8,534,138	2,315,458	27.13%
119	3483	11835	Paris Re Amer Ins Co	100,263	0.0009%	152	269,842	412,338	152.81%
120	3638	37648	Permanent Gen Assur Corp	28,626,313	0.2640%	47	29,070,257	17,826,381	61.32%
121	9	12832	Personal Express Ins Co	4,497,918	0.0415%	95	4,484,047	3,551,451	79.20%
122	3098	18058	Philadelphia Ind Ins Co	373,174	0.0034%	137	376,576	1,900,968	504.80%
123	796	37257	Praetorian Ins Co	6,361,630	0.0587%	89	8,061,197	5,324,449	66.05%
124	3703	15586	Preserver Ins Co	8,823,026	0.0814%	76	10,393,766	8,394,965	80.77%
125	748	21903	Procentury Ins Co	1,938,486	0.0179%	112	2,012,094	1,981,059	98.46%
126	155	11851	Progressive Advanced Ins Co	23,126	0.0002%	155	36,284	15,787	43.51%
127	155	24260	Progressive Cas Ins Co	3,465,514	0.0320%	100	3,519,571	1,672,336	47.52%
128	155	44288	Progressive Choice Ins Co	263,146,992	2.4266%	11	262,066,478	135,606,745	51.75%
129	155	16322	Progressive Direct Ins Co	15,796,250	0.1457%	58	14,823,090	6,304,207	42.53%
130	155	27804	Progressive West Ins Co	162,198,492	1.4957%	17	156,201,140	90,640,121	58.03%
131	796	39217	QBE Ins Corp	24,034,283	0.2216%	53	24,516,709	25,511,509	104.06%
132	215	10970	Response Ind Co Of CA	220,303	0.0020%	145	368,498	100,992	27.41%
133	215	43044	Response Ins Co	742,613	0.0068%	128	756,175	548,208	72.50%
134	215	26050	Response Worldwide Ins Co	549,604	0.0051%	134	583,679	207,980	35.63%
135	111	24740	Safeco Ins Co Of Amer	190,538,736	1.7570%	14	182,367,603	101,792,129	55.82%
136	111	39012	Safeco Ins Co Of IL	2,321,104	0.0214%	109	2,229,543	1,223,189	54.86%
137	257	10939	Safeway Direct Ins Co	646,247	0.0060%	130	670,394	303,676	45.30%
138	257	12521	Safeway Ins Co	12,508,891	0.1153%	65	13,152,273	6,313,175	48.00%
139	9	22985	Sequoia Ins Co	30,392	0.0003%	154	33,814	-11,992	-35.46%
140	3489	19216	Southern Ins Co	1,918,400	0.0177%	113	2,495,686	2,047,173	82.03%
141	3548	19070	Standard Fire Ins Co	110,652,152	1.0204%	24	108,087,276	73,642,260	68.13%

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: PRIVATE PASSENGER AUTO LIABILITY [19.2]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
142	98	40045	Starnet Ins Co	20,871	0.0002%	157	29,232	17,832	61.00%
143	4670	38318	Starr Ind & Liab Co	10,272,067	0.0947%	67	8,169,336	9,579,034	117.26%
144	176	25178	State Farm Mut Auto Ins Co	1,450,275,929	13.3736%	1	1,441,242,217	978,077,159	67.86%
145	93	12831	State Natl Ins Co Inc	9,173,239	0.0846%	75	10,630,594	6,518,367	61.32%
146		12878	Sterling Cas Ins Co	16,580,093	0.1529%	56	16,624,290	11,150,346	67.07%
147	140	13242	Titan Ind Co	286,512	0.0026%	143	263,430	134,647	51.11%
148	3098	12904	Tokio Marine & Nichido Fire Ins Co	7,796,741	0.0719%	82	5,422,320	2,830,506	52.20%
149	161	18031	Topa Ins Co	8,502,216	0.0784%	78	8,338,084	5,129,414	61.52%
150	225	28886	Transguard Ins Co Of Amer Inc	7,044,796	0.0650%	85	6,888,635	5,396,659	78.34%
151	91	27120	Trumbull Ins Co	598,751	0.0055%	132	45,572	4,715	10.35%
152	91	29459	Twin City Fire Ins Co Co	2,417,452	0.0223%	107	2,542,844	1,202,782	47.30%
153	796	25747	Unigard Ins Co	8,817,517	0.0813%	77	8,597,044	5,962,416	69.35%
154	200	25941	United Serv Automobile Assn	179,234,752	1.6528%	15	178,706,119	123,080,370	68.87%
155	215	16063	Unitrin Auto & Home Ins Co	214,288	0.0020%	146	250,279	50,454	20.16%
156	215	10226	Unitrin Direct Ins Co	10,055,051	0.0927%	69	10,686,653	5,818,344	54.44%
157	1326	42862	Universal Cas Co	646,560	0.0060%	129	1,064,762	1,346,625	126.47%
158	200	25968	USAA Cas Ins Co	191,349,829	1.7645%	13	190,090,969	129,835,647	68.30%
159	200	18600	USAA Gen Ind Co	28,013,099	0.2583%	48	26,165,696	18,677,165	71.38%
160	140	42889	Victoria Fire & Cas Co	44,825,800	0.4134%	40	46,685,053	28,129,530	60.25%
161	38	20397	Vigilant Ins Co	253	0.0000%	166	253	16	6.32%
162	169	13137	Viking Ins Co Of WI	97,588,139	0.8999%	29	90,944,546	57,593,058	63.33%
163		10683	Wawanesa Gen Ins Co	146,594,832	1.3518%	21	138,962,864	114,941,205	82.71%
164		27502	Western Gen Ins Co	14,428,793	0.1331%	61	14,131,789	12,745,917	90.19%
165	309	26395	Western Home Ins Co	3,586,053	0.0331%	99	1,820,233	1,843,680	101.29%
166	1278	37770	Western United Ins Co	24,823,469	0.2289%	50	24,246,319	10,989,372	45.32%
167	273	13250	Workmens Auto Ins Co	14,928,818	0.1377%	60	14,885,546	12,370,256	83.10%
Line Total:				10,844,350,264	100.0000%		10,796,247,456	6,877,176,166	63.70%

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: PRIVATE PASSENGER AUTO PHYSICAL DAMAGE [21.1]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
1	212	36404	21st Century Cas Co	4,874,881	0.0603%	85	4,786,363	3,035,088	63.41%
2	212	12963	21st Century Ins Co	249,277,590	3.0850%	7	253,890,017	139,083,233	54.78%
3	1278	15539	AAA Northern CA NV & UT Ins Exch	634,791,200	7.8560%	3	631,233,383	349,195,802	55.32%
4	1278	10921	ACA Ins Co	5,807,569	0.0719%	79	9,403,725	4,827,436	51.34%
5		11711	Access Ins Co	33,104,299	0.4097%	37	33,826,057	25,396,384	75.08%
6	313	33898	Aegis Security Ins Co	2,015,495	0.0249%	107	2,016,065	1,241,719	61.59%
7	3596	42609	Affirmative Ins Co	2,164,026	0.0268%	104	2,667,379	1,443,342	54.11%
8		10920	Alliance United Ins Co	26,754,091	0.3311%	40	26,709,486	13,615,140	50.97%
9	140	42579	Allied Prop & Cas Ins Co	39,256,234	0.4858%	35	40,149,467	23,846,226	59.39%
10	3239	22730	Allied World Reins Co	19,467	0.0002%	154	21,683	5,859	27.02%
11	8	19240	Allstate Ind Co	545,165,974	6.7468%	4	546,763,101	301,244,937	55.10%
12	8	19232	Allstate Ins Co	126,409,850	1.5644%	17	128,027,074	53,527,888	41.81%
13	140	19100	Amco Ins Co	87,979,891	1.0888%	22	90,560,628	57,941,602	63.98%
14	19	10111	American Bankers Ins Co Of FL	2,625,500	0.0325%	98	2,611,577	1,362,510	52.17%
15	361	23450	American Family Home Ins Co	2,574,970	0.0319%	99	1,515,165	1,017,230	67.14%
16	361	23469	American Modern Home Ins Co	5,918,366	0.0732%	78	6,219,535	2,140,665	34.42%
17	19	19615	American Reliable Ins Co	1,251,804	0.0155%	116	1,227,979	824,719	67.16%
18	313	17965	American Sentinel Ins Co	53,235	0.0007%	150	10,331	3,471	33.60%
19	111	37214	American States Preferred Ins Co	15,717,048	0.1945%	54	15,436,817	9,561,072	61.94%
20	28	19976	Amica Mut Ins Co	23,521,866	0.2911%	42	22,580,347	13,319,049	58.99%
21	4256	40010	Anchor Gen Ins Co	29,118,135	0.3604%	39	31,296,792	15,032,561	48.03%
22	1279	11150	Arch Ins Co	1,246,516	0.0154%	118	1,774,709	-82,321	-4.64%
23	1281	24813	Balboa Ins Co	537,440	0.0067%	134	368,258	502,264	136.39%
24	626	18279	Bankers Standard Ins Co	5,565,483	0.0689%	81	4,631,830	4,266,138	92.10%
25	660	38342	California Automobile Ins Co	33,953,203	0.4202%	36	35,929,949	23,522,415	65.47%
26	802	13544	California Capital Ins Co	21,164,471	0.2619%	47	20,872,237	10,133,797	48.55%
27	33	20117	California Cas Ind Exch	44,486,406	0.5506%	32	44,948,307	23,672,018	52.66%
28	3703	40134	Castlepoint Natl Ins Co	953,394	0.0118%	122	428,164	297,143	69.40%
29		26905	Century Natl Ins Co	5,021,911	0.0621%	84	4,612,588	2,536,809	55.00%
30	12	19402	Chartis Prop Cas Co	3,821,374	0.0473%	95	487,571	97,131	19.92%
31	323	10693	Civil Serv Employees Ins Co	5,049,274	0.0625%	83	5,129,832	2,402,317	46.83%
32	4725	20532	Clarendon Natl Ins Co	112,073	0.0014%	148	126,623	11,471	9.06%
33	212	25089	Coast Natl Ins Co	136,552,599	1.6899%	14	125,027,906	115,175,733	92.12%
34	411	13161	Commerce W Ins Co	50,363,386	0.6233%	29	53,074,992	34,962,754	65.87%
35	225	10906	Commercial Alliance Ins Co	1,309,866	0.0162%	114	644,254	817,633	126.91%
36	661	12157	Companion Prop & Cas Ins Co	6,836,116	0.0846%	73	4,613,339	3,529,127	76.50%
37		10783	Cornerstone Natl Ins Co	4,465,465	0.0553%	90	4,727,959	3,198,594	67.65%
38	323	18953	CSE Safeguard Ins Co	6,844,396	0.0847%	72	6,985,319	3,033,133	43.42%
39	930	19269	Danielson Natl Ins Co	635,995	0.0079%	129	664,214	383,897	57.80%
40	140	42587	Depositors Ins Co	2,073,636	0.0257%	106	2,241,372	1,583,612	70.65%
41	831	34495	Doctors Co An Interins Exch	2,437	0.0000%	161	2,503	2,422	96.76%
42	4672	12502	Dongbu Ins Co Ltd	449,514	0.0056%	135	122,336	137,737	112.59%
43	802	12890	Eagle W Ins Co	1,246,868	0.0154%	117	1,207,488	613,547	50.81%
44		21261	Electric Ins Co	1,433,728	0.0177%	112	1,441,524	811,156	56.27%
45	8	10358	Encompass Ins Co	15,197,051	0.1881%	56	15,137,060	8,795,416	58.11%
46	1129	37915	Essentia Ins Co	15,637,314	0.1935%	55	15,086,359	6,972,756	46.22%
47	8	30210	Esurance Prop & Cas Ins Co	61,181,203	0.7572%	26	61,747,597	37,328,710	60.45%

