November 13, 2024

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

Re: October 18, 2024 Administrative Law Judge Decisions in CDI File Nos. RFC-2023-015, RFC-2024-001, RFC-2024-002, RFC-2024-003, RFC-2024-004, RFC-2024-005

Dear Commissioner Lara,

On behalf of the below-signed insurance trade associations (the "Trades") and their members, we urge you to review and reject the above-identified Administrative Law Judge (ALJ) Decisions.

Each of these decisions appears to have originated through a reference to the Administrative Hearings Bureau (AHB) to determine what compensation, if any, should be awarded to intervenor Consumer Watchdog in connection with the associated rate application and its resolution. In each, the ALJ has strayed far beyond the issue of compensation and elected to write an opinion that essentially rewrites long-established, legally valid CDI rules and practices concerning rate approvals and concludes that settlement stipulations reached during the application review phase, before any hearing has been commenced through issuance of a Notice of Hearing, are not valid unless they have been reviewed (along with supporting evidence) by an ALJ, and approved by the ALJ.

The ALJ's conclusion rests on a misinterpretation of a regulation that applies ***only*** in the context of a rate ***hearing***, once a Notice of Hearing has issued and the matter has been transferred to the AHB.[1] The conclusion underlying each of these decisions is wrong, inconsistent with law, contrary to the process by which rate applications have been resolved since at least the 2000s, and represents a serious threat to the "Sustainable Insurance Strategy." (SIS)

---

[1] The regulation is 10 CCR § 2656.1. Prior to Notice of Hearing, the Commissioner can resolve a rate application through approval, or through a settlement without hearing. *See* California Insurance Code (CIC) § 1861.05(c) and Government Code § 11415.60 (permitting an agency to resolve a matter by settlement prior to any hearing).

The California Department of Insurance (CDI) Rate Enforcement Bureau and affected insurers are seeking review of the October 18 Decisions. The related petitions and letters include legal arguments and citations that demonstrate your authority to approve rates when there is a stipulation of settlement. Indeed, the Commissioner can approve rates over objection except for increases over 7% for personal lines or over 15% for commercial lines; above these levels, the Commissioner can still approve without a hearing if there is no request for a hearing, which is the case if a request has been made but the rate challenge has been resolved by stipulation. We write to underscore two, related points:

- ***The Commissioner*** is the elected official answerable to the public for the state of the California insurance market. An ALJ holds hearings. An ALJ lacks the broader view, including both an understanding of how the market does and has functioned outside of the narrow sphere of adjudicatory rate hearings, as well as what is necessary to continue functioning to ensure insurance "availability" and "affordability".

- For a host of reasons, including climate-related catastrophes and historic price spirals, the California insurance market is in crisis, requiring innovative action to continue offering California residents the insurance they need on their homes and cars. The Commissioner is working to address the crisis through various programs intended to make insurance rate approvals more efficient and responsive to current conditions and current actuarial science (which has advanced beyond what was available when Proposition 103 was adopted 36 years ago). These various programs fall under the general heading of the SIS. If settlement stipulations will now have to be sent for ALJ adjudicative approval before rates can be approved by the Commissioner, the process will go backward, not forward. There is no reason to add a step, which promises to add months to rate approvals, where the process that has existed for decades is legal and more streamlined.

The Commissioner Is The Elected Official With The Responsibility—And Power—To Ensure A Functioning Insurance Market.

The October 18 Decisions feature lengthy analyses of regulations and mistakenly presume that an ALJ is the only bulwark against imagined machinations surrounding the amicable resolution of rate application disputes. But these imagined machinations simply do not exist.

In a process that has evolved and has been utilized for virtually all rate application resolutions involving an intervenor for the past 30 years, disputes over proposed rates are concluded by a three-party agreement reached during the application review phase, prior to issuance of a Notice of Hearing. The Department actuaries and analysts request information from the applicant through the System for Electronic Rates & Forms Filing (SERFF). The applicant responds. During the course of the review, the applicant

may make changes and submit them, in response to comments, questions, and observations by CDI staff.

It is critical to recognize that this process moves forward regardless of whether there is an intervenor.

When there is an intervenor, which is almost always Consumer Watchdog, the intervenor (Consumer Watchdog) sends a series of what it labels as “Requests For Information”, or “RFIs”. Regardless of whether insurers are legally compelled to respond to these RFIs—a subject of debate—applicants generally do respond.

The CDI then holds one or more three-party remote meetings to discuss the filing. Occasionally, such a meeting will be set to address the need for additional information, but in the typical case, the CDI will collect rate indications from all parties regarding the most significant components and the ultimate rate and circulate a comparison chart. At the meeting, the actuaries explain their thinking behind postulated rate indications and listen to the rationale of the other actuaries. The meeting typically results in the sharing of further information, and actuarial analysis.

As a result of this process, the parties are, for the most part, able to reach a resolution and agree on a rate change that meets the standards set in California Insurance Code (CIC) § 1861.05(a).

All of the dialogue between the CDI and applicant is published on SERFF, which is easily and publicly accessible. The ultimate resolution, including specific distributions of premium, is published on SERFF. The parties execute a stipulation, which is subject to approval by the Commissioner. The stipulation is not effective unless the Commissioner approves the proposed rates, as modified pursuant to stipulation, through SERFF.

The AHB may be unfamiliar with this process, but it is what has prevailed for decades as the principal means of achieving such efficiency as has been possible. Adjudicatory hearings exist to resolve disputes for which no agreement can be reached. When the parties, with the input of their respective actuaries, have resolved their disputes, there remain no issues for an ALJ to adjudicate.

