



VIA EMAIL

September 27, 2019

Insurance Commissioner Ricardo Lara  
California Department of Insurance  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814

Bryant Henley  
Deputy Commissioner & Special Counsel  
California Department of Insurance  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814

Re: *September 17, 2019 public hearing on group plans and rates under  
Insurance Code section 1861.12*

Dear Commissioner Lara and Deputy Commissioner Henley:

We write to supplement Consumer Watchdog's oral testimony with our enclosed written testimony on group plans and rates under Insurance Code section 1861.12.

Furthermore, we request that this letter and the following materials be incorporated by reference into the record as part of Consumer Watchdog's testimony:

- (1) Consumer Watchdog's PowerPoint presentation, reviewed at the public hearing (appended to Consumer Watchdog's written testimony as Ex. 1);
- (2) Consumer Watchdog's June 24, 2019 submission in response to the Department's May 24, 2019 request for information from consumer groups, including all exhibits;
- (3) Consumer Watchdog's April 1, 2019 letter to Commissioner Lara apprising him of surcharges based on occupation in Mercury Insurance Company Rate Manual for private passenger auto class plan reflecting rates and class plan approved May 6, 2019 (appended to Consumer Watchdog's written testimony as Ex. 2); and
- (4) Consumer Watchdog's April 13, 2010 letter to Joel Laucher, then-Deputy Commissioner of the Rate Regulation Branch, objecting to proposed rate filing instructions for group plans under section 1861.12.

Additionally, we request that the following information related to the investigatory hearing be made publicly available in a timely manner upon closure of the evidentiary record on September 27, 2019:

- (1) The raw insurance industry data provided to the Department in response to the May 24 Request for Information;

- (2) The names and addresses of each of the companies that the Department asked to provide the requested data;
- (3) The names and addresses of each of the companies that provided the requested data;
- (4) All written testimony submitted to the Department, including, but limited to, submissions by insurance companies and trade groups, consumer groups, and individual consumers;
- (5) A copy of the sign-in list, compiled by Department staff, of those who attended the hearing; and
- (6) A copy of the hearing transcript.

At the hearing, the Department asked Consumer Watchdog when it first learned that insurance companies were utilizing so-called “affinity groups” based on occupation and education. Our best recollection from a review of our records indicates that Consumer Watchdog discovered and began to object to the Department’s practice of allowing companies to create separate programs and rates for selected occupations under the guise of Insurance Code section 1861.12 in the course of participating in proceedings on auto rate applications and class plans in 2008. We repeatedly stated in informal discussions in these proceedings that basing rates and premiums on unapproved rating factors such as education and occupation violated Insurance Code section 1861.02. We wrote a letter to the then-Deputy Commissioner of the Rate Regulation Branch on April 13, 2010, in which we objected to proposed rate filing instructions allowing the practice of so-called “affinity” groups based on occupation and urged that any rules regarding group program filings under section 1861.12 must be adopted by a regulation. (See Ex. A hereto.)

In response, the Department noticed a workshop that was held in December 2010 in which Consumer Watchdog participated. After no further action was taken by the Department to adopt a regulation after that workshop, Consumer Watchdog repeatedly objected in individual rate proceedings (in at least 8 proceedings over the last seven years) to permitting insurance companies to grant favorable treatment to motorists based on their level of education or status in elite professions. When we did so, Department personnel repeatedly promised that the agency would take action – but, in the meantime, continued to deny our petitions for hearing and to allow insurance companies to utilize these unlawful rating factors cloaked in the fabricated “affinity group” category.

We will be happy to provide you with copies of our petitions for hearing and correspondence objecting to the use of occupation and education to rate drivers under the guise of Insurance Code section 1861.12, as well as the Department’s decisions denying our petitions, if you would like to review them. It was the Department’s repeated denials of our petitions for hearing in rate proceedings that led Consumer Watchdog to petition Commissioner Jones for a formal rulemaking proceeding in 2014 and to petition Commissioner Lara in February 2019.

Finally, we were troubled to learn that only 33 auto insurance companies provided the requested data – about one third of the 95 insurance companies that CDI surveyed. It was even more appalling that all but one insurance industry executive in attendance at the September 17 workshop refused the Department’s invitation to testify about the use of occupation and education to set premiums or to respond to the damning evidence of discrimination exposed by the Department’s analysis. Clearly the insurance companies intend to stonewall the inquiry into

their use of unlawful rating factors. You should immediately require the remaining auto insurance companies in California to comply with your request for information, if necessary, by compelling their compliance with a subpoena.

The information distributed by the Department at the September 17 hearing provides further support for the conclusion that insurance companies are utilizing occupation and education as unlawful rating factors in violation of California law. Consumer Watchdog looks forward to working with the Department on a regulation to prohibit the improper use of “affinity marketing plans” generally, and the use of occupation and education specifically, to determine rates and premiums for automobile insurance.

Sincerely,



Daniel L. Sternberg



Pamela Pressley

# **Exhibit A**



April 13, 2010

Via E-mail

Joel Laucher, Deputy Commissioner, Rate Regulation Branch  
California Department of Insurance  
45 Fremont, 23rd Floor  
San Francisco, CA 94105

Re: Comments Regarding Proposed Amendments to Prior Approval Rate Filing Instructions

Dear Mr. Laucher,

I write on behalf of Consumer Watchdog regarding proposed amendments to the Prior Approval Rate Filing Instructions. Consumer Watchdog appreciates the Department's initiative in addressing rate applications for group filings purportedly made under Insurance Code section 1861.12.

Any rules regarding group program filings, however, must be adopted by regulation. The proposed changes to the prior approval rate filing instructions clearly embody a "rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code § 11340.600.) As such, pursuant to subdivision (a) of Government Code section 11340.5, the Commissioner must adopt the proposed instructions as a regulation and file them with the Secretary of State. Including such rules in the prior approval filing instructions without following the proper procedures makes them an improper underground regulation.


Consumer Watchdog has long believed that the current structure that allows companies to create separate programs for certain occupations and other so-called "affinity" groups runs afoul of Proposition 103, and that public hearings and regulation are the proper way to determine how to implement the group insurance provision in the statute. Currently, many insurers file rating plans and sell discounted coverage to drivers who meet some preferred qualification pre-determined by the insurance company purportedly as "group programs" pursuant to section 1861.12. Most, if not all, of such group program filings that Consumer Watchdog has reviewed are, in fact, in violation of Insurance Code sections 1861.02, 1861.12, and unfairly discriminatory. The statute allows insurers to "issue [] insurance coverage on *a group plan*" (emphasis added), but it does not permit insurers to carve out large sections of the public based upon unapproved rating factors, like occupation, and market different rates to these select few.

Comments of Consumer Watchdog  
Re: Amendment Prior Approval Rate Filing Instructions  
April 13, 2010  
Page 2

Substantively, the proposed amendments to the instructions are deficient in at least two regards. First, the instructions contradict Title 10 of the California Code of Regulations, section 2644.23, by allowing combined experience to be used as the complement of credibility. Secondly, the instructions are not clear as to what insurers must provide as justification for each individual program's rate level, which is discussed on page 5 of the instructions. As currently drafted, insurers must merely "justify" each individual program's rate level without further explanation of how such "justification" will be accomplished. If the Department intends that each individual program's rate change must be directly proportional to each program's loss ratio, then the instructions should make this explicit.