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: PRIVATE PASSENGER AUTO PHYSICAL DAMAGE [21.1]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
48	922	40029	Explorer Ins Co	24,894,438	0.3081%	41	31,329,171	21,447,397	68.46%
49	212	21652	Farmers Ins Exch	238,459,173	2.9511%	8	211,011,526	108,183,316	51.27%
50	212	10873	Farmers Reins Co	50	0.0000%	163	50	0	0.00%
51	38	20281	Federal Ins Co	11,359,560	0.1406%	63	10,601,638	4,955,403	46.74%
52	670	25180	Fidelity Natl Ins Co	2,347,145	0.0290%	102	2,962,087	1,996,430	67.40%
53	215	19852	Financial Ind Co	56,979,405	0.7052%	28	59,812,222	36,740,134	61.43%
54	761	21873	Firemans Fund Ins Co	14,181,852	0.1755%	58	15,345,655	7,054,025	45.97%
55	70	37710	First Amer Prop & Cas Ins Co	1,075,642	0.0133%	119	771,304	764,471	99.11%
56	111	24724	First Natl Ins Co Of Amer	666,957	0.0083%	128	657,352	334,988	50.96%
57	212	11185	Foremost Ins Co Grand Rapids MI	19,946,949	0.2469%	48	20,783,102	12,050,944	57.98%
58	212	11800	Foremost Prop & Cas Ins Co	268,406	0.0033%	141	268,827	81,473	30.31%
59	200	21253	Garrison Prop & Cas Ins Co	22,178,207	0.2745%	45	20,197,574	15,468,087	76.58%
60	31	41491	Geico Cas Co	57,586,920	0.7127%	27	57,875,796	34,537,679	59.68%
61	31	35882	Geico Gen Ins Co	218,389,929	2.7027%	9	218,986,354	130,120,985	59.42%
62	31	22055	Geico Ind Co	84,864,602	1.0503%	24	85,905,910	64,388,752	74.95%
63	1169	11231	Generali Us Branch	2,196	0.0000%	162	2,196	0	0.00%
64	31	22063	Government Employees Ins Co	89,939,209	1.1131%	21	91,309,138	50,118,900	54.89%
65	83	22101	Grange Ins Assn	4,865,688	0.0602%	86	4,852,395	2,656,658	54.75%
66	84	26344	Great Amer Assur Co	555,531	0.0069%	131	540,854	741,850	137.16%
67	1285	22322	Greenwich Ins Co	2,606	0.0000%	159	2,606	2,132	81.81%
68	303	15032	Guideone Mut Ins Co	2,510	0.0000%	160	2,553	8,045	315.12%
69	88	22292	Hanover Ins Co	11,282	0.0001%	157	11,834	305	2.58%
70	91	29424	Hartford Cas Ins Co	17,801,223	0.2203%	51	19,542,048	11,811,370	60.44%
71	91	30104	Hartford Underwriters Ins Co	47,894,266	0.5927%	31	48,245,141	28,906,847	59.92%
72	3495	10068	Hillstar Ins Co	12,933,405	0.1601%	61	12,665,955	11,188,036	88.33%
73	300	22578	Horace Mann Ins Co	14,020,314	0.1735%	59	13,764,363	7,430,353	53.98%
74	300	22756	Horace Mann Prop & Cas Ins Co	2,479,534	0.0307%	100	2,523,265	1,081,439	42.86%
75	158	25054	Hudson Ins Co	2,150,627	0.0266%	105	2,805,145	910,204	32.45%
76	4	29068	IDS Prop Cas Ins Co	86,188,407	1.0666%	23	85,261,422	56,490,126	66.26%
77	4381	35408	Imperium Ins Co	842,324	0.0104%	124	1,513,722	488,223	32.25%
78	3495	11738	Infinity Auto Ins Co	962,204	0.0119%	121	1,183,508	359,631	30.39%
79	3495	22268	Infinity Ins Co	185,408,637	2.2946%	11	171,421,958	87,816,716	51.23%
80	3495	20260	Infinity Select Ins Co	1,411,852	0.0175%	113	1,535,386	1,131,366	73.69%
81	12	19429	Insurance Co Of The State Of PA	16,237,975	0.2010%	52	20,002,750	10,668,207	53.33%
82	922	27847	Insurance Co Of The West	5,662,686	0.0701%	80	6,106,835	5,269,462	86.29%
83	2538	29742	Integon Natl Ins Co	4,148,571	0.0513%	91	1,795,839	1,829,565	101.88%
84	2538	31488	Integon Preferred Ins Co	8,530,086	0.1056%	66	9,086,717	5,313,922	58.48%
85	1318	15598	Interins Exch Of The Automobile Club	779,342,241	9.6449%	2	773,293,292	360,285,616	46.59%
86	4509	23647	Ironshore Ind Inc	981,346	0.0121%	120	521,706	208,323	39.93%
87	215	10914	Kemper Independence Ins Co	21,439,408	0.2653%	46	21,686,316	9,991,500	46.07%
88	111	23035	Liberty Mut Fire Ins Co	136,235,205	1.6860%	15	134,595,532	74,208,087	55.13%
89	4753	33855	Lincoln Gen Ins Co	27,510	0.0003%	153	58,518	-104,573	-178.70%
90	3702	12589	Loya Cas Ins Co	22,249,314	0.2754%	44	21,977,096	9,455,771	43.03%
91	411	23876	Mapfre Ins Co	175,118	0.0022%	144	72,072	85,677	118.88%
92	785	28932	Markel Amer Ins Co	614,193	0.0076%	130	659,341	549,579	83.35%
93	1326	33650	Mendota Ins Co	3,416,289	0.0423%	97	5,129,727	3,171,273	61.82%
94	660	11908	Mercury Cas Co	115,819,639	1.4334%	19	114,851,277	74,066,784	64.49%

