

1 Harvey Rosenfield, SBN 123082
2 Pamela Pressley, SBN 180362
3 Daniel L. Sternberg, SBN 329799
4 CONSUMER WATCHDOG
5 6330 San Vicente Blvd., Suite 250
6 Los Angeles, CA 90048
7 Tel. (310) 392-0522
8 Fax (310) 392-8874
9 harvey@consumerwatchdog.org
10 pam@consumerwatchdog.org
11 danny@consumerwatchdog.org

12 Attorneys for CONSUMER WATCHDOG

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Rate, Rule, and Form
Application of
Pacific Specialty Insurance Company,
Applicant.

File No.: 20-1565

**CONSUMER WATCHDOG'S PETITION
FOR HEARING, PETITION TO
INTERVENE, AND NOTICE OF INTENT
TO SEEK COMPENSATION**

[Ins. Code §§ 1861.05, 1861.10; Cal. Code
Regs, tit. 10, §§ 2653.1, 2661.2, and 2661.3]

1 Consumer Watchdog hereby requests that the Insurance Commissioner notice a public
2 hearing pursuant to Insurance Code sections 1861.05, subdivision (c), and 1861.10, subdivision
3 (a), on the above-referenced rate, rule, and form application of Pacific Specialty Insurance
4 Company (“Applicant”), at which time Applicant will be directed to appear and respond to the
5 issues raised in this petition. Consumer Watchdog also hereby requests that it be granted leave to
6 intervene in the proceeding on Applicant’s rate, rule, and form filing. Consumer Watchdog
7 intends to seek compensation in this proceeding, and, pursuant to California Code of
8 Regulations, title 10 (“10 CCR”), section 2661.3(c), Consumer Watchdog’s proposed budget is
9 attached hereto as Exhibit A.

10 In support of its petition, Consumer Watchdog alleges:

11 **I. THE APPLICATION**

12 1. On or about May 13, 2020, Applicant filed a Prior Approval Rate, Rule, and Form
13 Application with the California Department of Insurance (“CDI”), seeking approval of an overall
14 rate increase for its Preferred Homeowners Program of 6.9%. (File No. 19-618 [“the
15 Application”]). On or about May 22, 2020, the public was notified of the Application.

16 **II. PETITIONER**

17 2. Petitioner Consumer Watchdog is a nonprofit, nonpartisan, public interest
18 corporation organized to represent the interests of consumers and taxpayers. A core focus of
19 Consumer Watchdog’s advocacy is the representation of the interests of insurance consumers
20 and policyholders, particularly as they relate to the implementation and enforcement of
21 Proposition 103, in matters before the Legislature, the courts, and the CDI.

22 3. Consumer Watchdog’s founder authored Proposition 103 and led the successful
23 campaign for its enactment by California voters in 1988. Consumer Watchdog’s staff and
24 consultants include some of the nation’s foremost consumer advocates and experts on insurance
25 ratemaking matters.

26 4. Consumer Watchdog has served as a public watchdog with regard to insurance
27 rates and insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements
28 and the status of the rollback regulations; reviewing and challenging rate filings made by insurers

1 seeking excessive rates; participating in rulemaking and adjudicatory hearings before the CDI;
2 and educating the public concerning industry underwriting and rating practices, their rights under
3 Proposition 103, and other provisions of state law. Consumer Watchdog has also initiated and
4 intervened in actions in state court and appeared as amicus curiae in matters involving the
5 interpretation and application of Proposition 103 and the Insurance Code.¹

6 5. Consumer Watchdog has initiated and intervened in numerous proceedings before
7 the CDI related to the implementation and enforcement of Proposition 103's reforms, including
8 over 100 such proceedings in the last seventeen years. In each and every proceeding in the last
9 sixteen years that has resulted in a final decision and in which Consumer Watchdog sought
10 compensation, the Commissioner found that Consumer Watchdog made a substantial
11 contribution, meaning that its participation was separate and distinct from any other party and
12 that it presented relevant issues, evidence, and arguments that resulted in more credible, non-
13 frivolous information being available to the Commissioner in making his final decision.

14 **III. EVIDENCE**

15 6. At the requested public hearing, Consumer Watchdog will present and elicit
16 evidence that the rates proposed in the Application are in violation of Insurance Code section
17 1861.05, subdivision (a), which provides that "[n]o rate shall be approved or remain in effect
18 which is excessive, inadequate, [or] unfairly discriminatory." Additionally, Consumer Watchdog
19 will present and elicit evidence that Applicant's proposed rates violate 10 CCR § 2644.1, which
20 provides that "[n]o rate shall be approved or remain in effect that is above the maximum
21 permitted earned premium as defined in section 2644.2."

