December 7, 2022

VIA EMAIL

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

Re: *In the Matter of the Rate Application of GEICO Indemnity Company, GEICO Casualty Company, GEICO General Insurance Company, and Government Employees Insurance Company* (File No. PA-2022-00006)

Dear Commissioner Lara:

We write to bring to your attention that the Department approved the above-referenced rate application on December 6, 2022 without requiring GEICO to respond to petitioner Consumer Watchdog's requests for information as agreed upon by the parties last week. The requested information and data was necessary for Consumer Watchdog to complete its review and rate analysis. Instead, your staff took the drastic and unwarranted step of abandoning nearly two decades of Department practice honoring consumers' rights under Proposition 103 to participate in the rate review process. (See December 2, 2022 letter, attached.) This long-standing process ensures that the Commissioner is presented with the positions of consumers, the Department, and the company before making his final decision on a rate application. We believe a meeting with you and your executive team is necessary to help ensure that the rights of consumer participation in the rate review process are enforced in other pending rate proceedings.

As you are well aware, Proposition 103 and the intervenor regulations expressly provide for consumer participation in the rate review process. This is because "the scrutiny of consumer representatives is an important tool to ensure that applicants comply with the statutory and regulatory prohibition on 'excessive, inadequate, and unfairly discriminatory' rates, or rates that otherwise violate the law.'" (*Ass'n of California Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029, 1041.) In fact, going back to Insurance Commissioner Garamendi, the Department has recognized that its responsibility to administer California's insurance laws includes protecting the public's right to a meaningful review of rate applications in both the mandatory and pre-hearing process. (See Cal. Dep't of Ins., Advisory Notice: Rate Increase Applications Which Exceed the Statutory Thresholds Set Forth in California Insurance Code Section 1861.05(c)(3) (Feb. 18, 2005), https://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/Advisory-Notice-February-18-2005.pdf.)

To enforce Proposition 103's public participation requirements, regulations adopted by Commissioner Garamendi in 2006 make clear that a rate proceeding is initiated upon the filing of a petition for hearing (10 CCR §§ 2651.1(h), 2661.1(h)), and from that point forward the

Department requires that all information that is provided to the Department must be simultaneously provided to the petitioner/intervenor. These regulations were upheld in response to a legal challenge by the insurance industry. The Court of Appeal specifically rejected the insurance industry's argument that consumer intervenors do not have the right to participate in any informal pre-hearing rate review process. (See *Ass'n of California Ins. Cos. v. Poizner*, *supra*, 180 Cal.App.4th 1029, 1051–1052.)

Despite instructions from the Department on August 12 (immediately after Consumer Watchdog filed its petition) that GEICO copy Consumer Watchdog simultaneously on all submissions to the Department as required by this long-standing process, GEICO failed to heed this instruction and made submissions to the Department on November 8, November 18, and November 29 that were not provided to nor noticed on Consumer Watchdog. Moreover, in response to Consumer Watchdog's November 21 requests for information, GEICO withheld documents critical to the completion of Consumer Watchdog's review and analysis of the rate application. For example, GEICO refused to provide data, documents, and/or analysis related to (1) changes in its marketing system, including its decision to close local offices in California and stop selling insurance through telephone agents in the state; (2) the impact of the COVID-19 pandemic on its private passenger auto insurance costs; and (3) comprehensive trend data for both frequency and severity. Last week the parties held a call on November 30 to discuss GEICO's deficient response, with a further three-way call scheduled for this Thursday, December 8. Short-circuiting that agreed-upon process and schedule—notwithstanding their consistency with Proposition 103, the Department's regulations, and longstanding practice—the Department scheduled a call with GEICO for December 5, and the Department approved the filing yesterday, December 6.

Consequently, GEICO has been granted a significant rate hike without the scrutiny of consumer intervenors, as contemplated by Proposition 103 and reaffirmed by the courts. And adding insult to injury for consumers, Consumer Watchdog's preliminary analysis based on the documents GEICO *did* produce shows that the rate hike is unjustified. Moreover, according to your public calendar, you met with GEICO on October 27. If GEICO urged you to fast track the pending rate increase at that meeting, they violated rules prohibiting ex parte communications and undermined the consumer protections adopted by the voters under Proposition 103.

We request a meeting with you and your executive team at your earliest convenience to discuss these issues and ensure that the rights of consumer petitioners and the public under Proposition 103 to participate in the rate review process and scrutinize companies' data backing up proposed increases are fully implemented and protected against insurance industry efforts to bypass.