Consumer Watchdog strongly urges the Commissioner to conduct workshops and/or notice a public rulemaking hearing on proposed regulations to properly implement Insurance Code section 1861.12 and any associated rate filing instructions. This will ensure compliance with Proposition 103 and lead to consistency in rate filing and approvals. Thank you for considering our views.

Sincerely,



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Todd M. Foreman, Esq.  
Staff Attorney



Testimony of Daniel L. Sternberg

Consumer Watchdog

Before

The California Department of Insurance Investigatory Hearing on the Use of Group Rating  
in Private Passenger Automobile Insurance

September 27, 2019

Consumer Watchdog is a nonprofit organization dedicated to providing an effective voice for taxpayers and consumers in an era when special interests dominate public discourse, government, and politics. A core focus of Consumer Watchdog's advocacy is the representation of the interests of insurance consumers and policyholders, particularly as they relate to the implementation and enforcement of Proposition 103, in matters before the California Department of Insurance (the "Department" or "CDI"), the Legislature, and the courts. Since 2003, Consumer Watchdog's challenges in rate proceedings before the CDI have saved consumers over \$3.4 billion.

Consumer Watchdog strongly supports the Department of Insurance's inquiry into whether the insurance industry's practice of surcharging motorists based on their occupations, education levels, or any generic classification pertaining to either, violates Proposition 103. The answer to this investigatory hearing's inquiry is that it does. Proposition 103 bars insurance companies from using occupation and education to set auto insurance rates and premiums: they have never been shown to have a substantial relationship to a driver's risk of loss and they have never been adopted by the Commissioner as rating factors. Across the nation, the insurance industry's use of occupation and education has been uniformly criticized. Massachusetts has explicitly banned education, income, and occupation as rating factors by a regulation adopted in 2007.<sup>1</sup>

Consumer Watchdog, along with ten civil rights and public interest organizations, petitioned Commissioner Dave Jones for a regulation banning this practice in January 2014 and Commissioner Ricardo Lara five years later in February 2019. Still, rate applications with these disparities continue to be approved today. Consequently, low-income Californians are still paying unjustified and discriminatory surcharges based on their occupation or education. It is time to rid California's insurance marketplace of this pernicious form of discrimination.

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<sup>1</sup> The Massachusetts Division of Insurance's rate regulations prohibit the use of rating factors based on sex, marital status, race, creed, national origin, age, occupation, income, education, or homeownership in classification plans, rules, rates, or rating plans. (211 Mass. Code Regs. 79.05(11)-(12).)

Consumer Watchdog urges the Commissioner to ban the use of occupation and education in setting rates and premiums, just as the Department did with the use of gender.

The purpose of Proposition 103 is clear. The voters of California passed Proposition 103 to ensure that insurance is fair, available, and affordable for all Californians. Auto insurance premiums in California have to be based primarily on a motorist's driving safety record, the number of miles driven annually, and the motorist's years driving experience. Insurance companies are allowed to consider other optional rating factors but only if the company can prove, in a public hearing, that they have a "substantial relationship to the risk of loss" and they are adopted by regulation as an approved optional rating factor by the elected Insurance Commissioner.<sup>2</sup> It is a system designed to make insurance rates fair and affordable, reward good drivers, and eliminate the arbitrary discrimination against the middle class that was rampant in the 1980s when the voters passed Proposition 103.

Unfortunately, as demonstrated by recent premium quotes obtained by Consumer Watchdog, this practice continues today.<sup>3</sup> In fact, CDI's analysis of industry data obtained through this investigatory hearing confirms that "affinity" marketing plans based on drivers' occupational and educational background disproportionately and adversely impact drivers residing in ZIP codes with lower per capita incomes; lower levels of educational attainment; and with a lower percentage of Non-Hispanic White population.

### **Education and Occupation Are Being Used as Rating Factors and is Discriminatory**

In California today, auto insurance companies are using motorists' education levels and occupations as unapproved rating factors that is resulting in rates that are unfairly discriminatory. A number of auto insurance companies, including seven of the top ten which collectively have over 50% of the market share, have submitted and had approved so-called "affinity group" programs as part of their applications to the Department of Insurance for rate or premium changes. These programs grant special discounts to those who happen to be employed in a professional or other preferred "occupation," usually one requiring a college degree or professional license such as attorneys, doctors and engineers.

Under California law, those who do not qualify for the "affinity" marketing plans must subsidize, through premium surcharges, those who do. This practice discriminates against drivers in less-skilled occupations and those without advanced degrees. Premium quotes obtained by Consumer Watchdog as recently as June 2019 show that education and occupation are being

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<sup>2</sup> Insurance Code section 1861.02(a) requires that premiums be determined principally by three specified rating factors: the insured's driving safety record, annual mileage, and years of driving experience—and, to a lesser extent, by any optional rating factors that "the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss." (Ins. Code § 1861.02(a)(4).) The current list of authorized optional rating factors can be found at 10 CCR § 2632.5(d).

<sup>3</sup> Consumer Watchdog respectfully requests that its June 24, 2019 submission in response to the Department's May 24, 2019 request for information in advance of public hearing on group plans and rates be incorporated by reference into the investigatory record. Unless indicated otherwise, the exhibits referenced hereinafter refer to the materials appended to Consumer Watchdog's June 24 submission.



used as rating factors across the industry—with surcharges of up to 14.31% on those who do not have one of the preferred professional occupations.<sup>4</sup>

This summary of online premium test quotes based on occupation and education, obtained for AAA, Farmers, GEICO, Progressive, Allstate, Mercury, and Liberty Mutual, shows uniformly that individuals who are not employed in an insurer's selected group of professional occupations with advanced degrees pay more for the same coverage, all other rating characteristics being equal.<sup>5</sup> These surcharges range from 1% to over 14% and are prohibited under Proposition 103.

For these premium test quotes, Consumer Watchdog created a driver profile to obtain online quotes from each company's website. The same driver profile was used for each online quote with the only change to the driver being that of the attribute tested for. Our test motorist was a 49-year-old female driver from Los Angeles with 33 years of driving experience. She is unmarried, owns her own car, primarily commutes to work, and her estimated annual mileage driven was between 11,001 and 12,000 miles.

Through Farmers' website we obtained premium test quotes for an accountant and a factory worker. With all attributes except profession being equal, our tests show that Farmers charges a factory worker \$172 more per year than an accountant. This is a surcharge of 13.97% because of the factory worker's profession.<sup>6</sup> For Liberty Mutual, the attribute tested for was also occupation. Through Liberty Mutual's website we obtained premium test quotes for an attorney and a construction worker. With all attributes except profession being equal, our tests show that Liberty Mutual charges a construction worker \$50 more per year than an attorney. This is a surcharge of 5.45% because of nothing more than the construction worker's profession.<sup>7</sup>

For AAA, we obtained separate premium quotes controlling for both occupation and education level. Through AAA's website we obtained premium test quotes for an engineer and a motorist with no professional affiliation, as well as a motorist with an alumni association membership and one with no college affiliation. With all attributes except profession being equal, our tests show that AAA charges a driver with no professional affiliation \$76 more per year than an engineer. This is a surcharge of 8.07% because of the motorist's profession. Similarly, AAA charges a motorist with no college affiliation 8.07% more than a driver who is an alumni association member.<sup>8</sup>

While insurance companies may claim that certain occupations correlate to a lower risk of loss, they have never made public any data to prove this claim, nor has the Commissioner adopted through a regulation occupation or education level as an approved optional rating factor. As a result, the discounts and surcharges based on occupation and education level are not subjected to the required weighting methodology formula to ensure that their impact does not outweigh the mandatory rating factors.

