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15
16 BEFORE THE INSURANCE COMMISSIONER
17 OF THE STATE OF CALIFORNIA
18

19 In the Matter of the Rate Applications of

20 GEICO Indemnity Company, GEICO
21 Casualty Company, GEICO General
22 Insurance Company, and Government
23 Employees Insurance Company,
24 Applicants.
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28

File No.: PA-2022-00006

**CONSUMER WATCHDOG'S REQUEST
FOR COMPENSATION**

TABLE OF CONTENTS

I. INTRODUCTION	1
II. CONSUMER WATCHDOG IS ELIGIBLE TO SEEK COMPENSATION IN THIS PROCEEDING, AND ITS REQUEST IS TIMELY	2
III. SUMMARY OF THE PROCEEDING.....	3
A. Consumer Watchdog Petitioned for Hearing, Identifying Several Issues with the Application.....	3
B. Consumer Watchdog Requested Additional Information from GEICO and Participated in Three-Way Discussions with the Parties Regarding the Issues Identified in the Petition and Additional Submissions.	5
IV. CONSUMER WATCHDOG IS ENTITLED TO AN AWARD OF ITS REASONABLE ADVOCACY AND WITNESS FEES	7
A. Consumer Watchdog Made a Substantial Contribution to the Commissioner’s Final Decision.	7
B. Consumer Watchdog’s Requested Advocacy Fees Are Reasonable.	10
C. Consumer Watchdog’s Expert Fees Are Reasonable.	12
V. CONCLUSION.....	14

1 **I. INTRODUCTION**

2 Consumer Watchdog (“CWD”), Intervenor in the above-entitled proceeding, submits this
3 Request for Compensation (“Request”) pursuant to Insurance Code section 1861.10, subdivision
4 (b), and the intervenor regulations, California Code of Regulations, title 10 (“10 CCR”), § 2661.1
5 et seq.

6 Proposition 103 and the intervenor regulations expressly provide for consumer
7 participation in the rate review process. This is because “the scrutiny of consumer representatives
8 is an important tool to ensure that applicants comply with the statutory and regulatory prohibition
9 on ‘excessive, inadequate, and unfairly discriminatory’ rates, or rates that otherwise violate the
10 law.” (*Ass’n of California Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029, 1041.)

11 Invoking the right the voters accorded themselves under Insurance Code section
12 1861.10(a) to enforce the provisions of Proposition 103, Consumer Watchdog initiated the
13 proceeding when it filed a Petition for Hearing, Petition to Intervene, and Notice of Intent to Seek
14 Compensation (“Petition”) on August 8, 2022, challenging the rate applications (File Nos.: 22-
15 1492; 22-1492-A; 22-1492-B; 22-1492-C) [“the Applications”] of GEICO Indemnity Company,
16 GEICO Casualty Company, GEICO General Insurance Company, and Government Employees
17 Insurance Company (“Applicants” or “GEICO”) seeking an overall 6.9% rate increase to their
18 private passenger auto lines of insurance. (Consumer Watchdog, the Department of Insurance,
19 and Applicants will be collectively referred to as the “Parties.”)

20 Consumer Watchdog represented the interests of consumers and policyholders by
21 presenting issues, evidence, and arguments in its Petition and subsequent requests for information
22 and correspondence and communications with the Parties that were separate and distinct from
23 those raised by the Department of Insurance (the “Department”). Consequently, the Insurance
24 Commissioner (“Commissioner”) had all this information available to him when making his
25 decision that would not have been available had Consumer Watchdog not participated. As a
26 result, Consumer Watchdog substantially contributed to the Commissioner’s decision to approve
27 the Applications.
28

1 This Request seeks compensation in the total amount of \$63,378.50¹ for Consumer
2 Watchdog's substantial contribution to the Commissioner's Decision Denying Petition for
3 Hearing ("Order") regarding the Applications. This Request includes time spent working on this
4 matter, including preparing this Request, through February 3, 2023. This Request is based on the
5 facts and circumstances of this matter as summarized in Section III below and in supporting
6 exhibits, the record in this matter, and the accompanying Declarations of Daniel L. Sternberg
7 ("Sternberg Decl.") and Allan I. Schwartz ("Schwartz Decl."). In light of the substantial
8 contribution Consumer Watchdog made to the Commissioner's decision in this proceeding, as
9 discussed further below, the compensation sought for its attorneys, paralegal, and actuarial expert
10 fees is abundantly reasonable.

11 **II. CONSUMER WATCHDOG IS ELIGIBLE TO SEEK COMPENSATION IN THIS** 12 **PROCEEDING AND ITS REQUEST IS TIMELY**

13 The intervenor regulations provide, in part:

14 A petitioner, intervenor or participant whose Petition to Intervene or Participate
15 has been granted and who has been found eligible to seek compensation may
16 submit to the Public Advisor, within 30 days after the service of the order,
17 decision, regulation or other action of the Commissioner in the proceeding for
18 which intervention was sought, or at the requesting petitioner's, intervenor's or
19 participant's option, within 30 days after the conclusion of the entire proceeding,
20 a request for an award of compensation.