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: PRIVATE PASSENGER AUTO PHYSICAL DAMAGE [21.1]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
95	660	27553	Mercury Ins Co	531,605,578	6.5790%	5	526,458,880	323,774,150	61.50%
96	1281	24821	Meritplan Ins Co	292,424	0.0036%	140	769,102	160,314	20.84%
97	241	25321	Metropolitan Drt Prop & Cas Ins Co	48,890,744	0.6051%	30	47,732,393	25,157,085	52.70%
98		40150	MGA Ins Co Inc	156,422	0.0019%	146	207,339	58,709	28.32%
99	2538	38660	MIC Gen Ins Corp	4,649,893	0.0575%	87	4,908,982	1,930,697	39.33%
100	212	21687	Mid Century Ins Co	463,957,106	5.7418%	6	488,224,947	304,398,633	62.35%
101	930	23671	National Amer Ins Co of CA	738,231	0.0091%	125	738,441	515,663	69.83%
102	2538	23728	National Gen Ins Co	39,582,762	0.4899%	34	40,231,144	15,480,005	38.48%
103	84	32620	National Interstate Ins Co	1,302,897	0.0161%	115	1,414,117	760,296	53.76%
104		19119	National Unity Ins Co	70,842	0.0009%	149	18,898	4,448	23.54%
105		13127	Nations Ins Co	7,404,708	0.0916%	71	6,420,334	3,641,658	56.72%
106	140	25453	Nationwide Ins Co Of Amer	41,417,016	0.5126%	33	41,609,206	27,868,419	66.98%
107	3548	24015	Northland Ins Co	3,907	0.0000%	158	4,202	2,519	59.95%
108	225	23248	Occidental Fire & Cas Co Of NC	4,048,473	0.0501%	92	4,173,411	3,283,967	78.69%
109	4051	12360	Ocean Harbor Cas Ins Co	1,918,154	0.0237%	109	2,318,885	1,630,058	70.29%
110	3678	39098	Omni Ins Co	33,851	0.0004%	151	44,985	4,341	9.65%
111	645	14907	Oregon Mut Ins Co	2,000,319	0.0248%	108	1,980,672	1,303,858	65.83%
112		40550	Pacific Pioneer Ins Co	252,377	0.0031%	142	26,919	179,435	666.57%
113	408	11048	Pacific Prop & Cas Co	7,686,607	0.0951%	70	7,586,204	4,096,584	54.00%
114	2898	37850	Pacific Specialty Ins Co	4,465,951	0.0553%	89	4,494,462	2,529,408	56.28%
115	3483	11835	Paris Re Amer Ins Co	33,421	0.0004%	152	89,947	137,446	152.81%
116	3638	37648	Permanent Gen Assur Corp	14,701,960	0.1819%	57	14,317,808	5,485,018	38.31%
117	9	12832	Personal Express Ins Co	3,915,502	0.0485%	94	3,865,606	2,422,979	62.68%
118	3098	18058	Philadelphia Ind Ins Co	5,375,224	0.0665%	82	5,265,174	2,847,167	54.08%
119	796	37257	Praetorian Ins Co	852,223	0.0105%	123	1,190,980	110,707	9.30%
120	3703	15586	Preserver Ins Co	6,335,310	0.0784%	75	7,415,602	5,107,806	68.88%
121	748	21903	Procentury Ins Co	551,177	0.0068%	132	627,341	451,182	71.92%
122	155	11851	Progressive Advanced Ins Co	13,045	0.0002%	156	20,351	6,367	31.29%
123	155	24260	Progressive Cas Ins Co	16,020,657	0.1983%	53	16,285,900	8,500,047	52.19%
124	155	44288	Progressive Choice Ins Co	189,870,256	2.3498%	10	187,627,854	101,387,846	54.04%
125	155	16322	Progressive Direct Ins Co	18,034,369	0.2232%	50	16,766,876	11,417,343	68.09%
126	155	27804	Progressive West Ins Co	109,620,455	1.3566%	20	105,689,633	68,370,615	64.69%
127	796	39217	QBE Ins Corp	10,667,899	0.1320%	64	11,365,300	4,001,502	35.21%
128	215	10970	Response Ind Co Of CA	204,717	0.0025%	143	337,195	193,664	57.43%
129	215	43044	Response Ins Co	703,515	0.0087%	127	715,785	386,343	53.97%
130	215	26050	Response Worldwide Ins Co	394,483	0.0049%	137	410,512	189,608	46.19%
131	111	24740	Safeco Ins Co Of Amer	132,681,514	1.6420%	16	124,721,089	81,871,908	65.64%
132	111	39012	Safeco Ins Co Of IL	2,325,967	0.0288%	103	2,263,228	-2,428,727	-107.31%
133	257	10939	Safeway Direct Ins Co	431,172	0.0053%	136	455,271	165,994	36.46%
134	257	12521	Safeway Ins Co	8,017,284	0.0992%	68	8,631,095	4,150,333	48.09%
135	9	22985	Sequoia Ins Co	15,802	0.0002%	155	17,880	-4,419	-24.71%
136	3489	19216	Southern Ins Co	737,632	0.0091%	126	1,043,370	426,962	40.92%
137	3548	19070	Standard Fire Ins Co	72,186,263	0.8934%	25	69,686,750	48,629,995	69.78%
138	4670	38318	Starr Ind & Liab Co	5,997,046	0.0742%	77	4,933,136	7,134,751	144.63%
139	176	25178	State Farm Mut Auto Ins Co	1,147,690,935	14.2035%	1	1,134,906,874	697,973,756	61.50%
140	93	12831	State Natl Ins Co Inc	3,925,706	0.0486%	93	4,741,334	4,570,687	96.40%
141		12878	Sterling Cas Ins Co	9,775,955	0.1210%	65	9,958,472	6,520,376	65.48%

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: PRIVATE PASSENGER AUTO PHYSICAL DAMAGE [21.1]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
142	140	13242	Titan Ind Co	142,930	0.0018%	147	124,471	119,461	95.97%
143	3098	12904	Tokio Marine & Nichido Fire Ins Co	6,787,382	0.0840%	74	4,726,450	2,499,912	52.89%
144	161	18031	Topa Ins Co	4,649,230	0.0575%	88	4,960,223	1,987,671	40.07%
145	225	28886	Transguard Ins Co Of Amer Inc	2,436,374	0.0302%	101	2,570,382	1,494,584	58.15%
146	91	27120	Trumbull Ins Co	362,527	0.0045%	138	27,507	21,863	79.48%
147	91	29459	Twin City Fire Ins Co Co	1,844,372	0.0228%	110	2,249,425	1,234,130	54.86%
148	796	25747	Unigard Ins Co	6,133,246	0.0759%	76	5,955,817	4,037,011	67.78%
149	200	25941	United Serv Automobile Assn	147,673,252	1.8276%	13	146,112,114	89,654,246	61.36%
150	215	16063	Unitrin Auto & Home Ins Co	168,381	0.0021%	145	193,099	127,220	65.88%
151	215	10226	Unitrin Direct Ins Co	7,824,694	0.0968%	69	8,215,149	3,813,031	46.41%
152	1326	42862	Universal Cas Co	547,623	0.0068%	133	907,386	707,228	77.94%
153	200	25968	USAA Cas Ins Co	149,251,319	1.8471%	12	147,163,694	86,623,902	58.86%
154	200	18600	USAA Gen Ind Co	32,474,648	0.4019%	38	30,098,276	17,425,982	57.90%
155	140	42889	Victoria Fire & Cas Co	22,736,476	0.2814%	43	23,051,370	12,763,106	55.37%
156	169	13137	Viking Ins Co Of WI	19,912,677	0.2464%	49	19,331,285	11,787,788	60.98%
157	4254	40827	Virginia Surety Co Inc	3,817,381	0.0472%	96	2,949,409	1,866,791	63.29%
158		10683	Wawanesa Gen Ins Co	115,953,577	1.4350%	18	120,634,611	95,200,033	78.92%
159		27502	Western Gen Ins Co	13,687,147	0.1694%	60	13,523,841	7,382,312	54.59%
160	309	26395	Western Home Ins Co	1,840,796	0.0228%	111	845,827	752,240	88.94%
161	1278	37770	Western United Ins Co	11,953,085	0.1479%	62	11,499,539	6,768,460	58.86%
162	273	13250	Workmens Auto Ins Co	8,146,009	0.1008%	67	8,481,637	5,226,350	61.62%
163	158	13269	Zenith Ins Co	332,069	0.0041%	139	104,030	245,334	235.83%
Line Total:				8,080,326,187	100.0000%		8,032,955,764	4,685,182,978	58.32%