22
23
24 ¹ For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v.*
25 *Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243;
26 *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish*
27 *Speaking Citizens' Foundation v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Farmers*
28 *Insurance Co.* (2004) 116 Cal.App.4th 968; *State Farm Mutual Automobile Ins. Co. v.*
Garamendi (2004) 32 Cal.4th 1029; *The Foundation for Taxpayer and Consumer Rights v.*
Garamendi (2005) 132 Cal.App.4th 1354; *Association of California Insurance Companies v.*
Poizner (2009) 180 Cal.App.4th 1029; and *Mercury Casualty Company v. Jones* (2017) 8
Cal.App.5th 561.

1 7. Based on Consumer Watchdog’s preliminary analysis and the information
2 contained in the Application, Consumer Watchdog has identified the following issues on which it
3 intends to present and elicit evidence:

- 4 a. Excessive Rates (10 CCR § 2644.1): Applicant is requesting a +6.9% rate
5 increase despite having a profit during 2019. According to the filing submitted,
6 Applicant had a net underwriting gain of \$14.9 million on earned premiums of
7 \$187.4 million in 2019. This is an underwriting gain of 8.0% of premium. This
8 high profit is the result of the low loss ratio of only 34.3% in 2019. A large profit
9 such as this is not consistent with the rate increase being requested.
- 10 b. Projected Losses (10 CCR § 2644.4): Applicant uses a Fire Following Earthquake
11 provision of 3.6%, which appears to be unreasonably high. This is the result of the
12 RMS model giving projected losses over 250% as large as the AIR model. The
13 Applicant has not explained the basis for these widely differing results.
14 Furthermore, the Applicant has not shown that the models used conform to the
15 standards of practice as set forth by the Actuarial Standards Board and that the
16 models are based upon the best available scientific information for assessing
17 earthquake frequency, severity, damage, and loss, and that the projected losses
18 derived from the model meet all applicable statutory standards.
- 19 c. Improper Loss Development (10 CCR § 2644.6): Applicant uses incurred
20 development in the rate calculation. Incurred development results in projected
21 loss & DCCE 3.5% higher than paid development. Applicant has not supported
22 the use of incurred development. In addition, the Application does not
23 demonstrate that the selected development method is the most actuarially sound.
- 24 d. Loss and Premium Trends (10 CCR § 2644.7): The Application uses an annual
25 loss trend of 9.1%. This is unreasonably high. Additionally, the trend selection by
26 Applicant does not appropriately reflect the distortion in the historical trend data
27 from the large amount of claim payments in 2019. Furthermore, the trend data end
28 in 2019, which does not take into account the impact of COVID-19, which can be

1 expected to reduce claim costs. Also, the Application does not demonstrate that
2 the selected trend factors and trend data period used are the most actuarially
3 sound.

4 8. Based upon its initial analysis, Consumer Watchdog respectfully submits that the
5 Commissioner should reject the requested overall rate increase and take such further corrective
6 action as necessary.

7 9. This petition is based upon Consumer Watchdog's preliminary analysis of the
8 Application. Thus, Consumer Watchdog reserves the right to modify, withdraw, and/or add
9 issues for consideration as more information becomes available.

10 **IV. AUTHORITY FOR PETITION AND GRANTING REQUEST FOR A HEARING**

11 10. The authority for this petition for hearing is Insurance Code section 1861.10,
12 subdivision (a), which grants "any person" the right to initiate or intervene in a proceeding
13 permitted or established by Proposition 103 and the right to enforce Proposition 103.
14 Specifically, as stated above, Consumer Watchdog initiates this rate proceeding to enforce
15 Insurance Code section 1861.05, subdivision (a), and the prior approval rate regulations.

16 11. Additionally, a hearing is authorized pursuant to Insurance Code section 1861.05,
17 subdivision (c), which allows "a consumer or his or her representative" to request a hearing on a
18 rate application, and 10 CCR § 2653.1, which provides that "any person, whether as an
19 individual, representative of an organization, or on behalf of the general public, may request a
20 hearing by submitting a petition for hearing." Section 1861.05(c) further provides that when "the
21 proposed rate adjustment exceeds 7% of the then applicable rate for personal lines . . . the
22 commissioner must hold a hearing upon a timely request."

23 12. This petition is timely pursuant to Insurance Code section 1861.05, subdivision
24 (c), and 10 CCR § 2646.4(a)(1) because it is filed within forty-five (45) days of the May 22,
25 2020 public notice date.