21 (10 CCR § 2662.3(a).) Consumer Watchdog is a longtime participant and intervenor in
22 Department proceedings and a nationally recognized consumer advocacy organization. The
23 Commissioner issued Consumer Watchdog's latest Finding of Eligibility on July 26, 2022,
24 effective for two years as of July 12, 2022, in which he found Consumer Watchdog eligible for
25 compensation "for its representation of consumers' interests[.]"²

26 ¹ Consumer Watchdog seeks advocacy fees and expenses in the amount of \$41,032.50 for the
27 work of Consumer Watchdog's counsel and seeks \$22,346.00 in fees billed by its consulting
28 actuary and expert witness, Allan I. Schwartz. (See Exh. A (attached) for a summary of the fees
and expenses requested.)

² Consumer Watchdog's current Finding of Eligibility succeeded prior determinations issued on
August 25, 2020, effective as of July 12, 2020; July 12, 2018; July 14, 2016, July 24, 2014;
July 24, 2012; July 2, 2010; August 25, 2008; July 14, 2006; July 2, 2004; June 20, 2002;
October 1, 1997; September 26, 1995; September 27, 1994; and September 13, 1993.

1 The Commissioner granted Consumer Watchdog's Petition to Intervene in the proceeding
2 on the Applications on or about August 22, 2022. (Ruling Granting Consumer Watchdog's
3 Petition to Intervene, Aug. 22, 2022, p. 4.) Thus, Consumer Watchdog is eligible to seek
4 compensation in this matter.

5 Pursuant to 10 CCR § 2662.3(a), a request for compensation is due 30 days after service
6 of the Commissioner's decision in the proceeding in which intervention was sought or 30 days
7 after conclusion of the entire proceeding. On December 6, 2022, the Commissioner issued an
8 order denying Consumer Watchdog's Petition for Hearing. On December 21, Consumer
9 Watchdog requested an extension to file its request for compensation by February 6, 2023, which
10 was granted by the Public Advisor via email that same day. Accordingly, Consumer Watchdog's
11 Request is timely pursuant to 10 CCR § 2662.3(a).

12 **III. SUMMARY OF THE PROCEEDING**

13 To demonstrate Consumer Watchdog's substantial contribution to the Commissioner's
14 decision in this proceeding and to demonstrate the reasonableness of the advocacy and witness
15 fees requested, set forth below is a summary of Consumer Watchdog's participation in this
16 matter.

17 **A. Consumer Watchdog Petitioned for Hearing, Identifying Several Issues with the** 18 **Application**

19 On or about June 6, 2022, Applicants filed Prior Approval Rate Applications with the
20 Department, seeking approval of an overall rate increase of 6.9% to their private passenger
21 automobile line of insurance. (Sternberg Decl., ¶ 27.) The Department notified the public of the
22 Applications on or about June 24, 2022. (*Ibid.*)

23 Consumer Watchdog and its actuarial expert, Allan I. Schwartz, reviewed the Applications
24 in detail and determined that the proposed rate changes were excessive and/or unfairly
25 discriminatory in violation of Insurance Code section 1861.05, subdivision (a), and the prior
26 approval rate regulations, 10 CCR § 2644.1, et seq. (Sternberg Decl., ¶ 28.) Mr. Schwartz's
27 analysis of the Applications included several specific issues that contributed to Applicants'
28 proposed rates being excessive. (*Ibid.*)

1 On August 8, 2022, pursuant to Insurance Code section 1861.10(a), Consumer Watchdog
2 filed its Petition identifying the issues on which it would provide evidence to show why
3 Applicants' proposed rates were excessive and/or unfairly discriminatory. (Petition, at 8–9;
4 Sternberg Decl., ¶ 29, Exh. 3.)

5 Specifically, Consumer Watchdog's Petition alleged that GEICO chose excessive net
6 trends which overstate the projected loss ratios resulting in an inflated rate indication. (Petition, at
7 8a; Sternberg Decl., ¶ 30.) GEICO also did not demonstrate that the selected trend factors and
8 trend data period used were the most actuarially sound. (*Ibid.*)

9 Additionally, the Petition alleged Applicants' analysis of potential distorting events on the
10 loss and premium trend were not adequately documented or supported. (Petition, at 8b; Sternberg
11 Decl., ¶ 31.)

12 The Petition also alleged Applicants' use of a weighted average efficiency standard
13 consisting of 75.5% weight to Captive and 24.5% weight to Direct Writer failed to reflect that
14 GEICO would be a 100% Direct Writer when the proposed rates were in effect, as GEICO
15 announced in August 2022 that it was closing all its sales offices in California, and therefore,
16 would be 100% Direct going forward. (Petition, at 8c; Sternberg Decl., ¶ 32.)

17 Finally, the Petition alleged that GEICO used education and occupation as unlawful rating
18 factors to create five separate rating tiers for their Standard Group, Professional Group, Skilled
19 Artisans and Technicians Group, Sponsored Marketing Group, and Affinity Groups. (Petition, at
20 8d; Sternberg Decl., ¶ 33.)