Sincerely,

Daniel L. Sternberg

cc: Lucy F. Wang (Lucy.Wang@insurance.ca.gov)
Ken Allen (Ken.Allen@insurance.ca.gov)
Nikki McKennedy (Nikki.McKennedy@insurance.ca.gov)
Alec Stone (Alec.Stone@insurance.ca.gov)
Melissa Wurster (Melissa.Wurster@insurance.ca.gov)
Brian Kelly (BAKelly@duanemorris.com)
Damon Vocke (DNVocke@duanemorris.com)

ATTACHMENT

December 2, 2022

Jon Phenix
Staff Counsel
Rate Enforcement Bureau
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

Dear Mr. Phenix,

At the conclusion of our call with CDI and GEICO two days ago (Wednesday, November 30), the parties *all* agreed to a process and timeline for moving this filing forward: (1) by no later than next Wednesday, December 7, Consumer Watchdog will identify issues regarding GEICO's November 29 responses to Consumer Watchdog's Requests for Information; (2) the parties set another three-way call on December 8 to discuss any remaining issues regarding GEICO's response to the Requests for Information; and (3) after the December 8 call and once GEICO responded to our Requests for Information in a complete and satisfactory manner, we would set another call within a reasonable time to discuss rate indications with the aim of reaching a negotiated settlement that is fair to both GEICO and the public.

This is the standard procedure that has been consistently used by CDI in the past. As we explained on the Wednesday call, this is the timeline that would allow Consumer Watchdog to represent the public interest in the manner contemplated by Proposition 103 to review GEICO's request for a 6.9% increase in its auto insurance rates and to respond in a meaningful way with realistic rate indications based on the requested information. Your email yesterday at 12:14 p.m. suggesting follow up dates between December 13–15 acknowledges the schedule agreed upon on Wednesday.[1]

Despite GEICO's agreement Wednesday to this expedited schedule, GEICO counsel proposed a call by next Tuesday, December 6 (see Mr. Vocke's email yesterday at 3:55 p.m., attached as Exhibit A) to discuss rate indications. And you then responded that the Department is available for a call on Monday, December 5, which also ignores the previous schedule we all agreed upon. GEICO has presented no basis for this unilateral request to change the agreed-upon schedule. (We assume, of course, that there have been no ex parte communications with the Commissioner. If we are incorrect in that assumption, we ask you to immediately provide us copies of those communications.)

Certainly nothing has changed in the past two days. As we made clear, Consumer Watchdog will not be able to complete its analysis, much less discuss, our rate indication until we obtain the information that GEICO has refused so far to provide (and which we will re-identify by letter as was agreed upon). We therefore will not agree to Mr. Vocke's proposal for a

[1] *See* email chain attached as Exhibit A.

Monday or Tuesday call, and we expect that the Department will follow its regular procedures and wait until GEICO provides Consumer Watchdog with the necessary information and we have had the opportunity to review and complete our analysis.

We will not tolerate GEICO's attempt to short-circuit public scrutiny of its application to raise rates and deny Consumer Watchdog its right to represent the interests of consumers under Proposition 103.

Finally, Consumer Watchdog does not appreciate the antagonism that GEICO's lawyers (who are seemingly unaware of California's intervenor process) have voiced concerning the timeline for completing our review, suggesting that it is Consumer Watchdog that is responsible for the delay in the CDI's review of GEICO's application. To begin, despite the email that went to all parties from CDI's Cecilia Padua on August 12, 2022 stating that "all future information and/or data submitted to the Department regarding this matter must simultaneously be provided to Petitioner, Consumer Watchdog," GEICO did not serve Consumer Watchdog with the responses that GEICO submitted to the CDI on October 28, November 18, or November 29. As GEICO failed to follow the required process in this proceeding of copying us on submissions to CDI in response to objections, we were the last party to become aware that the filing had been updated and have been forced to play catch-up ever since. We promptly served Requests for Information on Monday, November 21 after learning that GEICO had filed a response to the CDI's objection on Friday, November 18. Several of those requests were following up on information GEICO had provided for the first time in its November 18 response to CDI's objection. And, as noted on our call, in its November 29 response to Consumer Watchdog's Requests for Information, GEICO largely failed to provide the information requested, but then expected us to be ready to resolve the filing the next day, on November 30, after we were told by you that the November 30 call was to discuss GEICO's responses only, not the parties' indications. Indeed, there were no CDI actuaries on the November 30 call for that reason.

