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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES

14 THE ASSOCIATION OF CALIFORNIA  
15 INSURANCE COMPANIES, THE PERSONAL  
16 INSURANCE FEDERATION OF CALIFORNIA,  
17 THE AMERICAN INSURANCE ASSOCIATION,  
18 AND THE PACIFIC ASSOCIATION OF  
19 DOMESTIC INSURANCE COMPANIES

20 Insurance Association  
21 Petitioners and Plaintiffs,

22 v.

23 STEVE POIZNER, in his capacity as Insurance  
24 Commissioner of the State of California; and  
25 CALIFORNIA DEPARTMENT OF INSURANCE,

26 Respondents and Defendants,

27 THE FOUNDATION FOR TAXPAYER AND  
28 CONSUMER RIGHTS,

Intervenor.

Case No. BS109154

**THE FOUNDATION FOR TAXPAYER  
AND CONSUMER RIGHTS' REQUEST  
FOR JUDICIAL NOTICE IN SUPPORT OF  
ITS OPPOSITION TO PETITION FOR  
WRIT OF MANDATE**

Hearing Date: January 31, 2008  
Time: 9:30 a.m.  
Dept: 85  
Judge: Hon. Dzintra Janavs

Date Action Filed: May 25, 2007

1 Pursuant to sections 451 and 452 of the Evidence Code, Intervenor The Foundation for  
2 Taxpayer and Consumer Rights ("FTCR") hereby requests judicial notice of the following documents,  
3 true and correct copies of which are attached as exhibits 1-7 hereto, in support of its Opposition to  
4 Petition for Writ of Mandate:

- 5 1. Final Text of Regulation in RH06092874, dated November 8, 2006;<sup>1</sup>
- 6 2. Sections 2651.1, 2661.1, 2661.3, 2662.1, 2662.2, 2662.3, and 2662.5 of Title 10 of the  
7 California Code of Regulations, as amended effective January 28, 2007;
- 8 3. Final Statement of Reasons, RH06092874, Nov. 14, 2006, adopting Initial Statement of  
9 Reasons, Sept. 22, 2006;
- 10 4. Summary and Response to Public Comments, RH06092874, Sept. 22, 2006;
- 11 5. Example of CDI, Rate Regulation Branch, "Approval of Application";
- 12 6a. Stipulation and Request for Order, File No. PA04039736, July 28, 2005 and Order  
13 Adopting Proposed Stipulation, PA04039736, Sept. 17, 2005;
- 14 6b. Decision, PA05045074, Aug. 9, 2005;
- 15 6c. Decision, File No. PA04039720, Dec. 17, 2004;
- 16 6d. Decision, File No. PA04037956, July 22, 2004; and
- 17 7. Advisory Notice, Cal. Ins. Comm'r, Feb. 18, 2005.

18 Each of these documents is judicially noticeable under sections 451 and/or 452 of the Evidence  
19 Code and are relevant to support FTCR's arguments that the Commissioner's amendments to the  
20 procedural regulations governing consumer participation and compensation in administrative rate  
21 proceedings (the "Intervenor Regulations") are consistent with the Insurance Code.

22  
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27  
28 <sup>1</sup> Note that section 2653.6 was withdrawn.

[illegible]

1       **Exhibit 7** is an Advisory Notice issued by the Commissioner on February 18, 2005 to all  
2       property casualty insurers subject to Proposition 103 and other interested persons discussing  
3       how the CDI will handle rate proceedings to include initial discussions amongst the rate  
4       applicant, the CDI and any person who has petitioned for a hearing.

5  
6       Judicial notice of the above-described Insurance Commissioner and CDI documents is proper  
7       under Evidence Code section 452(c). (*See also Nipper v. California Auto. Assigned Risk Plan* (1977)  
8       19 Cal.3d 35, 44-45 [court took judicial notice of Insurance Commissioner's "decision which  
9       summarized the results of hearings held by his office" and derived from those summaries findings of  
10      fact about the Commissioner's assumptions and intentions].)

11  
12       **Exhibit 2** comprises the amended Intervenor Regulations, which are judicially noticeable  
13      pursuant to Evidence Code § 452(b), providing that a court may take judicial notice of "[r]egulations  
14      and legislative enactments issued by ... any public entity in the United States." (Evid. Code § 452(b);  
15      see also *In-Home Supportive Services v. Workers' Comp. Appeals Bd.* (1984) 152 Cal.App.3d 720, 725  
16      [taking judicial notice of state's regulations governing IHSS pursuant to Evid. Code § 451(a)].)

17  
18       As each of the documents is judicially noticeable and relevant to the instant proceeding, FTCT  
19      respectfully requests that this Court take judicial notice of the attached documents in support of its  
20      Opposition to Petition for Writ of Mandate.

21  
22      Dated: December 7, 2007

Respectfully Submitted

23                                      The Foundation for Taxpayer and Consumer Rights  
24                                      Harvey Rosenfield  
25                                      Pamela Pressley  
26                                      Todd Foreman

27      BY:

  
Pamela Pressley

# **EXHIBIT 1**

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, California 95814

RH06092874

September 22, 2006

TEXT OF REGULATON

Title 10. Investment  
Chapter 5. Insurance Commissioner

§ 2651.1. Definitions

The following definitions shall apply to Subchapter 4.9.

(a) "Administrative Hearing Bureau" means that office within the office of the Commissioner at 45 Fremont Street, 22nd Floor, San Francisco, CA 94105 and, except where otherwise specified in this subchapter, designated for receipt of all pleadings filed pursuant to this subchapter.

(b) "Applicant" means the insurer presenting, on the form prescribed by the Commissioner and specified in section 2648.4, an application to

change any rate pursuant to California Insurance Code section 1861.05(b).

(c) "Application" means the form prescribed by the Commissioner and specified in section 2648.4, together with all supporting information included with that form, which every insurer seeking to change any rate pursuant to California Insurance Code section 1861.05(b) must provide.

(d) "Day", unless otherwise specified in these regulations, means a calendar day. "Business days" include all days except Saturdays, Sundays, and any holiday set forth in California Government Code section 6700.

The time within which any pleading may be filed or served shall exclude the first day and include the last day; however, when the last day falls on a Saturday, Sunday or holiday the time computation shall exclude that day and include the next business day.

(e) "Filing" means the act of delivery of a paper pleading to the Administrative Hearing Bureau. An original and four copies of each pleading shall be filed with the Administrative Hearing Bureau. A specific pleading may be filed by facsimile or electronic transmission only when authorized by the administrative law judge.

(f) "Party" means the insurer whose rates are the subject of the proceeding, any person whose petition to intervene in the proceeding has been granted pursuant to section 2661.3(g), and the Department.

(g) "Pleading" means any petition, notice of hearing, notice of defense, answer, motion, request, response, brief, or other formal document filed with the Administrative Hearing Bureau pursuant to this subchapter. The original of each pleading shall be signed by each party or the party's attorney or representative.

(h) "Proceeding" means any action conducted pursuant to Article 10 of Chapter 9 of Part 2 of Division 1 of the California Insurance Code, entitled "Reduction and Control of Insurance Rates," including a rate proceeding established upon the submission of a petition for hearing pursuant to California Insurance Code section 1861.05 and section 2653.1 of this subchapter.

(i) "Service" means to provide a copy of a pleading to every other party in the proceeding in conformity with California Code of Civil Procedure sections 1011 and 1013. When a party files a pleading, the party shall concurrently serve that pleading on all other parties in the proceeding.

All filed pleadings shall be accompanied by an original declaration of service in conformity with California Code of Civil Procedure sections 1011 and 1013. All served pleadings shall be accompanied by a copy of the declaration of service. An employee of a party may sign a declaration of service.

A specific pleading may be served by facsimile or electronic transmission when authorized by the receiving party.

A sample declaration of service form can be found in section 2623.9.

(j) "Settlement" means an agreement among some or all of the parties to a proceeding on a mutually acceptable outcome to the proceeding.

(k) "Stipulation" means an agreement among some or all of the parties to a proceeding on the resolution of any issue of fact or the applicability of any provision of law material to the proceeding.

(l) "Submit" means the act of delivery of a pleading to the Rate Enforcement Bureau.

#### AUTHORITY:

Note: Authority cited: Sections 1861.05 and 1861.055, Insurance Code, CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.05(c), 1861.055 and 1861.08, Insurance Code, CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989),

20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

§ 2653.6. Withdrawal of Application

(a) After a petition for hearing has been submitted or after a hearing has been noticed, an insurer may not withdraw its rate or class plan application without the Commissioner's approval.

(b) An insurer desiring to withdraw an application shall submit a request to withdraw its rate or class plan application. When a request to withdraw is submitted, the insurer shall serve a copy on each petitioner named in the petition.

(c) A petition for a hearing may, within five (5) days of submission of the request to withdraw, submit a response to a request to withdraw.

(d) If the Commissioner determines that a withdrawal of the insurer's application is justified, the Commissioner shall issue an order of withdrawal.

AUTHORITY:

Note: Authority cited: Sections 1861.05, 1861.055, and 1861.10, Insurance Code, CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.05(a), 1861.055 and 1861.10(a) and (b), Insurance Code, CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

§ 2661.1. Definitions

The following definitions shall apply to Articles 13 and 14 of this subchapter.

(a) "Advocacy Fees" means costs, incurred or billed, by a party for the services of an advocate in the proceeding. An advocate need not be an attorney. Advocacy fees shall not exceed market rates as defined in this section.

(b) "Compensation" means payment for all or part of advocacy fees, witness fees, and other expenses of participation and intervention in any rate hearing or proceeding other than a rate hearing.

(c) "Market Rate" means, with respect to advocacy and witness fees, the prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay Areas at the time of the Commissioner's decision awarding compensation for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability. Billing rates shall not exceed the market rate.



(d) "Other Expenses" means reasonable, actual out-of-pocket costs of an intervenor or petitioner. Out-of-pocket costs include but are not limited to expenses such as travel costs, transcript charges, postage charges, overnight delivery charges, telephone charges and copying expenses. Out-of-pocket costs also includes the costs incurred in preparing a request or amended request for award, defined in sections 2662.3 and 2662.4. The intervenor or petitioner has the burden of substantiating any costs incurred, including providing supporting documentation as requested by the Public Advisor.

(e) "Proceeding" includes those proceedings set forth in Insurance Code Section 1861.10(a).

(f) "Proceeding Other Than a Rate ~~Hearing~~ Proceeding" means any proceeding, including those described in subdivision (e) above, conducted pursuant to Chapter 9 of Part 2 of Division 1 of the Insurance Code which is not a rate ~~hearing~~ proceeding as defined in this section.

(g) "Public Advisor" means that official of the Department of Insurance who monitors and assists participation by members of the public in the Department of Insurance's proceedings. The Public Advisor shall not represent any member of the public and shall not advocate any substantive position on behalf of the public on any issues before the Commissioner.

(h) "Rate ~~Hearing~~ Proceeding" means any proceeding conducted pursuant to Insurance Code Sections 1861.01 and 1861.05. For purposes of section 1861.05, a "rate proceeding" is established upon the submission of a petition for hearing in accordance with section 2653.1 of this subchapter, or if no petition for hearing is filed, upon notice of hearing.

(i) "Rate Hearing" means a hearing noticed by the Commissioner on his own motion or in response to a petition for hearing pursuant to Insurance Code section 1861.05, which is conducted pursuant to the applicable procedural requirements of Insurance Code section 1861.08, and subchapters 4.8 and 4.9 of this chapter.

(j) "Represents the Interests of Consumers" means that the intervenor represents the interests of individual insurance consumer[s], or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial proceedings.

A party which represents, in whole or in part, any entity regulated by the Commissioner shall not be eligible for compensation. However, nothing in this subsection shall be construed to prohibit any person from intervening or participating if that person is not seeking compensation.

(k) "Substantial Contribution" means that the intervenor substantially contributed, as a whole, to a decision, order, regulation, or other action of the Commissioner by presenting

relevant issues, evidence, or arguments which were separate and distinct from those emphasized by the Department of Insurance staff or any other party, such that the intervenor's participation resulted in more relevant, credible, and non-frivolous information being available for the Commissioner to make his or her decision than would have been available to a Commissioner had the intervenor not participated. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied.

(kl) "Witness Fees" means recorded or billed costs for a witness, together with associated expenses. Costs and expenses for a witness shall not exceed market rate as defined in this section.

#### AUTHORITY:

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

#### § 2661.3. Procedure for Intervention in a Rate Hearing or Class Plan Proceeding

(a) A person desiring to intervene and become a party to a rate ~~hearing~~or class plan proceeding shall file a petition to intervene which shall be drafted in compliance with sections 2652.1-2652.4 of this subchapter. A person who petitions for a hearing may combine a petition to intervene with a petition for hearing in one pleading.

(b) The Petition shall cite the law authorizing the proposed intervention and shall contain the petitioner's interest in the proceeding, the specific issues to be raised and the positions to be taken on each issue to the extent then known, and the name, address, and telephone number of the petitioner. The verified petition shall include a statement that the intervenor or advocate will be able to attend and participate in the proceeding without delaying the proceeding or any other proceedings before the Commissioner.

(c) The Petition shall also state whether the petitioner intends to seek compensation in the proceeding, and, if so, contain an itemized estimated budget for the participation in the proceeding, which shall set forth the following:

(1) separate listings of the rates for each attorney advocate or non-attorney advocate, including:

(A) the names of each attorney advocate or non-attorney advocate,

(B) the rates to be claimed for each attorney advocate or non-attorney advocate,

(C) a description of the work to be performed by each attorney advocate or non-attorney advocate, an estimate of the time to be spent to perform that work and the rates, fees and costs associated with that work; and,

(2) separate listings of the rates for each witness, including:

(A) the names of each witness and their areas of expertise,

(B) the rates to be claimed for each witness,

(C) a description of the work to be performed by each witness, an estimate of the time to be spent to perform that work and the rates, fees and costs associated with that work;

Rates contained in the estimated budget shall not exceed market rates. Submission of the budget shall not guarantee the payment of the dollar amounts set forth in the budget. The lack of objection to any item in the budget shall not imply approval of the budget.

(d) An amended budget shall be submitted as soon as possible when the intervenor learns that the total estimated budget amount increases by \$ 10,000 or more.

(e) A Petition to Intervene shall be in a rate or class plan proceeding may be submitted to the Rate Enforcement Bureau concurrently with a petition for hearing submitted pursuant to section 2653.1 of this subchapter or filed with the Administrative Hearing Bureau after a hearing is granted, and shall be considered an "additional pleading" within the meaning of Government Code Section 11507.6. A copy of the Petition to Intervene shall be served on the Public Advisor and all of the parties to the proceeding. A Petition to Participate shall be submitted to the contact person for the proceeding, and served on the Public Advisor.

(f) ~~Within ten~~five (45) days after filing of the Petition to Intervene, any other party may file a response to the Petition to Intervene. Any party claiming that the petitioner does not represent the interests of consumers shall so state in the response, which shall include any supporting documentation. The petitioner may reply to any allegation in the response and may reply to the allegation that it does not represent the interests of consumers within ~~eight~~three (83) days of filing of the response.

