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**IN THE SUPREME COURT OF CALIFORNIA**

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THE ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES, AND  
THE PERSONAL INSURANCE FEDERATION OF CALIFORNIA,  
*Plaintiffs and Appellants*

v.

STEVEN POIZNER, COMMISSIONER OF INSURANCE OF THE  
STATE OF CALIFORNIA, ET AL.,  
*Defendants and Respondents.*

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After a decision by The Court of Appeal, Second Appellate District,  
Division One  
Case No. B208402

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**INTERVENOR THE FOUNDATION FOR TAXPAYER AND  
CONSUMER RIGHTS' ANSWER TO PETITION FOR REVIEW**

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<sup>1</sup> The Foundation for Taxpayer and Consumer Rights ("FTCR") changed its name to Consumer Watchdog in 2008. For consistency with the record, Intervenor will be referred to FTCR throughout this Answer.

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## **INTRODUCTION AND SUMMARY OF WHY REVIEW SHOULD BE DENIED**

Review should be denied because the Insurance Commissioner's regulations that the trial court and Court of Appeal upheld are fully consistent with, and appropriately promote, the language and purposes of Proposition 103. The Court of Appeal's unanimous decision raises no new question of law, nor does it conflict with any other appellate decisions. To the contrary, the opinion below carefully follows this Court's Proposition 103 jurisprudence.

Since its enactment in 1988, Proposition 103 has required insurance companies to apply for prior approval of their rates by the Insurance Commissioner (Ins. Code §§ 1861.01(c), 1861.05), while affording the public with a robust right to initiate and participate in rate proceedings to enforce the initiative's directive that insurance rates and practices be fair and affordable (Ins. Code §§ 1861.05, 1861.10(a)). To guarantee the public an opportunity to participate in these often technical proceedings on a level playing field with insurance companies, the initiative statute encourages public participation by requiring compensation when a consumer representative makes a substantial contribution to the outcome. Insurance Code section 1861.10(b)<sup>2</sup> provides: "[t]he commissioner or a court shall award reasonable advocacy and witness fees and expenses to any person who demonstrates that (1) the person represents the interests of consumers, and, (2) that he or she has made a substantial contribution to the adoption of any order, regulation or decision by the commissioner or a court." (Ins. Code § 1861.10(b).)

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<sup>2</sup> Unless otherwise stated, all further statutory references are to the Insurance Code.

In 2007, the Commissioner promulgated amendments to the consumer participation and compensation regulations that implement and enforce Insurance Code section 1861.10 (“the 2007 Amendments”).<sup>3</sup> The 2007 Amendments “clarif[ied] that consumers, who participate in the [rate] approval process after having filed a petition for hearing, may seek an award of reasonable advocacy fees,” and “ma[d]e clear that advocacy performed by a consumer representative . . . 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.” (CT 343.)

Petitioners, insurance company trade associations, argued against the regulations during the rulemaking process. Their arguments were thoroughly considered, and rejected on their merits, by the Commissioner, the trial court, and a unanimous Court of Appeal. The Court of Appeal held that the Commissioner’s regulations are consistent with Proposition 103, relying on this Court’s well-established precedent in *Calfarm Ins. Co. v. Deukmejian* (“*Calfarm*”) (1989) 48 Cal.3d 805, *20th Century Ins. Co. v. Garamendi* (“*20th Century*”) (1994) 8 Cal.4th 216, and *State Farm Mut. Auto. Ins. Co. v. Garamendi* (“*State Farm*”) (2004) 32 Cal.4th 1029.

Seeking review in this Court, Petitioners once again argue that the 2007 Amendments conflict with the statute and suggest that review is appropriate to settle important questions of law. Nothing, however, is unsettled. This Court has repeatedly recognized the Insurance Commissioner’s broad authority to adopt regulations to implement and

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<sup>3</sup> The amended regulations are found in Title 10 of the California Code of Regulations, sections 2651.1(h), 2661.1(d), (f), (h) & (k), 2661.3(a), (e)-(g), 2662.1, 2662.3(a), (b)(3), (c)-(d), and 2662.5. See Attachment 1 (Final Text of 2007 Amendments) (CT 554-563).