In the current California market, there is a dire need for this Commissioner to establish a process that is ***more*** efficient, not one that is ***less***. It is the Commissioner’s job to consider the entire insurance market and take steps to make it work. That is what the Commissioner is elected to do and is what the Commissioner is working to accomplish.

Imposing A Requirement That Settlement Stipulations Must Be Approved By An ALJ—a Requirement That Has Never Existed And Is Not Mandated By Law—Would Substantially Delay An Already Extended Process To The Detriment Of The Market.

Perhaps the greatest challenge for insurers in the California market is the time it takes to get approval of submitted actuarially justified rates. The system postulates rate

approval within 60 days if no rate hearing is needed, or in any case within 180 days. See CIC § 1861.05(c) (discussing 60 and 180 day deemers). These "deemer" provisions are intended to allow a rate to be "deemed" effective if not timely approved, but the periods do not reflect reality and the CDI regularly requires more time, in many cases much more time.

As part of a routine practice that has become embedded in California rate review, CDI reviewers send out routine messages in SERFF telling applicants that CDI requires additional time to review the application and asks the applicant to submit a "waiver" of the deemer provisions, in specific language spelled out by the reviewer. The applicant is faced with the Hobson's choice of agreeing to the deemer "waiver" or having CDI institute a hearing, which means, in the best of cases, at least an additional year. Thus, in virtually every case, the applicant agrees to send the "waiver." Consequently, despite Prop 103's optimistic view that the California process should generally result in approvals after 60 days, and at the extreme 180 days, California rate approvals tend to take at least six months, with many examples of much longer periods of time.

For a variety of reasons, California has a problem with delays in rate review and approvals, which translates to a gap between adequate rates and projected losses, which has directly resulted in the reluctance of many insurers to continue doing unrestricted business in California. The SIS takes aim at this issue. While the SIS also focuses on specific substantive issues (such as use of predictive models for projecting wildfire losses), reducing the time between filing and approval is an essential goal.

To emphasize this point, insurers do not agree to submit to "waivers," or compromise indicated rate levels with intervenors, because they think they cannot support indicated rates. They "waive" and compromise because some rate now is worth more than the indicated rate following however many years it takes to go to hearing, with the potential for a subsequent visit to the California Superior Court and Court of Appeal before the insurer can realize any portion of the full, actuarially justified rate need.

A successful SIS would support a fair result without the extensive delays that currently characterize the California rate approval process. That means ***reducing*** delay, not adding to it. By definition, adding a superfluous, intermediate level of approval, not required by California law, would increase delay.

And what purpose would be served by ALJ review, envisioned by the October 18 decisions, where the parties are already in agreement and the Commissioner holds the power to approve or not approve the rates? What would it add to insert an ALJ review of a settlement? And how would that happen? Where there has been a settlement, there is no hearing commenced by the Commissioner. So, some additional action would have to occur to commence a hearing that would give an ALJ jurisdiction. Do the decisions contemplate that the Commissioner should issue a Notice of Hearing under CIC § 1861.08(b)[2] ***after*** all issues are resolved, in order to create AHB jurisdiction which

[2] CIC § 1861.08(b): "Hearings are commenced by a filing of a notice . . . ."

otherwise does not exist? Certainly, there is no legal requirement, or legitimate purpose, for adding such a burdensome step to the process.

There are two additional points of significance.

First, the October 18 decisions appear to have their most significant impact as to filings with proposed rates above the statutory levels of 7% for personal lines and 15% for commercial lines. With respect to proposed rates below that level, the Commissioner can deny a petition for hearing over objection, which does not seem to register in the October 18 decisions. This is, however, precisely a focal point of the CDI's public statements. The CDI has urged insurers to file for the indicated rate, even if it is above statutory levels. Adding a further burden to obtaining review of the actual rate need could further dampen insurers' inclination to file for the indicated need. ***Some*** rate in a relatively near-term is better than ***no*** rate for over a year or even longer, which may as well be no rate at all.

Second, it may be, and one would hope, that if one or two settlements were to be subject to review by the AHB, the AHB would try to dispel the industry's (and CDI's) timing concerns by expediting a review, in contradistinction to the Wawanesa experience described in the Department's November 4 letter. ***Even*** in that case, ***even*** if the AHB review consists of an unnecessary rubber stamp, it creates delay because a hearing would have to be commenced, and some time expended. But, ***even*** with a presumed upfront effort, there aren't one or two settlements. And with all settlement stipulations to consider, there is further and further delay. Additional delay on top of that already occurring in the current process could well break the system.

The current and accepted process for resolving intervenor-contested rate applications operates by a three-way stipulation amongst CDI, the applicant, and the intervenor, all subject to approval by the Commissioner. The Commissioner approves rates based on that stipulation. The Commissioner has authority to approve rates in these circumstances. The ALJ approval requirement suggested in the October 18 decisions adds nothing but delay—and potential complications. That delay would thwart the Commissioner's efforts in developing a Sustainable Insurance Strategy to revive the California insurance market.

For these reasons, the undersigned support the CDI's and insurer efforts to eliminate all ambiguity about the Commissioner's exclusive authority to review, reconsider, and reject stipulations without the intermediate approval process contemplated in the October 18 opinions -- consistent with the widespread understanding of the long-established process.

PERSONAL INSURANCE FEDERATION OF CALIFORNIA

Rex Frazier
President

PACIFIC ASSOCIATION OF DOMESTIC INSURERS

Stacey Jackson
Executive Director

AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION

Denni Ritter
Vice President, State Government Relations

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

Christian John Rataj, Esq.
NAMIC Senior Regional Vice President