(g) If a person who petitions for a hearing meets the requirements of this section, represents the interests of consumers and is otherwise eligible to seek compensation in proceedings before the Department pursuant to Insurance Code section 1861.10(b) and section 2662.2 of this subchapter, that person's Petition to Intervene shall be granted within fifteen (15) days of its submission. If a petition for a hearing is granted, The administrative law judge shall rule on the any Petition to Intervene subsequently filed by any person within 20 days of its filing with the Administrative Hearing Bureau.

(h) No person whose petition has been granted shall be permitted to reopen matters decided before the petition is granted without a showing of good cause.

AUTHORITY:

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

§ 2662.1. Purpose

The purpose of this Article is to establish procedures for awarding advocacy fees, witness fees and other expenses to petitioners, intervenors and participants in proceedings, including proceedings other than rate hearingsproceedings, before the Insurance Commissioner in accordance with Section 1861.10(b) of the Insurance Code. The definitions set forth in section 2666.1 apply to Article 14 of this subchapter.

AUTHORITY:

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

§ 2662.3. Request for Award

(a) An petitioner, intervenor or participant whose Petition to Intervene or Participate has been granted and who has been found eligible to seek compensation may submit to the Public Advisor, within 30 days after the service of the order, decision, regulation or other action of the Commissioner in the proceeding for which intervention was sought, or at the requesting petitioner's, intervenor's or participant's option, within 30 days after the conclusion of the entire proceeding, a request for an award of compensation. An petitioner, intervenor or participant requesting that any award ordered be made payable to a specific person or entity, other than the petitioner, intervenor or participant, that represented or advocated on behalf of the intervenor or participant during the proceeding shall include verified authorization to that effect in the request.

(b) The request shall be verified and shall be in compliance with sections 2652.1-2652.4 of this subchapter and shall include, at a minimum:

- (1) a detailed description of services and expenditures;
- (2) legible time and/or billing records, created as soon as possible after the work was performed, which show the date and the exact amount of time spent on each specific task; and
- (3) a description of the petitioner's, intervenor's or participant's substantial contribution citing to the record, including, but not limited to, documents such as: declarations by advocates and/or witnesses, written or oral comments of the petitioner or intervenor or its witnesses regarding a rate application provided to the Department, correspondence with the parties, stipulations or settlement agreements regarding the outcome or material issues in the proceeding, and decision or order by the Department or Commissioner concerning a petition for hearing or rate or class plan application issued without a formal hearing, transcripts, proposed decisions of the Administrative Law Judge and orders demonstrating that a substantial contribution was made for the purpose of complying with section 2661.1(j). Notwithstanding section 2656.4, any confidential correspondence, documents, or declarations referencing confidential information, including but not limited to confidential settlement communications, may be submitted to the Public Advisor with a request for an award of compensation. Any such confidential material submitted to the Public Advisor will retain its confidential status. Nothing in this subsection shall require disclosure of privileged information.

The phrase "exact amount of time spent" as used in this subdivision refers either to five (5) minute or tenth (10th) of an hour increments.

(c) While parties may stipulate to a person's status as an intervenor who is eligible to seek compensation, nothing herein is intended to allow parties to enter into a stipulation regarding whether a person has made a substantial contribution for the purpose of complying with section 2661 of this subchapter.

(ed) The phrase "each specific task," as used in this subdivision refers to activities including, but is not limited to: (A) telephone calls or meetings/conferences, identifying the parties participating in the telephone call, meeting or conference and the subject matter discussed; (B) legal pleadings or research, identifying the pleading or research and the subject matter; (C) letters, correspondence or memoranda, identifying the parties and the subject matter; and, (D) attendance at hearings, specifying when the hearing occurred, the subject matter of the hearing and the names of witnesses who appeared at the hearing, if any.

~~Nothing in this subsection shall require disclosure of privileged information.~~

(de) Within 15 days after service of the request, any other party may submit a response to the request. The response shall be submitted to the Public Advisor and a copy shall also be provided to all parties to the proceeding. The intervenor or participant may reply to any such response within 15 days after service of the response. The reply shall be

submitted to the Public Advisor and a copy shall also be provided to all parties to the proceeding.

(ef) The Public Advisor shall require an audit and/or may inspect the books and records of the intervenor or participant to the extent necessary to verify the basis for the award. The Public Advisor shall maintain the confidentiality of the intervenor's books and records to the extent allowed by law.

(fg) Any party questioning the market rate or reasonableness of any amount set forth in the request shall, at the time of questioning the market rate or reasonableness of that amount, provide a statement setting forth the fees, rates, and costs it expects to expend in the proceeding.

#### AUTHORITY:

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

#### § 2662.5. Requirements for Awards

(a) Subject to subdivision (b) herein, advocacy fees, witness fees, and other expenses of participation in a proceeding shall be awarded to any petitioner, intervenor or participant who complies with section 2662.3 and satisfies both of the following requirements:

(1) The petitioner, intervenor or participant's presentation makes a substantial contribution as evidenced by specific citations to the petitioner's, intervenor's or participant's direct testimony, cross-examination, legal arguments, briefs, motions, discovery, declarations by advocates and/or witnesses, written or oral comments of the intervenor or its witnesses regarding a rate application provided to the Department, correspondence with the parties, stipulations or settlement agreements, and decision or order by the Department or the Commissioner on a petition for hearing or rate or class plan application issued without a formal hearing, or any other appropriate evidence; and,

(2) The petitioner, intervenor or participant represents the interests of consumers.

(b) To the extent the substantial contribution claimed by an petitioner, intervenor or participant duplicates the substantial contribution of another party to the proceeding and was not authorized in the ruling on the Petition to Intervene or Participate, the petitioner's, intervenor's or participant's compensation may be reduced. Participation by the Department of Insurance staff does not preclude an award of compensation, so long

as the petitioner's, intervenor's, or participant's substantial contribution to the proceeding does not merely duplicate the participation by the Department of Insurance's staff. In assessing whether there was duplication, the Commissioner will consider whether or not the petitioner, intervenor or participant presented relevant issues, evidence, or arguments which were separate and distinct from those presented by any party or the Department of Insurance staff.

**AUTHORITY:**

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

## **EXHIBIT 2**



C

**BARCLAYS OFFICIAL CALIFORNIA CODE OF  
REGULATIONS****TITLE 10. INVESTMENT****CHAPTER 5. INSURANCE COMMISSIONER****SUBCHAPTER 4.9 RULES OF PRACTICE AND****PROCEDURE FOR RATE PROCEEDINGS****ARTICLE 3. DEFINITIONS**

This database is current through 01/19/07, Register 2007, No. 3

s 2651.1. Definitions.

The following definitions shall apply to Subchapter 4.9.

(a) "Administrative Hearing Bureau" means that office within the office of the Commissioner at 45 Fremont Street, 22nd Floor, San Francisco, CA 94105 and, except where otherwise specified in this subchapter, designated for receipt of all pleadings filed pursuant to this subchapter.

(b) "Applicant" means the insurer presenting, on the form prescribed by the Commissioner and specified in section 2648.4, an application to

change any rate pursuant to California Insurance Code section 1861.05(b).

(c) "Application" means the form prescribed by the Commissioner and specified in section 2648.4, together with all supporting information included with that form, which every insurer seeking to change any rate pursuant to California Insurance Code section 1861.05(b) must provide.

(d) "Day", unless otherwise specified in these regulations, means a calendar day. "Business days" include all days except Saturdays, Sundays, and any holiday set forth in California Government Code section 6700.

The time within which any pleading may be filed or served shall exclude the first day and include the last day; however, when the last day falls on a Saturday, Sunday or holiday the time computation shall exclude that day and include the next business day.

(e) "Filing" means the act of delivery of a paper pleading

to the Administrative Hearing Bureau. An original and four copies of each pleading shall be filed with the Administrative Hearing Bureau. A specific pleading may be filed by facsimile or electronic transmission only when authorized by the administrative law judge.

(f) "Party" means the insurer whose rates are the subject of the proceeding, any person whose petition to intervene in the proceeding has been granted pursuant to section 2661.3(g), and the Department.

(g) "Pleading" means any petition, notice of hearing, notice of defense, answer, motion, request, response, brief, or other formal document filed with the Administrative Hearing Bureau pursuant to this subchapter. The original of each pleading shall be signed by each party or the party's attorney or representative.

(h) "Proceeding" means any action conducted pursuant to Article 10 of Chapter 9 of Part 2 of Division 1 of the California Insurance Code, entitled "Reduction and Control of Insurance Rates," including a rate proceeding established upon the submission of a petition for hearing pursuant to California Insurance Code section 1861.05 and section 2653.1 of this subchapter.

(i) "Service" means to provide a copy of a pleading to every other party in the proceeding in conformity with California Code of Civil Procedure sections 1011 and 1013. When a party files a pleading, the party shall concurrently serve that pleading on all other parties in the proceeding.

All filed pleadings shall be accompanied by an original declaration of service in conformity with California Code of Civil Procedure sections 1011 and 1013. All served pleadings shall be accompanied by a copy of the declaration of service. An employee of a party may sign a declaration of service.

A specific pleading may be served by facsimile or electronic transmission when authorized by the receiving party.

A sample declaration of service form can be found in section 2623.9.

(j) "Settlement" means an agreement among some or all of the parties to a proceeding on a mutually acceptable outcome to the proceeding.

(k) "Stipulation" means an agreement among some or all of the parties to a proceeding on the resolution of any issue of fact or the applicability of any provision of law material to the proceeding.

(l) "Submit" means the act of delivery of a pleading to the Rate Enforcement Bureau.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Sections 1861.05 and 1861.055, Insurance Code, CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal.Rptr. 2d 807, 847 (1994). Reference: Sections 1861.05(c), 1861.055 and 1861.08, Insurance Code, CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

#### HISTORY

1. New article 3 and section filed 8-18-95 as an emergency; operative 8-18-95 (Register 95, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-16-95 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of second paragraph of subsection (d) (Register 96, No. 5).
3. Certificate of Compliance as to 8-18-95 order transmitted to OAL 12-18-95 and filed 2-1-96 (Register 96, No. 5)
4. Amendment of subsections (a), (e), (g) and (i) filed 10-16-2002; operative 11-15-2002 (Register 2002, No. 42).
5. Amendment of subsection (h) filed 12-29-2006; operative 1-28-2007 (Register 2006, No. 52).

**C****BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS****TITLE 10. INVESTMENT****CHAPTER 5. INSURANCE COMMISSIONER  
SUBCHAPTER 4.9 RULES OF PRACTICE AND  
PROCEDURE FOR RATE PROCEEDINGS****ARTICLE 13. INTERVENTION**

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s 2661.1. Definitions.

The following definitions shall apply to Articles 13 and 14 of this subchapter.

(a) "Advocacy Fees" means costs, incurred or billed, by a party for the services of an advocate in the proceeding. An advocate need not be an attorney. Advocacy fees shall not exceed market rates as defined in this section.

(b) "Compensation" means payment for all or part of advocacy fees, witness fees, and other expenses of participation and intervention in any rate hearing or proceeding other than a rate hearing.

(c) "Market Rate" means, with respect to advocacy and witness fees, the prevailing rate for comparable services in the private sector in the Los Angeles and San Francisco Bay Areas at the time of the Commissioner's decision awarding compensation for attorney advocates, non-attorney advocates, or experts with similar experience, skill and ability. Billing rates shall not exceed the market rate.

(d) "Other Expenses" means reasonable, actual out-of-pocket costs of an intervenor or petitioner. Out-of-pocket costs include but are not limited to expenses such as travel costs, transcript charges, postage charges, overnight delivery charges, telephone charges and copying expenses. Out-of-pocket costs also includes the costs incurred in preparing a request or amended request for award, defined in sections 2662.3 and 2662.4. The intervenor or petitioner has the burden of substantiating any costs incurred, including providing supporting documentation as requested by the Public Advisor.

(e) "Proceeding" includes those proceedings set forth in Insurance Code Section 1861.10(a).

(f) "Proceeding Other Than a Rate Proceeding" means any proceeding, including those described in subdivision (e) above, conducted pursuant to Chapter 9 of Part 2 of Division 1 of the Insurance Code which is not a rate proceeding as defined in this section.

(g) "Public Advisor" means that official of the Department of Insurance who monitors and assists participation by members of the public in the Department of Insurance's proceedings. The Public Advisor shall not represent any member of the public and shall not advocate any substantive position on behalf of the public on any issues before the Commissioner.

(h) "Rate Proceeding" means any proceeding conducted pursuant to Insurance Code Sections 1861.01 and 1861.05. For purposes of section 1861.05, a "rate proceeding" is established upon the submission of a petition for hearing in accordance with section 2653.1 of this subchapter, or if no petition for hearing is filed, upon notice of hearing.

(i) "Rate Hearing" means a hearing noticed by the Commissioner on his own motion or in response to a petition for hearing pursuant to Insurance Code section 1861.05, which is conducted pursuant to the applicable procedural requirements of Insurance Code section 1861.08, and subchapters 4.8. and 4.9 of this chapter.

(j) "Represents the Interests of Consumers" means that the intervenor represents the interests of individual insurance consumer[s], or the intervenor is a group organized for the purpose of consumer protection as demonstrated by, but is not limited to, a history of representing consumers in administrative, legislative or judicial proceedings.

A party which represents, in whole or in part, any entity regulated by the Commissioner shall not be eligible for compensation. However, nothing in this subsection shall be construed to prohibit any person from intervening or participating if that person is not seeking compensation.

(k) "Substantial Contribution" means that the intervenor

substantially contributed, as a whole, to a decision, order, regulation, or other action of the Commissioner by presenting relevant issues, evidence, or arguments which were separate and distinct from those emphasized by the Department of Insurance staff or any other party, such that the intervenor's participation resulted in more relevant, credible, and non-frivolous information being available for the Commissioner to make his or her decision than would have been available to a Commissioner had the intervenor not participated. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied.

(l) "Witness Fees" means recorded or billed costs for a witness, together with associated expenses. Costs and expenses for a witness shall not exceed market rate as defined in this section.

<General Materials (GM) - References, Annotations, or  
Tables>

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi, 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

#### HISTORY

1. Renumbering and amendment of former section 2616.1 to new section 2661.1 filed 8-18-95 as an emergency; operative 8-18-95 (Register 95, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-16-95 or emergency language will be repealed by operation of law on the following day.
2. Renumbering and amendment of former section 2616.1 to new section 2661.1 refiled 12-19-95 as an emergency; operative 12-19-95 (Register 95, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-17-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-19-95 order transmitted to OAL April 17, 1996; disapproved by OAL and order of repeal as to 12-19-95 order filed 5-30-96 (Register 96, No. 22).
4. Renumbering and amendment of former section 2616.1 to new section 2661.1 filed 5-30-96 as an emergency; operative 5-30-96 (Register 96, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-27-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-30-96 order, including amendments to subsections (c), (d), (e) and (i), transmitted to OAL 9-26-96 and filed 11-5-96 (Register 96, No. 45).
6. Amendment of subsections (d), (f) and (h), new subsection (i), subsection relettering and amendment of newly designated subsection (k) filed 12-29-2006; operative 1-28-2007 (Register 2006, No. 52).