Second, we must note that CDI is also directly responsible for the status of GEICO's application. Typically, when CDI is getting close to completing its review of a filing, CDI notifies the petitioner in order to give sufficient time for preparing an analysis and indication. Consumer Watchdog heard nothing from the Department—or GEICO—until on November 18, you asked to schedule a three-way call on December 21. Indeed, as has been noted by journalists in multiple articles, the agency apparently placed a de facto moratorium on approving rate applications by auto insurance companies some time ago.[2] That unannounced moratorium appears to have abruptly ended in mid-November. And now we have GEICO trying to bully its way to an immediate rate increase that Consumer Watchdog has preliminarily concluded is not justified. Whatever the basis or justification for the moratorium, the Department's responsibility to administer California's insurance laws includes protecting the public's right to a meaningful review of rate applications, and we expect the Department to do so here. Taking a few more weeks to complete review of the filing will not cause GEICO financial hardship, as evidenced by statements on their website boasting of their superior financial strength.[3]

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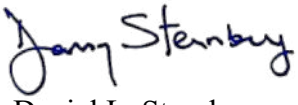
[2] *See* Exhibit B, attached.
[3] *See* GEICO, *GEICO's Financial Strength*, https://www.geico.com/about/corporate/financial-strength/ (last visited Dec. 2, 2022).

Consumer Watchdog intends to proceed on the schedule as agreed upon Wednesday.

Sincerely,



Daniel L. Sternberg

cc: Ken Allen (Ken.Allen@insurance.ca.gov)
Nikki McKennedy (Nikki.McKennedy@insurance.ca.gov)
Alec Stone (Alec.Stone@insurance.ca.gov)
Melissa Wurster (Melissa.Wurster@insurance.ca.gov)
Brian Kelly (BAKelly@duanemorris.com)
Damon Vocke (DNVocke@duanemorris.com)

EXHIBIT A

From: **Phenix, Jon** Jon.Phenix@insurance.ca.gov
Subject: RE: In the Matter of the Petition to Intervene of CONSUMER WATCHDOG
Date: December 1, 2022 at 5:30 PM
To: Vocke, Damon N. DNVocke@duanemorris.com
Cc: danny@consumerwatchdog.org, Harvey Rosenfield harvey@consumerwatchdog.org, Pamela Pressley pam@consumerwatchdog.org, ryan.m@consumerwatchdog.org, Kelly, Brian A. BAKelly@duanemorris.com, Wurster, Melissa Melissa.Wurster@insurance.ca.gov, Stone, Alec Alec.Stone@insurance.ca.gov, Allen, Ken Ken.Allen@insurance.ca.gov, McKennedy, Nikki Nikki.McKennedy@insurance.ca.gov

JP

Mr. Vocke,

On Monday, December 5, CDI has availability between 1-3pm PT for a three-way call.

Thank you,
Jon Phenix
Staff Counsel
Rate Enforcement Bureau
California Department of Insurance
(916) 492-3705
Jon.Phenix@insurance.ca.gov

PRIVILEGED/CONFIDENTIAL COMMUNICATION

From: Vocke, Damon N. <DNVocke@duanemorris.com>
Sent: Thursday, December 1, 2022 3:55 PM
To: Phenix, Jon <Jon.Phenix@insurance.ca.gov>
Cc: danny@consumerwatchdog.org; Harvey Rosenfield <harvey@consumerwatchdog.org>; Pamela Pressley <pam@consumerwatchdog.org>; ryan.m@consumerwatchdog.org; Kelly, Brian A. <BAKelly@duanemorris.com>; Wurster, Melissa <Melissa.Wurster@insurance.ca.gov>; Stone, Alec <Alec.Stone@insurance.ca.gov>; Allen, Ken <Ken.Allen@insurance.ca.gov>; McKennedy, Nikki <Nikki.McKennedy@insurance.ca.gov>
Subject: Re: In the Matter of the Petition to Intervene of CONSUMER WATCHDOG

Mr. Phenix, thank you very much. GEICO is available anytime between now and next Tuesday morning (PT) to participate in this call, and we strongly encourage everyone to make time available to schedule this meeting within that time frame so we can move this matter forward. In the interest of time, my assistant will circulate a calendar invite for next Tuesday, Dec. 6 at 11AM (PT). We thank all of you in advance for your cooperation.