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<sup>4</sup> See Ex. A-1 at 1–2.

<sup>5</sup> *Id.* Consumer Watchdog's PowerPoint presentation reviewed at the September 17 hearing is appended as Ex. 1

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Moreover, of the 168 companies actively selling private passenger automobile insurance in California, 167 refused to submit to the Department’s questioning at the public hearing concerning the disproportionate harm “affinity” marketing plans have on communities of color and lower wage, less educated, and blue-collar California motorists. In an email to drum up support for the use of these illegal rating factors, however, the American Property Casualty Insurance Association did contend that occupations like teachers, police, nurses, firefighters, and members of the military and unions are at lower risk for auto accidents than others. But one reason why the voters passed Proposition 103 is to force insurance companies to justify their actions by publicly disclosing the data.

The industry’s “affinity groups” are in fact actually nothing more than a marketing scheme—with insurers choosing which kinds of people they want to give preferential rates and, in turn, sell more insurance products to. Consumer Watchdog’s review of class plans and rate applications submitted by insurance companies pursuant to Proposition 103 show the arbitrariness with which discounts and surcharges based on education level and occupation are applied.

For example, in the underwriting guidelines submitted with a rate application currently pending before the Department, Farmers claims that insureds who have an occupation listed in its Business and Professional Group I (which includes CPAs, dentists, doctors, educators and engineers) and Group II (which includes firefighters, nurses, librarians, police officers, and small business owners) “will be given the highest qualifying discount.” But in actuality, in its Rate Templates, Farmers is actually proposing to charge its Group II—including firefighters, nurses, and police officers—base premiums that are almost **5% more** than those of individuals not employed in any of these business and professional fields, and almost **7% more** than those of its Business and Professionals Group I—including doctors, dentists and engineers.<sup>9</sup>

Consumer Watchdog’s review of Farmers’ rate templates also shows that firefighters, nurses, police officers, and librarians are currently being charged higher rates than teachers, and its proposed rates will maintain that disparity.<sup>10</sup> What Farmers is marketing as an “affinity” discount to firefighters, nurses, police officers, librarians, and small business owners ***is in fact a premium surcharge.***

The wide variation of these discounts and surcharges between different insurance companies is further proof that occupation and education background are not substantially related to the risk of loss and result in unfairly discriminatory rates. Insurance companies want to attract customers who they deem desirable and are perhaps likely to buy more insurance. By adding a person’s occupation or education level into the equation, insurance companies are squeezing out those less economically advantaged by charging them more. As documented in Consumer Watchdog’s February 21, 2019 petition for rulemaking, education and occupation

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<sup>9</sup> See Ex. A-3.

<sup>10</sup> *Id.* Consumer Watchdog also found surcharges based on occupation in Mercury Insurance Company Rate Manual for private passenger auto class plan reflecting rates and class plan approved May 6, 2019. See Ex. A-4. A copy of our April 1, 2019 letter to Commissioner Lara apprising him of this information is appended as Ex. 2 to Consumer Watchdog’s written testimony, and we request that the letter be included in the record of this proceeding.

levels are simply thinly veiled surrogates for wealth, ethnicity, and race, which is unfair discrimination prohibited by Proposition 103.<sup>11</sup>

Because communities of color in California earn less and hold less wealth overall, African American and Latinx motorists bear a disproportionate burden from these surcharges. The California Senate Office of Research notes, for example, that “for 2010–14, Latinos tended to earn less than non-Latinos and were underrepresented among higher income brackets, overrepresented at lower income brackets, and more likely to live in poverty.”<sup>12</sup> White households in Los Angeles in 2014 had a median net worth of \$355,000. In comparison, Mexican and African American households had a median wealth of \$3,500 and \$4,000, respectively.<sup>13</sup>

### **The Voters Passed Proposition 103 to Allow Consumers to Negotiate Group Insurance Policies Under Insurance Code Section 1861.12—The Voters Did Not Authorize “Affinity” Marketing and Unfair Rate Discrimination**

Insurance companies contend that their “affinity” marketing plans that set rates and premiums based on a driver’s education level or occupation are authorized by Insurance Code section 1861.12. This argument is spurious. Section 1861.12 was enacted to permit groups of consumers to independently join together to negotiate a “group plan” with a single insurance company (much like group health plans), which historically had not been allowed in the property-casualty insurance market in California and across the nation. It is a provision that allows organized groups to negotiate collectively with insurance companies to achieve discounts based upon their shared characteristics as members of a legitimate, organized group and efficiencies in the sale and administration of policies.

“Affinity groups,” by contrast, are used as marketing schemes concocted by insurance companies based on impermissible rating characteristics such as insurers’ selected occupations and levels of education attained. The only thing that “affinity groups” have in common with Insurance Code section 1861.12 is the word “group,” chosen by the industry to try to fabricate an exemption from Insurance Code section 1861.02, which regulates auto insurance rating factors. The suggestion that these “affinity” marketing plans are authorized by Insurance Code section 1861.12 cannot be squared with Insurance Code section 1861.02’s system of mandatory and permissible rating factors. Such an interpretation would establish a loophole in Proposition 103 that would allow insurance companies to evade the voters’ explicit direction in Insurance Code section 1861.02 and the auto rating factor regulations that implement it.

This interpretation of Insurance Code section 1861.12 conflicts with the principles of statutory interpretation which require the text of each provision to be construed and harmonized as a whole in light of the voters’ intent and to achieve the stated purpose of the statute – to ensure

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<sup>11</sup> See Ex. A-7.

<sup>12</sup> California Senate Office of Research, “A Statistical Picture of Latinos in California 2017 Update,” July 2017, <https://latinocaucus.legislature.ca.gov/sites/latinocaucus.legislature.ca.gov/files/forms/Statistical%20Picture%20of%20Latinos%20in%20California%20-%202017%20Update.pdf>; see also Ex. A-7.

<sup>13</sup> Duke University et al., “The Color of Wealth in Los Angeles,” March 2016, [http://www.aasc.ucla.edu/besol/color\\_of\\_wealth\\_report.pdf](http://www.aasc.ucla.edu/besol/color_of_wealth_report.pdf); see also Ex. A-7.

that insurance is fair, available, and affordable. Obviously, the voters would not have enacted stringent regulation of automobile rating factors only to allow insurance companies to override section 1861.02 by creating an unregulated patchwork of occupation “groups” that fit their preferred unfairly discriminatory marketing and rating practices.

## **Conclusion**

The use of occupation and education as unauthorized rating factors increases the cost of insurance for lower wage, less educated, and blue-collar California motorists and is a direct violation of Proposition 103. The use of any rating factor that has not been adopted by the Commissioner by regulation and does not appear on the list of approved optional rating factors “shall constitute unfair discrimination,” which is a violation of Insurance Code sections 1861.02(c) and 1861.05(a). Yet that is exactly what is happening across California. These unfair surcharges drive up the cost of insurance for people who can least afford it, and skirt civil rights protections to allow insurers to charge non-white, lower wage drivers more.