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**BARCLAYS OFFICIAL CALIFORNIA CODE OF  
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**TITLE 10. INVESTMENT**

**CHAPTER 5. INSURANCE COMMISSIONER  
SUBCHAPTER 4.9 RULES OF PRACTICE AND  
PROCEDURE FOR RATE PROCEEDINGS**

**ARTICLE 13. INTERVENTION**

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s 2661.3. Procedure for Intervention in a Rate or Class Plan Proceeding.

(a) A person desiring to intervene and become a party to a rate class plan proceeding shall file a petition to intervene which shall be drafted in compliance with sections 2652.1-2652.4 of this subchapter. A person who petitions for a hearing may combine a petition to intervene with a petition for hearing in one pleading.

(b) The Petition shall cite the law authorizing the proposed intervention and shall contain the petitioner's interest in the proceeding, the specific issues to be raised and the positions to be taken on each issue to the extent then known, and the name, address, and telephone number of the petitioner. The verified petition shall include a statement that the intervenor or advocate will be able to attend and participate in the proceeding without delaying the proceeding or any other proceedings before the Commissioner.

(c) The Petition shall also state whether the petitioner intends to seek compensation in the proceeding, and, if so, contain an itemized estimated budget for the participation in the proceeding, which shall set forth the following:

(1) separate listings of the rates for each attorney advocate or non-attorney advocate, including:

(A) the names of each attorney advocate or non-attorney advocate,

(B) the rates to be claimed for each attorney advocate or non-attorney advocate,

(C) a description of the work to be performed by

each attorney advocate or non-attorney advocate, an estimate of the time to be spent to perform that work and the rates, fees and costs associated with that work; and,

(2) separate listings of the rates for each witness, including:

(A) the names of each witness and their areas of expertise,

(B) the rates to be claimed for each witness,

(C) a description of the work to be performed by each witness, an estimate of the time to be spent to perform that work and the rates, fees and costs associated with that work;

Rates contained in the estimated budget shall not exceed market rates. Submission of the budget shall not guarantee the payment of the dollar amounts set forth in the budget. The lack of objection to any item in the budget shall not imply approval of the budget.

(d) An amended budget shall be submitted as soon as possible when the intervenor learns that the total estimated budget amount increases by \$10,000 or more.

(e) A Petition to Intervene in a rate or class plan proceeding may be submitted to the Rate Enforcement Bureau concurrently with a petition for hearing submitted pursuant to section 2653.1 of this subchapter or filed with the Administrative Hearing Bureau after a hearing is granted, and shall be considered an "additional pleading" within the meaning of Government Code Section 11507.6. A copy of the Petition to Intervene shall be served on the Public Advisor and all of the parties to the proceeding. A Petition to Participate shall be submitted to the contact person for the proceeding, and served on the Public Advisor.

(f) Within five (5) days after filing of the Petition to Intervene, any other party may file a response to the Petition to Intervene. Any party claiming that the petitioner does not represent the interests of consumers shall so state in the response, which shall include any supporting documenta-

tion. The petitioner may reply to any allegation in the response and may reply to the allegation that it does not represent the interests of consumers within three (3) days of filing of the response.

(g) If a person who files a petition for a hearing and a Petition to Intervene meets the requirements of this section, represents the interests of consumers pursuant to Insurance Code section 1861.10(b) and is otherwise eligible to seek compensation in proceedings before the Department pursuant to section 2662.2 of this subchapter, that person's Petition to Intervene shall be granted within fifteen (15) days of its submission. If a petition for a hearing has already been granted, the administrative law judge shall rule on any Petition to Intervene subsequently filed by any person within 20 days of its filing with the Administrative Hearing Bureau.

(h) No person whose petition has been granted shall be permitted to reopen matters decided before the petition is granted without a showing of good cause.

<General Materials (GM) - References, Annotations, or  
Tables>

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi, 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).



#### HISTORY

1. Renumbering and amendment of former section 2617.3 to new section 2661.3 filed 8-18-95 as an emergency; operative 8-18-95 (Register 95, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-16-95 or emergency language will be repealed by operation of law on the following day.
2. Renumbering and amendment of former section 2617.3 to new section 2661.3 refiled 12-19-95 as an emergency; operative 12-19-95 (Register 95, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-17-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-19-95 order transmitted to OAL April 17, 1996; disapproved by OAL and order of repeal as to 12-19-95 order filed 5-30-96 (Register 96, No. 22).
4. New section filed 5-30-96 as an emergency; operative 5-30-96 (Register 96, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-27-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-30-96 order, including amendment to subsections (b), (f) and (g), transmitted to OAL 9-26-96 and filed 11-5-96 (Register 96, No. 45).
6. Amendment of subsections (e) and (g) filed 10-16-2002; operative 11-15-2002 (Register 2002, No. 42).
7. Amendment of section heading and subsections (a), (e) and (h)-(g) filed 12-29-2006; operative 1-28-2007 (Register 2006, No. 52).

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**CHAPTER 5. INSURANCE COMMISSIONER  
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**ARTICLE 14. INTERVENOR'S AND PARTI-  
CIPANT'S FEES AND EXPENSES**

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s 2662.1. Purpose.

The purpose of this Article is to establish procedures for  
awarding advocacy fees, witness fees and other expenses  
to petitioners, intervenors and participants in proceedings,  
including proceedings other than rate proceedings, before  
the Insurance Commissioner in accordance with Section  
1861.10(b) of the Insurance Code. The definitions set  
forth in section 2666.1 apply to Article 14 of this  
subchapter.

<General Materials (GM) - References, Annotations, or  
Tables>

Note: Authority cited: Section 1861.10, Insurance  
Code; and CalFarm Insurance Company, et al. v. George  
Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Cen-  
tury Insurance Company v. John Garamendi, 8 Cal.4th  
216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference:  
Sections 1861.10(a) and 1861.10(b), Insurance Code; and  
CalFarm Insurance Company, et al. v. George Deukmeji-  
an, et al., 48 Cal.3d 805 (1989), 20th Century Insurance  
Company et al. v. John Garamendi, 8 Cal. 4th 216, 32 Cal.  
Rptr. 2d 807 (1994).

#### HISTORY

1. New article 14 and section filed 8-18-95 as an emergency; operative 8-18-95 (Register 95, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-16-95 or emergency language will be repealed by operation of law on the following day.
2. New article 14 and section refiled 12-19-95 as an emergency; operative 12-19-95 (Register 95, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-17-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-19-95 order transmitted to OAL April 17, 1996; disapproved by OAL and order of repeal as to 12-19-95 order filed 5-30-96 (Register 96, No. 22).
4. New article 14 and section filed 5-30-96 as an emergency; operative 5-30-96 (Register 96, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-27-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-30-96 order, including amendment of article heading and section, transmitted to OAL 9-26-96 and filed 11-5-96 (Register 96, No. 45).
6. Amendment filed 12-29-2006; operative 1-28-2007 (Register 2006, No. 52).

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s 2662.3. Request for Award.

(a) A petitioner, intervenor or participant whose Petition to Intervene or Participate has been granted and who has been found eligible to seek compensation may submit to the Public Advisor, within 30 days after the service of the order, decision, regulation or other action of the Commissioner in the proceeding for which intervention was sought, or at the requesting petitioner's, intervenor's or participant's option, within 30 days after the conclusion of the entire proceeding, a request for an award of compensation. A petitioner, intervenor or participant requesting that any award ordered be made payable to a specific person or entity, other than the petitioner, intervenor or participant, that represented or advocated on behalf of the intervenor or participant during the proceeding shall include verified authorization to that effect in the request.

(b) The request shall be verified and shall be in compliance with sections 2652.1-2652.4 of this subchapter and shall include, at a minimum:

- (1) a detailed description of services and expenditures;
- (2) legible time and/or billing records, created as soon as possible after the work was performed, which show the date and the exact amount of time spent on each specific task; and
- (3) a description of the petitioner's, intervenor's or participant's substantial contribution citing to the record, including, but not limited to, documents such as: declarations by advocates and/or witnesses, written or oral comments of the petitioner or intervenor

or its witnesses regarding a rate application provided to the Department, correspondence with the parties, stipulations or settlement agreements regarding the outcome or material issues in the proceeding, and decision or order by the Department or Commissioner concerning a petition for hearing or rate or class plan application issued without a formal hearing, transcripts, proposed decisions of the Administrative Law Judge and orders demonstrating that a substantial contribution was made for the purpose of complying with section 2661.1(j). Notwithstanding section 2656.4, any confidential correspondence, documents, or declarations referencing confidential information, including but not limited to confidential settlement communications, may be submitted to the Public Advisor with a request for an award of compensation. Any such confidential material submitted to the Public Advisor will retain its confidential status. Nothing in this subsection shall require disclosure of privileged information.

The phrase "exact amount of time spent" as used in this subdivision refers either to five (5) minute or tenth (10th) of an hour increments.

(c) Parties may stipulate to a person's status as an intervenor. Parties shall not enter into a stipulation regarding whether a person has made a substantial contribution for the purpose of complying with section 2661 of this subchapter.

(d) The phrase "each specific task," as used in this subdivision refers to activities including, but is not limited to: (A) telephone calls or meetings/conferences, identifying the parties participating in the telephone call, meeting or conference and the subject matter discussed; (B) legal pleadings or research, identifying the pleading or research and the subject matter; (C) letters, correspondence or memoranda, identifying the parties and the subject matter; and, (D) attendance at hearings, specifying when the hearing occurred, the subject matter of the hearing and the names of witnesses who appeared at the hearing, if any.

(e) Within 15 days after service of the request, any other party may submit a response to the request. The response shall be submitted to the Public Advisor and a copy shall

also be provided to all parties to the proceeding. The intervenor or participant may reply to any such response within 15 days after service of the response. The reply shall be submitted to the Public Advisor and a copy shall also be provided to all parties to the proceeding.

(f) The Public Advisor shall require an audit and/or may inspect the books and records of the intervenor or participant to the extent necessary to verify the basis for the award. The Public Advisor shall maintain the confidentiality of the intervenor's books and records to the extent allowed by law.

(g) Any party questioning the market rate or reasonableness of any amount set forth in the request shall, at the time of questioning the market rate or reasonableness of that amount, provide a statement setting forth the fees, rates, and costs it expects to expend in the proceeding.

<General Materials (GM) - References, Annotations, or  
Tables>

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi, 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

#### HISTORY

1. New section filed 8-18-95 as an emergency; operative 8-18-95 (Register 95, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-16-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12-19-95 as an emergency; operative 12-19-95 (Register 95, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-17-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-19-95 order transmitted to OAL April 17, 1996; disapproved by OAL and order of repeal as to 12-19-95 order filed 5-30-96 (Register 96, No. 22).
4. New section filed 5-30-96 as an emergency; operative 5-30-96 (Register 96, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-27-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-30-96 order, including amendment of section, transmitted to OAL 9-26-96 and filed 11-5-96 (Register 96, No. 45).
6. Amendment filed 12-29-2006; operative 1-28-2007 (Register 2006, No. 52).

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**ARTICLE 14. INTERVENOR'S AND PARTICIPANT'S FEES AND EXPENSES**

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s 2662.5. Requirements for Awards.

(a) Subject to subdivision (b) herein, advocacy fees, witness fees, and other expenses of participation in a proceeding shall be awarded to any petitioner, intervenor or participant who complies with section 2662.3 and satisfies both of the following requirements:

(1) The petitioner, intervenor or participant's presentation makes a substantial contribution as evidenced by specific citations to the petitioner's, intervenor's or participant's direct testimony, cross-examination, legal arguments, briefs, motions, discovery, declarations by advocates and/or witnesses, written or oral comments of the intervenor or its witnesses regarding a rate application provided to the Department, correspondence with the parties, stipulations or settlement agreements, and decision or order by the Department or the Commissioner on a petition for hearing or rate or class plan application issued without a formal hearing, or any other appropriate evidence; and,

(2) The petitioner, intervenor or participant represents the interests of consumers.

(b) To the extent the substantial contribution claimed by a petitioner, intervenor or participant duplicates the substantial contribution of another party to the proceeding and was not authorized in the ruling on the Petition to Intervene or Participate, the petitioner's, intervenor's or participant's compensation may be reduced. Participation by the Department of Insurance staff does not preclude an award of compensation, so long as the petitioner's, intervenor's, or participant's substantial contribution to the pro-

ceeding does not merely duplicate the participation by the Department of Insurance's staff. In assessing whether there was duplication, the Commissioner will consider whether or not the petitioner, intervenor or participant presented relevant issues, evidence, or arguments which were separate and distinct from those presented by any party or the Department of Insurance staff.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 1861.10, Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805, 824 (1989), 20th Century Insurance Company v. John Garamendi, 8 Cal.4th 216, 281, 32 Cal. Rptr. 2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), Insurance Code; and CalFarm Insurance Company, et al. v. George Deukmejian, et al., 48 Cal.3d 805 (1989), 20th Century Insurance Company et al. v. John Garamendi, 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807 (1994).

#### HISTORY

1. New section filed 8-18-95 as an emergency; operative 8-18-95 (Register 95, No. 33). A Certificate of Compliance must be transmitted to OAL by 12-16-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 12-19-95 as an emergency; operative 12-19-95 (Register 95, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-17-96 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-19-95 order transmitted to OAL April 17, 1996; disapproved by OAL and order of repeal as to 12-19-95 order filed 5-30-96 (Register 96, No. 22).
4. New section filed 5-30-96 as an emergency; operative 5-30-96 (Register 96, No. 22). A Certificate of Compliance must be transmitted to OAL by 9-27-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-30-96 order, including amendment of subsection (b), transmitted to OAL 9-26-96 and filed 11-5-96 (Register 96, No. 45).
6. Amendment filed 12-29-2006; operative 1-28-2007 (Register 2006, No. 52).



**EXHIBIT 3**

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE**  
300 Capitol Mall, 17th Floor  
Sacramento, CA 95814

**RH06092874**

**November 14, 2006**

**FINAL STATEMENT OF REASONS**

**California Code of Regulations, Title 10, Sections 2651.1, 2653.6, 2661.1, 2661.3,  
2662.1, 2662.3, and 2662.5**

**UPDATED INFORMATIVE DIGEST**

The Initial Statement of Reasons included in this rulemaking file continues to fully and accurately reflect the views of the Department of Insurance. Therefore, it is incorporated herein by this reference.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

**LOCAL MANDATE DETERMINATION**

The proposed regulation does not impose any mandate on local agencies or school districts.

**ALTERNATIVES DETERMINATION**

The Commissioner has determined that no alternative would be more effective in carrying out the purpose for which this regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

**SUMMARY OF AND RESPONSE TO PUBLIC COMMENT**

The Commissioner's summary of and response to the public comment is separately included in this rulemaking file and incorporated herein by this reference.

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
300 Capitol Mall, 16<sup>th</sup> Floor  
Sacramento, California 95814**

**RH06092874**

**September 22, 2006**

**INITIAL STATEMENT OF REASONS**

California Insurance Commissioner John Garamendi will consider adoption of Section 2653.6 and amendment of Sections 2651.1, 2661.1, 2661.3, 2662.1, 2662.3, and 2662.5 of Subchapter 4.9, Title 10, of the California Code of Regulations.

