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Attorneys for Cross-Complainants & Real Parties In Interest
American Council of Life Insurers, American Insurance Association, and Association of California Life and Health Insurance Companies

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 04 2011

John A. Clarke, Executive Officer/Clerk
By ~~A. Fajardo~~, Deputy
ANNETTE FAJARDO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER STEVE
POLZNER,

Petitioner,

v.

OFFICE OF ADMINISTRATIVE LAW,

Respondent,

AMERICAN COUNCIL OF LIFE INSURERS,
AMERICAN INSURANCE ASSOCIATION,
ASSOCIATION OF CALIFORNIA
INSURANCE COMPANIES, ASSOCIATION
OF CALIFORNIA LIFE AND HEALTH
INSURANCE COMPANIES, and PERSONAL
INSURANCE FEDERATION OF
CALIFORNIA,

Real Parties In Interest.

AMERICAN COUNCIL OF LIFE INSURERS,
AMERICAN INSURANCE ASSOCIATION,
and ASSOCIATION OF CALIFORNIA LIFE
AND HEALTH INSURANCE COMPANIES,

Cross-Complainants,

v.

INSURANCE COMMISSIONER DAVE
JONES,

Cross-Defendant:

CASE NO. BS129209

BY FAX

VERIFIED CROSS-COMPLAINT FOR
INJUNCTIVE RELIEF

1
2 This cross-complaint is filed on behalf of Cross-Complainants and Real Parties In
3 Interest American Council of Life Insurers, American Insurance Association, and Association
4 of California Life and Health Insurance Companies, against Petitioner and Cross-Defendant
5 (previously Insurance Commissioner Steve Poizner, now Insurance Commissioner Dave
6 Jones). For their complaint, they allege as follows:

7 **INTRODUCTION**

8 1. Cross-Complainants seek an order enjoining the Commissioner of the California
9 Department of Insurance from continuing to enforce “underground regulations” against their
10 member companies. Underground regulations are rules of general applicability that interpret,
11 implement, or make specific other provisions of law, and that are imposed without first having
12 been adopted in accordance with the standards and procedural safeguards of the California
13 Administrative Procedure Act (“APA”). The failure to comply with the provisions of the APA
14 renders such rules invalid, and they cannot lawfully be enforced.

15 2. The Commissioner of the California Department of Insurance has issued rules
16 applicable to approximately 1,300 insurers doing business in California, seeking to regulate
17 their investments in international businesses conducting business with certain private sector
18 businesses located in Iran. The Commissioner asserts that he has issued these rules to enforce
19 specific statutory provisions contained in the California Insurance Code.

20 3. None of the statutory provisions relied on by the Commissioner permit him to issue
21 rules to all insurers doing business in California relating to their specific investments, and
22 certainly not in complete violation of the procedures for adopting rules of general applicability
23 as spelled out in the APA. In fact, the Office of Administrative Law (“OAL”), an agency
24 charged by the Legislature to investigate rules issued without compliance with the APA, has
25 concluded that the Commissioner’s rules seeking to regulate insurers’ investments in
26 companies doing business in Iran is regulatory in nature and should have been adopted in
27 accordance with the provisions of the APA. The Commissioner’s failure to do so renders the
28 rules invalid.

4. Despite the invalidity of the rules issued by the Commissioner seeking to regulate investments in companies doing business in Iran, he continues to enforce them. Accordingly, Cross-Complainants have no alternative other than to seek injunctive relief.

PARTIES

5. The American Council of Life Insurers (“ACLI”) is a non-profit corporation in good standing, duly formed and operating under the laws of the State of Delaware. ACLI was founded in 1975, and was incorporated as a non-profit corporation in 1976. ACLI is a national membership organization, representing over 300 member companies, many of which do business in California.

6. The American Insurance Association (“AIA”) is a leading trade organization of the property and casualty industry, representing more than 300 major insurers. AIA members, based in this state and most other states, collectively wrote over \$117 billion in premiums in 2008, including over \$17 billion in premiums in California.

7. The Association of California Life and Health Insurance Companies (“ACLHIC”) is a California non-profit mutual benefit corporation in good standing, duly formed and operating under the laws of the State of California. ACLHIC was founded and was incorporated as a California non-profit mutual benefit corporation in 1962. ACLHIC is a membership organization, representing 35 life and health insurance companies throughout the State of California.

8. Cross-Defendant and Petitioner is the Commissioner of the California Department of Insurance. During 2010, the time that most of the events set out in this cross-complaint occurred, the Commissioner was Steve Poizner. Dave Jones became Commissioner on January 3, 2011. The Commissioner is the head of the California Department of Insurance and is responsible for implementing the specific regulatory provisions of the Insurance Code.