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: HOMEOWNERS MULTIPLE PERIL [04]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
1	1278	15539	AAA Northern CA NV & UT Ins Exch	453,219,601	6.5715%	5	445,577,822	184,799,910	41.47%
2	313	33898	Aegis Security Ins Co	3,976,627	0.0577%	73	4,044,286	1,691,976	41.84%
3	65	10014	Affiliated Fm Ins Co	205,398	0.0030%	98	188,819	1,451	0.77%
4	140	42579	Allied Prop & Cas Ins Co	61,616,464	0.8934%	22	61,897,533	29,795,484	48.14%
5	8	19240	Allstate Ind Co	2,271,867	0.0329%	81	2,382,780	767,279	32.20%
6	8	19232	Allstate Ins Co	602,487,410	8.7358%	2	591,844,890	263,473,519	44.52%
7	140	19100	Amco Ins Co	157,966,401	2.2904%	10	159,161,806	82,250,447	51.68%
8	19	10111	American Bankers Ins Co Of FL	12,596,495	0.1826%	48	12,520,228	3,194,132	25.51%
9	361	23450	American Family Home Ins Co	12,647,981	0.1834%	47	12,506,400	4,248,908	33.97%
10	761	21857	American Ins Co	55,272	0.0008%	104	59,129	-3,162	-5.35%
11	361	23469	American Modern Home Ins Co	33,159,584	0.4808%	34	31,824,195	10,247,584	32.20%
12	19	19615	American Reliable Ins Co	18,906,134	0.2741%	44	18,611,625	9,051,413	48.63%
13	19	42978	American Security Ins Co	11,666,087	0.1692%	52	12,119,786	8,823,778	72.80%
14	28	19976	Amica Mut Ins Co	25,606,759	0.3713%	37	24,857,820	9,428,426	37.93%
15		41459	Armed Forces Ins Exch	4,405,790	0.0639%	72	4,429,720	1,894,202	42.76%
16	761	21865	Associated Ind Corp	7,337,920	0.1064%	65	7,678,994	3,776,093	49.17%
17	1281	24813	Balboa Ins Co	948,411	0.0138%	90	5,918,300	-471,098	-7.96%
18	626	18279	Bankers Standard Ins Co	20,662,561	0.2996%	43	17,714,375	5,895,011	33.28%
19	802	13544	California Capital Ins Co	49,766,791	0.7216%	25	48,620,228	24,638,057	50.67%
20	33	20117	California Cas Ind Exch	42,317,108	0.6136%	29	42,394,629	11,653,187	27.49%
21		27480	California Mut Ins Co	749,762	0.0109%	92	793,775	91,842	11.57%
22		26905	Century Natl Ins Co	49,193,464	0.7133%	26	50,683,861	15,315,676	30.22%
23	12	19402	Chartis Prop Cas Co	98,775,735	1.4322%	15	101,977,631	44,288,395	43.43%
24		18767	Church Mut Ins Co	13,912	0.0002%	105	25,065	-2,159	-8.61%
25	244	10677	Cincinnati Ins Co	12,298	0.0002%	106	13,374	31,464	235.26%
26	212	10315	Civic Prop & Cas Co	2,216,096	0.0321%	82	2,312,296	451,966	19.55%
27	323	10693	Civil Serv Employees Ins Co	21,377,160	0.3100%	42	22,335,811	10,158,103	45.48%
28	411	13161	Commerce W Ins Co	2,396,363	0.0347%	80	2,118,647	1,587,382	74.92%
29	140	18961	Crestbrook Ins Co	1,771,107	0.0257%	85	1,345,127	573,949	42.67%
30	323	18953	CSE Safeguard Ins Co	21,759,607	0.3155%	40	20,392,511	14,952,576	73.32%
31	4672	12502	Dongbu Ins Co Ltd	83,873	0.0012%	102	59,568	14,778	24.81%
32	802	12890	Eagle W Ins Co	2,644,025	0.0383%	78	2,521,402	1,665,786	66.07%
33		21261	Electric Ins Co	1,851,191	0.0268%	84	1,836,825	629,673	34.28%
34	212	21326	Empire Fire & Marine Ins Co	11,506,006	0.1668%	53	12,030,929	23,780,872	197.66%
35	8	10358	Encompass Ins Co	31,890,157	0.4624%	35	33,147,508	14,871,075	44.86%
36	212	10318	Exact Prop & Cas Co Inc	971,497	0.0141%	89	1,029,862	55,986	5.44%
37	212	21652	Farmers Ins Exch	12,287,243	0.1782%	50	13,102,109	3,093,344	23.61%
38	38	20281	Federal Ins Co	92,384,529	1.3395%	16	88,169,482	38,744,277	43.94%
39	212	39306	Fidelity & Deposit Co Of MD	1,578,037	0.0229%	87	1,713,287	656,938	38.34%
40	670	25180	Fidelity Natl Ins Co	17,657,934	0.2560%	45	19,379,888	10,312,145	53.21%
41	670	16578	Fidelity Natl Prop & Cas Ins Co	8,591,059	0.1246%	60	8,465,206	5,024,777	59.36%
42	212	21660	Fire Ins Exch	487,619,667	7.0702%	4	512,554,321	146,913,437	28.66%
43	761	21873	Firemans Fund Ins Co	115,534,237	1.6752%	13	122,168,831	46,747,171	38.26%
44	70	37710	First Amer Prop & Cas Ins Co	10,799,147	0.1566%	54	11,372,300	3,054,310	26.86%
45	70	34525	First Amer Speciaty Ins Co	42,616,958	0.6179%	28	43,451,617	21,071,734	48.49%
46	111	24724	First Natl Ins Co Of Amer	70,323,712	1.0197%	19	67,014,402	42,118,856	62.85%
47	212	11185	Foremost Ins Co Grand Rapids MI	80,725,844	1.1705%	17	79,129,222	30,705,809	38.80%

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: HOMEOWNERS MULTIPLE PERIL [04]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
48	212	11800	Foremost Prop & Cas Ins Co	10,294,770	0.1493%	57	10,057,397	5,383,416	53.53%
49	200	21253	Garrison Prop & Cas Ins Co	14,025,890	0.2034%	46	12,471,067	4,782,988	38.35%
50	111	24732	General Ins Co Of Amer	2,718,331	0.0394%	77	168,472	46,295	27.48%
51	3829	10182	Geovera Specialty Ins Co	322,975	0.0047%	95	355,880	481,651	135.34%
52		39861	Golden Bear Ins Co	1,741,765	0.0253%	86	1,575,765	684,699	43.45%
53	83	22101	Grange Ins Assn	7,763,661	0.1126%	62	7,945,168	4,810,370	60.54%
54	91	29424	Hartford Cas Ins Co	37,727,509	0.5470%	31	38,971,195	18,300,059	46.96%
55	91	37478	Hartford Ins Co Of The Midwest	5,176	0.0001%	108	2,401	68,834	2866.89%
56	91	30104	Hartford Underwriters Ins Co	60,105,384	0.8715%	23	60,615,991	28,254,516	46.61%
57	501	11005	Homesite Ins Co Of CA	23,879,684	0.3462%	38	21,862,024	8,502,987	38.89%
58	300	22578	Horace Mann Ins Co	11,754,849	0.1704%	51	11,412,185	5,367,094	47.03%
59	300	22756	Horace Mann Prop & Cas Ins Co	5,859,762	0.0821%	68	5,848,052	1,711,244	29.26%
60	4	29068	IDS Prop Cas Ins Co	36,393,099	0.5277%	32	34,499,998	17,870,506	51.80%
61	4381	35408	Imperium Ins Co	119,322	0.0017%	100	137,109	52,109	38.01%
62	1318	15598	Interins Exch Of The Automobile Club	351,309,639	5.0938%	6	345,600,158	184,191,775	53.30%
63	215	10914	Kemper Independence Ins Co	46,381,895	0.6725%	27	46,322,381	15,874,979	34.27%
64	111	42404	Liberty Ins Corp	281	0.0000%	112	12	0	0.00%
65	111	23035	Liberty Mut Fire Ins Co	153,430,447	2.2247%	11	148,627,375	36,912,134	24.84%
66	785	28932	Markel Amer Ins Co	233,401	0.0034%	97	233,401	55,955	23.97%
67	88	22306	Massachusetts Bay Ins Co	1,792	0.0000%	110	1,868	0	0.00%
68	215	31968	Merastar Ins Co	429,617	0.0062%	94	437,737	104,167	23.80%
69		15768	Merced Mut Ins Co	3,740,379	0.0542%	75	3,853,852	1,096,552	28.45%
70	660	11908	Mercury Cas Co	222,575,616	3.2272%	7	216,056,038	108,268,820	50.11%
71	1281	24821	Meritplan Ins Co	12,515,533	0.1815%	49	13,708,601	4,138,162	30.19%
72	241	25321	Metropolitan Drt Prop & Cas Ins Co	10,235,721	0.1484%	58	9,593,261	4,961,974	51.72%
73	212	21687	Mid Century Ins Co	550,544,878	7.9826%	3	529,987,907	227,926,870	43.01%
74	761	21881	National Surety Corp	62,961	0.0009%	103	54,375	14,582	26.82%
75	140	25453	Nationwide Ins Co Of Amer	21,450,905	0.3110%	41	20,902,949	11,318,296	54.15%
76	140	23779	Nationwide Mut Fire Ins Co	7,567,550	0.1097%	63	8,058,243	2,685,408	33.32%
77	212	10317	Neighborhood Spirit Prop & Cas Co	4,748,369	0.0688%	71	5,029,682	1,397,854	27.79%
78	1281	24848	Newport Ins Co	34,169,598	0.4954%	33	33,185,823	18,345,510	55.28%
79	645	14907	Oregon Mut Ins Co	5,935,846	0.0861%	67	6,040,989	3,002,823	49.71%
80	38	20346	Pacific Ind Co	778,222	0.0113%	91	777,074	260,623	33.54%
81		40550	Pacific Pioneer Ins Co	667	0.0000%	111	816	0	0.00%
82	408	11048	Pacific Prop & Cas Co	9,127,266	0.1323%	59	8,662,335	3,775,295	43.58%
83	2898	37850	Pacific Specialty Ins Co	101,040,451	1.4650%	14	98,495,748	29,996,444	30.45%
84	9	12832	Personal Express Ins Co	5,166,485	0.0749%	69	5,125,747	2,424,324	47.30%
85	796	37257	Praetorian Ins Co	3,814,870	0.0553%	74	3,176,479	982,297	30.92%
86	91	34690	Property & Cas Ins Co Of Hartford	3,134	0.0000%	109	2,053	2,395	116.66%
87	796	39217	QBE Ins Corp	1,468,781	0.0213%	88	1,255,554	324,102	25.81%
88	800	15776	Residence Mut Ins Co	38,450,838	0.5575%	30	37,342,326	12,669,944	33.93%
89	111	24740	Safeco Ins Co Of Amer	74,645,869	1.0823%	18	74,623,542	21,143,554	28.33%
90	111	39012	Safeco Ins Co Of IL	64,877,506	0.9407%	21	64,584,108	29,050,592	44.98%
91	9	22985	Sequoia Ins Co	84,948	0.0012%	101	69,264	-190,726	-275.36%
92	3548	19070	Standard Fire Ins Co	6,782,319	0.0983%	66	7,222,501	1,376,389	19.06%
93	19	42986	Standard Guar Ins Co	2,492,526	0.0361%	79	2,527,584	725,740	28.71%
94	176	25151	State Farm Gen Ins Co	1,515,373,625	21.9721%	1	1,504,918,421	609,727,319	40.52%

2011 CALIFORNIA P & C MARKET SHARE REPORT

Line of Business: HOMEOWNERS MULTIPLE PERIL [04]