**SPECIFIC PURPOSE OF THE REGULATION**

Proposition 103, approved by California voters in 1988, established the requirement that all property-casualty insurers obtain the prior approval of the Insurance Commissioner for proposed rate changes. (Insurance Code §1861.05). Proposition 103 permits consumer participation in the approval process. (Insurance Code §1861.10(a)). It further requires the Commissioner to award reasonable advocacy and witness fees to a consumer when the consumer makes a "substantial contribution" to the adoption of any order, regulation, or decision by the Commissioner or a court. (Insurance Code §1861.10(b)).

As required by Insurance Code §1861.055, the Department has promulgated regulations under Title 10, Chapter 5 of the Code of Regulations (CCR) governing the prior approval process, including regulations governing consumer participation. The Department wishes to amend Subchapter 4.9 (Rules of Practice and Procedure for Rate Proceedings) to clarify that consumers, who participate in the approval process after having filed a petition for a hearing, may seek an award of reasonable advocacy fees.

**NECESSITY**

The Commissioner has determined that amendment of certain regulations in Subchapter 4.9 is necessary in order to properly implement the requirements, purposes and intent of the statutes. Specifically, the regulations must be amended to make clear that advocacy performed by a consumer representative (whether a "petitioner," "intervenor," or "participant") prior to a decision by the Commissioner to grant or deny a petition for hearing pursuant to Section 1861.05(c) is to be compensated so long as a consumer has made a "substantial contribution" to a decision or order ending the proceeding.

As noted above, section 1861.05(a) authorizes consumers and their representatives to request a hearing to, among other things, review applications for rate changes, or to review a rate presently in effect. Subdivision 1861.05(c) specifies that upon a timely request, a hearing must be granted when the challenged rate application seeks an adjustment in rates for personal lines (for example, private passenger automobile and homeowners multi-peril insurance) that exceeds 7%, and for an adjustment that exceeds 15% for commercial lines. It is within the Commissioner's

discretion whether to grant requests for hearings on applications for changes of less than 7% and 15% respectively.

It has been the Department's practice to encourage consumer representatives and applicants to resolve rate challenges informally so as to avoid engaging in lengthy formal hearings that benefit no one. Often during negotiations, insurers seek to withdraw their rate applications. In some instances, applicants have withdrawn their applications after a petition for a hearing has been filed and after the petitioner has expended substantial time and effort advocating its position through its advocates and experts. In these instances, the result of the informal process has been either no rate change, or a substantial alteration in the rate ultimately approved by the Commissioner. Such results benefit the public without the necessity of conducting a formal hearing.

In several of these instances, either the challenge was settled by the parties or the case was dismissed as moot when the applicant chose to withdraw rather than proceed with its application and potentially be subject to a hearing. After extensive and careful consideration, the Commissioner determined that the petitioner made a "substantial contribution" to his decision concerning the rate applications even though no hearing was held. Recently, several insurers have objected to the Commissioner's authority to award compensation to petitioners who make a substantial contribution in these circumstances. Responding to certain insurer's arguments, the Commissioner found and determined in awarding fees that

"With respect to the construction of CIC 1861.10, the Commissioner has determined that in fairness to consumers who desire to participate in the public ratemaking process as provided for by Proposition 103, and in furtherance of the purposes of Proposition 103, that a "proceeding" has been "initiated," within the meaning of CIC 1861.10(a) once a Petition for Hearing has been filed pursuant to CCR section 2661.2 and 2661.3(a)."

Despite the statutory requirement of Proposition 103 that the Commissioner *shall* award compensation to any person representing the interests of consumers who make a substantial contribution to his orders of decision, a Superior Court recently ruled that the Commissioner was not authorized to award a petitioner a fee award. Without agreeing with the reasoning and analysis of the Superior Court in that instance, the Commissioner believes that the intervenor regulations should be amended to reflect the fact that once a petition for hearing has been filed, a proceeding has been established and that an insurer may not thereafter withdraw its rate application without approval of the Commissioner. Consumer representatives who make a substantial contribution to the outcome of that proceeding are entitled to compensation for their work, even if the proceeding concludes without a hearing.

The Commissioner believes that the proposed adoption and amendments are not only authorized by, but also necessitated by Proposition 103. Section 1861.10(b) contains only two prerequisites: (1) that the person seeking advocacy and witness fees "represents the interests of consumers"; and (2) that the person has "made a substantial contribution to the adoption of any order, regulation, or decision by the commissioner or a court." (Insurance Code §1861.10(b).) Subsection (b) further provides that "where advocacy occurs in response to a rate application, the award shall be paid by the applicant." (*Ibid.*) When these two statutory conditions are met, the Commissioner "shall award reasonable advocacy and witness fees and expenses." (*Ibid.*)

The Commissioner's view is that the statute plainly mandates that "any person" who "represents the interests of consumers" and who "made a substantial contribution to the adoption of any order, regulation, or decision by the commissioner" is entitled to an award of compensation for reasonable advocacy fees and expenses. An insurer's attempt to withdraw its application in order to avoid paying compensation defeats the purpose of the statutes. Therefore, the Commissioner proposes to adopt a regulation, allowing insurers, in some circumstances, to withdraw rate applications following the filing of a petition by a consumer. The Commissioner's order allowing an insurer to withdraw its application clearly constitutes an "order" or "decision" within the meaning of Section 1861.10(b).

Denying compensation for advocacy performed by a petitioner prior to an insurer's withdrawal of its application would thwart the statute's plain language and its underlying purpose of encouraging consumers to enforce Proposition 103, and disrupt the framework of public participation established by the Department through its regulations, in the following ways:

- It would discourage consumer representatives from challenging rate applications if the consumer representatives faced the risk that its substantial investigation and participation in the informal review process might result in no compensation, even if the outcome was the very outcome sought by the consumer representative. Without the potential for an award of compensation, few if any consumer representatives would be able to afford the resource expenditures needed to participate in a professional manner in the review of such applications.
- Conversely, if the only way to obtain compensation would be to insist upon a hearing – where a hearing is mandatory – consumer representatives will eschew the informal process. This would discourage efficient resolution of challenges.
- It could effectively place the determination of whether intervenors are compensated within the sole control of an insurer, who may unilaterally withdraw, rather than with the Commissioner.

In summary, the Commissioner believes that, as the voters intended, the scrutiny of consumer representatives is an important tool to ensure that applicants comply with the statutory and regulatory prohibition on "excessive, inadequate, and unfairly discriminatory" rates, or rates that otherwise violate the law, and that if consumer representatives are denied the ability to seek compensation when they make a substantial contribution in pre-hearing proceedings, such scrutiny would be discouraged and curtailed.

Such a result contravenes the public policy underlying section 1861.10 and analogous intervenor compensation statutes of encouraging consumer participation in administrative and court proceedings, and thereby aiding regulators and courts in their decisions. (See *Calfarm Ins. Co. v. Deukmaejian* (1989) 48 Cal.3d 805, 836 [voters for Prop. 103 "favored a measure that provides for public regulatory hearings with consumer participation"]; *Economic Empowerment Foundation v. Quackenbush* (1997) 57 Cal.App.4<sup>th</sup> 677, 686 [courts "should seek an interpretation of the statute which best facilitates compensation"]; *State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4<sup>th</sup> 1029, 1045 [interpreting section 1861.07 in a manner consistent with Proposition 103's goal of fostering consumer participation in the rate-setting process"].)

The Commissioner therefore proposes to adopt and amend regulations to change the definitions related to "proceedings" and to establish an application withdrawal procedure following the filing of a petition for a hearing, so as to ensure that consumer representatives are eligible to seek compensation when they make a substantial contribution to any "order, regulation, or decision by the commissioner" prior to a formal hearing being granted or denied. The balance of the proposed amendments conform various provisions of existing regulations regarding compensation to intervenors in such proceedings to those changes.

Because the amendments do not alter the requirement that the Commissioner determine that a petitioner or intervenor made a "substantial contribution," the Commissioner is confident that the amendments will not infringe upon the Department's ability to police the integrity of the intervenor process.

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The Commissioner did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption and amendment of these regulations.

#### **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

No other alternatives to the regulation (including alternatives to lessen any adverse impact on small business) were presented to or considered by the Commissioner. The Commissioner has determined that the proposed amendment will only affect insurance companies and will therefore not affect or impact small business. Pursuant to Government Code section 11342.610(b)(2), insurers are not small businesses.

#### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The Commissioner has made an initial determination that adoption of the proposed amendment will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

## **EXHIBIT 4**

# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

RH 06092874  
November 13, 2006

COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
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## PROPOSED REGULATORY ACTION COMMENTED UPON:

## AUTHORITY FOR PROPOSED AMENDMENTS AND ADOPTION

John Metz

Mr. Metz' written comment took the form of proposed additions to the Commissioner's proposed regulatory amendments and adoption. Specifically, Mr. Metz commented that the proposed amendment to CCR section 2651.1(h) should add the phrase "without limitation" to the proposed description of "proceeding", thereby broadening the definition of "proceeding" even further. Mr. Metz commented that the authority notations for the proposed regulatory amendments and adoption should all be amended to include CIC section 1861.03 for the purpose of incorporating unfair business practices actions into the category of proceedings which would be subject to compensation pursuant to CIC 1861.10. Mr. Metz also commented that CIC section 1861.01 should be included as authority for the proposed amendment of CCR 2662.1(h).

Mr. Metz' comment on the record at the public hearing was generally supportive of the oral comments of the Foundation for Taxpayer and Consumer Rights, *infra*. Mr. Metz also presaged his written comments, stating his opinion that additional points of authority could be added and specifically, that CIC 1861.03 could be enforced under the terms of CIC 1861.10 along with "other situations...other than rate hearings...connected with the determination of whether or not a rate is excessive and adequately [sic] or unfairly discriminatory...."

CIC 1861.10 includes, by its terms, "any proceeding permitted or established pursuant to this chapter", which includes CIC 1861.03 as well as "actions of the Commissioner" and "Provisions of [article 9]" which includes CIC 1861.03 and therefore, incorporates "unfair business practices" as set forth in Cal. Bus. & Prof. Code sections 16600 *et seq.* [Preservation and Regulation of Competition], and 17500 *et seq.* [Representations to the Public]. The Department declines to include CIC 1861.03 in its definition of "rate proceedings" as CIC sections 1861.03 and 1861.10 are not specifically related to insurance rate applications. Mr. Metz also commented that there is a typographical error in the text of the proposed amendments/adoption in section 2662.1. That will be corrected.

The Association of  
California  
Insurance  
Companies; The  
Personal Insurance

ACIC *et al.*, commented that there is no statutory authority for proposed section 2653.6 and the proposed regulation is not reasonably necessary to effectuate the purpose of section 1861.10 and it

ACIC *et al.*'s comment on the record was that the regulations violate the authority, consistency and necessity standards of the Cal. Government Code applicable to amendments of

It is the Commissioner's view that the proposed adoption and amendments are authorized by Proposition 103. Section 1861.10(b) requires:



# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
Federation of California; The American Insurance Association; The Pacific Association of Domestic Insurance Companies and the California Association of Professional Liability Insurers (ACIC, <i>et al</i> )	cannot be reasonably implied from CIC sections 1861.05, 1861.055 or 1861.10 that insurers must seek prior approval to withdraw a rate regulation. ACIC <i>et al.</i> , also commented that imposing a new prior approval requirement affects insurers' rights and fundamentally changes the dynamics involved in rate filings and the Commissioner has no authority to add such a substantive requirement which is not found in the Insurance Code.	regulations and new proposed regulations; the proposed amendments/adoption are arbitrary and not supported by fair or substantial reason and the regulation would have the effect of precluding a ruling of the Superior Court, holding that in order to receive compensation for advocacy, a hearing must be granted and party status must be awarded through intervention in a rate hearing proceeding.	(1) that the person seeking advocacy and witness fees "represents the interests of consumers" and (2) that the person has "made a substantial contribution to the adoption of any order, regulation, or decision by the commissioner or a court." Requiring insurers to request to withdraw an application that has been the subject of pre-hearing advocacy avoids the unfair result highlighted by the Superior Court's ruling, which can occur when consumer advocates are involved, along with the Department, in pre-hearing review of rate applications. As Judge Janavs' ruling points out, requests for compensation must be denied under the existing regulations when a carrier unilaterally withdraws the disputed filing prior to a hearing.
State Farm Insurance Companies (State Farm)	State Farm commented that there is no authority for this proposed amendment to require prior approval to withdraw a rate application and the insertion of such a requirement is unlawful and distorts the system so that rate regulation exists for the purpose of providing income to lawyers and other		See, the Department's response to ACIC <i>et al.</i> 's comment on this issue, <i>supra</i> .
State Farm (cont'd)			

# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
American Insurance Association (AIA)	forensic professionals, rather than allowing the compensatory provisions of CIC 1861.10(b) to serve their intended purpose of rewarding persons who contribute to rate regulation.	AIA echoed the comments of ACIC, <i>et al.</i> , and commented that the regulatory proposal lacks regulatory authority with respect to CIC sections 1861.10 and 1861.05. AIA commented further that the regulations impose a chilling effect on filings for rate decreases and artificially interferes with the rate making process. AIA commented that the Commissioner's proposal to approve the withdrawal of a rate filing is unprecedented and not contemplated by the statute. The decision whether to go forward with a rate application or to withdraw it is solely a business decision. These regulations will encourage the filing of baseless challenges to rate filings and do nothing to further consumer protection. Finally, AIA commented that it is opposed to the Commissioner's adoption of any regulations prior to the arrival of the next Insurance Commissioner.	See, the Department's response to ACIC <i>et al.</i> 's comment on the authority issue, <i>supra</i> . AIA's comment on the Commissioner's general authority to adopt regulations prior to the arrival of a new Commissioner is not a comment on the proposed regulatory action; therefore the Department makes no response to this comment.

# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
Foundation for Taxpayer and Consumer Rights (FTCR)	FTCR commented that the proposed regulations are clearly within the Commissioner's authority, are consistent with the plain language of sections 1861.05 and 1861.10 and are necessary to further the Proposition 103's goals of consumer participation in the ratemaking process.		The Department concurs with FTCR's comments.

# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTER	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
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## PROPOSED REGULATORY ACTION COMMENTED UPON: GENERAL COMMENTS

**FTCR** FTCR commented that it supports the Commissioner's proposed amendments to these regulations as necessary to conform the rules of practice and procedure for participation in rate proceedings to the statutory requirements of Proposition 103.

The Department concurs with FTCR's comment.

**Public Advocates, Inc.**

Public Advocates supports the Commissioner's adoption of section 2653.6 and amendments of sections 2651.1, 2661.1, 2661.3, 2662.3 and 2662.5. The amendments will clarify that consumers, who participate in the approval process for an application for proposed rate changes or for review of a current rate, after having filed a petition for hearing, may seek an award of reasonable advocacy fees.

The Department concurs with Public Advocates' comment.

**Richard J. Roth, Jr.**

Mr. Roth made no comment on the proposed amendments and adoption, but suggested that intervenors should be required to submit the Fair Political Practices Commission Form 700 to reveal conflicts of interest and to protect the interests of consumers.