21 On August 12, 2022, GEICO filed their Answer to Consumer Watchdog's Petition for
22 Hearing denying the allegations in Consumer Watchdog's Petition (GEICO's Answer and
23 Affirmative Defenses to Consumer Watchdog's Petition for Hearing, Aug. 12, 2022, at pp. 2–4;
24 Sternberg Decl., Exh. 4). GEICO's Answer generally denied each of the allegations in the Petition
25 but did not offer any substantive response or additional data or information attempting to rebut
26 any of the issues raised by Consumer Watchdog. (Sternberg Decl., ¶ 34.)

27 The Commissioner granted Consumer Watchdog's Petition to Intervene in the proceeding
28 on the Applications on August 22, 2022, finding that Consumer Watchdog "has raised and seeks

1 to address issues that are relevant to the ratemaking process.” (Ruling Granting Consumer
2 Watchdog’s Petition to Intervene, Aug. 22, 2022, at p. 4; Sternberg Decl., ¶ 35, Exh. 5.)

3 **B. Consumer Watchdog Requested Additional Information from GEICO and**
4 **Participated in Three-Way Discussions with the Parties Regarding the Issues**
5 **Identified in the Petition and Additional Submissions.**

6 On November 21, 2022, Consumer Watchdog submitted 25 Requests for Information to
7 GEICO (Exh. B hereto; Sternberg Decl., ¶ 36) seeking, among other information, data dealing
8 with the impact on GEICO’s insurance costs (both losses and expenses) and profits from its
9 decision to stop offering insurance through agents or by phone in California; an explanation of its
10 methodology used to split advertising into institutional and non-institutional; data and analysis
11 used by GEICO to monitor the impact of COVID-19 on California private passenger automobile
12 insurance costs, as well as the data used by GEICO to derive the 15% premium credit for
13 excessive rates it charged in March and April 2020 due to COVID-19; and a breakdown of
14 GEICO’s Comprehensive Trend Data for both frequency and severity by Cause of Loss.
15 Consumer Watchdog also identified in its Requests for Information several instances where
16 GEICO’s responses to the Department’s Objection Letter, dated November 17, 2022, were
17 incomplete and required further clarification and/or additional information. (*Ibid.*)

18 On November 23, 2022, the Department filed a second Objection Letter with GEICO that,
19 among other issues, identified additional questions for GEICO that were related to the frequency
20 and severity issues originally raised in Consumer Watchdog’s Requests for Information.
(Sternberg Decl., ¶ 37.)

21 On November 29, GEICO provided a partial response to Consumer Watchdog’s Requests
22 for Information and the Department’s November 23 Objection Letter. GEICO withheld
23 documents critical to the completion of Consumer Watchdog’s review and analysis of the rate
24 application. For example, GEICO refused to provide data, documents, and/or analysis related to
25 (1) changes in its marketing system, including its decision to close local offices in California and
26 stop selling insurance through telephone agents in the state; (2) the impact of the COVID-19
27 pandemic on its private passenger auto insurance costs; and (3) comprehensive trend data for both
28 frequency and severity. (Sternberg Decl., ¶ 38.)

1 On November 30, 2022, Consumer Watchdog participated in a teleconference with the
2 Parties to discuss the issues regarding GEICO's November 29 responses to Consumer
3 Watchdog's Requests for Information. (Sternberg Decl., ¶ 39.) During this call, Consumer
4 Watchdog made clear to the parties that, because of the information GEICO had thus far refused
5 to provide, it was presently unable to complete its actuarial analysis (*Ibid.*) At the conclusion of
6 this call, the parties all agreed to a process and timeline for moving the Applications forward:
7 (1) by no later than December 7, 2022, Consumer Watchdog would identify issues regarding
8 GEICO's incomplete responses to Consumer Watchdog's Requests for Information; (2) the
9 parties would have another three-way call on December 8, 2022 to discuss any remaining issues
10 regarding GEICO's deficient responses to the Requests for Information; and (3) after the
11 December 8 call and once GEICO responded to Consumer Watchdog's Requests for Information
12 in a complete and satisfactory manner, the parties would set another call within a reasonable time
13 to discuss rate indications with the aim of reaching a negotiated resolution that was fair to both
14 GEICO and policyholders. (*Ibid.*)

15 Despite this agreed-upon schedule, GEICO counsel subsequently emailed the parties on
16 December 1 proposing a call by December 6 to discuss rate indications, and the Department
17 responded that it was available for a call on December 5. (Sternberg Decl., ¶ 40.) Consumer
18 Watchdog responded to the Department's email with a letter on December 2 stating that until
19 GEICO provided the missing information, it would not be able to complete its analysis and
20 discuss its rate indication. (Exh. C hereto; Sternberg Decl., ¶ 41.) That letter concluded that
21 Consumer Watchdog intended to honor to the schedule that the parties had previously agreed
22 upon to proceed with a call to discuss GEICO's deficient responses on December 8. (*Ibid.*)

23 No one from the Department ever responded to Consumer Watchdog's December 2 letter.
24 (Sternberg Decl., ¶ 42.) The next day, on December 6, 2022, the Commissioner issued an order
25 denying Consumer Watchdog's Petition for Hearing. (*Ibid.*; Sternberg Decl., Exh. 6.)

26 In approving the Applications, the Decision responded to each of the issues raised by
27 Consumer Watchdog and concluded that the Department had "considered all of the factors and
28 issues which Petitioner raised" to reach its determination that a rate change of 6.9% was justified.