BACKGROUND

9. On February 10, 2010, the Commissioner, through the General Counsel, Adam Cole, of the California Department of Insurance, issued an electronic communication to all 1,327 insurance companies doing business in the state of California. The directive announced:

1 a. The Department has developed a list of companies doing business with the Iranian
2 oil and natural gas, nuclear, or defense sector.

3 b. Every company on the list is subject to financial risk as a result of doing business in
4 Iran. Because of the Iranian government's activities, companies doing business there are
5 subject to "asymmetric reputational harm," and accordingly, financial or market risk.

6 c. Effective March 30, 2010, the Department will treat all investments by insurers
7 selling insurance in California in companies on the list and affiliates-owned 50% or more by
8 such companies as non-admitted on the insurer's financial statements. **All financial**
9 **statements filed from periods ending on or after March 31, 2010 by insurers must report**
10 **all investment holdings on the list as not-admitted assets.**

11 d. All insurers were "requested" to agree not to invest in the future in any of the
12 companies on the list or affiliates-owned 50% or more by those companies until (a) Iran is
13 removed from the United States State Department's list of state sponsors of terrorism, or (b) the
14 company and its affiliates cease to do business with Iran's oil and natural gas, nuclear, and
15 defense sectors and is removed from the list.

16 e. All companies were required to respond by March 12, 2010 to the "request." The
17 Department may publish the names of all companies not responding or declining the
18 Department's "request" for a moratorium on future investments in the companies on the list and
19 affiliates-owned 50% or more by those companies.

20 10. On April 16, 2010, the Commissioner, once again, through the General Counsel,
21 Adam Cole, issued a directive to all admitted insurance companies relating to the supplemental
22 filing on Iran-related investments. This directive:

23 a. Added Shell International Finance to the initial list of 50 companies doing business
24 in Iran.

25 b. Dropped investments in affiliates-owned 50% or more by companies on the list.

26 c. Required insurers to complete an Iran-Related Investments Supplemental Filing
27 Workbook by May 31, 2010, treating all such investments as non-admitted.
28

1 d. Warned non-complying companies that failure to submit the completed supplemental
2 filing by the due date will be referred to the Department of Insurance's Legal Division for
3 further action.

4 11. On May 12, 2010, the Commissioner published a list of 296 insurers that did not
5 agree to forego future investments in the listed companies doing business in Iran.

6 12. The directives issued by the Commissioner on February 10, 2010, and those issued
7 subsequently on April 16, 2010, and May 12, 2010, in furtherance of the February 10, 2010
8 directives, are regulations. They are rules of general application in that they are imposed on
9 over 1,300 insurers. They are intended to implement, interpret, and make specific provisions of
10 state and federal law. The directives pertaining to investments in companies doing business in
11 Iran are not exempt under any statutory exception from compliance with the provisions of the
12 APA.

13 13. On October 11, 2010, the Office of Administrative Law, acting consistently with its
14 statutory charge under Government Code section 11340.5, determined that the communication
15 issued by the Commissioner on February 10, 2010, met the definition of a regulation, was not
16 adopted pursuant to the APA, and therefore, is an invalid underground regulation. Further,
17 OAL concluded that none of the exceptions to the requirement that rules be adopted pursuant to
18 the APA apply to the communication issued by the Commissioner. OAL's determination was
19 issued pursuant to a Petition submitted to OAL by five insurance trade associations, including
20 Cross-Complainants.

21 14. Despite the OAL determination that the Commissioner's directives pertaining to
22 investments in companies doing business in Iran is an underground regulation, the
23 Commissioner, on December 14, 2010, dropped four companies, Royal Dutch Shell, Shell
24 International Finance, Total SA, and Repsol YPF, leaving 47 on the list of companies doing
25 business in Iran.

26 15. Again, despite OAL's determination, new Commissioner Dave Jones, on February
27 1, 2011, through the General Counsel, Adam Cole, issued a directive to all admitted insurance
28

1 companies relating to the Supplemental Filing on Iran-Related Investments - Fourth Quarter
2 2010. This directive:

- 3 a. Contains a list of 47 companies doing business in Iran.
- 4 b. Treats all investments in companies on the list as non-admitted.
- 5 c. Requires insurers to complete and return the Iran-Related Investments Supplemental
6 Filing Workbook to the Department no later than March 1, 2011.