Sorted by Company Name

Source: NAIC Database

Licensed companies only

Rec #	Group #	Naic #	Company Name	Written Premium	Market Share	Share Rank	Earned Premium	Incurred Losses	Loss Ratio
95		32107	Sutter Ins Co	568,650	0.0082%	93	565,036	171,969	30.44%
96	3098	12904	Tokio Marine & Nichido Fire Ins Co	10,677,295	0.1548%	56	10,308,844	2,344,234	22.74%
97	161	18031	Topa Ins Co	5,008,037	0.0726%	70	5,059,447	1,661,089	32.83%
98	3703	44300	Tower Ins Co Of NY	51,725,588	0.7500%	24	49,358,822	27,685,073	56.09%
99	3548	36137	Travelers Commercial Ins Co	182,222,930	2.6421%	8	168,460,106	98,632,145	58.55%
100	3548	36161	Travelers Prop Cas Ins Co	67,285,186	0.9756%	20	70,952,772	29,306,877	41.30%
101	796	25798	Unigard Ind Co	8,526,962	0.1236%	61	8,710,043	5,972,671	68.57%
102	796	25747	Unigard Ins Co	7,497,148	0.1087%	64	7,352,164	2,591,529	35.25%
103	200	25941	United Serv Automobile Assn	181,835,174	2.6365%	9	181,492,394	72,796,336	40.11%
104	215	16063	Unitrin Auto & Home Ins Co	244,237	0.0035%	96	263,561	91,337	34.65%
105	215	10915	Unitrin Direct Prop & Cas Co	137,690	0.0020%	99	116,790	34,109	29.21%
106	71	10759	Universal N Amer Ins Co	27,659,284	0.4010%	36	24,364,701	10,046,044	41.23%
107	200	25968	USAA Cas Ins Co	144,596,267	2.0966%	12	143,319,271	57,651,880	40.23%
108	200	18600	USAA Gen Ind Co	10,759,672	0.1560%	55	9,190,785	4,619,187	50.26%
109	38	20397	Vigilant Ins Co	2,007,421	0.0291%	83	2,023,017	185,179	9.15%
110		10683	Wawanesa Gen Ins Co	22,025,664	0.3194%	39	21,614,217	14,551,211	67.32%
111	800	13625	Western Mut Ins Co	2,908,203	0.0422%	76	2,974,209	775,957	26.09%
112	273	13250	Workmens Auto Ins Co	5,396	0.0001%	107	429,650	165,907	38.61%
Line Total:				6,896,796,197	100.0000%		6,832,454,959	2,890,230,414	42.30%

EXHIBIT 3

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7 Insurers Association of America dba Association of
California Insurance Companies, National
8 Association of Mutual Insurance Companies, and
Pacific Association of Domestic Insurance
9 Companies

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SACRAMENTO
12

13 MERCURY CASUALTY COMPANY,

14 Petitioner and Plaintiff,

15 v.

16 DAVE JONES, IN HIS OFFICIAL
CAPACITY AS THE INSURANCE
17 COMMISSIONER OF THE STATE OF
CALIFORNIA,

18 Respondent and Defendant.

19 CONSUMER WATCHDOG,

20 Intervenor.

21 PERSONAL INSURANCE
FEDERATION OF CALIFORNIA,
22 AMERICAN INSURANCE
ASSOCIATION, , PROPERTY
23 CASUALTY INSURERS ASSOCIATION
OF AMERICA DBA ASSOCIATION OF
24 CALIFORNIA INSURANCE
COMPANIES, NATIONAL
25 ASSOCIATION OF MUTUAL
INSURANCE COMPANIES, AND
26 PACIFIC ASSOCIATION OF
DOMESTIC INSURANCE COMPANIES,
27

28 Intervenors.

Case No. 34-2013-80001426
Hon. Eugene L. Balonon, Dept. 14

[Proposed] COMPLAINT IN
INTERVENTION

Personal Insurance Federation of California (“PIFC”), American Insurance Association (“AIA”), Property Casualty Insurers Association of America (“PCI”) doing business as Association of California Insurance Companies (“ACIC”), National Association of Mutual Insurance Companies (“NAMIC”), and Pacific Association of Domestic Insurance Companies (“PADIC”) (collectively the “Trades”) allege as follows:

NATURE OF THIS ACTION

1. Through this Complaint, the Trades seek to intervene in this action brought by Mercury Casualty Company (“Mercury”) to obtain review of the Insurance Commissioner’s Order dated February 11, 2013 issued by Defendant, Dave Jones, in his capacity as Insurance Commissioner of the state of California (“Commissioner”) in *In the Matter of the Rate Application of Mercury Casualty Company*, File No. PA-2009-00009 (the “Order”). The Trades seek to intervene in order to represent the interests of their members in the correct resolution of the important questions of law before the Court in this matter. The Court’s resolution of those questions of law will significantly impact every insurer doing business in this state subject to “Proposition 103” rate regulation.

2. The Trades collectively represent the majority of the insurers in California subject to Proposition 103. Some members of the Trades are among the largest writers of personal lines insurance in the country and in California. Other members are relatively small and localized. Most of the Trades' members who write insurance in California are subject to the prior approval rate regulatory system put in place by Proposition 103 (Ins. Code §§ 1861.01 *et seq.*). These members – large, small, local and national – are all entitled to a fair and constitutional system of rate regulation.

3. The Trades ask the Court to correct the Insurance Commissioner's unprecedented interpretation of the constitutional standard for confiscation. In Mercury's rate proceeding the Insurance Commissioner applied an erroneous standard to Mercury's request for a constitutional variance from the maximum permitted rate identified by the Proposition 103 ratemaking formula. Such variances are explicitly authorized by the regulations implementing Proposition 103. Cal. Code Regs., title 10 ("10 C.C.R"), § 2644.27(f)(9). This confiscation variance serves

1 as the bottom line “safety valve”, as the Commissioner put it in adopting the current regulations,
2 preserving the constitutionality of the entire regulatory scheme by providing sufficient
3 accommodation for an individualized case where the limitations and assumptions of the
4 regulatory formula would otherwise result in confiscation.

5 4. The Order abandoned controlling federal and California law, which provides that
6 price regulation must afford a regulated entity an opportunity to earn a “fair rate of return”. The
7 Order substitutes a financial distress standard. The Commissioner’s novel financial distress
8 standard significantly circumscribes the rates that would qualify as confiscatory by requiring that
9 a rate order – which is issued as to a single line of insurance in California – must cause the
10 insurer financial distress across the entire company before the rate order would be considered
11 confiscatory.

12 5. The substantive standard applied by the Commissioner is inconsistent with
13 constitutional jurisprudence and insufficient to provide the constitutionally mandated protection
14 against confiscation.

15 6. Compounding the impact of the Commissioner’s opinion as to the substantive
16 standard for confiscation, the Commissioner also interpreted the “relitigation bar” of 10 C.C.R. §
17 2646.4(c) as precluding Mercury’s legal argument as to the correct constitutional standard, as
18 well as the evidence proffered by Mercury to prove up its claim to the confiscation variance.

19 7. Moreover, the substitution of the financial distress test for the fair return standard
20 affects the entire regulatory system. As described by the Commissioner in adopting the
21 regulations, the system is intended to produce a fair result *ab initio* through the selection of
22 reasonable, “most actuarially sound” rating components, controlled by the regulations. In the
23 event the regulatory selections prove insufficient to allow for a fair rate, the regulations allow for
24 several “variances”. The ultimate variance is the confiscation variance. The standard governing
25 the selection as to each component – and determining whether the Commissioner will allow a
26 variance – strongly impacts the end result of the formula. By imposing a financial distress
27 standard in place of a fair return standard, that lowered standard impacts every selection of every
28 component, as it inherently bears on what is reasonable or “most actuarially sound”. Similarly,

1 whether the rate is judged by a financial distress or fair return standard influences the decision as
2 to whether a variance can be granted, and at what level.

3 8. The consequence of these substantive and procedural rulings is to eliminate the
4 ultimate “safety valve” previously recognized by the Commissioner as necessary to render the
5 rate regulations constitutional. As interpreted by the Commissioner in the Order, the system no
6 longer contains the necessary safeguards against unconstitutional confiscation, and the system
7 itself fails to meet constitutional standards.

8 9. The Order contains an additional error of law addressed by the Trades in this
9 complaint in intervention. The Order misreads regulation 10 C.C.R. § 2644.10(f), which
10 requires exclusion from the expense component of the rate formula of “institutional advertising
11 expenses”. The regulation is awkwardly drafted, but obviously intended to exclude expenses
12 relating to certain advertising promoting corporate image, while allowing inclusion of expenses
13 relating to product advertising. The Order interprets the regulation in such a manner as to
14 effectively sweep all advertising into the category of “institutional advertising,” thereby
15 excluding all advertising expense from consideration in the rate. The Order’s interpretation
16 contradicts the plain language of the regulation.

17 10. What is more, the exclusion of “institutional advertising” expense chills and
18 burdens commercial speech protected under the First Amendment to the United States
19 Constitution and Article I § 2(a) of the California Constitution. The regulation chills and
20 burdens this protected commercial speech solely on the basis of content, by significantly
21 reducing the rate the insurer is permitted to charge if the content of the commercial speech is not
22 of the type favored by the regulation. This burden on commercial speech is not supported by a
23 legitimate governmental objective. Consequently, the regulation excluding advertising expense
24 is not constitutional.

25 **PARTIES**

26 11. Intervenor PIFC is a California trade association representing six personal lines
27 insurers who collectively write the majority of the personal lines auto and home insurance in
28 California.

12. Intervenor AIA is a national trade organization representing the interests of more than 300 property and casualty insurance providers.

13. Intervenor PCI is a national property casualty trade organization representing the interests of more than 1,000 member companies. PCI does business in California as Association of California Insurance Companies.

14. Intervenor PADIC is a trade organization representing small and mid-sized property and casualty insurance companies operating in California.

15. Intervenor NAMIC is a national trade organization representing the interests of more than 1,400 mutual insurance companies providing property and casualty insurance.