(Decision, pp. 2–4; Sternberg Decl., ¶ 43.)

IV. CONSUMER WATCHDOG IS ENTITLED TO AN AWARD OF ITS REASONABLE ADVOCACY AND WITNESS FEES

A. Consumer Watchdog Made a Substantial Contribution to the Commissioner’s Final Decision.

Proposition 103 requires awards of reasonable advocacy and witness fees and expenses for persons who represent the interests of consumers and who make a “substantial contribution” to decisions or orders by the Commissioner or a court. Insurance Code section 1861.10(b), states:

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.

(Emphasis added.) As the emphasized language makes clear, when the statutory criteria are met, an award of reasonable advocacy fees and expenses is mandatory. This provision affords insurance consumers the ability to have their interests represented on an equal basis with the interests of insurers and facilitates consumer participation in the enforcement of Proposition 103. (See *Econ. Empowerment Found. v. Quackenbush* (“*EEF*”) (1997) 57 Cal.App.4th 677, 686 [the purpose of intervenor fees is to encourage consumer participation]; see also *Ass’n of California Ins. Cos. v. Poizner*, *supra*, 180 Cal.App.4th at 1052 [stating “the goal of fostering consumer participation in the administrative rate-setting process” as “one of the purposes of Proposition 103”].) Per the voters’ instruction, the mandate of section 1861.10(b), like all of the provisions of Proposition 103, must be “liberally construed and applied in order to fully promote its underlying purposes.” (Prop. 103, § 8.) Thus, the courts have held that section 1861.10(b) should be applied in a manner “which best facilitates compensation.” (*EEF*, *supra*, 57 Cal.App.4th at 686.)

When they established Proposition 103’s public participation system, the voters were well aware that the Department (as distinct from the Commissioner) would become a party to a proceeding such as this. However, the voters recognized that Department staff might be subject to budgetary or other considerations in their role as regulators that might cause them to take different positions or emphasize different issues than consumer participants in a particular proceeding. The voters therefore created a system in which consumers would have their own

1 advocates, able to protect consumers’ interests before any tribunal as zealously as lawyers for the
2 insurance industry protect their clients’ interests—and be compensated accordingly. As the
3 Ballot Argument in Favor of Proposition 103 explained, the initiative sought to establish “a
4 permanent, *independent* consumer watchdog system [that] will champion the interests of
5 insurance consumers.” (Emphasis added.) The broad substantial contribution standard enacted by
6 section 1861.10(b), ensures that consumers will be able to participate in proceedings
7 *independently of the Department staff*.

8 As the Court of Appeal held in *State Farm General Insurance Company v. Lara* (“SFG”) (2021) 71 Cal.App.5th 197, a party’s entitlement to fees under section 1861.10(a) “requires a
9 significant, distinct contribution, but not more” (*id.* at 214), as Proposition 103’s fee statute “was
10 intended to encourage consumer participation more broadly” than other fee schemes. (*Id.* at 216.)

11 Regulations promulgated by the Commissioner provide guidance for the determination of
12 whether consumer representatives made a “substantial contribution” in departmental proceedings.

13 The regulations provide as follows:

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

24 (10 CCR § 2661.1(k), emphasis added.)

25 The detailed summary of this proceeding presented in section III above, the
26 accompanying Sternberg and Schwartz Declarations, and the record in this proceeding make
27 clear that Consumer Watchdog has met the substantial contribution requirement. CWD’s counsel
28 are veterans of over a hundred administrative proceedings concerning Proposition 103 since the
law’s passage. They have also litigated challenges to Proposition 103 in the civil courts and
participated in all of the cases that led to landmark judicial decisions. Consumer Watchdog
counsel and consulting actuary were able to provide an effective professional balance to

1 GEICO's highly qualified team of in-house counsel and actuaries. (See Sternberg Decl., ¶¶ 9–
2 19.)

3 Consumer Watchdog's substantial contribution in this proceeding, as detailed in
4 section III above and in the accompanying Sternberg Declaration and further evidenced by the
5 record in this matter, is demonstrated by at least the following:

- 6 • Consumer Watchdog's Petition initiated the proceeding and first raised issues with
7 the Application, including (1) GEICO chose excessive net trends which overstated
8 the projected loss ratios resulting in an inflated rate indication and did not
9 demonstrate that the selected trend factors and trend data period used were the
10 most actuarially sound; (2) GEICO's analysis of potential distorting events on the
11 loss and premium trend were not adequately documented or supported;
12 (3) GEICO's use of a weighted average efficiency standard consisting of 75.5%
13 weight to Captive and 24.5% weight to Direct Writer failed to reflect that GEICO
14 would be a 100% Direct Writer when the proposed rates were in effect; and
15 (4) GEICO used education and occupation as unlawful rating factors to create five
16 separate rating tiers for their Standard Group, Professional Group, Skilled Artisans
17 and Technicians Group, Sponsored Marketing Group, and Affinity Groups.
- 18 • Consumer Watchdog submitted Requests for Information to GEICO, requesting
19 further data and documentation of the issues raised by its Petition and issues
20 subsequently identified as discussed *supra*, section IIB.
- 21 • GEICO provided responses, though not in full, to Consumer Watchdog's Requests
22 for Information, including additional documentation, calculations, explanations,
23 and data. (*See supra*, Section IIIB.)
- 24 • Consumer Watchdog attorneys and its actuary participated in a three-way
25 discussion with the Department and GEICO addressing the data and
26 documentation of the issues raised by its Petition and GEICO's deficient responses
27 to Consumer Watchdog's Requests for Information.