Damon N. Vocke
Partner, Head of Corporate &
Regulatory Insurance Litigation

Duane Morris LLP
P: 212 692 1059
F: 212 692 1020

C: 203 233 4859

DNVocke@duanemorris.com
www.duanemorris.com

On Dec 1, 2022, at 3:14 PM, Phenix, Jon <Jon.Phenix@insurance.ca.gov> wrote:

Counsel,

Some of the Department's calendar restraints referred to in my previous email have lifted. During the week of December 12, the Department can also be available for a three-way call to discuss indications and analyses as follows:

12/13, 2pm-3pm PT
12/14, 12pm-1pm PT
12/15, 10am-11am or 2:30-3:30 PT

Please continue to reserve the 12/21 call date and time.

Thank you,
Jon Phenix
Staff Counsel
Rate Enforcement Bureau
California Department of Insurance
(916) 492-3705
Jon.Phenix@insurance.ca.gov

PRIVILEGED/CONFIDENTIAL COMMUNICATION

From: Phenix, Jon
Sent: Friday, November 18, 2022 2:59 PM
To: Vocke, Damon N. <DNVocke@duanemorris.com>
Cc: Harvey Rosenfield <harvey@consumerwatchdog.org>; Pamela Pressley <pam@consumerwatchdog.org>; danny@consumerwatchdog.org; ryan.m@consumerwatchdog.org; Kelly, Brian A. <BAKelly@duanemorris.com>; Wurster, Melissa <Melissa.Wurster@insurance.ca.gov>; Stone, Alec <Alec.Stone@insurance.ca.gov>; Allen, Ken <Ken.Allen@insurance.ca.gov>
Subject: RE: In the Matter of the Petition to Intervene of CONSUMER WATCHDOG, GEICO companies - PA 2022-00004 -- Application No(s).: 22-1492; 22-1492-A; 22-1492-B; and 22-1492-C

Mr. Vocke

Mr. Vocke,

Due to preexisting commitments and calendars, that's a challenging timeframe for the Department. If CW has availability, however, that would be good to know.

I will also note that it is very possible that our commitments in other matters might shift in such a way that the Department will have greater availability during December. If that happens, we can commit to exploring earlier call dates in this matter.

Jon Phenix
Staff Counsel
Rate Enforcement Bureau
California Department of Insurance
(916) 492-3705
Jon.Phenix@insurance.ca.gov

PRIVILEGED/CONFIDENTIAL COMMUNICATION

From: Vocke, Damon N. <DNVocke@duanemorris.com>
Sent: Friday, November 18, 2022 1:59 PM
To: Phenix, Jon <Jon.Phenix@insurance.ca.gov>
Cc: Harvey Rosenfield <harvey@consumerwatchdog.org>; Pamela Pressley <pam@consumerwatchdog.org>; danny@consumerwatchdog.org; ryan.m@consumerwatchdog.org; Kelly, Brian A. <BAKelly@duanemorris.com>; Wurster, Melissa <Melissa.Wurster@insurance.ca.gov>; Stone, Alec <Alec.Stone@insurance.ca.gov>
Subject: Re: In the Matter of the Petition to Intervene of CONSUMER WATCHDOG, GEICO companies - PA 2022-00004 -- Application No(s).: 22-1492; 22-1492-A; 22-1492-B; and 22-1492-C

Mr. Phenix, thank you for your email. As you know, I represent the GEICO companies in this matter. In light of ongoing discussions at present, we respectfully request that you schedule this call for early next week, before the holiday. I will make myself available at your convenience.

Thank you.

Damon N. Vocke
Partner, Head of Corporate &
Regulatory Insurance Litigation

Duane Morris LLP
P: 212 692 1059
F: 212 692 1020

C: 203 233 4859

DNVocke@duanemorris.com
www.duanemorris.com

On Nov 18, 2022, at 4:27 PM, Phenix, Jon <Jon.Phenix@insurance.ca.gov> wrote:

Dear Counsel,

The Department would like to schedule a three-way call in this matter. Please let us know your team's availability on Wednesday, December 21 between 10am-11am PT.

If this date does not work, please provide the next week during which your team is available.

Sincerely,
Jon Phenix
Staff Counsel
Rate Enforcement Bureau
California Department of Insurance
(916) 492-3705
Jon.Phenix@insurance.ca.gov

PRIVILEGED/CONFIDENTIAL COMMUNICATION

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EXHIBIT B

California Commissioner Withholds Auto Insurance Rate Approvals, Rattles Market

BestWire

August 10, 2022 Wednesday 04:20 PM EST

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Length: 899 words

Byline: Renee Kiriluk-Hill

Dateline: SACRAMENTO, Calif.