16. Defendant Dave Jones currently occupies the office of Insurance Commissioner of the state of California and is sued herein solely in his capacity as Commissioner and not otherwise. The Commissioner regulates the business of insurance in California and is governed by the California Insurance Code, as well as by other applicable constitutional and statutory law. Pursuant to Insurance Code section 12906, the California Department of Insurance ("CDI") is under the control of the Commissioner. The Commissioner issued the February 11, 2013 Order which is the subject of this action.

17. Petitioner Mercury filed the homeowner’s insurance rate application that is the subject of the Commissioner’s Order. In this action, Mercury challenges the Commissioner’s Order through a California Code of Civil Procedure (“CCP”) 1094.5 “administrative” writ petition, and a complaint for declaratory relief.

18. There is an existing intervenor – Consumer Watchdog. Consumer Watchdog was founded by Harvey Rosenfield, the author of Proposition 103. Consumer Watchdog and its predecessors have been frequent intervenors opposing insurers in rate applications and other actions touching upon rate regulation in California. The original parties did not oppose Consumer Watchdog’s petition for leave to intervene, and this Court granted the petition on March 22, 2013.

JURISDICTION AND VENUE

19. This is a Complaint in Intervention, filed in connection with a Petition for Writ of

1 Mandate and Complaint for Declaratory Relief over which this Court has jurisdiction, and which
2 is properly venued in this Court. Consequently, this Court has jurisdiction over this Complaint
3 in Intervention, which is properly venued in the Court in which the original action was filed.

4 **RIGHT TO INTERVENE AND STANDING**

5 20. Insurance Code § 1861.10(a) provides that “[a]ny person may initiate or intervene
6 in any proceeding permitted or established pursuant to this chapter, challenge any action of the
7 commissioner under this article, and enforce any provision of this article.” “[T]his chapter” is
8 Chapter 9 of Division 1 Part 2 of the Insurance Code. [T]his article” is Article 10 of Chapter 9,
9 Division 1 Part 2 of the Insurance Code. Mercury’s Petition is brought pursuant to Insurance
10 Code §§ 1861.08, 1861.09, and 1858.6, among other statutes. Mercury Petition, ¶ 11. All of
11 these Insurance Code statutes appear in Chapter 9. Sections 1861.08 and 1861.09 are in Article
12 10, and § 1861.09 directs that review of a rate order issued under § 1861.08 may be had as
13 described in § 1858.6. The action commenced by Mercury with the filing of its petition is a
14 “proceeding” to which § 1861.10(a) applies. Consequently, the Trades, as persons, have a right
15 to intervene.

16 21. Section 1861.10(a) likewise confers standing upon the Trades to bring this action,
17 challenging the Commissioner’s legal interpretations and imposition of unconstitutional
18 standards through the Order, through the devices established by California law to challenge
19 action by an agency. These devices include a petition for writ of ordinary mandamus and a
20 complaint for declaratory relief. The causes of action stated herein are so framed, in the interests
21 of consistency with Insurance Code § 1861.10(a) and California law generally regarding the
22 appropriate form of action for challenging determinations of law made by an administrative
23 agency.

24 **THE CONFISCATION ISSUE: GENERAL ALLEGATIONS**

25 **Proposition 103 and the Confiscation Standard**

26 22. California voters approved Proposition 103 on November 8, 1988, replacing
27 California’s “open competition” system of insurance regulation with a prior approval system to
28 regulate rates and premiums for most insurance in California. In addition to the prior approval

1 system, Proposition 103 also required insurers to “rollback” rates for the first year following
2 passage of Proposition 103, to 80% of 1987 rates. *See* Ins. Code § 1861.01(a). Insurers could
3 avoid the “rolled back” rate only upon a showing that the statutory rate would cause the insurer
4 to be “threatened with insolvency”. Ins. Code § 1861.01(b).

5 23. Upon its passage, seven insurance companies and a trade association challenged
6 aspects of the initiative measure. Pertinent here, the insurers and trade association challenged
7 the “threatened with insolvency” standard as insufficient to protect against the risk that the
8 Proposition 103 “rollback” would be confiscatory as applied to individual insurers.

9 24. In *Calfarm Insurance Co. v. Deukmejian*, 48 Cal. 3d 805 (1989), the California
10 Supreme Court agreed, concluding that the “threatened with insolvency” standard was
11 unconstitutional because it provided no protection from confiscation for an insurer who might be
12 in no danger whatsoever of insolvency, but for which the “rollback” rate would not provide an
13 opportunity to earn a fair return. The opportunity to earn a fair rate of return is the constitutional
14 standard protecting entities subject to price regulation from confiscation. The Court held,
15 however, that the general rate standard set forth in Insurance Code § 1861.05(a) – allowing rates
16 that are not excessive or inadequate – would apply once the unconstitutional “threatened with
17 insolvency” standard was stricken. The Court held that the § 1861.05(a) standard was sufficient
18 to allow insurers to apply for relief from confiscation, in the event the rollback rate would be
19 confiscatory.

20 25. Because the rollback year was almost concluded by the time the *Calfarm* opinion
21 issued, the Court reshaped the “rollback” from a prospective rate to a rebate of premiums.
22 Insurers could apply for and charge the rates they considered appropriate during the rollback
23 year, subject to refunding premium if it were ultimately determined that the rate actually charged
24 during the rollback year was higher than the minimum non-confiscatory rate.

25 26. The Commissioner adopted a regulatory formula to set the minimum non-
26 confiscatory rate. The regulations substituted industry averages and certain assumptions for the
27 insurer’s own experience, as to certain parts of the rate formula. Because the formula was
28 applied retrospectively to determine a rebate rather than prospectively to calculate a rate for a

1 future period, the formula used actual, past historical data whenever the insurer's own data was
2 implicated. Additionally, in the rollback context there were two formulas used to determine the
3 rollback refund: the formula for determining the by-line "maximum permitted earned premium"
4 ("MPEP") – which in the rollback context constituted an intermediate step in calculating the
5 rollback – and the rollback formula set forth in 10. C.C.R. § 2645.9.

6 27. 20th Century Insurance Company – the first insurer to which the regulations were
7 applied – challenged the regulations, supported by numerous other insurers which were also
8 subject to the regulations. *See 20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216 (1994). In 20th
9 *Century*, the Court held the regulations and formula constitutional "as to rollbacks". The Court
10 held that flaws in the individual components of the formula were unimportant unless such flaws
11 led to a confiscatory result. Moreover, the Court held that in the event such flaws produced a
12 confiscatory result in the first instance, that intermediate result could be rectified by the
13 allowance of "variances" sufficient to accommodate the potential for confiscation in an
14 individual case. Implicitly recognizing that the variances actually written into the regulations
15 were not sufficient, the Court implied a "separate and independent constitutionally mandated
16 'variance,' which . . . would be available to the individual insurer on proof of confiscation, that
17 is to say, on proof that the regulations in question would otherwise be confiscatory as applied."
18 8 Cal. 4th at 313. The Court went on to examine the rate of return to 20th Century post-rollback,
19 found that 20th Century would receive an 11% rate of return, and held that "[w]ith a profit and
20 rate of return of this magnitude, confiscation does not appear." *Id.* at 328.

21 The Current Regulations

22 28. In 2006, the Commissioner proposed regulations modeled after the structure
23 approved in 20th *Century* "as to rollbacks". That is, they utilized industrywide averages as to
24 some components and gross assumptions as to others in the interests of "reduc[ing]" the job of
25 review and approval of a large annual volume of rate applications "to a manageable size." 20th
26 *Century*, 8 Cal. 4th 216, 280, *quoting Calfarm*, 48 Cal. 3d at 824. Consideration of the
27 constitutional concern with confiscation pervaded the entire regulatory structure as each
28 regulation was designed to account for the "fair return principle." Ensuring the opportunity for a

1 fair rate of return was woven into the fabric of the scheme, and expressly included as the bottom
2 line “variance” protecting against confiscation (10 C.C.R. § 2644.27(f)(9)).

3 29. The Commissioner reaffirmed his commitment to the “fair return principle” and its
4 importance to every step of the ratemaking process when he stated, in the course of adopting the
5 current regulations:

6 The 20th Century Court emphasized the importance of variances and stated time
7 and time again that the variances expressly provided for in the regulations are the
8 final mechanism for rate adjustments necessary to avoid confiscation before the
9 final rate determination is made. The Commissioner recognizes the importance of
10 variances and is fully cognizant that the Court in 20th Century relied on variances
11 as an extremely important protection against confiscation. Both the *Calfarm* and
12 20th Century Courts made it clear that the Commissioner has the legal authority to
13 take those steps reasonably necessary to make the job of rate regulation
14 manageable. (20th Century, (quoting *Calfarm*), 8 Cal. 4th 216, 245; 32 Cal. Rptr.
807, 824.) ***The Commissioner is also aware that insurers must be allowed an
opportunity to earn a fair and reasonable rate of return.*** Variances are important
as the constitutional safety valves. However, a variance cannot be created for
every possible contingency. The Commissioner has determined that variances
must be carefully considered, otherwise the exceptions will swallow the rule
making meaningful rate regulation impossible. ***And the opposite is also true. The
regulations must contain enough of these safety valves to ensure insurers may
avoid confiscation.***

15 *Summary of And Response To Public Comment Received Prior To September 13, 2006 Public
16 Comment Deadline*, at p. 128 (emphasis added).

17 30. The “fair return principle” traces a lineage from the U.S. Supreme Court to the
18 California Supreme Court and into the Proposition 103 regulatory scheme and the
19 Commissioner’s own statements. It has been a cornerstone of the Proposition 103 regulations,
20 helping to ensure that the process results in rates that are both fair to consumers and
21 constitutional as to insurers. The Commissioner’s Order, abandoning the “fair return principle”
22 in favor of his novel financial distress standard, strips the regulations of the safety valves the
23 Commissioner once underscored as essential, leaving insurers with no protection from
24 confiscatory rates.