1 In sum, Consumer Watchdog’s separate and distinct presentation of relevant issues,
2 evidence, and arguments provided in its Petition, requests for information, and communications
3 with the Parties, as well as the additional information, documents, and data it elicited from
4 Applicants in response to the distinct issues raised by Consumer Watchdog in its Petition and in
5 verbal and written exchange with the Applicants, resulted in more relevant, credible, and non-
6 frivolous information being available to the Commissioner in making his final decision approving
7 the Applications than if Consumer Watchdog had not participated. Thus, Consumer Watchdog
8 clearly meets the “substantial contribution” requirement of the Insurance Code and the
9 regulations.

10 **B. Consumer Watchdog’s Requested Advocacy Fees Are Reasonable.**

11 When a consumer representative makes a “substantial contribution,” as here, Insurance
12 Code section 1861.10(b) requires payment of all of a consumer representative’s “reasonable
13 advocacy and witness fees and expenses.” (Emphasis added.) As *SFG* held, “section 1861.10(b)
14 requires only that advocacy fees be ‘reasonable,’ within the usual meaning of the term in the fees
15 context: fair and appropriate under the circumstances.” (*SFG, supra*, 71 Cal.App.5th at 218.) That
16 means, in general, parties “who qualify for a fee should recover compensation for all the hours
17 reasonably spent.” (*Ibid.*, quotations omitted.) Indeed, *SFG* recognizes that “California law
18 requires that attorney fee awards be ‘fully compensatory’” (*ibid.*, quoting *Ketchum v. Moses*
19 (2001) 24 Cal.4th 1122, 1133), and that permitting “recovery of all reasonable fees” under section
20 1861.10(b) supports Proposition 103’s consumer-participation purposes “by encouraging
21 intervention in the first place and ensuring intervenors can vigorously represent consumers once
22 involved” (*id.* at 219).

23 For its substantial contribution, Consumer Watchdog requests reasonable advocacy fees in
24 the amount of \$41,032.50 for the work of its counsel and paralegal. The requested fees, including
25 the total hours of work performed and the hourly rates of each Consumer Watchdog attorney, are
26 summarized in the attached Exhibit A, “Summary of Fees.” Insurance Code section 1861.10,
27 subdivision (b), requires an award of all “reasonable advocacy and witness fees” once the
28 requirements of the statute are met, including making a substantial contribution. The procedural

1 history of this matter set forth above and supported by the Sternberg Declaration demonstrates the
2 reasonableness of the compensation requested in light of the amount of work performed. The
3 procedural history and Consumer Watchdog's time records (Sternberg Decl., Exh. 1a) also
4 demonstrate the work Consumer Watchdog performed in this proceeding.

5 As required by the regulations, the specific tasks performed by Consumer Watchdog's
6 attorneys are set forth in its detailed time records attached as Exhibit 1a to the Sternberg
7 Declaration. (See Sternberg Decl., ¶ 3 & Exh. 1a.) These time records were maintained
8 contemporaneously and reflect the actual time spent and actual work performed, billed to the
9 tenth of an hour, by all Consumer Watchdog legal staff who worked on this matter. (Sternberg
10 Decl., ¶ 6.) In preparing their respective time records for this request, Consumer Watchdog's legal
11 staff exercised billing judgment and eliminated time entries where appropriate. (Sternberg Decl.,
12 ¶ 5.) Consumer Watchdog submits that the time expended and work performed in the proceeding,
13 as reflected in the time records, was reasonable and appropriate, and the minimum required to
14 make a substantial contribution in this proceeding and to achieve the result obtained. (*Ibid.*)

15 The 2023 hourly rates set forth in Exhibit A are also reasonable and consistent with
16 prevailing market rates. The intervenor regulations specify, "[t]he compensation awarded **shall**
17 **equal** the market rate of the services provided." (10 CCR § 2662.6(b), emphasis added.) "Market
18 rate" is defined as the "prevailing rate for comparable services in the private sector in the Los
19 Angeles and San Francisco Bay Areas **at the time of the Commissioner's decision awarding**
20 **compensation** for attorney advocates, non-attorney advocates, or experts with similar experience,
21 skill and ability." (10 CCR § 2661.1(c)(1), emphasis added.)