Mr. Roth made no comment on the proposed regulatory action; therefore, the Department makes no response to this comment.

# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
Center for Public Interest Law, University of San Diego (CPIL)	CPIL supports the Commissioner's proposal to adopt new section 2653.6 and amend sections 2651.1, 2661.1, 2661.3, 2662.3 and 2662.5. These regulatory changes will clarify the Department's intervenor compensation regulations, which are critical to ensuring that consumers are adequately represented in Department ratemaking and rulemaking proceedings as mandated by Proposition 103. These regulations will redefine the meaning of the term "proceeding" to ensure that consumer groups that expend time and resources to challenge a rate increase application which is then withdrawn without a hearing (or which is approved at a different, often lower, rate due to the consumer group's advocacy) are compensated for their work as their participation has resulted in the abandonment of a rate increase request without the necessity of a time-consuming hearing, which constitutes a "substantial contribution" within the meaning of CIC section 1861.10. The proposed changes to the definition of "proceeding" are necessary to ensure that compensation to deserving groups is determined by the Commissioner and not by the actions of the insurer. CPIL		The Department concurs with CPIL's comment.

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COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
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CPIL (cont'd)

also cited case law in support of the proposition that "a plaintiff should not be denied attorneys' fees because resolution in the plaintiff's favor was reached by settlement...a plaintiff is considered the prevailing party if his lawsuit motivated defendants to provide the primary relief sought or activated them to modify their behavior".

# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
State Farm	<p>The Commissioner's drastic and illegal action to solve the perceived "fairness" problem [arising when carriers unilaterally withdraw a pending rate application, obviating the need for a formal proceeding and thereby eliminating the "proceeding" required for compensation pursuant to CIC 1861.10] would distort the entire system, making it into a system with a primary objective of paying money to consumer groups, and making the rate review function subservient to this goal. State Farm commented further that intervenors do not have a cognizable right to attorney's fees (or other advocacy compensation).</p>		<p>See, the Department's response to ACIC <i>et al.</i>'s comment on the authority issue, <i>supra</i>. In support of its comment, State Farm cites <i>Californians for Disability Rights v. Mervyn's LLP</i>, 39 Cal 4<sup>th</sup> 223 (2006) for the proposition that an intervenor has no cognizable interest in a right to attorney's fees. However, the <i>Mervyn's</i> case turned on attorneys' fees sought pursuant to CCP 1021.5 (private attorney general). This argument is inapposite. CIC 1861.10's "substantial contribution" standard is separate and distinct from the CCP 1021.5 requirements.</p>
ACIC, <i>et al.</i>	<p>ACIC <i>et al.</i>, commented generally that the proposed regulations ignore the proper role of the Department and the Commissioner in the rate application review process as compared to the role of consumers and the proposed amendments and adoption are unlawful in that they conflict with CIC section 1861.10 and completely reverse the Department's long-standing application of that statute as reflected in the existing regulations. ACIC <i>et al.</i>, also commented that none of the cases cited by the Commissioner in support of the</p>	<p>ACIC <i>et al.</i>, commented that the industry's position is that CIC 1861.10 is clear that with respect to challenges to rate applications, 1861.10(a) permits consumers to participate through intervention in a section 1861.05 rate hearing proceeding only. ACIC <i>et al.</i>, cited four cases in support of its opposition as well as the superior court ruling in <i>AHI/SCPIE v. Garamendi</i>. ACIC <i>et al.</i>, commented that Proposition 103 intends that the rate application review function will be performed by</p>	<p>See, the Department's response to ACIC <i>et al.</i>'s comment, <i>supra</i>, with respect to the Commissioner's authority to require prior approval for the withdrawal of a pending rate filing prior to a formal hearing. The Commissioner's disagrees with ACIC <i>et al.</i>'s assertion that Proposition 103 only intends to permit consumer groups to participate in rating matters through formal public hearings. To the extent that class plans are subject to article 10 of chapter 9, referenced</p>

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COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
ACIC, <i>et al</i> (cont'd)	<p>proposed amendments and adoption state that consumer groups should be encouraged to participate in the rate application review phase and that, to the contrary, those cases indicate that Proposition 103 only intends to permit consumer groups to participate in rating matters through a public hearing. ACIC <i>et al.</i>, commented further that the proposed amendments unlawfully expand the scope of 1861.10(a) and (b) by establishing that a "proceeding" commences upon a request for a hearing, effectively making the rate application itself a "proceeding"; improperly provide that a "decision" on the rate application may include the Commissioner's approval of the withdrawal of the application and unlawfully include class plans within the scope of CIC 1861.10. ACIC <i>et al.</i>, commented further that the proposed regulations conflict with Proposition 103, which intended specific limits on consumers' ability to obtain compensation and that such limitation violates no public policy.</p>	<p>the Department of Insurance and giving consumer groups the right to act as a party in a rate application [review] process elevates the consumer representative to an advocacy organization in violation of the court's ruling in <i>Calfarm</i>.</p>	<p>by CIC section 1861.10, it is within the Commissioner's authority and the scope of Proposition 103 to amend the regulations to include class plans. None of the cases cited by ACIC <i>et al.</i>, in its opposition preclude consumer participation in a pre-hearing review of a filed rate application. Moreover, a close reading of the cited cases reveals that the courts have in fact referred to Proposition 103's provisions as allowing for public participation not only in the context of a formal hearing, but also generally, in the "rate-setting process" (<i>State Farm v. Garamendi</i>, (2004) 32 Cal. 4<sup>th</sup> 1029, at p. 1045.) ACIC <i>et al.</i>'s comment that the proposed amendments and adoption run afoul of the <i>Calfarm</i> ruling are inapposite. The <i>Calfarm</i> court severed an original provision of Proposition 103 (1861.10(c)) on the ground that an initiative cannot identify a private person or corporation to perform a function. The decision has no bearing on advocacy organizations, <i>per se</i>.</p>



# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTER	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
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## PROPOSED REGULATORY ACTION COMMENTED UPON:

### PROPOSED AMENDMENTS TO CCR SECTIONS 2651.1(H), 2661.1(F), (H)-(I)

#### FTCR

FTCR commented that the proposed amendments to these sections are necessary to clarify that a rate proceeding is initiated when a petition for hearing is filed, regardless of whether the proceeding results in a formal rate hearing conducted under the Administrative Procedures Act (APA) and is consistent with the statutory language and purpose of sections 1861.05 and 1861.10.

The Department concurs with FTCR's comment.

#### ACIC, *et al.*

ACIC *et al.*, commented that proposed section 2661.1(h) makes the rate application review process a proceeding in which consumers can obtain compensation and as such, this proposed amendment is in conflict with section 1861.10 which does not contemplate that an informal rate application review is a proceeding which consumers can "initiate" or in which they can "intervene". ACIC *et al.*, commented further that the plain meaning of "proceeding" denotes a more formal process than is afforded in a rate review and that the voters' choice of the terms advocacy, witness, order and decision all indicate that the "proceeding" in which a consumer may

See, the Department's response to ACIC *et al.*'s comments, *supra*, on the issue of the Commissioner's authority to expand the regulations' definition of "proceeding" to include pre-hearing review.

# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
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ACIC, <i>et al</i> , (cont'd)	intervene, is a hearing or similar formal adjudicatory proceeding. ACIC <i>et al</i> , commented further that CIC 1861.05 sets forth the requirements relating to the Commissioner's review of a rate application and clearly contemplates that the appropriate avenue for consumer participation is a rate hearing and that none of the California cases cited by the Commissioner in support of the proposed amendments and adoption contradict this conclusion.		
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# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTER	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
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## PROPOSED REGULATORY ACTION COMMENTED UPON: PROPOSED AMENDMENTS TO CCR SECTIONS 2661.3(A), (E), (F) AND (G)

**FTCR** FTCR commented that the proposed amendment to this section is necessary to conform the regulations to the statute, which provides for an unconditional right to intervene in matters to enforce Proposition 103.

**ACIC, et al.**

ACIC *et al.*, commented that proposed amendments to CCR section 2661.3 improperly apply the consumer compensation rules to insurer class plans by permitting consumers to “intervene and become a party to a rate or class plan proceeding” where CIC section 1861.10 requires insurers to compensate for advocacy only in connection with rate applications, which are filed pursuant to CIC section 1861.05 and not class plans, which are filed pursuant to CIC section 1861.02. ACIC *et al.*, also commented that neither the Insurance Code nor the regulations permit consumers to request or demand a hearing on a class plan application.

The Department concurs with FTCR’s comment.

See, the Department’s response to ACIC *et al.*’s comments, *supra*, on the issue of the Commissioner’s authority to specifically refer to class plans in the intervenor regulations.

# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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## PROPOSED REGULATORY ACTION COMMENTED UPON:

### PROPOSED AMENDMENTS TO CCR SECTION 2653.6

#### FTCR

FTCR commented that the proposed amendment to this section is necessary to prevent an insurer from using its withdrawal as a basis to argue that a consumer is not eligible for compensation for any advocacy performed prior to the insurer's withdrawal and that the Commissioner's order allowing an insurer to withdraw its application clearly constitutes an 'order' or 'decision' within the meaning of section 1861.10(b).

The Department concurs with FTCR's comment.

#### ACIC, *et al*

ACIC *et al.*, commented that proposed section 2653.6(c) conflicts with CIC 1861.10(b) because the courts have interpreted the statute to require a "decision on the merits" and which clearly refers to a determination made after an adversarial proceeding in which each side is able to present arguments and evidence in support of its position and no "decision" or "order" can reasonably result from informal discussions during the rate review process. ACIC *et al.*, also commented that the Commissioner is attempting to create a "decision" by requiring insurers to obtain prior approval to withdraw an

The Superior Court's ruling in the *AHI/SCPIE* matter is limited to its facts. Consumer advocates had filed a Petition for Hearing (PTF) on the SCPIE filing, but the application was withdrawn and the PTF dismissed prior to the Department's grant of the Petition to Intervene (PTI). As a result, no decision on the merits was issued. The proposed amendments to the regulation address this issue by providing that a PTF and a PTI may be combined in one document. Judge Janavs' ruling points out the unfair result that obtains under the

# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
ACIC, <i>et al.</i> (cont'd)	<p>application and by allowing consumers to file a "response" to the insurer's request to withdraw.</p>		<p>existing regulations when a carrier unilaterally withdraws the disputed filing prior to a hearing. The proposed amendments and adoption will remedy this situation.</p>
State Farm	<p>State Farm commented that there is no authority for this proposed amendment to require prior approval to withdraw a rate application and that it is the "worst aspect" of the proposed regulatory action because it distorts the whole rate regulatory system in order "to favor an aspect of the system that should be ancillary." State Farm commented further that the regulation operates on the assumption that any withdrawal of a rate application equals an admission that the applied-for rates would be excessive, such that a putative intervenor's filing objecting to aspects of the applied-for rates benefits the public when the rate application is withdrawn, but as a constitutional matter, that assumption cannot be made a binding presumption by regulation. Unless there is a hearing, the law does not permit an inference that a proposed rate does not meet the standard of CIC section 1861.05(a). Pursuant to that</p>		<p>See, the Department's response to ACIC <i>et al.</i>'s comment on the authority issue, <i>supra</i>. The regulations do not provide, and State Farm incorrectly asserts that any withdrawal of a rate application pursuant to the proposed amendments would "equal[]" an admission that the applied-for rates [were] excessive". The Commissioner's decision disposing of a rate application prior to a hearing would, if appropriate, contain facts regarding the Department's review of the application. CIC 1861.10 and the intervenor regulations do not define "substantial contribution" in the context of the contents or disposition of a rate filing. Whether or not the intervenor has made a substantial contribution and is therefore entitled to compensation is a separate issue, which is</p>

# SUMMARY AND RESPONSE TO PUBLIC COMMENTS

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COMMENTS	SUMMARY OF WRITTEN COMMENT	SUMMARY OF ORAL COMMENT	DEPARTMENT OF INSURANCE'S RESPONSE TO COMMENT
State Farm (cont'd)	<p>section, the Commissioner may only approve an application or call a hearing. There can be no disapproval without an APA proceeding, per CIC section 1861.08. The assumption that any withdrawal equals a "substantial contribution" within the meaning of CIC section 1861.10(b) cannot be reconciled with the statutory system or principles of due process and thus fails the authority prerequisite for administrative approval.</p>		<p>determined by the Department's Public Advisor based upon the intervenors' Request for Compensation and supporting documents.</p>

PROPOSED REGULATORY ACTION COMMENTED UPON:	PROPOSED AMENDMENTS TO CCR SECTIONS 2662.1, 2662.3 AND 2662.5
FTCR	The Department concurs with this comment.

FTCR commented that the proposed amendment to these sections clarify that compensation pursuant to CIC 1861.10 may be applied for by one "initiating" a proceeding in addition to one that is "intervening" in a proceeding.

## **EXHIBIT 5**

**DEPARTMENT OF INSURANCE**

RATE REGULATION BRANCH

300 SOUTH SPRING STREET

LOS ANGELES, CA 90013

www.insurance.ca.gov



January 26, 2007

**FARMERS INSURANCE GROUP**

Attn.: Lynne Wehmueller

4700 Wilshire Boulevard

Los Angeles, CA 90010

**RE: APPROVAL OF APPLICATION**

FARMERS INSURANCE GROUP has submitted the following applications for approval regarding the following line of business or program:

<b><u>CDI App. No(s):</u></b>	06-8851, Farmers Insurance Exchange 06-8852, Fire Insurance Exchange
<b><u>Line(s) of Insurance:</u></b>	Homeowners
<b><u>Program:</u></b>	-
<b><u>% Rate Change Approved:</u></b>	-18.0%

Only the change(s) specifically indicated in the application set forth above, as it may have been amended, is (are) approved. Nothing in this letter shall constitute approval of any other application, whether incorporated by reference, or filed prior or subsequent to the application set forth above. FARMERS INSURANCE GROUP shall begin issuing policies pursuant to this approval within 90 days of the date of this approval, provided that the insurer is licensed in California to transact the line of insurance for which the approval is given. FARMERS INSURANCE GROUP may implement this approval earlier if it is able to do so. Regardless of the implementation date, the insurer shall implement this approval with the same effective date for both new and renewal business and shall offer this product to all eligible applicants as of the implementation date. This approval shall continue to have full force and effect until such time as a subsequent change for the referenced lines or programs may be approved or ordered by the Insurance Commissioner.

If the approved rate change is different than originally submitted, please be reminded that you must submit copies of rate pages at the approved level within 30 days.

If any portion of the application or related documentation conflicts with California law, that portion is specifically not approved. This approval does not constitute an approval of underwriting guidelines nor the specific language, coverages, terms, covenants and conditions contained in any forms, or of the forms themselves. Policy forms and underwriting guidelines included in this filing were reviewed only insofar as they relate to rates contained in this filing or currently on file with the California Department of Insurance. Any subsequent changes to underwriting guidelines or coverages, terms, covenants and conditions contained in any forms must be submitted with supporting documentation when those changes result in any rating impact. The Commissioner may at any time take any action allowed by law if he determines that any underwriting guidelines, forms or procedures for application of rates, or any other portions of the application conflict with any applicable laws or regulations.