25 **The Commissioner’s Order**

26 31. On February 11, 2013, the Commissioner issued his order requiring Mercury to
27 reduce homeowner’s rates by 5%. The Commissioner’s February 11, 2013 Order adopted the
28 law, analysis, and conclusions of the ALJ with no changes.

1 32. In considering Mercury's request for the constitutional variance under 10 C.C.R. §
2 2644.27(f)(9), the Commissioner renounced the "fair return principle", which had served as the
3 foundation underlying the entire regulatory structure when the current regulations were adopted
4 in 2007. The Commissioner substituted a financial distress test, requiring that a rate order
5 (which is issued as to a single line of insurance for the California market) must cause financial
6 distress companywide in order to be considered confiscatory. This standard appears
7 indistinguishable from the "threatened with insolvency" standard held unconstitutional in
8 *Calfarm*.

9 33. Additionally, the Order upholds the use of the "relitigation bar" set forth in 10
10 C.C.R. § 2646.4(c) to preclude Mercury from arguing the question of the constitutional standard,
11 and to preclude Mercury from presenting the evidence Mercury believed would meet the
12 standard if Mercury correctly interpreted the law. Mercury was entitled to present its valid
13 interpretation of the constitutional variance, and entitled to present evidence corresponding with
14 its valid interpretation. By interpreting the relitigation bar to prevent Mercury from even arguing
15 its case, the Order eliminates the accommodation necessary to allow for the possibility that a
16 formulaic approach may yield a confiscatory result in an individual case.

17 **THE CONFISCATION ISSUE: CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **Petition for Writ Of Mandate Directed To Interpretation of 10 C.C.R. § 2644.27(f)(9)**
20 **(CCP §§ 1085, 1088.5: By the Trades Against Insurance Commissioner)**

21 34. The Trades hereby incorporate by reference the allegations of paragraphs 1-33.

22 35. Regulation 10 C.C.R. § 2644.27(f)(9) purports to incorporate the "implied
23 constitutional variance" articulated in 20th Century.

24 36. The Commissioner's interpretation of that standard set forth in the Order is
25 contrary to established constitutional law and contrary to the legislative history of the
26 regulations.

27 37. The Commissioner's interpretation of 10 C.C.R. § 2644.27(f)(9) therefore
28 constitutes an abuse of discretion, subject to a writ of mandate issued by this Court compelling

1 the Commissioner to correct that abuse of discretion.

2 **SECOND CAUSE OF ACTION**

3 **Request for A Declaration As To The Correct Interpretation of 10 C.C.R. § 2644.27(f)(9)**
4 **(CCP § 1060 and Gov't Code § 11350: By the Trades Against Insurance Commissioner)**

5 38. The Trades hereby incorporate by reference the allegations of paragraphs 1 - 37.

6 39. A controversy has arisen between the Insurance Commissioner on the one hand
7 and the Trades and their members on the other regarding the correct interpretation of 10 C.C.R. §
8 2644.27(f)(9).

9 40. The Commissioner asserts that 10 C.C.R. § 2644.27(f)(9) requires that a rate order
10 cause financial distress to the affected company as a whole in order to be considered
11 confiscatory, and that § 2644.27(f)(9) does not entitle regulated insurers to the opportunity to
12 earn a fair rate of return.

13 41. The Trades and their members assert that the Due Process (Fourteenth
14 Amendment) and Takings (Fifth and Fourteenth Amendments) Clauses of the US Constitution
15 create a protection against confiscatory price controls, which requires that regulated rates allow
16 the regulated entity an opportunity to earn a fair rate of return on the regulated property or
17 investment. The Trades and their members assert that 10 C.C.R. § 2644.27(f)(9) requires this
18 protection.

19 42. The Trades' members are subject to rate regulation by the Commissioner in
20 accordance with the Commissioner's interpretations of the regulations. Without relief from this
21 Court, the Trades' members will be subjected to an incorrect interpretation, which allows
22 unconstitutional rate orders.

23 43. Thus, the Trades pray for a declaration of the correct interpretation of 10 C.C.R. §
24 2644.27(f)(9).

25 **THIRD CAUSE OF ACTION**

26 **Petition for Writ Of Mandate Directed To Interpretation of 10 C.C.R. § 2646.4(c)**
27 **(CCP §§ 1085, 1088.5: By the Trades Against Insurance Commissioner)**

28 44. The Trades hereby incorporate by reference the allegations of paragraphs 1 - 43.

- 10 -

45. As alleged, the Commissioner interpreted 10 C.C.R. § 2646.4(c) to preclude Mercury from arguing an interpretation of law, and to preclude Mercury from presenting any evidence of its individual circumstances intended to show that the rate order would not allow Mercury the opportunity to earn a fair rate of return on its California homeowner's insurance business.

46. The Commissioner's interpretation of § 2646.4(c) is incorrect as a matter of law and deprives an applicant insurer of its right to a fair hearing, guaranteed by the Fourteenth Amendment to the US Constitution.

47. The Commissioner's interpretation of § 2646.4(c) therefore constitutes an abuse of discretion, subject to a writ of mandate issued by this Court compelling the Commissioner to correct that abuse of discretion.

FOURTH CAUSE OF ACTION

Request for A Declaration As To The Correct Interpretation of 10 C.C.R. § 2646.4(c)
(CCP § 1060 and Gov't Code § 11350: By the Trades Against Insurance Commissioner)

48. The Trades hereby incorporate by reference the allegations of paragraphs 1 - 47.

49. A controversy has arisen between the Insurance Commissioner on the one hand and the Trades and their members on the other regarding the correct interpretation of 10 C.C.R. § 2646.4(c).

50. The Commissioner asserts that 10 C.C.R. § 2646.4(c) precludes an insurer applicant from taking the position that the applicant is entitled to an opportunity to earn a fair rate of return on the insurance subject to the rate order, and precludes an insurer applicant from presenting evidence of its individual circumstances establishing that the insurer will not have the opportunity to earn a fair rate of return on the insurance subject to the rate order, as a result of the rate order.

51. The Trades and their members assert that the Due Process Clause (Fourteenth Amendment) of the US Constitution create a right to a fair hearing, which includes the right to present the insurer applicant's case that a contemplated rate order will not allow the insurer the opportunity to earn a fair return due to the individual insurer's circumstances differing from the

1 assumptions built into the regulations.

2 52. The Trades' members are subject to rate regulation by the Commissioner in
3 accordance with the Commissioner's interpretations of the regulations. Without relief from this
4 Court, the Trades' members will be subjected to an incorrect interpretation, which allows
5 unconstitutional rate orders.

6 53. Wherefore, the Trades pray for a declaration of the correct interpretation of 10
7 C.C.R. § 2646.4(c).

8 **FIFTH CAUSE OF ACTION**

9 **Petition for Writ Of Mandate Directed To Unconstitutional Regulatory Scheme** 10 **(CCP §§ 1085, 1088.5: By the Trades Against Insurance Commissioner)**

11 54. The Trades hereby incorporate by reference the allegations of paragraphs 1 - 53.

12 55. As the Commissioner has interpreted 10 C.C.R. §§ 2644.27(f)(9) and 2446.4(c),
13 the rate regulatory scheme is unconstitutional.

14 56. Price control regulation that proceeds by way of formulaic assumptions can be
15 constitutional, but only if the regulatory mechanism is capable of accommodating adjustments
16 that may be necessary in an individual case to avoid confiscation. As the Commissioner
17 interprets the regulations in the Order, the current regulations contain no accommodation where,
18 in an individual case, the regulatory formula may generate a rate order that will not permit the
19 affected insurer the opportunity to earn a fair rate of return on the insurance business that is
20 subject to the rate order. Since the system contains no mechanism to accommodate an
21 adjustment that may be necessary to avoid confiscation, it is unconstitutional.

22 57. Further, as the Commissioner interprets the regulations in the Order, the regulatory
23 system does not allow an affected insurer to present its evidence that a proposed rate order will
24 not permit the insurer the opportunity to earn a fair rate of return on the insurance business
25 subject to the rate order.

26 58. The current rate regulations are therefore unconstitutional, as a whole, as
27 interpreted by the Commissioner, and subject to a writ of mandate issued by this Court
28 compelling the Commissioner to cease applying an unconstitutional regulatory system.

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(CCP § 1060 and Gov't Code § 11350: By the Trades Against Insurance Commissioner)

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1 (e) Fines and penalties.

2 (f) Institutional advertising expenses. "Institutional advertising" means advertising
3 not aimed at obtaining business for a specific insurer and not providing consumers
4 with information pertinent to the decision whether to buy the insurer's product.

5 (g) All payments to affiliates, to the extent that such payments exceed the fair market
6 rate or value of the goods and services in the open market.

7

8 66. Excluded expenses are considered at Page 13 of the rate application. On Page 13b,
9 the insurer applicant lists, by line, the excluded expense amount for each of the three most recent
10 years. There is one line for each of the lettered items in § 2644.10. It is commonly the case that
11 various lines will show zeroes, when the insurer does not have expenses for that excluded
12 expense item.

13 67. Page 13b also calculates the "excluded expense factor". The "excluded expense
14 factor" is an expense ratio of excluded expenses to direct earned premium. The expense
15 component within the formula – known as the "efficiency standard" – is an expense to premium
16 ratio. In the formula, the "efficiency standard" – the expense ratio – is reduced by the excluded
17 expense factor. Reducing the efficiency standard by a percentage point or two, based on the
18 excluded expense factor, makes a dramatic difference in the rate produced by the formula.