22 The qualifications and experience of Consumer Watchdog's attorneys and paralegal who
23 performed work in this matter, Pamela Pressley, Harvey Rosenfield, Daniel L. Sternberg, and
24 Kaitlyn Gentile, are summarized in the Sternberg Declaration. (Sternberg Decl., ¶¶ 9–23.) The
25 Declaration of Richard M. Pearl ("Pearl Decl."), attached as Exhibit 2 to the Sternberg
26 Declaration, confirms that the requested rates for Consumer Watchdog's counsel are consistent
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28

1 with prevailing market rates.³ Mr. Pearl is a recognized expert on attorneys' fees issues under
2 California law. (See Sternberg Decl., Exh. 2 [Pearl Decl.], ¶¶ 3–9.) The Pearl Declaration shows
3 that Consumer Watchdog counsel's and paralegal's 2022 rates are well within, if not below, the
4 range of non-contingent rates charged by California attorneys in the Los Angeles area of
5 equivalent experience, skill, and expertise for comparable services. (See *id.*, ¶¶ 10–19.) The
6 Commissioner has also approved fee awards for Consumer Watchdog based on the same hourly
7 rates Consumer Watchdog's legal staff is currently using in 2023 for work done in 2017–2022.
8 (Sternberg Decl., ¶ 7.)

9 Finally, this Request also includes the time expended preparing the instant Request for
10 Compensation. This is also reasonable because the regulations permit reimbursement for
11 preparation of a request for an award of compensation. (10 CCR § 2661.1(d).) Preparing such a
12 request requires the intervenor to perform a comprehensive review of the record, review the
13 regulations, cite to the record in this proceeding, review billing and expense records, and prepare
14 the Request and supporting documents.

15 **C. Consumer Watchdog's Expert Fees Are Reasonable.**

16 Consumer Watchdog incurred reasonable expert fees of \$22,346.00 for the actuarial
17 consulting services of Allan I. Schwartz at AIS Risk Consultants, Inc. (See Schwartz Decl.,
18 Exh. 8.) The specific tasks performed by Mr. Schwartz are set forth in the detailed billing records
19 of AIS Risk Consultants, Inc. (*Ibid.*) Consumer Watchdog is informed and believes that these
20 time records were maintained contemporaneously and reflect the actual time spent and actual
21 work performed by Mr. Schwartz and his associates. (Schwartz Decl., ¶ 14; Sternberg Decl.,
22 ¶ 26.) Pursuant to 10 CCR sections 2662.6(b) and 2661.1(c)(1), the expert fees billed for the
23 actuarial consulting services of Mr. Schwartz and his staff at AIS Risk Consultants, Inc. reflect
24 their current 2023 market rates for such services and amount to less than the total expert fees
25 projected in Consumer Watchdog's Petition. (*Ibid.*; see Petition, Exh. A.)

26
27 ³ The Pearl Declaration was filed on April 15, 2022 in connection with a State Farm write matter
28 arising out of a rate proceeding and is equally applicable to this proceeding, given that Consumer
Watchdog's 2023 rates are within the range of rates considered reasonable for attorneys with
comparable experience at that time.

1 The Commissioner has awarded Consumer Watchdog compensation for Mr. Schwartz's
2 services based on his 2022 rate of \$870 per hour in the prior proceeding (Decision Awarding
3 Compensation, June 29, 2022, *In the Matter of the Rate Applications of Farmers Insurance*
4 *Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-2021-
5 00007, p. 10; Schwartz Decl., ¶ 8.) The Commissioner also awarded Consumer Watchdog
6 compensation for Mr. Schwartz's actuarial consulting services based on his 2021 hourly rate of
7 \$835 in three proceedings. In the decisions awarding compensation in these matters issued in
8 2021 for work performed in 2020–2021, the Commissioner found that the hourly rates requested
9 for Consumer Watchdog's attorneys and experts were reasonable. (See Decision Awarding
10 Compensation, Oct. 6, 2021, *In the Matter of the Rate Applications of Farmers Insurance*
11 *Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, File No. PA-2020-
12 00006, p. 10; Decision Awarding Compensation, Feb. 14, 2022, *In the Matter of the Rate*
13 *Application of Homesite Insurance Company of California*, File No. PA-2020-00003, p. 9;
14 Decision Awarding Compensation, Feb. 16, 2022, *In the Matter of the New Program Applications*
15 *of Farmers Insurance Exchange and Fire Insurance Exchange*, File No. PA-2020-00004, p. 9
16 (*Ibid.*; Schwartz Decl., Exh. 4). Mr. Schwartz's 2023 rate of \$915 per hour is an increase of 5.2%
17 from his 2022 rate of \$870 per hour. (*Ibid.*)

18 Mr. Schwartz's over 40 years of professional actuarial experience include being President
19 of AIS Risk Consultants, Assistant Commissioner of the New Jersey Department of Insurance,
20 and chief actuary of the North Carolina Department of Insurance. His resume is attached to the
21 accompanying Schwartz Declaration. (Schwartz Decl., ¶ 10, Exh. 5.) Consumer Watchdog
22 submits that the time expended and work performed by Mr. Schwartz as CWD's sole expert in
23 this proceeding, as reflected in his time records, including review of the initial Applications,
24 formulation of issues for the Petition, drafting of requests for information, and review of
25 GEICO's responses and updated data, was reasonable and appropriate and the minimum required
26 to achieve the result obtained. (Sternberg Decl., ¶ 26; Schwartz Decl., ¶ 14, Exh. 8.)
27
28