enforce Proposition 103, and both the Superior Court and a unanimous Court of Appeal determined that there is nothing in the 2007 Amendments that is inconsistent with that broad statutory authority. Petitioners assert that the Commissioner does not have the power to award compensation to consumer representatives for their substantial contribution to his decisions in rate proceedings unless and until the Commissioner orders a formal adjudicative hearing. (See, e.g., Petition at 22 [“This Court should decide whether the amended regulations conflict with section 1861.10 by empowering the Commissioner to compensate consumer groups absent a public hearing”].) But, as this Court stated in *20th Century, supra*, “[m]uch is necessarily left to the Insurance Commissioner, who has broad discretion to adopt rules and regulations as necessary to promote the public welfare.” (*Id.* at 245, quoting *Calfarm, supra*, 48 Cal.3d at 824-825.) Indeed, this Court has expressly recognized the Commissioner’s authority to “tak[e] whatever steps are necessary to reduce the job [of rate review and approval] to manageable size” (*20th Century, supra*, 8 Cal.4th at 245), provided that those steps are consistent with Proposition 103’s broad mandate for public participation.

This well-settled principle, twice confirmed by this Court in the context of prior challenges by the insurance industry to the Commissioner’s regulations implementing the initiative statute, is the basis for the Court of Appeal’s decision. (See, e.g., *ACIC, supra*, 180 Cal.App.4th at 1049, citing *Calfarm, supra* [“Proposition 103 does not provide a detailed method of processing and deciding rate change applications. Many procedures and details were necessarily left to regulations and rules to be promulgated by the Commissioner”].) In applying these principles, the Court of Appeal correctly determined that the 2007 Amendments “are consistent with Proposition 103 and valid” (*id.* at 1047) because they comport with the statutory language of section 1861.10(b), which requires compensation to

be awarded to any person who substantially contributes to *any* order of the Commissioner or a court (*ibid.*), and that the Commissioner’s definition of “rate proceeding” falls within the definition of “proceeding” in section 1861.10(a) (*ACIC, supra*, 180 Cal.App.4th at 1049). There is nothing remarkable about this determination, which is based upon the plain text of the statute and completely conforms to this Court’s prior decisions construing Proposition 103.

Petitioners also hyperbolically claim that review of the Court of Appeal’s decision is necessary because it “may profoundly affect the system of insurance rate regulation in California and the role consumer representatives play in that system.” (Petition at 7.) As the Court of Appeal correctly found, however, the Commissioner’s 2007 Amendments promote consumer participation in rate proceedings, and this result is entirely consistent with section 1861.10 and “Proposition 103’s goal of fostering consumer participation in the rate-setting process,” as emphasized by this Court in *State Farm, supra*, 32 Cal.4th at 1043. As this Court has recognized:

public interest interveners...speak for a substantial segment of the population that otherwise may go unheard....the commission staff cannot fully and adequately represent all facets of the public interest,.... Public interest interveners therefore fill a gap in the ratemaking process.

....participation of the general public in ratemaking proceedings “is to be commended, and even encouraged.”

(*Consumers Lobby Against Monopolies v. Public Utilities Commission* (1979) 25 Cal.3d 891, 911.) Thus, the impact of the Court of Appeal’s decision upholding the 2007 Amendments on the system of insurance regulation will be to ensure that the public’s interest in advocating for rates that are fair and affordable is adequately represented, which is precisely what the voters intended.

The final issue of which Petitioners seek review is the Court of Appeal’s decision upholding the trial court’s determination that Petitioners should pay the attorneys’ fees and expenses of Intervenor The Foundation for Taxpayer and Consumer Rights (“FTCR”) in this matter pursuant to section 1861.10(b).<sup>4</sup> Petitioners offer no reason, however, why this raises an unsettled issue of law warranting review. Indeed, they devote just over a page to it in their discussion, rehashing the same arguments that were correctly rejected by the courts below. Petitioners argue that attorneys’ fees and costs in Proposition 103 cases must, “[b]y default,” be paid by the Department of Insurance, a prevailing party in this matter. (Petition at 27-28.) Again, nothing in the statute, however, supports their argument. As the Court of Appeal correctly held, since the statute is silent as to who is required to pay fees to consumer representatives in a case brought by insurance trade associations challenging a regulation implementing Proposition 103, “whether the award is payable by the insurer is discretionary.” (*ACIC, supra*, 180 Cal.App.4th at 1055.) Indeed, the wording of section 1861.10(b) in this regard (“[t]he commissioner or a court shall award reasonable advocacy fees and expenses to any person who . . . .”) is very similar to other fee-shifting provisions, which do not specify who should pay the award.<sup>5</sup> It is a standard formulation for courts to be vested with discretion to determine an appropriate award and the responsible party, and Petitioners have cited no authority to the contrary.