*In consideration of this approval, Farmers Insurance Group has agreed to refile its rates for the above line of insurance with the Insurance Commissioner not later than January 25<sup>th</sup>, 2008.*

Sincerely,

Philip M. Pratt, CPCU  
Chief, Rate Filing Bureau – Los Angeles  
(213) 346-6686  
prattp@insurance.ca.gov



**EXHIBIT 6 A**

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8 **BEFORE THE INSURANCE COMMISSIONER**  
9 **OF THE STATE OF CALIFORNIA**  
10

11 In the Matter of the Rate Application of

12 American Casualty Company of  
13 Reading, Pennsylvania,

14 Applicant

File No. PA04039736

~~[PROPOSED]~~ ORDER

15  
16 **ORDER ADOPTING PROPOSED STIPULATION**

17 The Stipulation and Request for Order, filed in this matter by the American Casualty  
18 Company of Reading, Pennsylvania (the "Applicant"), The Foundation for Taxpayer and  
19 Consumer Rights (the "Intervenor"<sup>1</sup>), and the Department of Insurance of the State of California  
20 (the "Department") has been considered by the California Insurance Commissioner (the  
21 "Commissioner"). The terms of the settlement include, among other things, a 9.5% rate increase  
22 for the Applicant, and a requirement that the Applicant provide refunds to all insureds who  
23 previously paid premiums increased by 14.9% as a result of the Department's October 20, 2004  
24 approval of the Applicant's rate application at that amount.<sup>2</sup> For the reasons stated below, the  
25

26 <sup>1</sup> On December 31, 2004, the Commissioner ruled that the Intervenor had raised issues relevant  
27 to the Application and granted Intervenor's Request to Intervene.

28 <sup>2</sup> The October 20, 2004 approval was the subject of a request for reconsideration filed by the  
Intervenor. After that request for reconsideration was granted, the parties met and conferred,  
ultimately agreeing to a 9.5% increase in lieu of the 14.9% increase previously granted.

1 Request for Order in the above-entitled matter is granted, and the terms of the Stipulation are  
2 accepted.

3 **DISCUSSION**

4 The parties have submitted declarations in support of the settlement from Eric Johnson,  
5 Senior Casualty Actuary for the Department, Allan Schwartz, the consulting actuary for the  
6 Intervenor, Sharon K. Robinson, Vice President and Actuary for the Applicant, Daniel M.  
7 Goodell, attorney for the Department, Robert Hoffman, of Sonnenschein Nath and Rosenthal  
8 LLP, attorney for Applicant, and Lawrence Markey, Jr., attorney for Intervenor. The  
9 declarations support the conclusion that the Settlement results in reasonable rates that comply  
10 with California law, including Proposition 103, and that the Settlement represents a reasonable  
11 and fair resolution of this matter.

12 For all the reasons discussed above and based on the facts set forth in the Settlement  
13 Stipulation and supporting declarations submitted without objection, the settlement, taken as a  
14 whole, is fundamentally fair, adequate, reasonable, and in the interests of justice.

15 Accordingly, the Commissioner accepts the attached Settlement Stipulation of the  
16 parties, and adopts it by way of this Order.

17 **ORDER**

18 The Commissioner finds that the Settlement Stipulation renders the basis for a hearing in  
19 this matter moot. For this reason, the Petitioner's request for hearing in this matter IS DENIED.

20 IT IS FURTHER ORDERED that the terms of the settlement stipulation are adopted as  
21 the order of the Commissioner.

22  
23 Dated: 9/17/, 2005

24  
25   
26 **JOHN GARAMENDI**

27 California Insurance Commissioner  
28

In the Matter of the Application of	)	DECLARATION OF SERVICE
	)	BY MAIL
	)	
AMERICAN CASUALTY COMPANY OF	)	File No. PA04039736
READING, PENNSYLVANIA,	)	
	)	
_____ Applicant.	)	

I am over the age of 18 years, and not a party to this cause.

I am an employee at the Department of Insurance, State of California, employed at 45 Fremont Street, 21st Floor, San Francisco, CA 94105.

On September 21, 2005, at San Francisco, California, I sealed into an envelope and deposited in the United States mail, postage there upon fully prepaid, true copies of the following documents in the above entitled matter; the original, or a true copy, of each document served is attached hereto; said copies were addressed as follows:

C ORDER AND DECLARATION OF SERVICE were mailed to:

Pamela Pressley  
The Foundation For Taxpayer &  
Consumer Rights  
1750 Ocean Park Blvd., #200  
Santa Monica, CA 90405-4938

**BY CERTIFIED MAIL**  
#7004 0510 0001 4964 6229  
AND BY FACSIMILE

Robert Hoffman, Esq.  
Sonnenschein, Nath & Rosenthal, LLP  
685 Market Street, 6<sup>th</sup> Floor  
San Francisco, CA 94105

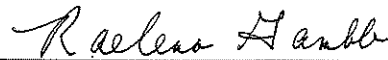
**BY CERTIFIED MAIL**  
#7002 0510 0001 4964 6236

Dan Goodell, Esq.  
California Dept. of Insurance  
Legal Division, Rate Enforcement Bureau  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105

BY HAND DELIVERED

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 21, 2005, at San Francisco, California.



\_\_\_\_\_  
Declarant

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8 BEFORE THE INSURANCE COMMISSIONER  
9 OF THE STATE OF CALIFORNIA  
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11 In the Matter of the Rate Application of  
12 American Casualty Company of  
13 Reading, Pennsylvania,  
14 Applicant.

File No. PA04039736

STIPULATION AND REQUEST FOR  
ORDER

15  
16 The American Casualty Co. of Reading, Pennsylvania (the "Applicant"), the Foundation  
17 for Taxpayer and Consumer Rights (the "Petitioner"), and the Department of Insurance of the  
18 State of California (the "Department"), stipulate as set forth herein.

19 RECITALS

20 A. The Applicant is licensed by the Department to conduct business in various lines  
21 of insurance in California.

22 B. On June 21, 2004, the Department received medical malpractice insurance rate  
23 application #04-4692 (the "Application") from the Applicant, seeking a rate increase of 27.7%.

24 C. The Applicant's 2003 California written premium for the medical malpractice  
25 line was \$9,047,193. The Applicant's total 2003 California written premium for all lines  
26 combined was \$133,839,063.

27 D. The Application is subject to CIC §1861.05. On August 16, 2004, pursuant to  
28 §1861.05, the Petitioner filed a timely petition for hearing regarding the Application.

1 E. The Applicant subsequently amended the Application to seek a rate increase of  
2 14.9% and, on October 20, 2005, the Department approved the amended Application. The  
3 Petitioner objected to the 14.9% increase and filed a request for reconsideration with the  
4 California Insurance Commissioner (the "Commissioner").

5 F. On January 20, 2005, the Commissioner issued a Decision Granting Request for  
6 Reconsideration of Decision Denying Petition for Hearing in this matter (the Decision to  
7 Reconsider). In the Decision to Reconsider, the Commissioner ordered the parties to meet and  
8 confer regarding the appropriate rates that were the subject of the Application.

9 G. After the Commissioner issued the Decision to Reconsider, the parties met and  
10 conferred on multiple occasions and the Applicant provided additional data, including data  
11 related to the loss development calculations. The parties have discussed the implications of the  
12 additional data and the appropriate rates that were the subject of the Application. The latest  
13 meeting occurred on July 6, 2005.

14 H. At the conclusion of the meeting on July 6, 2005, the parties reached an  
15 agreement to settle all their differences regarding the Application in a manner that is consistent  
16 with applicable California law, including Proposition 103 as set forth in this stipulation. The  
17 parties ask the Commissioner to adopt the terms of this settlement stipulation.

#### 18 STIPULATION

19 1. This stipulation represents the complete and final settlement that resolves all  
20 issues between the parties regarding the Application.

21 2. The Applicant will issue refunds to insureds of any and all amounts charged as a  
22 result of the approved 14.9% rate increase.

23 3. If the Commissioner adopts the terms of this stipulation, the Applicant will  
24 amend the rate Application to comply with the Commissioner's order by filing three copies of  
25 each of the CARA2, Exhibit 21, Exhibit 22 and the rate manual implementing the changes with  
26 the Rate Filing Bureau in San Francisco.

27 4. The Applicant will implement the 9.5% rate increase prospectively as soon as  
28 Applicant is reasonably able after the Commissioner executes the order approving this

1 stipulation. The 9.5% rate increase will not apply retroactively.

2 5. The Petitioner qualifies as an intervenor in this matter, eligible to seek  
3 compensation pursuant to Title 10, California Code of Regulations, sections 2661.1 et seq.  
4 However, this stipulation does not include any agreement regarding Petitioner's entitlement to  
5 compensation under sections 2662.5, et seq.

6 6. Having settled this matter through this stipulation, Petitioner hereby withdraws  
7 its Petition for Hearing.

8 7. This stipulation is made solely for the purpose of reaching a compromise among  
9 the parties to this proceeding. Adoption of the terms of this stipulation by the Commissioner  
10 does not constitute approval of, or precedent regarding, any principle, issue or interpretation of  
11 law. Discussions, admissions, concessions or offers to stipulate or settle, made by any party in  
12 negotiating this stipulated settlement, are confidential and are not discoverable or admissible for  
13 any purpose in any proceeding.

14 8. The Commissioner retains jurisdiction to ensure that the parties comply with the  
15 provisions and terms of this stipulation and the order requested thereon.

16 Dated: July 27, 2005

AMERICAN CASUALTY COMPANY OF  
READING, PENNSYLVANIA, APPLICANT

18 By J. K. Fleischer

Jean K. Fleischer  
Vice President (Global Specialty Lines)

20 Dated: July 28, 2005

FOUNDATION FOR TAXPAYER AND  
CONSUMER RIGHTS, PETITIONER

23 By Pamela Pressley

Pamela Pressley  
Counsel for Petitioner

25 Dated: JULY 25TH, 2005

CALIFORNIA DEPARTMENT OF INSURANCE

27 By Bryant Henley

Bryant Henley  
Staff Counsel

**EXHIBIT 6 B**



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8 **BEFORE THE INSURANCE COMMISSIONER**  
9 **OF THE STATE OF CALIFORNIA**  
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11 In the Matter of the Rate Application of  
12 The Medical Protective Company,  
13 Applicant.  
14

File No. PA05045074

DECISION GRANTING IN PART AND  
DENYING IN PART THE FOUNDATION  
FOR TAXPAYERS AND CONSUMERS  
RIGHTS' PETITION FOR HEARING AND  
PETITION TO INTERVENE

15  
16 The Petition for Hearing and Petition to Intervene, filed in this matter by the Foundation  
17 for Taxpayer and Consumer Rights ("Petitioner"), has been considered by the Commissioner. For  
18 the reasons stated below the Petition to intervene is granted and the Petition for hearing is denied.

19 **I. FACTUAL SUMMARY**  
20

21 On February 17, 2005, the Department of Insurance ("Department") received the  
22 following rate application (the "Application") from The Medical Protective Company (the  
23 "Applicant") seeking a rate increase of 14.5%.

24 RFB App. No(s).

Applicant File No(s).

Line(s) of Insurance

25 05-1776

05-CA-37

Medical Malpractice

26  
27 The Application is subject to California Insurance Code §1861.05. On March 4, 2005,  
28 pursuant to §1861.05, the Department notified the public of the Application. On April 18, 2005

1 the Commissioner received Petitioner's timely Petition for Hearing and Petition to Intervene  
2 regarding the Application (the "Petition").

3 The statutory sixty-day "deemed approved" date for the Application, set forth in  
4 California Insurance Code §1861.05(c), was May 3, 2005. On May 2, 2005 the Department  
5 received a letter by facsimile from Applicant, waiving the "deemed approved" dates in  
6 §1861.05(c). The decision in this case is based upon the Application, the Petition, and officially  
7 noticeable information as set forth in the decision.

## 8 II. ANALYSIS

9  
10 "While companies remain free to formulate their rates under any methodology, the  
11 Commissioner's review of those rates must use a single, consistent methodology." (Cal. Code  
12 Regs., tit. 10, § 2643.1.) The consistent methodology that the Commissioner applies to rate  
13 applications is the formula set forth in Title 10, California Code of Regulations, section 2642.1 et  
14 seq. Where the formula requires a generic factor that has not been promulgated by the  
15 Commissioner, values are selected on a case-by-case basis, using generally accepted actuarial  
16 principles and standards of reasonableness.

### 17 Applicant's loss and ALAE trend factors

18 Petitioner objected that the Applicant originally used an annual loss and ALAE trend of 7  
19 percent based upon a rate application filed by The Doctors' Company in 2003 (No. 03-6211) even  
20 though a more recent filing by The Doctors' Company (No. 04-8658) used a lower annual trend  
21 of 5.5% which was subsequently lowered to 2.6%.

22 The Department revised Applicant's annual trend down to 5%. A trend of 5% is  
23 reasonable for Applicant in this case and is also consistent with the Commissioner's August 31,  
24 2004 order on The Medical Protective Company's prior rate application No. 04-1231, File No.  
25 PA04036735 (hereafter "the PA04036735 order").

### 26 Applicant's loss development methodology

27 The Petitioner objected that Applicant's loss development value was excessive and  
28 otherwise flawed. The Applicant used countrywide loss and ALAE loss data to calculate the loss

1 and ALAE development factors with an adjustment to reflect the expected impact from  
2 California's Medical Injury Compensation Reform Act of 1975 (MICRA), which limits damages  
3 in medical malpractice claims. The Petitioner objected to the methodology used to apply the 80  
4 percent adjustment. The Applicant revised the Application so that the 80 percent adjustment is  
5 applied to the individual link ratios. This is also consistent with the PA04036735 order.

6 The Department evaluated the revised application loss data as of December 31, 2004.

7 **Applicant's death, disability and retirement ("DD&R") load**

8 The Petitioner objected to the Applicant's DD&R load of 6%. The Department revised the  
9 DD&R load to 3.5 percent. This was reasonable and consistent with the PA04036735 order.

10 **Applicant's target operating return**

11 The Petitioner objected to the Applicant's target operating return of 9.8% and asserted that  
12 7.0% would be consistent with past practices and actuarially unsound.

13 The Department revised the target operating return to 7 percent which is reasonable and  
14 consistent with the PA04036735 order. This calculation is also consistent with the  
15 Commissioner's August 22, 2003 decision in In The Matter of the Rate Applications of American  
16 Healthcare Indemnity and SCPIE Indemnity Company, File No. PA-02025379.

17 **Applicant's investment rate of return**

18 The Petitioner objected that Applicant's proffered investment rate of return of 3.5% was  
19 inadequate and not consistent with reasonable actuarial and economic practices.

20 The Department increased the investment rate of return to 4.15 percent based on the  
21 formula set forth at 10 CCR § 2644.19 and using Applicant's 2004 Annual Statement data.

22 The Federal Income Tax rate used in the revised calculation is 19 percent based on the  
23 formula set forth at 10 CCR § 2644.18.

24 **Applicant's complement of credibility/pure premium trend**

25 The Petitioner objected to Applicant's use of the Doctors' Company as the basis for the  
26 complement of credibility instead of using the pure premium trend. The Department revised the  
27 figure to 5 percent pure premium trend. This is also consistent with the PA04036735 order.