1 **V. CONCLUSION**

2 In sum, Consumer Watchdog made a substantial contribution to the Commissioner's final
3 decision approving GEICO's Applications by identifying relevant issues and arguments as set
4 forth in Consumer Watchdog's Petition and expanded upon in Consumer Watchdog's Requests
5 for Information, correspondence, and discussions with the Parties. In addition, during the course
6 of the proceeding, Applicants submitted additional relevant information, argument, and evidence
7 in response to each of the issues raised and requests for information by Consumer Watchdog that
8 would not have otherwise been available had Consumer Watchdog not participated. The decision
9 denying Consumer Watchdog's petition explicitly stated that it considered the issues raised by
10 Consumer Watchdog and responded to each one. Accordingly, Consumer Watchdog made a
11 substantial contribution to the Commissioner's decision to approve the Applications and is thus
12 entitled to its reasonable advocacy and witness fees as requested in the total amount of
13 \$63,378.50.

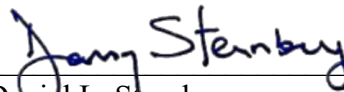
14
15 DATED: February 6, 2023

Respectfully submitted,

16 Harvey Rosenfield
17 Pamela Pressley
18 Daniel L. Sternberg
19 Ryan Mellino

20 CONSUMER WATCHDOG

21 By:



22 Daniel L. Sternberg
23 Attorneys for CONSUMER WATCHDOG
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2. I personally oversaw the preparation of the attached pleading entitled “Consumer Watchdog’s Request for Compensation” filed in this matter.

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


Daniel L. Sternberg

EXHIBIT A

EXHIBIT A
SUMMARY OF FEES AND EXPENSES

File No. PA-2022-00006

<u>ITEMS</u>	<u>COST</u>
1. <u>Consumer Watchdog's Fees</u> (Detailed in Billing Records attached as Exhibit 1a to Pressley Decl.)	
Harvey Rosenfield @ \$695 per hour, 7.5 hours	\$5,212.50
Pamela Pressley @ \$595 per hour, 36.0 hours	\$21,420.00
Daniel Sternberg @ \$350 per hour, 35.2 hours	\$12,320.00
Kaitlyn Gentile @ \$200 per hour, 10.4 hours	\$2,080.00
Subtotal of Consumer Watchdog Fees	\$41,032.50
2. <u>Expert Witness Fees – AIS Risk Consultants, Inc.</u> (Detailed in Billing Records attached as Exhibit 7 to Schwartz Decl.)	
Allan Schwartz @ \$915 per hour, 16.8 hours	\$15,372.00
Katherine Tollar @ \$ 415 per hour, 11.0 hours	\$4,565.00
Marianne Dwyer @ 365 per hour, 6.6 hours	\$2,409.00
Subtotal of AIS Risk Consultants, Inc. Fees	\$22,346.00
TOTAL ADVOCACY FEES AND WITNESS FEES:	\$63,378.50

EXHIBIT B

Information Requests in Connection with GEICO/GEICO General/GEICO Indemnity/GEICO
Casualty Auto Liability and Physical Damage Filing – SERFF Tracking #: GECC-133274260
State Tracking #: 22-1492; 22-1492-A; 22-1492-B; 22-1492-C
CDI File No. PA-2022-00006

1. GEICO’s response to Objection 2 of the November 17, 2022 Objection Letter provides a qualitative explanation for the difference in the number of closed claims in Exhibits 7 and 8. Provide a quantitative reconciliation of the values shown in those Exhibits.
2. GEICO’s response to Objection 4 of the November 17, 2022 Objection Letter shows graphs for Bodily Injury Liability frequency and severity. For frequency, the “selected trend” falls in between the “Trended Rolling 4-Quarter Expected Actual” and “Trended Rolling 4-Quarter Actual”. For severity, the “selected trend” does not appear to be based on the same methodology. Provide an explanation of, and justification for, the difference in methodology for frequency and severity.
3. GEICO’s response to Objection 6 of the November 17, 2022 Objection Letter appears to take the position that it is appropriate to disregard known changes in marketing channels. Provide the justification for that approach.
4. GEICO’s response to Objection 6 of the November 17, 2022 Objection Letter states “We will continue to monitor the changes to our distribution system as they occur”. Provide a complete description of all changes to your distribution system during 2022.
5. Provide all data, information, documents, and analyses relied upon by GEICO in no longer using agents for California private passenger automobile insurance.
6. Provide all data, information, documents, and analyses relied upon by GEICO in no longer selling private passenger automobile insurance over the telephone in California.
7. For each month from January 2022 to the present, provide the written premium and earned premium by marketing channel for policies with effective dates in each month.
8. Provide all data, information, documents, and analyses dealing with the impact on GEICO’s California private passenger automobile insurance costs (both losses and expenses) and profits of GEICO’s decision to no longer offer insurance through agents or by phone.
9. Provide an explanation of the methodology used to split advertising into institutional and non-institutional as set forth on Page 4.1 of the Prior Approval Rate Template.
10. Provide the calculation of the amounts shown for institutional and non-institutional advertising as set forth on Page 4.1 of the Prior Approval Rate Template.
11. Provide the un-redacted media specific advertising information referenced in the CA filing memo.
12. Provide all data, information, documents, and analyses that were used by GEICO in deriving the numerical value of the 15% premium credit referenced in its response to item number 1b in the COVID-19 RATE FILING QUESTIONNAIRE.
13. Provide all data, information, documents and analyses that were used by GEICO to monitor the impact of COVID on California private passenger automobile insurance costs from the March 4, 2020 date of the Governor’s “Proclamation of a State of Emergency” to the present, such as for example the mileage values as referenced in its response to item number 1b in the COVID-19 RATE FILING QUESTIONNAIRE.