7 16. The Commissioner, through the directives issued on December 14, 2010, and
8 February 1, 2011, continues to compel insurers that are members of Cross-Complainants to
9 comply with invalid underground regulations. Specifically, insurers subject to the directives
10 are disadvantaged because their capacity to write insurance is diminished when the amounts of
11 their investments in companies on the list are non-admitted. Insurers will continue to be
12 disadvantaged until such as time as the Commissioner relieves them of the requirement to not
13 invest in companies on the list and not treat those investments as non-admitted, or until such
14 time as a court enjoins the Commissioner from continuing to enforce the underground
15 regulation. They will continue to face the Hobson's choice between facing disciplinary action
16 by the Commissioner if they do not comply and having their investments devalued by invalid
17 "underground regulations" if they do comply.

18 17. Cross-Complainants have no plain, speedy and adequate remedy at law.

19 **PRAYER**

20 WHEREFORE, Cross-Complainants pray for relief as follows:

21 1. That the court issue a preliminary and permanent injunction against the
22 Commissioner from continuing to impose and enforce directives against insurers relating to
23 their investments in companies doing business in Iran without complying in full with the
24 standard and procedural safeguards of the California Administrative Procedure Act.

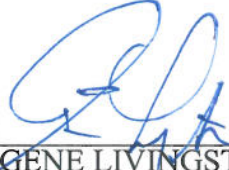
25 2. That the Court award Cross-Complainants their attorneys fees and costs pursuant to
26 section 1021.5 of the California Code of Civil Procedure.

1 3. That the Court grant such further and additional relief as the Court deems just and
2 proper.

3
4 DATED: February 4th, 2011

Respectfully submitted,

GREENBERG TRAURIG, LLP

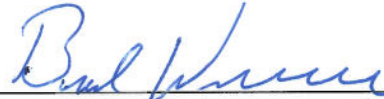
5
6
7 By: 
8 GENE LIVINGSTON
9 Attorneys for Cross-Complainants and
10 Real Parties In Interest
11 American Council of Life Insurers,
12 American Insurance Association, and
13 Association of California Life and
14 Health Insurance Companies
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3 **VERIFICATION**

4 I, Brad Wenger, am the President and Chief Executive Officer of the Association of
5 California Life and Health Insurance Companies, a party to this action, and am authorized to
6 make this verification on its behalf. I have read the foregoing Cross-Complaint for Injunctive
7 Relief and know its contents. I am informed and believe and on that ground allege that the
8 matters stated therein are true. The same is true of my own knowledge, except as to those
9 matters alleged on information and belief, and as to those matters, I believe them to be true.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed this Third day of February, 2011, in Sacramento, California.

13 

14 BRAD WENGER, President and CEO
15 Association of California Life and Health
16 Insurance Companies

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25 SAC 441,910,440v1 2-3-11

SUMMONS
Cross-Complaint
(CITACION JUDICIAL-CONTRADEMANDA)

NOTICE TO CROSS-DEFENDANT:
(AVISO AL CONTRA-DEMANDADO):
INSURANCE COMMISSIONER DAVE JONES

YOU ARE BEING SUED BY CROSS-COMPLAINANT:
(LO ESTÁ DEMANDANDO EL CONTRADEMANDANTE):
AMERICAN COUNCIL OF LIFE INSURERS, AMERICAN INSURANCE
ASSOCIATION, AND ASSOCIATION OF CALIFORNIA LIFE AND HEALTH
INSURANCE COMPANIES

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OF ORIGINAL FILED
 Superior Court of California
 County of Los Angeles
FEB 04 2011
 John A. Clarke, Executive Officer/Clerk
 By RUBEN LOPEZ Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the cross-complainant. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al contrademandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto, si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), o uniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles County Superior Court

111 North Hill Street

Los Angeles, CA 90012

SHORT NAME OF CASE (from Complaint): (Nombre de Caso):

POIZNER v. OAL, et al.

CASE NUMBER: (Número del Caso):

BS 129209

The name, address, and telephone number of cross-complainant's attorney, or cross-complainant without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del contrademandante, o del contrademandante que no tiene

abogado, es): Gene Livingston, SBN 44280 (916) 442-1111

GREENBERG TRAURIG, LLP

1201 K Street, Suite 1100, Sacramento, CA 95814

DATE: February 4, 2011

(Fecha)

Clerk, by
 (Secretario)

Deputy
 (Adjunto)

RUBEN LOPEZ

(For proof of service of this summons, use Proof of Service of Summons, (form POS-010).)
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010).)

NOTICE TO THE PERSON SERVED: You are served

(SEAL)

1. ☒ as an individual cross-defendant.
 2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):