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<sup>4</sup> Notably Petitioners do not seek review of the Court of Appeal’s decision that FTCR is *entitled* to an award of fees and expenses (see *ACIC, supra*, 180 Cal.App.4th at 1054-55). Petitioners only object to *who* should pay that award.

<sup>5</sup> See, e.g., Civil Code § 1780(d) (the Consumers Legal Remedies Act); Civil Code § 1811.1 (the Unruh Act); Civil Code § 2983.4 (the Rees-Levering Act.) These statutes all authorize an award of fees, but do not expressly state who pays the award.

FTCR respectfully submits that the Court should deny the Petition for Review and allow the unanimous decision of the Court of Appeal to stand because it properly construes the statute consistent with its underlying goal of promoting consumer participation in the rate-setting process.

### **BACKGROUND AND HISTORY OF THE CASE**

#### **A. Proposition 103 Established a Framework for the Review and Approval of Rates Imbued with Public Participation and Oversight.**

Proposition 103 “made numerous fundamental changes in the regulation of automobile and other forms of insurance in California.” (*20th Century, supra*, 8 Cal.4th 216, 240.) Declaring that “[t]he existing laws inadequately protect consumers and allow insurance companies to charge excessive, unjustified and arbitrary rates” (Prop. 103, § 1; CT 439), the voters “replace[d] the former system for regulating insurance rates (which relied primarily upon competition between insurance companies) with a system in which the commissioner must approve such rates prior to their use” (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1259).

Proposition 103 ensured the accountability of the Commissioner in carrying out his duties by providing the public with the same rights of access to data and ability to participate in regulatory proceedings as the insurance industry. To achieve that goal, Proposition 103 provides for public notice of all rate applications (§ 1861.05(c)), public access to all information provided to the Commissioner by the industry (§ 1861.07; see generally *State Farm, supra*), and broad rights of public participation and compensation in administrative and judicial proceedings to encourage consumers to enforce Proposition 103 (§ 1861.10; see generally, e.g., *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968 [finding that section 1861.10 authorized any person to bring an Unfair Competition Law claim to enforce provisions of Proposition 103]).

Relevant to this case is section 1861.10, which serves “Proposition 103’s goal of fostering consumer participation in the rate-setting process” (*State Farm, supra*, 32 Cal.4th at 1043), providing:

(a) Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter [chapter 9], challenge any action of the commissioner under this article [article 10], and enforce any provision of this article.

(b) The commissioner or a court shall award reasonable advocacy and witness fees and expenses to any person who demonstrates that (1) the person represents the interests of consumers, and, (2) that he or she has made a substantial contribution to the adoption of any order, regulation or decision by the commissioner or a court. Where such advocacy occurs in response to a rate application, the award shall be paid by the applicant.

**B. The Commissioner’s 2007 Amendments Ensure Compensation for Consumer Representatives’ Substantial Contribution to Rate Proceedings, Whether or Not They Result in a Formal Adjudicative Hearing.**

Consistent with section 1861.10, its underlying purpose, and the Commissioner’s inherent authority to “reduce the job to manageable size” (*20th Century, supra*, 8 Cal.4th at 245, quoting *Calfarm, supra*, 48 Cal.3d at 825), the Commissioner amended his consumer participation and compensation regulations in 2007. The primary 2007 Amendments clarified, consistent with the Commissioner’s regulations first adopted in 1995 and longstanding practice, that “a ‘rate proceeding’ is established upon the submission of a petition for hearing.” (10 CCR § 2661.1(h); accord § 2651.1(h)) and that “[a] substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied.” (10 CCR § 2661.1(k).)

The Commissioner determined that the amendments were necessary “to make clear that *advocacy performed by a consumer representative ... 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.”* (CT 343, emphasis added; see also *ACIC, supra*, 180 Cal.App.4th at 1039-41 [detailing Commissioner’s findings and reasons for the 2007 Amendments].) FTCR, insurance trade association Petitioners, and other consumer organizations, including Public Advocates and the Center for Public Interest Law, submitted written comments and testified in support of the Commissioner’s proposed regulations. (*ACIC, supra*, 180 Cal.App.4th at 1041-42.)