Information Requests in Connection with GEICO/GEICO General/GEICO Indemnity/GEICO
Casualty Auto Liability and Physical Damage Filing – SERFF Tracking #: GECC-133274260
State Tracking #: 22-1492; 22-1492-A; 22-1492-B; 22-1492-C
CDI File No. PA-2022-00006

14. Provide all data, information, documents, and analyses that GEICO has regarding the future impact of COVID on California private passenger automobile insurance costs.
15. Provide all data, information, documents, and analyses related to the allegation that there are “higher levels of bad debt from moratoriums” as referenced in its response to item number 1b in the COVID-19 RATE FILING QUESTIONNAIRE.
16. Provide the complete basis for the statement “We believed at the time that effects of the pandemic would extend far beyond April 2020” as referenced in its response to item number 1d in the COVID-19 RATE FILING QUESTIONNAIRE.
17. Provide the complete basis for the statement “GEICO had positive conversations with the California Department of Insurance regarding the GEICO Giveback” as referenced in its response to item number 1d in the COVID-19 RATE FILING QUESTIONNAIRE.
18. Provide the basis for the statement “We also note that GEICO’s 15% credit for the entire term currently represents a greater benefit than many other companies’ approaches” as referenced in its response to item number 1d in the COVID-19 RATE FILING QUESTIONNAIRE.
19. The Prior Approval Rate Application Page 7 defines Net underwriting gain or loss as CY earned premiums less CY incurred loss less CY incurred expense. Provide the value of those three items used in the calculation of the Net underwriting gain shown of \$11,683,480.
20. Provide the Crash Course 2022 P&C Insurance Trends Report referenced in Exhibit 13.
21. Provide a breakdown of the Comprehensive Trend Data for both frequency and severity by Cause of Loss.
22. Provide support for the statement regarding “longer cycle times for completing vehicle repairs” given in Exhibit 13.
23. Provide data showing the “average annual mileage” as referenced in Exhibit 13, covering the entire period shown for the historical trend data.
24. Provide the basis for the assumption that “average premiums will recover 50% of the way to trended pre-pandemic levels” as referenced in Exhibit 13.
25. Provide the most recent versions currently in use of GEICO’s rule manuals for its Professional, Skilled Artisans and Technicians, Sponsored Marketing, and Affinity groups showing the percentage of premium reductions applied by coverage and eligibility criteria. These were not included in the original Application or in any subsequent updates to the Application currently available on SERFF.

**PROOF OF SERVICE
BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION,
EMAIL TRANSMISSION AND/OR PERSONAL SERVICE**

State of California, City of Los Angeles, County of Los Angeles

I am employed in the City 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 6330 South San Vicente Boulevard, Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On November 21, 2022, I caused service of true and correct copies of the document entitled

CONSUMER WATCHDOG'S REQUESTS FOR INFORMATION

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 EMAIL, by electronic mail transmission this date to the email address stated.
3. 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 November 21, 2022 at Los Angeles, California.


Kaitlyn Gentile

Service List

Alec Stone
Jon Phenix
Melissa Wurster
Rate Enforcement Bureau
California Department of Insurance
1901 Harrison Street, 4th Floor
Oakland, CA 94612
Tel. (415) 538-4111
Fax (510) 238-7830
Alec.Stone@insurance.ca.gov
Jon.Phenix@insurance.ca.gov
Melissa.Wurster@insurance.ca.gov

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

Brian A. Kelly
Damon N. Vocke
Duane Morris
Duane Morris LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
Tel. (415) 957-3000
BAKelly@duanemorris.com
DNVocke@duanemorris.com

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

Jenny Absher
Analyst, State Filings
GEICO
One Geico Plaza
Washington, DC 20076-0001
Tel. 478-744-5420
JAbsher@geico.com

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

EXHIBIT C



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

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).

December 2, 2022

Page 3

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

Sincerely,

A handwritten signature in blue ink that reads "Daniel L. Sternberg". The signature is written in a cursive, flowing style.

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 Me.ssa.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

CONFIDENTIALITY NOTICE: This communication may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use, or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

EXHIBIT B

California Commissioner Withholds Auto Insurance Rate A

Se ect Language

Disclaimer



Go to

Search Document

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)

PROOF OF SERVICE
BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION,
EMAIL TRANSMISSION AND/OR PERSONAL SERVICE

State of California, City of Los Angeles, County of Los Angeles

I am employed in the City 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 6330 South San Vicente Boulevard, Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On February 6, 2023, I caused service of true and correct copies of the document entitled

CONSUMER WATCHDOG'S REQUEST FOR COMPENSATION

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 EMAIL, by electronic mail transmission this date to the email address stated.
3. 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 February 6, 2023 at Los Angeles, California.


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