26 **V. INTEREST OF PETITIONER**

27 13. Consumer Watchdog's interest in the above-captioned proceeding is to ensure that
28 Applicant's homeowners insurance policyholders are charged rates and premiums that comply

1 with 1861.05(a)'s requirement that "no rate shall be approved or remain in effect which is
2 excessive, inadequate, [or] unfairly discriminatory or otherwise in violation of this chapter," and
3 the requirements contained in the regulations promulgated thereunder. For most homeowners,
4 their home is their most valuable asset and mortgage lenders generally require homeowners'
5 insurance. Consumers who might be overcharged by insurers as they attempt to protect their
6 homes are part of Consumer Watchdog's core constituency.

7 14. Vigilance over insurance company rates and underwriting practices for
8 homeowner and other dwelling insurance coverage is particularly necessary because Pacific
9 Specialty and other insurance companies may seek to exploit the recent wildfires to either
10 arbitrarily deny coverage or obtain unjustified rate hikes.

11 15. As noted in paragraphs 2–5 above, Consumer Watchdog's staff and consultants
12 have substantial experience and expertise in insurance rate matters, which Consumer Watchdog
13 believes will aid the CDI in its review of the Applications and aid the Commissioner in making
14 his ultimate decision as to whether to approve or disapprove the requested rates. As noted in
15 paragraph 5 above, the Commissioner has found that Consumer Watchdog has made a
16 substantial contribution in all of the rate proceedings in which it has intervened in the last sixteen
17 years that have proceeded to a final decision and Consumer Watchdog has sought compensation.
18 If leave to intervene is granted, Consumer Watchdog will participate fully in all aspects of this
19 proceeding.

20 **VI. AUTHORITY FOR PETITION TO INTERVENE**

21 16. The authority for Consumer Watchdog's petition to intervene is Insurance Code
22 section 1861.10, subdivision (a), which grants "any person" the right to "initiate or intervene in
23 any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of
24 Division 1 of the Insurance Code] . . . and enforce any provision of this article." This proceeding
25 is a proceeding to enforce Insurance Code section 1861.05(a) pursuant to Insurance Code
26 sections 1861.10(a) and 1861.05(c), and hence is a proceeding both "permitted" and
27 "established" by Chapter 9. This petition to intervene is also authorized by 10 CCR § 2661.1 et
28 seq. Although consumer presence in departmental proceedings typically results in significant

1 reductions to policyholders' rates, the amount of savings for each individual consumer is
2 outweighed by the time and expense of hiring individual counsel or an advocacy group to protect
3 his or her rights. Thus, an independent organization like Consumer Watchdog introduces a voice
4 that otherwise would be absent from this proceeding.

5 **VII. PARTICIPATION OF CONSUMER WATCHDOG**

6 17. Consumer Watchdog verifies, in accordance with 10 CCR § 2661.3, that it will be
7 able to attend and participate in this proceeding without unreasonably delaying this proceeding
8 or any other proceedings before the Insurance Commissioner.

9 **VIII. INTENT TO SEEK COMPENSATION**

10 18. The Commissioner has awarded Consumer Watchdog compensation for its
11 reasonable advocacy and witness fees and expenses in past departmental proceedings. The
12 Commissioner issued Consumer Watchdog's most recent Finding of Eligibility on July 12, 2018,
13 effective for two years from the date of the order. Consumer Watchdog was previously found
14 eligible to seek compensation on July 14, 2016; July 24, 2014; July 24, 2012; July 2, 2010;
15 August 25, 2008 (effective July 14, 2008); July 14, 2006; July 2, 2004; June 20, 2002; October 1,
16 1997; September 26, 1995; September 27, 1994; and September 13, 1993.

17 19. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to
18 10 CCR § 2661.3(c), Consumer Watchdog's estimated budget in this proceeding is attached
19 hereto as Exhibit A. Consumer Watchdog has based its estimated budget on several factors
20 including: (1) the technical and legal expertise needed to address these issues; (2) its current best
21 estimate of the time needed to participate effectively in these proceedings, taking into account
22 the time already expended by Consumer Watchdog staff and an estimate of time needed to
23 complete remaining tasks; and (3) past experience in similar rate proceedings before the CDI.
24 The estimated budget is reasonable and the staffing level is appropriate, given the expertise that
25 Consumer Watchdog and its consultants bring to these proceedings when the issues involved are
26 issues at the very core of its organizational mission and strike at the very heart of Proposition
27 103 itself. The budget presented in the attached Exhibit is a preliminary estimate, and Consumer
28 Watchdog reserves the right to amend its proposed budget as its expenses become more certain,

1 or in its request for final compensation. Consumer Watchdog will give notice of such
2 modifications as soon as practicable after it discovers the need to revise its estimates and shall
3 comply with the budget revision requirements in the relevant intervenor regulations.

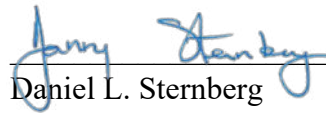
4 WHEREFORE, Consumer Watchdog respectfully requests that the Insurance
5 Commissioner GRANT its petition for hearing and petition to intervene in the proceeding
6 initiated on Pacific Specialty's Application.