28 The Department has considered all of the factors and issues raised by the Petitioner and

1 has thoroughly reviewed the Application. Based on this review, including the above analysis, the  
2 Department has concluded that a rate increase of 7.1% is justifiable under the applicable laws.  
3 Applicant has amended its rate application to seek an overall increase of 7.1%. Petitioner does  
4 not agree and has indicated that it believes that a 7.1% increase is excessive.

### 5 6 III. CONCLUSION

7 In response to the issues raised with respect to the rate Application, Applicant has  
8 amended its rate application to seek an overall rate increase of 7.1%. Based on the Department's  
9 review of the Application and the issues raised by the Petitioner, including the above analysis, the  
10 Department has concluded that an overall rate increase of 7.1% falls within the range of  
11 reasonable rates, as required by California Insurance Code Section 1861.05. The Petitioner has  
12 indicated that it does not agree and that it believes that a 7.1% increase is excessive.


### 13 14 III. DECISION

15 Based on the foregoing, the Commissioner finds that in its Petition for Hearing and  
16 Request to Intervene pursuant to CIC §1861.10 and CCR §2661.2, Petitioner has raised issues  
17 relevant to the Application and Petitioner's request to intervene is granted.

18 The Commissioner further finds that the Department's methodology for review has  
19 appropriately taken into consideration each of the variables raised in the Petition for Hearing.  
20 The Commissioner further finds, based on the Department's review, that an overall rate increase  
21 of 7.1% is justified. The Petition for Hearing is, therefore, Denied.

22 IT IS SO ORDERED this 9th day of August, 2005

23 JOHN GARAMENDI  
24 Insurance Commissioner

25 By   
26 Deputy Commissioner  
27  
28

I am over the age of eighteen years and am not a party to the within action. I am an employee of the Department of Insurance, State of California, employed at 45 Fremont Street, 19th Floor, San Francisco, California 94105. On August 10, 2005, I served the following document(s):

on all persons named on the attached Service List, by the method of service indicated, as follows:

IF **U.S. MAIL** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for mailing by U.S. Mail. Under that practice, outgoing items are deposited, in the ordinary course of business, with the U.S. Postal Service on that same day, with postage fully prepaid, in the city and county of San Francisco, California.

If **OVERNIGHT SERVICE** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person, with the following overnight services in the city and county of San Francisco, California: Express Mail, UPS, Federal Express, or Golden State overnight service, with an active account number shown for payment.

If **FAX SERVICE** is indicated, by facsimile transmission this date to fax number stated for the person(s) so marked.

If **PERSONAL SERVICE** is indicated, by hand delivery this date.

If **INTRA-AGENCY MAIL** is indicated, by placing this date in a place designated for collection for delivery by Department of Insurance intra-agency mail.

Executed this date at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Cecilia Padua

**SERVICE LIST**  
**In the Matter of the Rate Application of**  
**Medical Protective Company, Applicant.**  
**Case No. PA05045074**

<u>Name/Address</u>	<u>Phone/Fax Numbers</u>	<u>Method of Service</u>
<b>Attorneys for Applicant:</b> Thomas E. McDonald Robert W. Hoffman <b>Sonnenschein Nath &amp; Rosenthal LLP</b> 685 Market Street, 6 <sup>th</sup> Floor San Francisco, CA 94105	Tel.: (415) 882-5000 Fax: (415) 543-5472	Fax & U.S. Mail
Melissa Coker Compliance Specialist <b>Medical Protective Company</b> 5814 Reed Road Fort Wayne, Indiana 46835	Tel. (800) 348-4669x6838 Fax: (260) 486-0733	U.S. Mail
Harvey Rosenfield, Esq. Lawrence Markey, Jr., Esq. Pamela Pressley, Esq. <b>The Foundation for Taxpayer &amp; Consumer Rights</b> 1750 Ocean Park Blvd., Suite 200 Santa Monica, CA 90405	Tel.: (310) 392-0522 Fax: (310) 392-8874	Fax & U.S. Mail
Barbara Fitzgerald Rate Filing Bureau <b>California Department of Insurance</b> 45 Fremont Street, 23 <sup>rd</sup> Floor San Francisco, CA 94105	Tel.: (415) 538-4229	Personal Service
Natasha Ray Office of the Public Advisor <b>California Department of Insurance</b> 300 Capitol Mall, 17 <sup>th</sup> Floor Sacramento, CA 95814	Tel.: (916) 492-3559 Fax: (916) 324-1883	Intra Office Mail

**EXHIBIT 6 C**

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8 **BEFORE THE INSURANCE COMMISSIONER**  
9 **OF THE STATE OF CALIFORNIA**  
10

11 In the Matter of the Rate Application of  
12 Farmers Insurance Exchange, Mid-  
13 Century Insurance Company, and  
14 Truck Insurance Company,  
15 Applicants.

File No. PA04039720

DECISION DENYING PETITIONERS'  
REQUEST FOR HEARING

16  
17 This Petition for Hearing having been considered by the Commissioner, regarding Rate  
18 Application Numbers 04-4704, 04-4706, and 04-4707, IS DENIED for the reasons stated below.

19 **I**

20 **FACTUAL SUMMARY**

21 Applicants filed Rate Application Numbers 04-4704, 04-4706, and 04-4707  
22 ("Applications") with the California Department of Insurance ("Department") on June 22, 2004.  
23 Applicants requested an overall rate adjustment of 5.8% to Applicants' personal automobile  
24 liability physical damage program; a line of insurance that is subject to Insurance Code Section  
25 1861.05. On July 2, 2004, pursuant to Section 1861.05, the Department notified the public of the  
26 Applications. On August 16, 2004, the Foundation for Taxpayer and Consumer Rights  
27 ("Petitioner") filed a Petition for Hearing and Request to Intervene/Participate ("Petition"),  
28 attached as Exhibit 1. The Petition was submitted in a timely fashion. Petitioner alleged that the



1 Applicants' requested rate adjustment is excessive or otherwise in violation of Insurance Code  
2 section 1861.05(a). Specifically, Petitioner alleged that the Applications would result in  
3 excessive rates or were otherwise improper several reasons as discussed further below:

4 The statutory sixty-day "deemed approved" date set forth in California Insurance Code  
5 §1861.05(c) was August 31, 2004. Prior to August 31, 2004, Applicants waived the 60-day  
6 deemer indefinitely in writing.

7 The decision in this case is based upon the Application, the Petition for Hearing and  
8 Request to Intervene/Participate, and any officially noticeable information.

## 9 II

### 10 ANALYSIS

11 "While companies remain free to formulate their rates under any methodology, the  
12 Commissioner's review of those rates must use a single, consistent methodology." (Cal. Code  
13 Regs., tit. 10, § 2643.1.) The consistent methodology that the Commissioner applies to rate  
14 applications is the formula set forth in Title 10, California Code of Regulations, section 2642.1 *et*  
15 *seq.* Where the formula requires a generic factor that the Commissioner has not promulgated, the  
16 Commissioner has selected values on a case-by-case basis, using generally accepted actuarial  
17 principles and standards of reasonableness. With respect to the "generic factor" issues raised by  
18 Petitioner for hearing in this case, the Commissioner has applied the above-mentioned principles.

19 A discussion of Petitioner's allegations follows.

#### 20 **The methods Applicants used to calculate loss and ALAE development.**

21 The Applicants applied the traditional "chain-ladder" method to all coverages, with the  
22 following exceptions: the ultimate losses for bodily injury for the latest two accident years and  
23 uninsured motorist bodily injury for the latest accident year were derived using the Bornhuetter-  
24 Ferguson method. The Applicants' method of developing losses and ALAE through the use of  
25 the Bornhuetter-Ferguson method for bodily injury and uninsured motorist bodily injury is  
26 regarded within the actuarial field as an acceptable method of development. For these reasons the  
27 Bornhuetter-Ferguson method of developing ultimate losses for bodily injury and uninsured  
28 motorist bodily injury coverages was justified for these rate Applications.

1        **Tax Issues: Applicants' use of a 35% federal income tax factor on underwriting**  
2        **income, and a 32.1% federal income tax factor on investment income, and**  
3        **Applicants' failure to add 2002 federal income tax credit to ancillary income.**

4        Petitioner argued that Applicants' use of a 35% federal income tax factor on underwriting  
5        income and 32.1% on investment income leads to rates that are excessive and contrary to the  
6        applicable regulations. While this criticism may be valid with respect to factors Applicants'  
7        selected, the Department's methodology for determining the appropriate Federal income tax  
8        factors and the Department's selected factors, were different from Applicants'.

9        **Applicants use of 15% after-tax return on surplus.**

10       The effect of return on surplus is to set the maximum underwriting profit provisions which  
11       are then used to determine the maximum permitted earned premiums. The Department, following  
12       formulae set forth in Title 10, CCR Section 2644.15 and 2644.19, derived a maximum  
13       underwriting profit provision of negative (1.08%) for liability and negative (0.55%) for physical  
14       damage. The Department's derived maximum underwriting profit provisions are based on  
15       property and casualty insurance industry-wide averaged data and are reasonable estimates of  
16       underwriting profit provisions in the projected rating period for these Applications.

17       **Applicants' filings assigned value for unallocated loss adjustment expenses as**  
18       **opposed to the three-year average value.**

19       The Department, following regulations set forth in title 10, CCR Section 2644.9, 2644.12  
20       and 2644.14, uses a case-by-case method for measuring the appropriate level of expenses in a rate  
21       application. CCR Section 2644.9 provides that unallocated loss adjustment expenses (ULAE) are  
22       fixed expenses, and the Department considered Applicants' ULAE accordingly.

23       The Department's efficiency standard method for measuring the appropriate level of  
24       expenses employs the same general methodology as that employed by the Department to calculate  
25       expenses in accordance with the insurance rate rollback requirements of Proposition 103. The  
26       Department's experience over the past 16 years has shown this method to be both fair and reliable  
27       for determining the appropriate amount of permissible expenses for insurers operating in  
28       California.

1 The Department's efficiency standard methodology results in a total expense ratio of  
2 34.49% for liability and 36.58% for physical damage in the private passenger automobile line of  
3 business for a captive agency system. The Department rejected the Applicants' projected expense  
4 ratios and replaced them with the Department's assigned values.

5 **Exclusion of excessive payments that Applicants makes to their affiliate, Farmers**  
6 **Group, Inc.**

7 The Department's regulations impose a limit on the expenses that may impact the  
8 Department's calculation of an appropriate minimum to maximum permitted earned premium  
9 range for a particular rate filing. As explained above, because the Department applies the  
10 appropriate Efficiency Standard to all filings, Applicants' excessive payments to its affiliate, if  
11 any, were not considered by the Department when calculating the appropriate range of minimum  
12 to maximum permitted earned premium.

13 **The filings treat all expenses as variable rather than separately identifying fixed and**  
14 **variable expenses.**

15 The Department allocated expenses according to the methodology set forth in Title 10,  
16 CCR Section 2644.9, 2644.12 and 2644.14. Although Petitioner correctly points out that  
17 Applicants' decision to treat all expenses as variable would not comply with the applicable  
18 regulations, the Department's methodology did not employ Applicants' method of treatment for  
19 its expenses. The Department's methodology that was used to evaluate Applicants' expenses for  
20 these rate Applications considered Applicants' expenses in the manner required by the  
21 regulations. Accordingly, the Department's review of Applicants' rates and ultimate rate  
22 calculation is not affected by this defect.

23 **Applicants' use of loss and ALAE trend values that are higher than indicated by**  
24 **historical experience.**

25 The Department agrees with the Petitioner that for some coverages, the Applicants'  
26 selected trend values are not supported by their experience. For property damage coverage, the  
27 Department reduced the Applicants' annual severity trend from 4.7% to 3.3% for the projection  
28 period. For collision coverage, the Applicants used an annual severity trend of 4.7% and

1 frequency trend of 0% for the projection period, the Department selected a 0% severity trend and  
2 0% frequency trend for the entire trending period. For all other coverages, the Department agrees  
3 with the Applicants' selections. The Department's selected trend values for all coverages are  
4 supported by the Applicants' historical experience. The use of the Applicants' historical  
5 experience for the selected trend values is reasonable in this case because the Applicants'  
6 historical experience data is credible and is the data which most closely resembles the Applicants'  
7 experience in the projected rating period.

8 The Department has considered all of the factors and issues raised by the Petitioner and  
9 has thoroughly reviewed the Applications. Based on this review, including the above analysis,  
10 the Department has concluded that a rate increase of 0.68% is justifiable under the applicable  
11 laws. Applicants have amended their rate Applications to seek an overall increase of 0.68%.  
12 Petitioner does not agree and has indicated that it believes as 0.68% increase is excessive.

### 13 III


### 14 DECISION

15 Based on the foregoing, the Commissioner finds that in its Petition for Hearing and  
16 Request to Intervene pursuant to CIC §1861.10 and CCR §2661.2, Petitioner has raised issues  
17 relevant to the Application and Petitioner's request to intervene is granted.

18 The Commissioner further finds that the Department's methodology for review has  
19 appropriately taken into consideration each of the variables raised in the Petition for Hearing.  
20 The Commissioner further finds, based on the Department's review, that an overall rate increase  
21 of 0.68% is justified. The Petition for Hearing is, therefore, Denied.

22 IT IS SO ORDERED this 17th day of December, 2004

23 JOHN GARAMENDI  
24 Insurance Commissioner

25 By   
26 Gary Cohen  
27 Deputy Commissioner and General  
28 Counsel

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**SERVICE LIST**  
**In the Matter of the Rate Applications of**  
**Farmers Insurance Group, Applicant.**  
**Case No. PA04039720**

<u>Name/Address</u>	<u>Phone/Fax Numbers</u>	<u>Method of Service</u>
John Green Senior Actuary & Product Manager <b>Farmers Insurance Exchange</b> 4680 Wilshire Blvd. Los Angeles, CA 90010	Fax: (323) 932-3161	Fax & U.S. Mail
Harvey Rosenfield, Esq. Lawrence Markey, Jr., Esq. Pamela Pressley, Esq. <b>The Foundation for Taxpayer &amp; Consumer Rights</b> 1750 Ocean Park Blvd., Suite 200 Santa Monica, CA 90405	Tel.: (310) 392-0522 Fax: (310) 392-8874	Fax & U.S. Mail
Natasha Ray Office of the Public Advisor <b>California Department of Insurance</b> 300 Capitol Mall, 17 <sup>th</sup> Floor Sacramento, CA 95814	Tel.: (916) 492-3559 Fax: (916) 324-1883	Intra Office Mail

**EXHIBIT 6 D**

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8 **BEFORE THE INSURANCE COMMISSIONER**  
9 **OF THE STATE OF CALIFORNIA**  
10

11 In the Matter of the Rate Application of  
12 NORCAL Mutual Insurance  
13 Company,  
14 Applicant.

File No. PA04037956

DECISION DENYING PETITIONERS'  
REQUEST FOR HEARING

15  
16 This Petition for Hearing having been considered by the Commissioner, regarding Rate  
17 Application Number 04-2368, IS DENIED for the reasons stated below.