Consumer Watchdog respectfully requests that the Department immediately proceed to a formal rulemaking barring the use of occupation and education as unapproved rating factors, and urges the Department to put in place a moratorium on “affinity” marketing plans based on a driver’s education level or occupation during the pendency of this investigatory hearing. Until the Department fully investigates and determines what, if any, uses of true group insurance plans—as intended by the voters under Insurance Code section 1861.12—should be permitted, no insurer should be permitted to submit rate applications that contain new education level- or occupation-based rates and premiums.

# **Exhibit 1**

## Every Doe



**Female**  
**DOB 1-1-1970**  
**Los Angeles, CA**  
**90004**  
**Unmarried**  
**Rents her home**

## Her Car

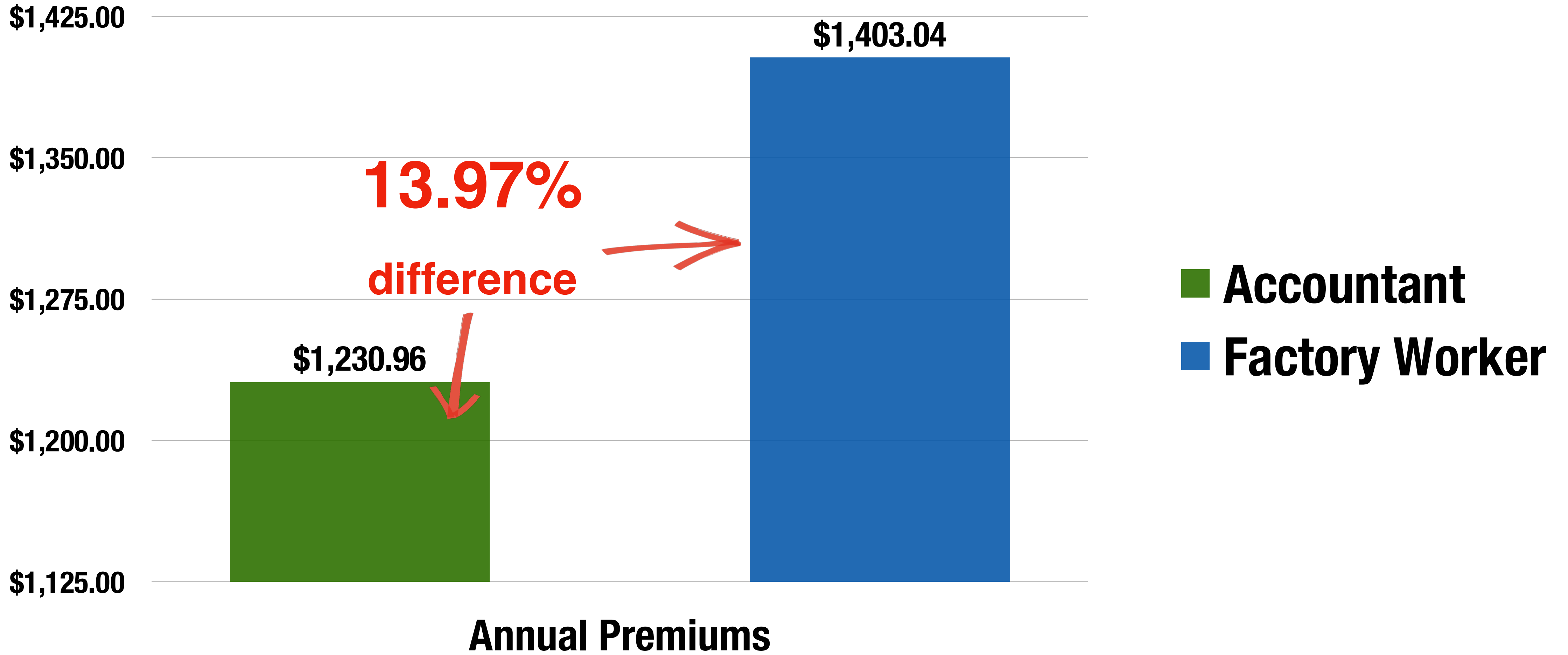


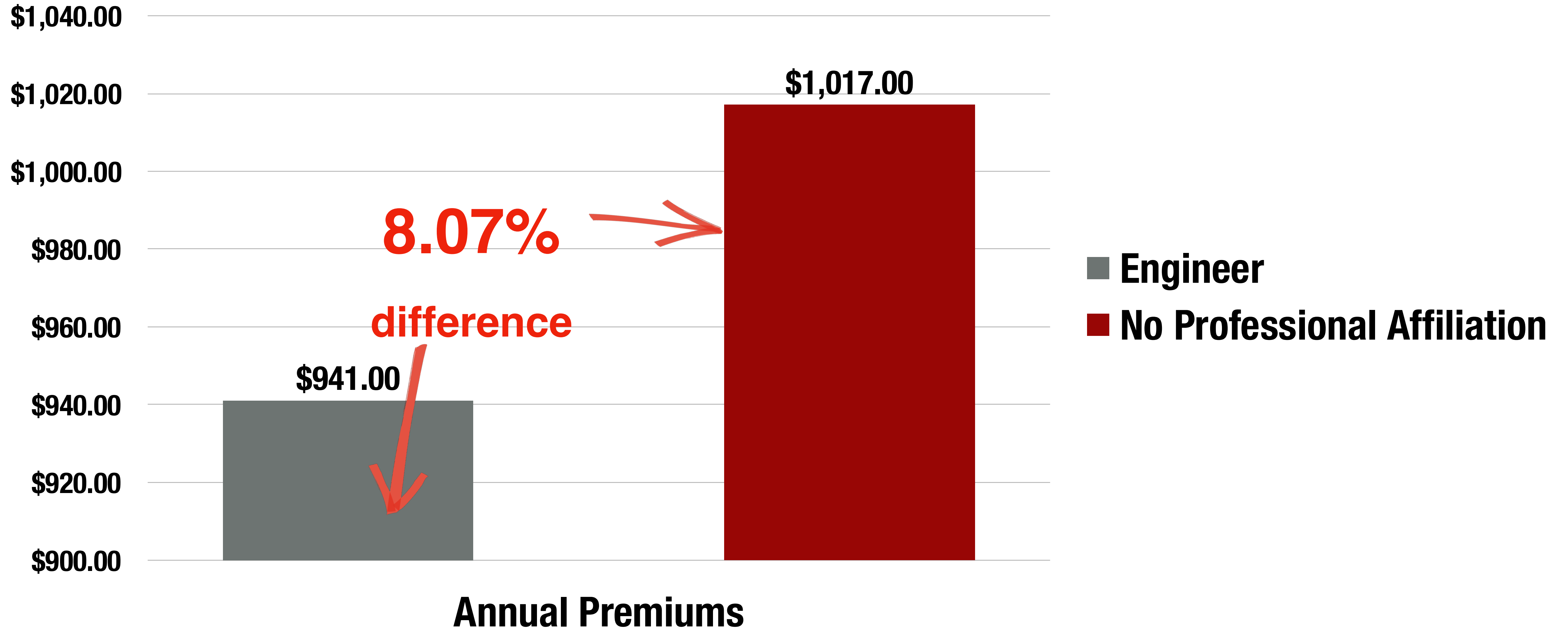
**2012 Lexus ES 350**  
**She owns her car**  
**Commutes to work 5 days/week**  
**5 miles each way**