19 68. Regulation § 2644.10, subpart (f) is directed at excluding advertising expense for
20 institutional advertising. There is a general understanding that "institutional advertising"
21 promotes image, rather than promoting products to consumers. There is, however, no general
22 understanding as to the boundary between institutional advertising and product advertising.

23 69. The regulation is awkwardly worded in the negative, identifying two categories of
24 advertising that *are not* institutional advertising. For convenience in discussing the regulation,
25 the two categories are referred to herein as "Category A" and "Category B". Category A is
26 advertising aimed at obtaining business for a specific insurer. Category B is advertising
27 providing consumers with information pertinent to the decision whether to buy the insurer's
28 product. If advertising is *not* A and *not* B, then it is institutional advertising. The converse also

1 being true, if the advertising *is* A, it is not institutional advertising, and if the advertising *is* B, it
2 is not institutional advertising.

3 70. The Order misreads the regulation, as if it defined advertising *as to which expense*
4 *is includable* as “A and B”. Order pp. 102-103. But the regulation is not so framed. The
5 regulation defines advertising *as to which expense is excluded* as *not* A and *not* B.

6 71. Additionally, the Order reads Category A – advertising aimed at obtaining
7 business for a specific insurer – as requiring that the “specific insurer” be named in the
8 advertising. That requirement is not included in the regulation, nor is it consistent with common
9 practice or consumer understanding. For example, advertising in a Northern California market
10 urging consumers to buy homeowner’s insurance from AAA due to a recent price reduction is
11 “advertising aimed at obtaining business for” AAA of Northern California, Nevada, and Utah
12 Insurance Exchange. It is not necessary to state the formal name of the specific insurer in the
13 advertising, which would serve no useful purpose and only be confusing. If a consumer wishes
14 to contact “AAA” and follows the instructions in the advertising, the consumer will contact, and,
15 if he or she ultimately makes that decision, purchase insurance from the “specific insurer” that
16 writes homeowner’s insurance in Northern California as AAA: AAA of Northern California,
17 Nevada and Utah Insurance Exchange. That is, it is not necessary that the “specific insurer” be
18 formally named in the advertising, rather than identified by the name by which the insurer is
19 popularly known. All that is required is that the business generated will accrue to a specific
20 insurer.

21 72. The Order incorrectly describes regulation § 2644.10 as identifying expenses that
22 cannot be “passed on” to consumers. Order p. 101. Similarly, the Order contrasts “excludable
23 shareholder cost[s]” with “includable ratepayer expenditure[s]”. Order p. 103. The Order relies
24 heavily on public utility cases for this analysis. But insurance companies are not public utilities.
25 They are competitors in a voluntary market. Advertising expenses, like other reasonable,
26 legitimate, and accepted costs of doing business, are not “passed on” to “ratepayers”. They are
27 *the insurer’s* costs of doing business. Neither the controlling statutes nor the implementing
28 regulations ascribe certain expenses to “ratepayers” and others to “shareholders”. The

1 regulations simply use the insurer's costs of doing business – including losses and expenses – as
2 the basic building blocks to determine the range between a rate that is “excessive” and a rate that
3 is “inadequate”. The public utility model, and public utility cases applying public utility
4 standards, does not apply.

5 73. There is another reason the public utility model – assigning certain costs to
6 shareholders and certain costs to ratepayers – does not belong in the insurance market. A
7 substantial portion of the insurance written in California is written by insurers who have no
8 shareholders. The “mutual insurer” form of corporate organization is unique to the insurance
9 industry. Mutual insurers are owned for the benefit of their policyholders, and have no
10 shareholders. *See e.g.* Ins. Code § 4010. The California market includes both large and small
11 mutual insurers writing a significant portion of the insurance in this state.

12 74. Regulation § 2644.10(f), particularly as interpreted in the Order, substantially
13 burdens affected insurers' constitutionally protected commercial speech. The Order asserts that
14 “[t]he Regulation does not regulate the content and form of advertising” Order p. 101. The
15 regulation is expressly content-based, chilling and burdening some speech by requiring an
16 insurer to reduce the expense component in the rate based solely on the content of the
17 advertising. Unquestionably, applying an excluded expense factor, based on excluded
18 advertising costs, which results in reducing the permitted rate by tens of millions of dollars has a
19 chilling effect on a regulated insurer's commercial speech.

20 **THE INSTITUTIONAL ADVERTISING ISSUE: CAUSES OF ACTION**

21 **SEVENTH CAUSE OF ACTION**

22 **Petition for Writ Of Mandate Directed To Interpretation of 10 C.C.R. § 2644.10(f)**

23 **(CCP §§ 1085, 1088.5: By the Trades Against Insurance Commissioner)**

24 75. The Trades hereby incorporate by reference the allegations of paragraphs 1-74.

25 76. The Commissioner's interpretation of 10 C.C.R. § 2644.10(f) set forth in the Order
26 is contrary to the plain meaning of the regulation, defines terms contained in the regulation in a
27 manner not set forth in the regulation itself and that are inconsistent with common practice and
28 consumer understanding, and ignores advertising expenses that are a legitimate and reasonable

1 part of the cost of doing business.

2 77. The Commissioner's interpretation of 10 C.C.R. § 2644.10(f) therefore constitutes
3 an abuse of discretion, subject to a writ of mandate issued by this Court compelling the
4 Commissioner to correct that abuse of discretion.

5 EIGHTH CAUSE OF ACTION

6 Request for A Declaration As To The Correct Interpretation of 10 C.C.R. § 2644.10(f) 7 (CCP § 1060 and Gov't Code § 11350: By the Trades Against Insurance Commissioner)

8 78. The Trades hereby incorporate by reference the allegations of paragraphs 1-77.

9 79. A controversy has arisen between the Insurance Commissioner on the one hand
10 and the Trades and their members on the other regarding the correct interpretation of 10 C.C.R. §
11 2644.10(f).

12 80. The Commissioner asserts that 10 C.C.R. § 2644.10(f) defines advertising for
13 which the expense is includable as advertising that is both aimed at obtaining business for a
14 specific insurer and providing consumers with information pertinent to the decision whether to
15 buy the insurer's product. The Commissioner further interprets § 2644.10(f) as requiring that a
16 specific insurance company be formally identified in the advertising for the expense of that
17 advertising to be includable.

18 81. The Trades and their members assert that 10 C.C.R. § 2644.10(f) defines
19 institutional advertising – as to which expenses are excluded – by identifying two categories of
20 advertising not constituting institutional advertising. Each of the two categories, then, defines
21 advertising as to which advertising expense is not excluded. The Trades and their members
22 further assert that the phrase “aimed at obtaining business for a specific insurer” does not require
23 that a specific insurance company be formally named in the advertising. All that is required is
24 that the business generated by the advertising (assuming success) will accrue to a specific
25 insurer.

26 82. The Trades' members are subject to rate regulation by the Commissioner in
27 accordance with the Commissioner's interpretations of the regulations. Without relief from this
28 Court, the Trades' members will be subjected to an incorrect interpretation, with the potential to

1 drastically and unfairly reduce the rate level permitted by the formula.

2 83. Wherefore, the Trades pray that this Court declare the proper meaning of 10
3 C.C.R. § 2644.10(f).

4 **NINTH CAUSE OF ACTION**

5 **Petition for Writ Of Mandate Directed To Unconstitutional Regulation**

6 **(CCP §§ 1085, 1088.5: By the Trades Against Insurance Commissioner)**

7 84. The Trades hereby incorporate by reference the allegations of paragraphs 1-83.

8 85. Regulation § 2644.10(f), as written and as interpreted by the Commissioner, is a
9 content-based regulation that substantially chills and burdens affected insurers' constitutionally
10 protected commercial speech by altering their permitted rates based on whether their speech is
11 an excludable expense.

12 86. The current regulations are therefore unconstitutional, as written and as interpreted
13 by the Commissioner, and subject to a writ of mandate issued by this Court compelling the
14 Commissioner to cease applying an unconstitutional regulation.

15 **TENTH CAUSE OF ACTION**

16 **Request for A Declaration That 10 C.C.R. § 2644.10(f) Is Unconstitutional**

17 **(CCP § 1060 and Gov't Code § 11350: By the Trades Against Insurance Commissioner)**

18 87. The Trades hereby incorporate by reference the allegations of paragraphs 1-86.

19 88. An actual controversy has arisen between the Commissioner on the one hand and
20 the Trades and their members on the other regarding the constitutionality of regulation §
21 2644.10(f) as written and as interpreted by the Commissioner.

22 89. The Commissioner contends that the regulation § 2644.10(f) is lawful and
23 constitutional.

24 90. The Trades and their members contend that, as written and as interpreted by the
25 Commissioner, regulation § 2644.10(f) is a content-based regulation that substantially chills and
26 burdens affected insurers' constitutionally protected commercial speech by altering their
27 permitted rates based on whether their speech is an excludable expense.

28 91. The Trades' members are subject to this unconstitutional regulation.

1 92. Wherefore, the Trades and their members request that this Court declare regulation
2 § 2644.10(f), as written and as interpreted by the Commissioner, to be unconstitutional.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Trades pray for the following relief:

- 5 1. That this Court issue a Declaratory Judgment as requested in the Second, Fourth,
6 Sixth, Eighth, and Tenth Causes of Action;
- 7 2. That this Court issue its writ of mandate compelling the Commissioner to interpret the
8 regulations in a lawful and constitutional manner, as requested in the First, Third,
9 Fifth, Seventh and Ninth Causes of Action;
- 10 3. For attorney's fees and costs incurred herein; and
- 11 4. For such other and further relief as the Trades may request or this Court may
12 determine is appropriate.

13
14 Dated: _____, 2013

Respectfully submitted,

15 HOGAN LOVELLS US LLP

16
17 By: _____

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