**C. The Trial Court Properly Upheld the 2007 Amendments and Awarded FTCR Its Reasonable Attorneys’ Fees and Expenses.**

After the Commissioner rejected their arguments in the rulemaking proceeding (CT 383-85; 389-397), insurance trade association Petitioners, filed this suit, claiming that the 2007 Amendments conflict with Insurance Code sections 1861.05 and 1861.10. (*ACIC, supra*, 180 Cal.App.4th at 1043.) FTCR was granted leave to intervene, filed a comprehensive brief in opposition to the writ petition, and also participated in oral argument. (*Id.* at 1044; CT 507-27, 550-628; 5/07/08 RT *passim*, 7/25/08 RT *passim*.)

The trial court held that the 2007 Amendments are consistent with Proposition 103 and its underlying purposes, rejecting Petitioners’ arguments. (See, e.g., CT 703-04.)<sup>6</sup>

Relying on this Court’s decision in *State Farm, supra*, the trial court ruled that “[t]he Commissioner reasonably interpreted th[e] statutory mandate by adopting the Amended Regulations to aid the objective of Proposition 103 by encouraging consumer participation in the rate review process, and not just in formal hearings.” (CT 704.) The court cited

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<sup>6</sup> The trial court adopted its July 25, 2008 tentative ruling as the final ruling of the court, as orally modified. (CT [fees appeal] 209.)

Proposition 103's stated purposes "to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians" (Prop. 103 § 2) and the centrality of "[c]onsumer participation in the rate review process . . . to this objective." (*Ibid.*, citing *State Farm, supra*, 32 Cal.4th 1029, 1045.)

The trial court explicitly ruled that the 2007 Amendments are consistent with section 1861.10, "because they permit consumer representatives to collect advocacy fees for work performed during the rate review process, specifically during pre-hearing negotiations, as long as the consumer or representative made a 'substantial contribution' to the adoption of any order, regulation or decision." (CT 704.)

Finally, the trial court awarded FTCCR its attorney fees and expenses pursuant to section 1861.10(b). (CT [fees appeal] 208-209; 7/25/08 RT 22:26-27.)

**D. A Unanimous Court of Appeal Affirmed the Trial Court's Decision Upholding the 2007 Amendments.**

Petitioners appealed both the denial of the writ and the award of attorneys' fees. (CT 719-720; CT [fees appeal] 210-211). They argued that the amended regulations "conflict with and enlarge the scope of sections 1861.05 and 1861.10." (*ACIC, supra*, 180 Cal.App.4th at 1046; see also AOB 25-31.) Petitioners claimed that the Commissioner is empowered to award compensation for consumer participation only in formal adjudicative hearings, but not in conjunction with other portions of the rate-setting process. (*ACIC, supra*, 180 Cal.App.4th at 1043.)

The Court of Appeal rejected the insurance trade associations' arguments and unanimously agreed with the Commissioner and the trial court, ruling that the 2007 Amendments "allow compensation for

participation in the rate-setting process beginning with the submission of a petition for a hearing or the Commissioner's notice of a rate hearing, even if there is no public rate hearing" and concluding that "the amended regulations are consistent with Proposition 103 and valid." (*ACIC, supra*, 180 Cal.App.4th at 1047.)

In reaching its decision, the Court of Appeal quoted and discussed the plain language of the relevant statutory provision:

Subdivision (b) sets out two requirements for an award of compensation: (1) representation of consumer interests and (2) substantial contribution to the adoption of an order, regulation, or decision by the Commissioner or a court.

(*Ibid.*) As the Court of Appeal properly recognized, this provision contains "the only *statutory requirements* for compensation," and contrary to Petitioners arguments, "does not expressly or by implication require that the order, regulation, or decision of the Commissioner be adopted only after a public hearing, or only after any specific procedure." (*Ibid.*)

In reaching its decision, the Court of Appeal also rejected insurance trade associations' attempts to create a conflict between the Commissioner's 2007 Amendments and section 1861.10(a). In doing so, it followed this Court's decisions in *20th Century* and *Calfarm*, stating:

not all details of the administrative rate review process are "established" by the statutes. As noted in *Calfarm* [cites], Proposition 103 does not provide a detailed method of processing and deciding rate change applications. Many procedures and details were necessarily left to regulations and rules to be promulgated by the Commissioner. In point, subdivision (a) of section 1861.10 refers broadly to "any proceeding *permitted* or established pursuant to [chapter 9]." (Italics added.)