7
8 DATED: July 6, 2020

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Daniel L. Sternberg

11 CONSUMER WATCHDOG

12
13 By:



Daniel L. Sternberg
Attorneys for CONSUMER WATCHDOG

**EXHIBIT A
PRELIMINARY BUDGET**

ITEMS

ESTIMATED COST

1. Consumer Watchdog Attorneys and Paralegal

Pamela Pressley (Senior Staff Attorney) @ \$595 per hour, 100 hours \$59,500

- Supervise Consumer Watchdog counsel; oversee preparation of legal documents; confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with the CDI and Applicant’s counsel; assist in all phases of proceeding, evidentiary hearing, and preparation of post-hearing briefing.

Daniel Sternberg (Staff Attorney) @ \$350 per hour, 200 hours..... \$70,000

- Draft and edit petition for hearing and petition to intervene; confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with the CDI and Applicant’s counsel; participate in briefing legal issues; conduct discovery and preparation for evidentiary hearing; participate in evidentiary hearing and post-hearing legal briefing; prepare request for compensation.

Kaitlyn Gentile (Paralegal) @ \$200 per hour, 50 hours \$10,000

- Draft and edit petition for hearing and petition to intervene; assist with discovery and preparation of motions and briefs; prepare request for compensation.

Harvey Rosenfield (Of Counsel) @ \$695 per hour, 15 hours \$10,425

- Supervise Consumer Watchdog counsel and participate in strategy discussions.

2. Consumer Watchdog Expenses

Office expenses (photocopies, facsimile, telephone calls, postage, etc.)\$2,000

Travel (ground transportation; airfare; hotel)\$5,000

Consumer Watchdog Subtotal\$156,925

3. Expert Witness: AIS Risk Consultants, Inc.

Allan I. Schwartz, President of AIS Risk Consultants @ \$805 per hour, 200 hours \$161,000

- Lead actuary to review all discovery documents; prepare actuarial analysis; participate in meet and confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurers’ expert witnesses.

Katherine Tollar @ \$370 per hour, 100 hours \$37,000

- Assist Mr. Schwartz in document review, rate level analysis, preparation of testimony.

4. Travel by Mr. Schwartz

Ground transportation; airfare to hearing; hotel \$5,000

AIS Risk Consultants Subtotal \$203,000

TOTAL ESTIMATED BUDGET: \$359,925

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 July 6, 2020, I caused service of true and correct copies of the document entitled

**CONSUMER WATCHDOG'S PETITION FOR HEARING, PETITION TO INTERVENE,
AND NOTICE OF INTENT TO SEEK 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 July 6, 2020 at Los Angeles, California.


Kaitlyn Gentile

Service List

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Daniel Goodell, Chief Counsel
Emily Gallagher, Staff Counsel
Daniel Wade, Staff Counsel
Rate Enforcement Bureau
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Tel. (415) 538-4111
Fax (415) 904-5490
Daniel.Goodell@insurance.ca.gov
Emily.Gallagher@insurance.ca.gov
Daniel.Wade@insurance.ca.gov

- FAX
- U.S. MAIL
- OVERNIGHT MAIL
- HAND DELIVERED
- EMAIL

Edward Wu
Staff Counsel and Public Advisor
Office of the Public Advisor
California Department of Insurance
300 South Spring Street, 12th Floor
Los Angeles, CA 90013
Tel. (213) 346-6635
Fax (213) 897-9241
Edward.Wu@insurance.ca.gov

- FAX
- U.S. MAIL
- OVERNIGHT MAIL
- HAND DELIVERED
- EMAIL

Spencer Y. Kook
Attorney for Applicant
Hinshaw & Culbertson LLP
633 West 5th Street, 47th Floor
Los Angeles, CA 90071
Tel. (213) 680-2800
Fax (213) 614-7399
skook@hinshawlaw.com

- FAX
- U.S. MAIL
- OVERNIGHT MAIL
- HAND DELIVERED
- EMAIL

Kara Holzwarth
General Counsel
Attorney for Applicant
Pacific Specialty Insurance Company
2200 Geng Road, Suite 200
Palo Alto, CA 94303
kholzwarth@pacificspecialty.com

- FAX
- U.S. MAIL
- OVERNIGHT MAIL
- HAND DELIVERED
- EMAIL

1 Jeremy DeCarr
2 State Filings Analyst
3 1200 N. Federal Hwy, Suite 309
4 Boca Raton, FL 33432
5 Tel. (561) 948-2998
6 jdecarr@perrknight.com

- FAX
- U.S. MAIL
- OVERNIGHT MAIL
- HAND DELIVERED
- EMAIL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28