## Her Insurance

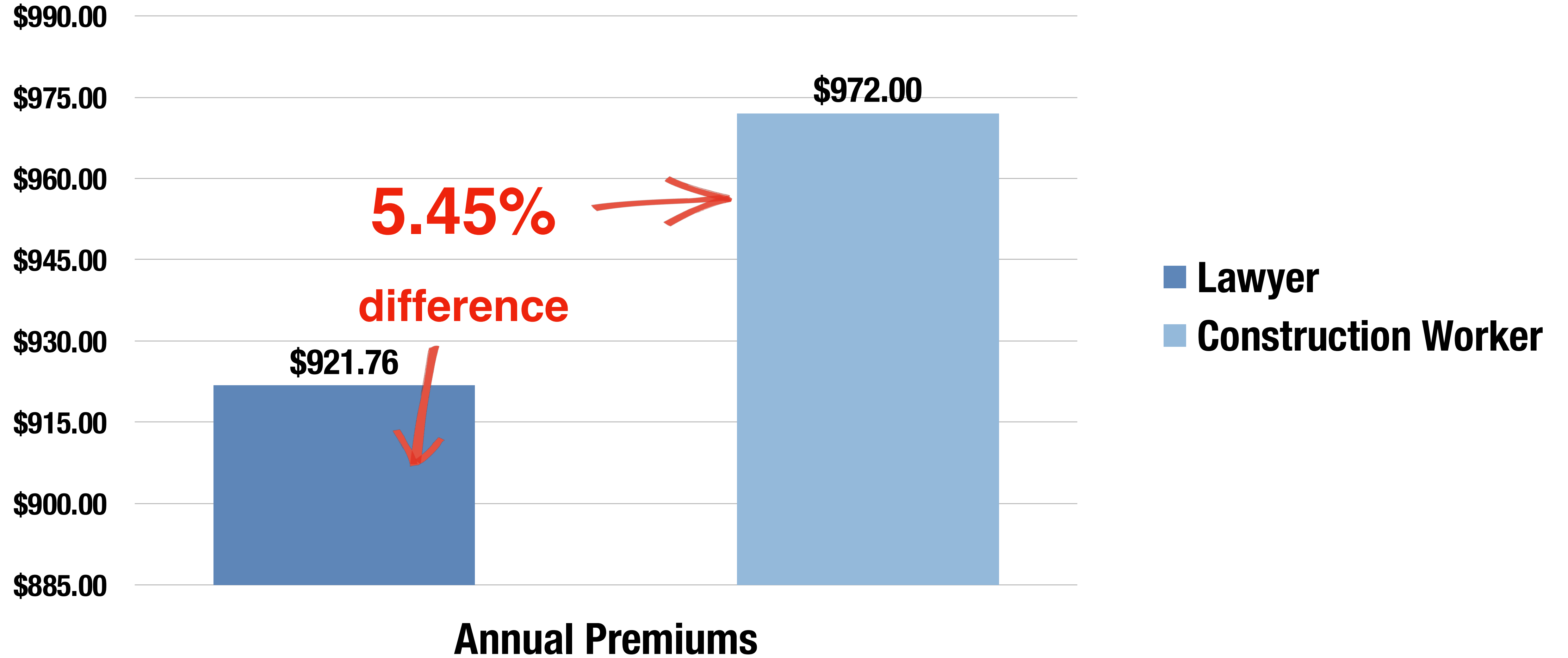


**Total Bodily Injury Limits of**  
**\$15,000/\$30,000**  
**First drivers license at age 16**











## Consumer Watchdog Premium Test Quotes Based on Occupation and Education

Insurance Company	Professional Occupation	Nonprofessional Occupation	Surcharge for Nonprofessional Occupations	Education Level (Bachelor's Degree)	Education Level (no college degree)	Surcharge Based on Education Level
<b>GEICO</b>	\$835.36/year (physician or CPA)	\$954.96/year (factory worker)	14.31%			
<b>Farmers</b>	\$1,230.96/year (accountant)	\$1,403.04/year (factory worker)	13.97%			
<b>AAA</b>	\$941/year (engineer)	\$1,017/year (no professional affiliation)	8.07%	\$941/year (alumni association member)	\$1,017/year (no college affiliations)	8.07%
<b>Progressive</b>	\$825.76/year (attorney or engineer)	\$881.76/year (factory worker)	6.78%			
<b>Mercury</b>	\$731.76/year (engineer or scientist)	\$779.76/year (no affiliations)	6.55%			
<b>Liberty Mutual</b>	\$921.76/year (lawyer)	\$972/year (construction worker)	5.45%			
<b>Allstate</b>	\$932/year (lawyer)	\$942/year (construction worker)	1.07%	\$932/year (lawyer, advanced degree)	\$942/year (construction worker, bachelor's degree)	1.07%

## Farmers' Business & Professional Group Surcharges

Coverage	Group I Occupations	Group II Occupations	Surcharge based on Occupation
All coverages combined	\$1,387.14/year	\$1,483.60/year	6.95%
Coverage	Group I Occupations	Regular Program	Surcharge based on Occupation
All coverages combined	\$1,387.14/year	\$1,416.66/year	2.12%
Coverage	Regular Program	Group II Occupations	Surcharge based on Occupation
All coverages combined	\$1,416.66/year	\$1,483.60/year	4.72%

Group I	Group II
Certified Public Accountants (CPA's)	Architects
Dentists	FIG Federal Credit Union
Educators	Firefighters
Engineers	Lawyers/Judges
Physicians/Surgeons	Registered Nurses
Scientists	Police Offices/Law Enforcement Officers
Veterinarians	Aviation Professionals
	Physical and Occupational Therapists
	Speech Audiologists and Pathologists
	Librarians
	Real Estate Agents and Brokers
	Small Business Policyholders (Owners & Officers)
	Workers' Compensation Policyholders (Owners & Officers)
	Zurich Employees/Agents

# **Exhibit 2**



April 1, 2019

VIA OVERNIGHT MAIL AND EMAIL

The Honorable Ricardo Lara  
Insurance Commissioner  
State of California  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814

Re: *In the Matter of the Class Plan Applications of California Automobile Insurance Company and Mercury Insurance Company*, File No.: PA-2017-00009

Dear Commissioner Lara:

Last Monday, March 25, you responded to Consumer Watchdog's petition for rulemaking to prohibit the improper use of education and occupation to set auto insurance rates, promising to "call for a public hearing into the rating practices alleged in the Petition to identify and evaluate whether and to what extent insurers are engaged in rating practices with respect to group insurance plans that are inconsistent with California law, including but not limited to, the provisions of Proposition 103 and the Unruh Civil Rights Act (Cal. Civ. Code § 51)." One day later, on March 26, Consumer Watchdog, Department staff, and representatives of Mercury Insurance Company had a teleconference to discuss Consumer Watchdog's pending petition on Mercury's class plan application, which objects to Mercury's "group discounts" based on education and occupation. We write to you because this current example highlights the urgency of setting a timeline to address this arbitrary and unfair rate discrimination against individuals in low wage occupations without college degrees, the lack of any consistent rating methodology for the calculation and the Department's approval of premium differentials between individuals who happen to have an occupation favored by the insurer, and the urgent need for regulations to address this issue.