Proposition 103 contemplates or permits public participation and intervention in the rate review process. Proceedings arising out of an insurer's rate change application, and which entail public participation and intervention in the rate review process, are procedures "permitted" and "established" by

chapter 9. The “rate proceeding” commences with the submission of a petition for a hearing or with a notice of a hearing. (Reg. 2661.1, subd. (h).) The “rate proceeding” thus constitutes a proceeding “permitted” pursuant to chapter 9 and falls within the ambit of section 1861.10, subdivision (a). Consequently, the amended regulations pertaining to rate proceedings are consistent with the latter statutory provision.

(*Id.* at 1048-49.)

Finally, the Court of Appeal upheld the trial court’s award of attorneys’ fees and expenses to FTCCR, finding that “the instant petition for a peremptory writ of mandate, seeking judicial review of the amended regulations, is a proceeding permitted and established pursuant to chapter 9.” (*Id.* at 1055.) As noted above, Petitioners do not seek review of this portion of the Court of Appeal’s decision, but claim that the Department of Insurance should pay the award and not them. The Court of Appeal also rejected this argument, fully explaining its reasoning in light of the plain language of the statute. (*Ibid.*)

## **DISCUSSION**

The Court of Appeal’s decision upholding the 2007 Amendments is important because it vindicates the voters’ important purposes of promoting procedural fairness and sound decision-making by means of full consumer participation in the insurance rate-setting process. Contrary to the Petition, however, that decision raises no *unsettled* questions of law. The Court of Appeal reached its decision by properly applying well-settled principles that this Court has enunciated in its previous opinions interpreting Proposition 103. Petitioners have failed to point to any legal authority that would indicate conflict or controversy regarding the Court of Appeal’s findings, reasoning, or conclusions.

**I. THE COURT OF APPEAL’S DECISION UPHOLDING THE 2007 AMENDMENTS AS CONSISTENT WITH SECTION 1861.10 RESTS ON WELL-SETTLED LEGAL PRINCIPLES ARTICULATED BY THIS COURT.**

The first issue of which Petitioners seek review is whether the 2007 Amendments conflict with or expand the scope of section 1861.10. They claim that conflict lies in the Commissioner’s provision for an award of compensation to consumer representatives who make a substantial contribution in “proceedings” on a rate application that conclude without a formal adjudicative hearing. (Petition at 2, 23.) This issue raises no unsettled questions of law. To the contrary, the Court of Appeal’s decision rejecting Petitioners’ arguments explicitly relied upon well-settled authority of this Court regarding the powers of the Commissioner, Proposition 103, and statutory interpretation. (See *ACIC, supra*, 180 Cal.App.4th at 1049-54.)

First, the Court of Appeal correctly found the regulations to be consistent with the plain language of subdivision (b). As the Court noted,

Subdivision (b) sets out two requirements for an award of compensation: (1) representation of consumer interests and (2) substantial contribution to the adoption of an order, regulation, or decision by the Commissioner or a court.

(*ACIC, supra*, 180 Cal.App.4th at 1047.) In rejecting Petitioners’ construction of this provision, the Court of Appeal reasoned that:

Subdivision (b) does not expressly or by implication require that the order, regulation, or decision of the Commissioner be adopted only after a public hearing, or only after any specific procedure.

(*Ibid.*)

Next, the Court of Appeal followed this Court’s findings in *Calfarm* and *20th Century* in ruling that “Proposition 103 does not provide a detailed method of processing and deciding rate change applications. Many procedures and details were necessarily left to regulations and rules to be

promulgated by the Commissioner.” (*ACIC, supra*, 180 Cal.App.4th at 1049, citing *Calfarm, supra*, 48 Cal.3d at 824.) Applying this principle, the Court of Appeal concluded that:

Proposition 103 contemplates or permits public participation and intervention in the rate review process. Proceedings arising out of an insurer’s rate change application, and which entail public participation and intervention in the rate review process, are procedures “permitted” and “established” by chapter 9. The “rate proceeding” [as defined by the Commissioner] commences with the submission of a petition for a hearing or with a notice of a hearing. (Reg. 2661.1, subd. (h).) The “rate proceeding” thus constitutes a proceeding ‘permitted’ pursuant to chapter 9 and falls within the ambit of section 1861.10, subdivision (a). Consequently, the amended regulations pertaining to rate proceedings are consistent with the latter statutory provision.

(*ACIC, supra*, 180 Cal.App.4th at 1049.) Petitioners identify no legal authority in conflict with either the underlying principles or the Court of Appeal’s conclusion.