18 **I**

19 **FACTUAL SUMMARY**

20 Applicants filed Rate Application Number 04-2368 ("Application") with the California  
21 Department of Insurance ("Department") on March 29, 2004. Applicant requested an overall rate  
22 adjustment of 4.3% to Applicant's Medical Malpractice program; a line of insurance that is  
23 subject to Insurance Code section 1861.05. On April 9, 2004, pursuant to section 1861.05, the  
24 Department notified the public of the Application. On May 25, 2004, the Rate Enforcement  
25 Bureau received a Petition for Hearing and Request to Intervene/Participate ("Petition") from the  
26 Federation for Taxpayer and Consumer Rights ("Petitioner"), attached as Exhibit 1. The Petition  
27 was submitted in a timely fashion. Petitioner alleged that the Application was excessive within  
28 the meaning of Insurance Code section 1861.05(a). Specifically, Petitioner alleged that the



1 following portions of the Application are excessive or improper: Applicant's loss and ALAE  
2 trend factors are excessive; Applicant's loss and ALAE development methodology is improper in  
3 that Applicant calculates development factors based upon a combination of incurred and paid  
4 losses and ALAE, resulting in an inflated indicated rate; Applicant provides inadequate  
5 documentation for its inclusion of a provision for "PAD coverage" of 1.8%; Applicant should  
6 have used a federal income tax factor of 0% instead of 34% in light of Applicant's federal income  
7 tax credit in 2003; and Applicant's efficiency standard is excessive and inadequately documented.  
8 As an additional basis for alleging that this Application is excessive or improper, Petitioners  
9 allege that Applicant has received four rate increases in the last three years: 8.25% in 2001,  
10 4.90% in 2002, 13.00% in 2003, and 2.91% in 2004. Petitioners noted that on July 3, 2003  
11 Applicant filed an application, for a 9.9% increase in its rates. Petitioners allege that based on  
12 Petitioners' advocacy and the evidence provided by Petitioners' expert, Allan Schwartz, the  
13 Department found that only a 2.91% increase was justified. Petitioners allege that on March 29,  
14 2004 Applicant filed the instant application, seeking to make up the difference for the portion of  
15 Applicant's requested 2004 rate increase that was rejected by the Department in October, 2003.  
16 Petitioners noted that if the current 4.3% requested rate increase were approved in addition to the  
17 2.9% increase that took effect January 1, 2004, Applicant will have increased its rates 7.3% this  
18 year.

19 Applicant, on June 1, 2004, filed an Answer to the Petition for Hearing ("Answer")  
20 attached as Exhibit 2. In the Answer, Applicant denied the allegations in Paragraphs II of the  
21 Petition for Hearing alleging that FTCR is qualified to represent the interest of NORCAL's  
22 physician policyholders in this matter. In the Answer, Applicant denied the allegations in  
23 Paragraph 3 of the Petition for Hearing alleging that grounds exist to reduce or deny Applicant's  
24 Rate Application. Applicant argued that for the following reasons Petitioners' Request for  
25 Hearing should be denied: the inherent delays caused by the rigid timelines contained in the  
26 Department of Insurance's hearing regulations will not permit completion of a hearing in time for  
27 Applicant to prepare its yearend billings; Applicant and its approximately 12,000 California  
28 physician policyholders will be damaged if Applicant's Rate Application is not approved by

1 October 30, 2004: because substantially all of Applicant's California physician policies renew on  
2 December 31, 2004. Applicant will be unable to retroactively bill and collect the premium lost  
3 during the course of the rate hearing even if the Insurance Commissioner should subsequently  
4 approve Applicant's rate application.

5 Additionally, Applicant noted in its Answer that Applicant's Rate Application has been  
6 pending since March 29, 2004 and Applicant has provided timely responses to all requests for  
7 information from the Rate Regulation staff of the California Department of Insurance. The  
8 statutory sixty-day "deemed approved" date set forth in California Insurance Code §1861.05(c)  
9 was June 8, 2004. The Applicant agreed to waive the 60 day deemer provisions and extend the  
10 60 day deemer for thirty days from June 8, 2004 to July 8, 2004. Ultimately, the Applicant  
11 agreed to extend the deemer for an additional 14 days from July 8, 2004 to July 22, 2004.  
12 Applicant stated in its Answer a desire to work collaboratively with the Rate Regulation Staff and  
13 any intervener to resolve any issues with the Applicant's Rate Application without a formal  
14 hearing.

15 The Decision in this case is based upon the Application, the Petition for Hearing and  
16 Request to Intervene/Participate, the Applicant's Answer, and the Department's analysis of each  
17 of these items.

## 18 II

### 19 ANALYSIS

20 "While companies remain free to formulate their rates under any methodology, the  
21 Commissioner's review of those rates must use a single, consistent methodology." (Cal. Code  
22 Regs., tit. 10, § 2643.1.) The consistent methodology that the Commissioner applies to rate  
23 applications is the formula set forth in Title 10, California Code of Regulations, section 2642.1 *et*  
24 *seq.* Where the formula requires a generic factor that has not been promulgated by the  
25 Commissioner, values are selected on a case-by-case basis, using generally accepted actuarial  
26 principles and standards of reasonableness. With respect to the issues raised by Petitioners for  
27 Hearing in this case, and the Application, the Commissioner has applied the above-mentioned  
28 principles.

1           Petitioners allege that this Application results in excessive rates for the following reasons:

2       1) Applicant's loss and ALAE trend factors are excessive; 2) Applicant's loss and ALAE  
3       development methodology is improper in that Applicant calculates development factors based  
4       upon a combination of incurred and paid losses and ALAE, resulting in an inflated indicated rate;  
5       3) Applicant provides inadequate documentation for its inclusion of a provision for "PAD  
6       coverage" of 1.8%; 4) Applicant should have used a federal income tax factor of 0% instead of  
7       34% in light of Applicant's federal income tax credit in 2003; 5) Applicant's efficiency standard  
8       is excessive and inadequately documented; 6) Applicant has received four rate increases in the  
9       last three years: 8.25% in 2001, 4.90% in 2002, 13.00% in 2003, and 2.91% in 2004. Each of  
10      these allegations will be addressed in order.

11      **Applicant's loss and ALAE trend factors**

12           Applicant submitted report year frequency and severity data for the experience period  
13      1994 to 2003. The 3.5% annual trend that Applicant selected is consistent with the data provided  
14      and is reasonable.

15      **Applicant's loss and ALAE development methodology**

16           The Department performed a thorough review of the loss and ALAE development for this  
17      program and bases its findings on the methodology indicated in Section 2644.6 of Article 4. The  
18      factor generated by this methodology is actually somewhat lower than Applicant's for 2003 and  
19      in line with Applicant's factors for 2001-2002. Accordingly, the loss and ALAE development  
20      applied by Applicant is not likely to result in excessive rates.

21      **Applicant's documentation for PAD coverage**

22           The Department requested additional documentation during the file review concerning the  
23      provision for PAD coverage. Applicant subsequently provided documentation of the loss and  
24      ALAE PAD claims for the experience period. The Department conducted its analysis using the  
25      actual PAD claims during the experience period, rather than Applicant's provision.

26      **Applicant's use of federal income tax factor**

27           The Department applied the methodology indicated in Section 2644.18 of Article 4 in its  
28      analysis of the application. The Department also applied a federal income tax factor of 0%.

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**PROOF OF SERVICE**  
**In the Matter of the Rate Application of**  
**NORCAL Mutual Insurance Company, Applicant.**  
**Case No. PA04037956**

I am over the age of eighteen years and am not a party to the within action. I am an employee of the Department of Insurance, State of California, employed at 45 Fremont Street, 19th Floor, San Francisco, California 94105. On July 21, 2003, I served the following document(s):

**DECISION DENYING PETITIONERS' REQUEST FOR HEARING**

on all persons named on the attached Service List, by the method of service indicated, as follows:

If **U.S. MAIL** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for mailing by U.S. Mail. Under that practice, outgoing items are deposited, in the ordinary course of business, with the U.S. Postal Service on that same day, with postage fully prepaid, in the city and county of San Francisco, California.

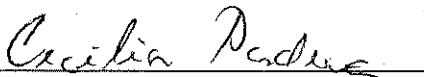
If **OVERNIGHT SERVICE** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person, with the following overnight services in the city and county of San Francisco, California: Express Mail, UPS, Federal Express, or Golden State overnight service, with an active account number shown for payment.

If **FAX SERVICE** is indicated, by facsimile transmission this date to fax number stated for the person(s) so marked.

If **PERSONAL SERVICE** is indicated, by hand delivery this date.

If **INTRA-AGENCY MAIL** is indicated, by placing this date in a place designated for collection for delivery by Department of Insurance intra-agency mail.

Executed this date at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
\_\_\_\_\_  
Cecilia Padua

**SERVICE LIST**  
**In the Matter of the Rate Application of**  
**NORCAL Mutual Insurance Company, Applicant.**  
**Case No. PA04037956**

<u>Name/Address</u>	<u>Phone/Fax Numbers</u>	<u>Method of Service</u>
Philip R. Hinderberger Attorney for <b>NORCAL MUTUAL INSURANCE COMPANY</b> 560 Davis Street San Francisco, CA 94111	Tel.: (415) 835-0816 Fax: (415) 835-9819	FAX & U.S. MAIL
Mike Pautler Chief Financial Officer <b>NORCAL MUTUAL INSURANCE COMPANY</b> 560 Davis Street San Francisco, CA 94111	Tel.: (415) 835-0845 Fax: (415) 835-9816	FAX & U.S. MAIL
Harvey Rosenfield Pamela Pressley Lawrence Markey, Jr. <b>THE FOUNDATION FOR TAXPAYER and CONSUMER RIGHTS</b> 1750 Ocean Park Blvd., Suite 200 Santa Monica, CA 90405	Tel.: (310) 806-4170 Fax: (310) 392-8874	FAX & U.S. MAIL
Natasha Ray Senior Staff Counsel & Public Advisor <b>OFFICE OF THE PUBLIC ADVISOR</b> 300 Capitol Mall, 17 <sup>th</sup> Floor Sacramento, CA 95814	Tel.: (916) 492-3559 Fax: (916) 324-1883	Inter-Office Mail

**EXHIBIT 7**

**DEPARTMENT OF INSURANCE**

300 Capitol Mall, 17th floor  
Sacramento, CA 95814  
[www.insurance.ca.gov](http://www.insurance.ca.gov)

**ADVISORY NOTICE**

**DATE:** FEBRUARY 18, 2005

**TO:** ALL PROPERTY AND CASUALTY INSURERS SUBJECT TO PROPOSITION 103 AND OTHER INTERESTED PERSONS

**SUBJECT:** RATE INCREASE APPLICATIONS WHICH EXCEED THE STATUTORY THRESHOLDS SET FORTH IN CALIFORNIA INSURANCE CODE SECTION 1861.05(c)(3).

The purpose of this advisory notice is to explain how the Department handles applications for rate increases when the following two conditions exist: first, the rate increase sought in the original rate application (the "proposed rate adjustment") exceeds the applicable threshold set forth in California Insurance Code ("CIC") Section 1861.05(c)(3). Second, a consumer or his or her representative ("consumer representative") has requested a hearing on the rate application.

When these two conditions are met, the Department will initiate joint discussions that include the consumer representative and the applicant regarding the rate application. If the applicant submits any written or electronic data or correspondence regarding the application to the Department, the applicant must also send a copy to the consumer representative.

If the applicant, consumer representative and Department agree to a specific rate change the applicant may amend its rate application to request the agreed rate change. However, if the applicant, consumer representative and Department do not all agree to a specific rate change the applicant will have two options: the applicant may pursue the rate increase in a public hearing pursuant to CIC Sections 1861.05 and 1861.08 before the Department's Administrative Hearing Bureau, or the applicant may withdraw the rate application.

An applicant may withdraw an unapproved rate application at any time prior to issuance of a notice of hearing on the application. When a notice of hearing is issued the matter is referred to the Administrative Hearing Bureau. After the matter is referred to Administrative Hearing Bureau withdrawal may be permitted under certain circumstances. After an applicant withdraws a rate application, the applicant may file a new rate application at any time. The new rate application will be considered independently and will not be prejudiced by the existence of the prior rate application or any prior request for hearing.

Inquiries about this notice may be addressed to Daniel Goodell, Senior Staff Counsel, California Department of Insurance, 45 Fremont St., 21st floor, San Francisco, CA 94105. (415) 538-4191.

JOHN GARAMENDI  
Insurance Commissioner

1  
2 **PROOF OF SERVICE**  
3 **[BY OVERNIGHT, U.S. OR INTRA-AGENCY MAIL, FAX**  
4 **TRANSMISSION AND/OR PERSONAL SERVICE]**

5 **State of California, City Santa Monica, County of Los Angeles**

6 I am employed in the City of Santa Monica and County of Los Angeles, State of California. I am over  
7 the age of 18 years and not a party to the within action. My business address is 1750 Ocean Park Blvd.,  
8 Suite #200, Santa Monica, California 90405, and I am employed in the city and county where this  
9 service is occurring.

10 On December 7, 2007, I caused service of true and correct copies of the following document:

11 **THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS' REQUEST FOR**  
12 **JUDICIAL NOTICE IN SUPPORT OF ITS OPPOSITION TO PETITION FOR WRIT OF**  
13 **MANDATE**

14 upon the persons named in the attached service list, in the following manner:

- 15 1. If marked FAX SERVICE, by facsimile transmission this date  
16 to the FAX number stated to the person(s) named.
- 17 2. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, by placing this date for  
18 collection for regular or overnight mailing true copies of the within document in sealed envelopes,  
19 addressed to each of the persons so listed. I am readily familiar with the regular practice of collection  
20 and processing of correspondence for mailing of U.S. Mail and for sending of Overnight mail. If  
21 mailed by U.S. Mail, these envelopes would be deposited this day in the ordinary course of business  
22 with the U.S. Postal Service. If mailed Overnight, these envelopes would be deposited this day in a box  
23 or other facility regularly maintained by the express service carrier, or delivered this day to an  
24 authorized courier or driver authorized by the express service carrier to receive documents, in the  
25 ordinary course of business, fully prepaid.

26 I declare under penalty of perjury that the foregoing is true and correct.

27 Executed on December 7, 2007, at Santa Monica, California.

28   
Mark Reback



SERVICE LIST

Person Served

Method of Service

Mark Richelson  
Christine Zarifian  
Deputy Attorneys General  
OFFICE OF THE ATTORNEY GENERAL  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Tel: (213) 897-2478  
Fax: (213) 897-5775

☐ FAX  
☒ U.S. MAIL  
☐ OVERNIGHT MAIL  
☐ HAND DELIVERED  
☐ EMAIL

(Counsel for Respondents Insurance  
Commissioner, Steve Poizner and California  
Department of Insurance)

Robert Hogeboom  
Michael A.S. Newman  
Suh Choi  
BARGER & WOLEN LLP  
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Los Angeles, CA 90071  
Tel: (213) 680-2800  
Fax: (213) 614-7399

☐ FAX  
☒ U.S. MAIL  
☐ OVERNIGHT MAIL  
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☐ EMAIL

(Counsel for Petitioners ACIC, PIFC, AIA and  
PADIC)