Consumer Watchdog filed a petition for hearing on April 24, 2017 challenging Mercury's practice of giving "group discounts" (or "premium reductions") to policyholders who are scientists, engineers, or educators with college degrees. Mercury includes engineers, scientists and educators under its "group discounts" listed in its underwriting guidelines filed with its class plan. (See Mercury's underwriting guideline pages attached as Exh. A.) Mercury's underwriting guidelines state that to receive a "premium reduction," engineers and scientists must have "a Bachelor's degree (or higher degree)" or be licensed in one of a specified number of engineering fields or physical sciences. The underwriting guidelines further state that "[a] reduction in the BIPD, UMBI, Medical, Comprehensive and Collision premiums is available" for an insured who meets the listed occupational and educational criteria. Mercury's underwriting guidelines do not specify the amount of the "discount" or "premium reduction" that an insured who has one of the specified occupations will receive. Mercury's rate manual, included as Exhibit 12 in its class plan, lists the proposed base premiums by coverage for each "group." (See Exh. B.) Based on

those premium differentials in Exhibit 12, Consumer Watchdog was able to determine that Mercury charges 7–19% more to drivers who are not educators, scientists or engineers with a bachelor's degree.

On last Tuesday's call, Department staff informed us that Mercury calculates base premium differentials for each of its four separate "groups" (Basic Group, Group 2 [Mercury Employees, CA Medical Association, and Cal CPA], Group 3 [Educators], Group 4 [Scientists/Engineers]) after running its entire book of business through the ratemaking templates, which calculate overall base rates by coverage. Department staff pointed to Exhibit 14 in Mercury's 2018 rate application approved on March 19, 2019. There is no regulation, however, allowing for the calculation of base premium differentials by "groups" or explaining how this calculation is to be performed. Instead, the Department's rate filing instructions specify that Exhibit 14 shall show the *distribution of a proposed rate change* by group and provides a chart with "one possible" sample methodology for showing the proposed rate change distribution. Mercury's Exhibit 14 does not provide sufficient data to justify the premium differentials by occupation. (See Mercury's 2018 rate filing Exhibit 14, attached as Exh. B.) No data justifying the premium differentials has been filed in connection with Mercury's class plan. This by itself violates the requirements of Proposition 103, which require that insurance companies open their books to the public and justify all rates and class plans before the Commissioner can approve them. (Ins. Code §§ 1861.01, 1861.02, and 1861.05.)

More critically, as you know, and as explained at length in our rulemaking petition and set forth in our petition for hearing on Mercury's pending class plan, occupation and education status are not approved rating factors under section 1861.02 or the Commissioner's regulations at 10 CCR § 2632.5 et seq. Mercury is thus using unapproved rating factors, which have never been adopted by the Commissioner by regulation nor subjected to the factor weighting requirements under 10 CCR § 2632.8. That regulation requires that each optional rating factor lawfully adopted by regulation must weigh less than each of the mandatory rating factors of driving safety record, annual mileage, and years driving experience. Since they are not subjected to the section 1861.02 weighting methodology under 10 CCR § 2632.8, Mercury's premium reductions for select occupations may exceed the "weight" of the third mandatory rating factor. In other words, Mercury may be giving occupation and education more weight than the three factors – driving safety record, miles driven, and years of driving experience – that the voters explicitly directed must be the principal determinant of a driver's premium.

On last Tuesday's call, Mercury would not answer whether it provided the Department any additional underlying data to justify its "group discounts" and it has not provided this data in relation to its class plan application, repeatedly claiming such data is not relevant to the pending class plan application even though Exhibit 12 of its class plan contains the premium differentials based on occupation. The Department's rate filing instructions provide that "[t]he insurer would also need to provide the detailed background data and calculations supporting the development of the loss experience for each category in the chart" but again, allow insurers to ultimately choose how to present that data in Exhibit 14 of a rate application. Not only is the Department's rate filing instruction an "underground regulation" and therefore unlawful, but it also violates the regulation requiring the Commissioner to use one consistent methodology in determining whether rates are excessive, inadequate or unfairly discriminatory. (10 CCR § 2643.1.)



Insurance Commissioner Ricardo Lara

April 1, 2019

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The bottom line is that these occupation-based discounts are illegal under Proposition 103 both as unapproved rating factors under section 1861.02(a) and unfairly discriminatory rates under section 1861.05, and therefore must be rejected.

Each time that Consumer Watchdog has raised this issue in a challenge to an individual class plan or rate filing, the Department has approved the filings over our objections, citing to past approvals and section 1861.12. That section applies to group insurance plans, however, and was never intended to allow companies to provide “group discounts” based on occupation or education or other rating characteristics as an end-run around section 1861.02. Two prior insurance commissioners held workshops on this issue but never noticed a public hearing or promulgated regulations to fix this loophole. This is why it is imperative that you take immediate action to notice a hearing to adopt regulations that will make it clear to all insurers that generic education and occupation classifications are not permissible rating factors and are not permissible “group plans” under section 1861.12. Otherwise, Department staff will continue to approve these illegal discounts and unfair rate discrimination against drivers without college degrees or professional occupations will continue unabated.

Thank you for your attention to this matter.

Sincerely,



Pamela Pressley  
Senior Staff Attorney

cc (via email):

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# **EXHIBIT A**



**E. MULTI POLICY DISCOUNT**

A Multi Policy Discount is available for insureds that have a Homeowner, Condominium or Tenants policy with the Company. To qualify the Agent must provide the HO or PK policy number with the request for the discount.

**F. GROUP DISCOUNTS** – Documentation supporting these discounts must accompany the application. All vehicles on the policy (except trailers) including 07(X) vehicles will qualify. If submitted at a later date, the discount will be effective when received by the Company or Agent.

**1. Scientists and Engineers**

A reduction in the BI, PD, UMBI, Medical, Comprehensive and Collision premiums is available if an insured is a member of one of the professional groups listed.

Engineer - The driver must have a Bachelor’s degree (or higher degree) or be licensed as an engineer in one of the following fields of engineering or any other engineering field:

Aeronautical	Chemical	Mechanical
Aerospace	Civil	Nuclear
Architectural	Electrical	Petroleum
	Gas	Structural

Scientist - The driver must have a Bachelor’s degree (or higher degree) in one of the following physical sciences:

Astronomy	Cybernetics	Mathematics
Biochemistry	Geology	Meteorology
Biology	Geophysics	Physics
Chemistry	Information Systems	Planetary Systems
Computer Science		

**2. Educators**

A reduction in the BIPD, UMBI, Medical, Comprehensive and Collision premiums is available if an insured is credentialed as a teacher or educational administrator and holds a “Clear”, “Professional Clear”, “Life”, “Preliminary”, “Temporary” or “Emergency” designation or is employed full-time as a teacher or professor.

**3. California Medical Association**

A reduction in BIPD, UMBI, Medical, Comprehensive and Collision premiums is available if an insured is a member of the California Medical Association.

**4. Mercury Insurance Employees**

A reduction in BIPD, UMBI, Medical, Comprehensive and Collision premiums is available if an insured is an employee of Mercury Insurance Services, LLC, and Affiliated Companies.