Finally, the Court of Appeal rejected Petitioners’ arguments attempting to limit public participation to rate hearings as contrary to the uncodified provision of Proposition 103, which states that “[t]his act shall be liberally construed and applied in order to fully promote its underlying purposes.” (Stats.1988, p. A-290, § 8.)” (*ACIC, supra*, 180 Cal.App.4th at 1051-52.) Relying on this Court’s prior precedent, the Court of Appeal further recognized that Petitioners’ “construction is also contrary to the goal of fostering consumer participation in the administrative rate-setting process, one of the purposes of Proposition 103.” (*ACIC, supra*, 180 Cal.App.4th at 1052, citing *State Farm Mutual Automobile Ins. Co. v. Garamendi, supra*, 32 Cal.4th at 1035.)

In sum, the Court of Appeal accurately followed this Court’s decisions in correctly deciding that the 2007 Amendments are consistent with the statute’s language, its underlying purpose, and the Commissioner’s

broad powers to implement and enforce the statute. There is no unsettled question of law for this Court to review.

**II. PETITIONERS' CLAIMS REGARDING THE CONSEQUENCES OF THE COURT OF APPEAL DECISION PRESENT NO UNSETTLED QUESTION OF LAW WITH REGARD TO ITS INTERPRETATION OF SECTION 1861.10.**

Petitioners' alternative proffered ground for review of the Court of Appeal's decision on the merits – whether subdivision (a) and (b) of section 1861.10 must be harmonized – also raises no question of unsettled law. Seeking to invent an issue where none exists, Petitioners claim that “the Court of Appeal's opinion means that consumer groups will be entitled to fees whenever they substantially contribute to the outcome of *any judicial proceeding or any proceeding before the commissioner*, whether or not the proceeding involves insurance rates or arises under chapter 9.” (Petition at 21, italics in the original.) In other words, Petitioners argue that Proposition 103 could be turned into a general fee-shifting statute for all civil litigation. This is utter hyperbole.

The Court of Appeal did not attempt to apply subdivision (b) to “any judicial proceeding or any proceeding before the Commissioner.” Instead, the Court of Appeal's decision on the merits was expressly directed to the issue before it – whether the 2007 Amendments are “consistent and not in conflict with the statute” under the standard set forth in Government Code section 11342.2. (*ACIC, supra*, 180 Cal.App.4th at 1044.) Moreover, the regulations at issue expressly apply to proceedings “conducted pursuant to Chapter 9 of Part 2 of Division 1 of the Insurance Code.” (10 CCR § 2649.1 [stating that “[t]his subchapter [of which the regulations at issue are a part] sets forth the rules of practice and procedure governing proceedings 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’”].) Thus, Petitioners seek nothing more than

an improper advisory opinion as to how courts may apply the Court of Appeal's decision to other cases in the future.

Moreover, Petitioners' argument that the Court of Appeal failed to harmonize subdivisions (a) and (b) of section 1861.10 is utterly false. As discussed above, the Court of Appeal explicitly held that the Commissioner's 2007 Amendments are consistent both with subdivision (b), which does not expressly limit compensation to instances when a substantial contribution is made to the Commissioner's orders or decisions after a public hearing (see, e.g., *ACIC, supra*, 180 Cal.App.4th at 1047-1048) and with subdivision (a)'s use of the term "proceeding" (see, e.g., *ACIC, supra*, 180 Cal.App.4th at 1049-1050).

In reaching its decision, the Court of Appeal pointed out that Petitioners are mounting a facial challenge to the regulations. (*ACIC, supra*, 180 Cal.App.4th at 1054.) Accordingly, Petitioners "must establish that *no set of circumstances exists under which the [law] would be valid*. The moving party must show that the challenged statutes or regulations inevitably pose a present total and fatal conflict with applicable prohibitions." (*Ibid.*, citing *T.H. v. San Diego Unified School Dist.* (2004) 122 Cal.App.4th 1267, 1281, alterations in original.) Having fully reviewed Petitioners' arguments, the statute, and this Court's opinions on Proposition 103, the Court of Appeal correctly concluded that Petitioners "failed to establish that the amended regulations are inconsistent with the governing statutes and the trial court properly rendered a judgment denying Insurance Companies' petition for a peremptory writ of mandate." (*Ibid.*)