Body

California Insurance Commissioner Ricardo Lara is pumping the brakes on private passenger auto rate hike requests from carriers, including Geico, which he said overcharged policyholders during COVID-19 pandemic shutdowns, according to spokesperson Gabriel Sanchez.

Insurers facing higher claims costs have sought widespread increases but have faced push back in California. Rates appear to be stuck in the state, said Kemper President, Chief Executive Officer and Chairman Joseph Lacher Jr., and he thinks the market will seize up in the near future.

"They're going to have a social and cultural problem where they're not going to be able to have people bind or change auto insurance," Lacher said during a second-quarter earnings call.

For 27 months Lara has "instructed his staff not to open or review rating plans" for private-passenger insurers, American Property Casualty Insurance Association spokeswoman Nicole Mahrt-Ganley said.

That has left dozens of filings in limbo as carriers grapple with skyrocketing costs from inflation and more severe auto accident in California, she said.

"Left to their own devices, insurance companies will charge more, not less," Sanchez told BestWire. "The California Department of Insurance is reviewing data from private passenger auto insurance companies deemed to have the largest gaps between what was owed and has been refunded to determine how best to close the gap on auto-insurance premiums owed to drivers.

"Private passenger auto insurers, including Geico, overcharged their policyholders during the pandemic and haven't given enough back to consumers."

Executives at large auto insurers like Allstate and Liberty Mutual named, or alluded to, California and New York recently when speaking about trouble attaining what they said will be rate adequacy as economic and social inflation and other factors, such as changed driving patterns and supply chain issues, escalate claims severity (BestWire, Aug. 8, 2022).

Absent CDI action on rate requests, auto insurers are "forced to make difficult decisions to manage solvency," said Mahrt-Ganley. Drivers may soon have difficulty finding coverage, she warned.

In addition to seeking rate hikes, carriers have cut marketing and advertising for personal auto and taken other actions, such as requiring full payment at the start of a policy, to offset losses.

Berkshire Hathaway said Geico's underwriting expenses decreased 8.7% in the second quarter after the carrier pulled back on advertising and lowered employee-related costs.

Geico has closed its California agencies, limiting more than 2.18 million policyholders to digital channel interactions with the auto insurer, according to a company spokesperson.

Geico also filed a rate request in June in California, seeking a combined 6.9% statewide rate increase for private-passenger auto. The impact would vary across coverages with the greatest impact, 50%, on comprehensive and the second-greatest, 25.1%, on rental reimbursement.

Geico has cited rising loss costs on economic inflation and the ongoing "supply chain crisis" that increased used car values and repair costs and times, which affects rental car costs for insurers.

Consumer Watchdog has filed a petition for hearing and petition to intervene with the CDI, saying an analysis showed that annual premiums would rise an average of $125 if the rate increase is approved.

That would disproportionately hit working-class policyholders, Consumer Watchdog said, because affinity group surcharges mean that drivers working in fields like custodial, construction or food service will pay 25% more than drivers in Geico's "preferred 'professional' occupations," and almost 11% more than "engineers, auditors and judges."

Geico's move to digital-only services will hurt drivers, Consumer Watchdog added, because some vulnerable populations lack internet access.

It took aim at the need for a 6.9% average rate hike, saying Geico needs to present an analysis of trends based on a book that will likely change on the agency closures.

Geico's most recent approved rate hike in California, in pre-pandemic February 2019, averaged 2.4% in California. It came nearly seven months after an average 6.9% rate increase.

In a variance request based on COVID-19 effects, Geico said in this year's filing that certain auto coverages have started to exceed pre-pandemic levels.

Prior to the economic shutdowns, Geico said medical and social inflation were rising. "However, the pandemic has led to even further increases in liability severities," the company said in the rate filing, because of changed driving patterns and costlier treatments as more care is taking place in emergency rooms and hospitals for injuries previously treated outside of a hospital setting.

APCIA Public Affairs Vice President Jeff Brewer said people are exhibiting dangerous post-pandemic-lockdowns driving trends. "People are driving more dangerously than in the past. And people are not wearing their seat belts," he said. "There are more and more severe crashes."

The National Highway Traffic Safety Administration estimates that nearly 43,000 people died in motor vehicle traffic crashes last year, a 10.5% increase from the prior year. The projection is the highest number of fatalities since 2005 and the largest annual percentage increase in agency record-keeping.

(By Renée Kiriluk-Hill, associate editor, BestWeek: Renee.Kiriluk-Hill@ambest.com)