**5. Los Angeles County Bar Association**

A reduction in BIPD, UMBI, Medical, Comprehensive and Collision premiums is available if an insured is a member of the Los Angeles County Bar Association. The discount shall be increased if the Named Insured is willing to sign an Arbitration Agreement (U-241) with Mercury. **Use Group 2004 for those eligible for the increased discount.**

**6. Cal CPA**

A reduction in BIPD, UMBI, Medical, Comprehensive, and Collision premiums is available if an insured is a member of the California Society of Certified Public Accountants. Note, Group 2007 will be assigned if this discount is added mid-term or at renewal.

**7. Alumni Association**

A reduction in BIPD, UMBI, Medical, Comprehensive, and Collision premiums is available if an insured is a member of a recognized alumni association of a 4 year accredited college.

**G. ANTI-THEFT DISCOUNTS** – Documentation supporting the discount for a Lo Jack, Tele Trac or similar type device must accompany the application.

**H. PERSISTENCY DISCOUNT**

A discount will be applied to policy renewals or rewrites. To qualify, the insured must have had coverage with Mercury for at least one year with no lapse in coverage greater than 30 days. This discount applies only to BI, PD, UMBI, MP, Comprehensive, and Collision coverages.

**I. REALDRIVE**

A reduction in BIPD, UMBI, Medical, Comprehensive, and Collision premiums is available for insureds that consent to participate in the RealDrive program. The program is offered at a Policy Level and the rating is applied at the Vehicle Level. All eligible vehicles must participate in the program in order to qualify and continue in the program. The RealDrive program premium adjustment is based on one of the following factors:

**1. RealDrive Enrollment Factor**

- The RealDrive Enrollment Factor will be applicable until the actual calculated annual mileage can be determined.

**2. RealDrive Factor**

- The RealDrive Factor shall be based on the calculated annual mileage factor from the rate manual.

Historical odometer readings will be used to determine the verified annual mileage used to rate the vehicles on the policy. All vehicles will be subject to attempts to collect the necessary odometer readings to calculate the verified mileage. Odometer readings will be collected at New Business and at least every other Renewal. Verification may be required for odometer readings supplied by the insured or an agent of the insured.

**Sources for Odometer Readings:**

The following are potential sources of odometer reading(s) that the Company may consider in the calculation of verified mileage. The Company may use one source exclusively or a combination of sources:

- Odometer readings of the insured Vehicle or Vehicles, made by an employee of the insurer, an agent of the insurer; or a third-party vendor retained by the insurer
- Odometer readings recorded by an automotive repair dealer in the ordinary course of the business of servicing a vehicle, provided to the insurer by the policyholder or by a vendor retained by the insurer
- Odometer readings obtained from smog check stations licensed by the California Bureau of Automotive Repair, from the California Department of Motor Vehicles, or any other governmental agency that maintains public records of vehicle odometer readings, provided to the insurer by the policyholder or by a vendor retained by the insurer
- Self-reported odometer readings provided with acceptable documentation
- A technological device

# **EXHIBIT B**

Mercury Insurance Company

Exhibit 12 - Rate Manual (Proposed)

Parameter	Level	BI	PD	UMBI	MP	COMP	COLL
Base Rate	Basic Program	129.42	160.10	25.56	3.04	42.64	240.48
Group	Mercury Employees	118.28	148.40	23.32	2.35	37.55	221.48
Group	CA Medical Association	118.28	148.40	23.32	2.35	37.55	221.48
Group	LA Bar Association	129.42	160.10	25.56	3.04	42.64	240.48
Group	LA Bar Association w/U-241	118.28	148.40	23.32	2.35	37.55	221.48
Group	CPA	118.28	148.40	23.32	2.35	37.55	221.48
Group	Scientist/Engineer	121.52	152.46	21.27	2.55	35.47	228.76
Group	Educator	107.42	134.78	22.05	2.03	35.99	201.83
Group	Alumni	129.42	160.10	25.56	3.04	42.64	240.48
Annual Miles	<=3000 Miles - Estimated	0.570	0.580	0.710	0.700	0.550	0.520
Annual Miles	3001-4000 Miles - Estimated	0.722	0.850	0.770	0.800	0.800	0.700
Annual Miles	4001-5000 Miles - Estimated	0.861	0.950	0.800	0.850	0.880	0.800
Annual Miles	5001-6000 Miles - Estimated	1.000	1.000	0.970	0.900	0.950	0.940
Annual Miles	6001-7000 Miles - Estimated	1.028	1.020	0.980	1.030	0.960	1.000
Annual Miles	7001-8000 Miles - Estimated	1.056	1.040	1.000	1.050	0.980	1.020
Annual Miles	8001-9000 Miles - Estimated	1.070	1.050	1.050	1.080	1.010	1.030
Annual Miles	9001-10000 Miles - Estimated	1.083	1.060	1.100	1.110	1.050	1.040
Annual Miles	10001-11000 Miles - Estimated	1.111	1.080	1.150	1.120	1.060	1.050
Annual Miles	11001-12000 Miles - Estimated	1.125	1.090	1.160	1.140	1.080	1.060
Annual Miles	12001-13000 Miles - Estimated	1.153	1.110	1.170	1.150	1.090	1.070
Annual Miles	13001-14000 Miles - Estimated	1.167	1.120	1.180	1.160	1.100	1.080
Annual Miles	14001-15000 Miles - Estimated	1.181	1.130	1.200	1.170	1.110	1.090
Annual Miles	15001-16000 Miles - Estimated	1.209	1.150	1.200	1.170	1.170	1.100
Annual Miles	16001-17000 Miles - Estimated	1.209	1.150	1.200	1.170	1.180	1.100
Annual Miles	17001-18000 Miles - Estimated	1.209	1.150	1.200	1.170	1.190	1.100
Annual Miles	18001-19000 Miles - Estimated	1.209	1.150	1.210	1.170	1.200	1.100
Annual Miles	19001-20000 Miles - Estimated	1.209	1.150	1.220	1.170	1.200	1.150
Annual Miles	20001-21000 Miles - Estimated	1.240	1.150	1.230	1.170	1.210	1.160
Annual Miles	21001-22000 Miles - Estimated	1.250	1.160	1.230	1.170	1.220	1.170
Annual Miles	22001-23000 Miles - Estimated	1.260	1.170	1.230	1.170	1.230	1.180
Annual Miles	23001-24000 Miles - Estimated	1.270	1.180	1.230	1.170	1.240	1.190
Annual Miles	24001-25000 Miles - Estimated	1.280	1.180	1.230	1.170	1.250	1.200
Annual Miles	25001-26000 Miles - Estimated	1.290	1.190	1.230	1.170	1.260	1.210
Annual Miles	26001-27000 Miles - Estimated	1.300	1.200	1.230	1.170	1.270	1.220
Annual Miles	27001-28000 Miles - Estimated	1.310	1.210	1.230	1.170	1.280	1.230
Annual Miles	28001-29000 Miles - Estimated	1.320	1.220	1.230	1.170	1.290	1.240
Annual Miles	29001-30000 Miles - Estimated	1.330	1.230	1.230	1.170	1.300	1.250
Annual Miles	30001-31000 Miles - Estimated	1.340	1.240	1.230	1.170	1.310	1.260
Annual Miles	31001-32000 Miles - Estimated	1.350	1.250	1.230	1.170	1.320	1.270
Annual Miles	32001-33000 Miles - Estimated	1.360	1.260	1.230	1.170	1.330	1.280
Annual Miles	33001-34000 Miles - Estimated	1.370	1.270	1.230	1.170	1.340	1.290
Annual Miles	>=34001 Miles - Estimated	1.380	1.280	1.230	1.170	1.350	1.300
Annual Miles	<=3000 Miles - RealDrive	0.540	0.550	0.670	0.670	0.520	0.490
Annual Miles	3001-4000 Miles - RealDrive	0.690	0.810	0.730	0.760	0.760	0.670
Annual Miles	4001-5000 Miles - RealDrive	0.820	0.900	0.760	0.810	0.840	0.760
Annual Miles	5001-6000 Miles - RealDrive	0.950	0.950	0.920	0.860	0.900	0.890
Annual Miles	6001-7000 Miles - RealDrive	0.980	0.970	0.930	0.980	0.910	0.950
Annual Miles	7001-8000 Miles - RealDrive	1.000	0.990	0.950	1.000	0.930	0.970
Annual Miles	8001-9000 Miles - RealDrive	1.020	1.000	1.000	1.030	0.960	0.980
Annual Miles	9001-10000 Miles - RealDrive	1.030	1.010	1.050	1.050	1.000	0.990
Annual Miles	10001-11000 Miles - RealDrive	1.060	1.030	1.090	1.060	1.010	1.000
Annual Miles	11001-12000 Miles - RealDrive	1.070	1.040	1.100	1.080	1.030	1.010
Annual Miles	12001-13000 Miles - RealDrive	1.100	1.050	1.110	1.090	1.040	1.020
Annual Miles	13001-14000 Miles - RealDrive	1.110	1.060	1.120	1.100	1.050	1.030
Annual Miles	14001-15000 Miles - RealDrive	1.120	1.070	1.140	1.110	1.050	1.040
Annual Miles	15001-16000 Miles - RealDrive	1.150	1.090	1.140	1.110	1.110	1.050
Annual Miles	16001-17000 Miles - RealDrive	1.150	1.090	1.140	1.110	1.120	1.050
Annual Miles	17001-18000 Miles - RealDrive	1.150	1.090	1.140	1.110	1.130	1.050
Annual Miles	18001-19000 Miles - RealDrive	1.150	1.090	1.150	1.110	1.140	1.050