### **III. PETITIONERS IDENTIFY NO UNSETTLED QUESTION OF LAW WITH RESPECT TO THE COURT OF APPEAL'S DECISION UPHOLDING THE TRIAL COURT'S AWARD OF ATTORNEYS' FEES AND EXPENSES.**

Finally, Petitioners seek review of the Court of Appeal's decision upholding the trial court's order requiring Petitioners to pay FTICR's award

of statutory attorneys' fees. Again, the Petitioners fail to identify any legal opinions indicating conflict or controversy on this issue. Petitioners argue that since section 1861.10(b) does not specify who should pay the award, the Department of Insurance should pay the award, "[b]y default." (Petition at 27.) The Court of Appeal, however, found no basis in statute for Petitioners' argument, stating that

[t]heir position is not supported by the last sentence of subdivision (b) of section 1861.10, stating that "[w]here such advocacy occurs in response to a rate application, the award shall be paid by the applicant." That sentence means that where the conditions for compensation are met *in response to a rate application*, the award must be paid by the insurer. But in all other circumstances, whether the award is payable by the insurer is discretionary. A judicial review arising out of a rulemaking proceeding presents such other circumstance, so an award against the insurer is in the discretion of the trial court. Insurance Companies make no further argument that imposing liability on them for FTCR's award constituted an abuse of discretion.

(*ACIC, supra*, 180 Cal.App.4th at 1055, emphasis in original.) Moreover, the Court of Appeal properly found that section 12979 addressing "administrative and operational costs of the Department," does not require courts "to shift liability for compensation from insurers to the Department" in court proceedings where insurers have unsuccessfully challenged the Commissioner's regulations. (*Ibid.*)

Thus, the Petition for Review presents no unsettled questions of law for this Court to address regarding the trial court and Court of Appeal's correct conclusion that the statute allows for Petitioners to pay Intervenor's fee award for making a substantial contribution to the trial court's decision.

### CONCLUSION

This Court's Proposition 103 jurisprudence leaves it well-established that one of the initiative's main goals is to "foster consumer participation in the rate-setting process," and that the Commissioner has broad discretion to

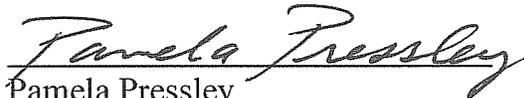
carry out that mandate in the details of his regulations governing rate review proceedings. The Petition raises no unsettled questions of law regarding the Commissioner's broad power to implement Proposition 103, including the power to encourage broad public participation in rate approval proceedings, whether or not they entail a formal adjudicative hearing. The 2007 Amendments fall well within the statutory language and are intended to further the well-settled statutory goals enumerated by this Court. For all the foregoing reasons, the Petition for Review should be denied.

Dated: March 1, 2010

Respectfully Submitted,

Harvey Rosenfield  
Pamela Pressley  
Todd M. Foreman  
CONSUMER WATCHDOG

Richard A. Marcantonio  
PUBLIC ADVOCATES, INC.

BY:   
Pamela Pressley  
Attorneys for Intervenor  
The Foundation for Taxpayer and  
Consumer Rights

**RULE 8.504(d)(1) CERTIFICATE OF COMPLIANCE**

The text of this answer consists of 4,617 words as counted by the word-processing program used to generate the document.

Dated: March 1, 2010

Harvey Rosenfield  
Pamela Pressley  
Todd M. Foreman  
CONSUMER WATCHDOG

Richard A. Marcantonio  
PUBLIC ADVOCATES, INC.

BY:   
Pamela Pressley  
Attorneys for Intervenor  
The Foundation for Taxpayer and  
Consumer Rights

**ATTACHMENT 1**

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

RH06092874

November 8, 2006

FINAL 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.

(ij) "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.

(jk) "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 (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 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 (3) 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 ~~hearings~~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.

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).

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

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

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

On March 1, 2009, I caused service of true and correct copies of the following document:

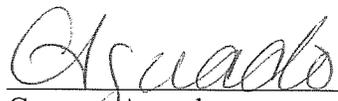
**INTERVENOR THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS' ANSWER TO PETITION FOR REVIEW**

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

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

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

Executed on March 1, 2009, at Santa Monica, California.

  
\_\_\_\_\_  
Carmen Aguado

**SERVICE LIST**

**Person Served**

**Method of Service**

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Michael A.S. Newman  
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Clerk of the Court  
Attn: The Honorable James C. Chalfant  
Los Angeles Superior Court, Dept. 85  
111 N. Hill Street  
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