Mercury Insurance Company

Exhibit 12 - Rate Manual (Current)

Parameter	Level	BI	PD	UMBI	MP	COMP	COLL
Base Rate	Basic Program	122.10	151.99	24.05	3.77	40.62	228.43
Group	Mercury Employees	111.59	140.89	21.94	3.20	35.77	210.38
Group	CA Medical Association	111.59	140.89	21.94	3.20	35.77	210.38
Group	LA Bar Association	122.10	151.99	24.05	3.77	40.62	228.43
Group	LA Bar Association w/U-241	111.59	140.89	21.94	3.20	35.77	210.38
Group	CPA	111.59	140.89	21.94	3.20	35.77	210.38
Group	Scientist/Engineer	114.65	144.74	20.01	3.17	33.79	217.30
Group	Educator	101.34	127.95	20.75	2.85	34.29	191.72
Group	Alumni	122.10	151.99	24.05	3.77	40.62	228.43
Annual Miles	<=3000 Miles	0.570	0.580	0.710	0.700	0.550	0.520
Annual Miles	3001-4000 Miles	0.722	0.850	0.770	0.800	0.800	0.700
Annual Miles	4001-5000 Miles	0.861	0.950	0.800	0.850	0.880	0.800
Annual Miles	5001-6000 Miles	1.000	1.000	0.970	0.900	0.950	0.940
Annual Miles	6001-7000 Miles	1.028	1.020	0.980	1.030	0.960	1.000
Annual Miles	7001-8000 Miles	1.056	1.040	1.000	1.050	0.980	1.020
Annual Miles	8001-9000 Miles	1.070	1.050	1.050	1.080	1.010	1.030
Annual Miles	9001-10000 Miles	1.083	1.060	1.100	1.110	1.050	1.040
Annual Miles	10001-11000 Miles	1.111	1.080	1.150	1.120	1.060	1.050
Annual Miles	11001-12000 Miles	1.125	1.090	1.160	1.140	1.080	1.060
Annual Miles	12001-13000 Miles	1.153	1.110	1.170	1.150	1.090	1.070
Annual Miles	13001-14000 Miles	1.167	1.120	1.180	1.160	1.100	1.080
Annual Miles	14001-15000 Miles	1.181	1.130	1.200	1.170	1.110	1.090
Annual Miles	15001-16000 Miles	1.209	1.150	1.200	1.170	1.170	1.100
Annual Miles	16001-17000 Miles	1.209	1.150	1.200	1.170	1.180	1.100
Annual Miles	17001-18000 Miles	1.209	1.150	1.200	1.170	1.190	1.100
Annual Miles	18001-19000 Miles	1.209	1.150	1.210	1.170	1.200	1.100
Annual Miles	19001-20000 Miles	1.209	1.150	1.220	1.170	1.200	1.150
Annual Miles	>=20001 Miles	1.278	1.180	1.230	1.170	1.250	1.200
Annual Miles	<=3000 Miles - RealDrive	0.540	0.550	0.670	0.670	0.520	0.490
Annual Miles	3001-4000 Miles - RealDrive	0.690	0.810	0.730	0.760	0.760	0.670
Annual Miles	4001-5000 Miles - RealDrive	0.820	0.900	0.760	0.810	0.840	0.760
Annual Miles	5001-6000 Miles - RealDrive	0.950	0.950	0.920	0.860	0.900	0.890
Annual Miles	6001-7000 Miles - RealDrive	0.980	0.970	0.930	0.980	0.910	0.950
Annual Miles	7001-8000 Miles - RealDrive	1.000	0.990	0.950	1.000	0.930	0.970
Annual Miles	8001-9000 Miles - RealDrive	1.020	1.000	1.000	1.030	0.960	0.980
Annual Miles	9001-10000 Miles - RealDrive	1.030	1.010	1.050	1.050	1.000	0.990
Annual Miles	10001-11000 Miles - RealDrive	1.060	1.030	1.090	1.060	1.010	1.000
Annual Miles	11001-12000 Miles - RealDrive	1.070	1.040	1.100	1.080	1.030	1.010
Annual Miles	12001-13000 Miles - RealDrive	1.100	1.050	1.110	1.090	1.040	1.020
Annual Miles	13001-14000 Miles - RealDrive	1.110	1.060	1.120	1.100	1.050	1.030
Annual Miles	14001-15000 Miles - RealDrive	1.120	1.070	1.140	1.110	1.050	1.040
Annual Miles	15001-16000 Miles - RealDrive	1.150	1.090	1.140	1.110	1.110	1.050
Annual Miles	16001-17000 Miles - RealDrive	1.150	1.090	1.140	1.110	1.120	1.050
Annual Miles	17001-18000 Miles - RealDrive	1.150	1.090	1.140	1.110	1.130	1.050
Annual Miles	18001-19000 Miles - RealDrive	1.150	1.090	1.150	1.110	1.140	1.050