

1 NIKKI S. McKENNEDY (SBN 184269)  
JENNIFER McCUNE (SBN 160089)  
2 DANIEL WADE (SBN 296958)  
DUNCAN MONTGOMERY (SBN 176138)  
3 CALIFORNIA DEPARTMENT OF INSURANCE  
4 1901 Harrison Street, Sixth Floor  
Oakland, CA 94612  
5 Tel: (415) 538-4162  
Fax: (510) 238-7829  
6 Email: [nikki.mckennedy@insurance.ca.gov](mailto:nikki.mckennedy@insurance.ca.gov)  
7 [jennifer.mccune@insurance.ca.gov](mailto:jennifer.mccune@insurance.ca.gov)  
8 [daniel.wade@insurance.ca.gov](mailto:daniel.wade@insurance.ca.gov)  
9 [duncan.montgomery@insurance.ca.gov](mailto:duncan.montgomery@insurance.ca.gov)

10 *Attorneys for The California Department of Insurance*

11 **BEFORE THE INSURANCE COMMISSIONER**  
12 **OF THE STATE OF CALIFORNIA**

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15 In the Matter of the Rate Applications of  
16 STATE FARM GENERAL INSURANCE  
17 COMPANY,  
18 Applicant.

File Nos. PA-2024-00011, PA-2024-00012,  
PA-2024-00013

**CALIFORNIA DEPARTMENT OF  
INSURANCE'S MOTION TO LIMIT  
TESTIMONY OF, OR IN THE  
ALTERNATIVE EXCLUDE, STATE  
FARM GENERAL'S RETAINED EXPERT  
WITNESS NANCY WATKINS BASED ON  
HER CURRENT CONSULTING  
AGREEMENT WITH THE  
DEPARTMENT**

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27 CALIFORNIA DEPARTMENT OF INSURANCE'S MOTION TO LIMIT, OR, IN THE ALTERNATIVE,  
EXCLUDE TESTIMONY OF STATE FARM GENERAL'S RETAINED EXPERT WITNESS NANCY WATKINS  
28 BASED ON HER CURRENT CONSULTING AGREEMENT WITH THE DEPARTMENT

File Nos. PA-2024-00011, PA-2024-00012, PA-2024-00013

1 I. INTRODUCTION

2 The California Department of Insurance (“CDI” or the “Department”) brings this Motion  
3 to limit or exclude the testimony of the retained expert witness of Applicant State Farm General  
4 Insurance Company (“Applicant” or “State Farm General”) Nancy Watkins, on grounds that Ms.  
5 Watkins is currently under contract with the Department to provide actuarial consulting services  
6 on matters likely to overlap with issues before this Hearing.<sup>1</sup> Specifically, Ms. Watkins’s contract  
7 expressly prohibits her from (1) disclosing any of the confidential data and work product she has  
8 received and continues to receive while under contract with the Department, and (2) placing  
9 herself in the position of a conflict of interest, or even the appearance of a conflict of interest,  
10 with the Department.

11 In this matter, the Applicant has already proffered the Declaration of Ms. Watkins. The  
12 Department has reviewed the Declaration, and believes she has not disclosed any confidential  
13 data or work product from her work with CDI to this Court in her declaration. But the  
14 Department’s concern extends to what testimony, if any, she may provide in person at the  
15 hearing, including on cross-examination by counsel for intervenor Consumer Watchdog  
16 (“Intervenor” or “Consumer Watchdog”).

17 Accordingly, the Department requests that the Court admonish Ms. Watkins of her  
18 contractual responsibilities and obligations of confidentiality under her consulting agreement with  
19 CDI, and that the Court limit the in-person testimony of Ms. Watkins to non-confidential matters  
20 or, in the alternative, if it is not possible to limit her testimony, to exclude her testimony in its  
21 entirety.

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24 <sup>1</sup> The contract at issue is through Milliman, Inc. (“Milliman”), a consulting firm for which Ms. Watkins works as  
25 Principal and Consulting Actuary at their San Francisco office.

## II. FACTUAL BACKGROUND

### A. Ms. Watkins' Consulting Agreement with the Department

On June 7, 2024, the Department executed a contract with Milliman, signed by Ms. Watkins as its Principal and Consulting Actuary, for consulting services. (Declaration of Nikki S. McKennedy in Support of Motion to Limit or, in the alternative, Exclude Testimony, filed concurrently herewith (McKennedy Decl.), at ¶ 2, Ex. A.) The contract is currently in place and effect, through December 31, 2025. (*Id.*)

Ms. Watkins' consulting engagement with the Department broadly relates to the development and implementation of regulations, as part of Commissioner Lara's Sustainable Insurance Strategy ("SIS"), to safeguard the overall health of the insurance marketplace and ensure long-term stability. As relevant here, SIS includes regulations related to the use of catastrophic modeling in ratemaking and the net cost of reinsurance in ratemaking, the latter of which Ms. Watkins' consulting agreement directly relates to. Pursuant to the terms of her agreement with the Department, Ms. Watkins has been providing consulting services to the Department on "several rulemakings and areas of *rate regulation*." (McKennedy Decl. at ¶ 3, Ex. 1 at p. 1, § 5 [emphasis added].) Particularly, her services are "related to rulemaking and rate regulations processes regarding the allowance of California-only reinsurance for homeowners and commercial property in ratemaking." (*Id.*)

The consulting services Ms. Watkins has provided, and continues to provide, to the Department, include, among others, "assistance in drafting regulatory text and providing feedback on contemplated regulation text; attending workshop/prenotice public discussions for proposed rulemakings; reviewing and analyzing written and oral comments submitted to the Department; advising Department staff on the benefits and drawbacks of potential amendment to proposed regulation text; identifying and estimating the "monetary direct costs and benefits of the

1 regulation on insurers business practices”; and to establish guidelines for the review of an  
2 insurer’s reinsurance program. (See, e.g., *id.*, at pp. 3, 4, 7, 10.) By way of specific examples, in  
3 her role as consultant to the Department, Ms. Watkins actively participated in an initial “roll-out”  
4 of a rulemaking plan with industry and consumer groups, including Consumer Watchdog; a  
5 subsequent series of “listening tour” sessions where insurers, including State Farm, voiced  
6 specific comments and concerns to the Department regarding the proposed regulations; and a  
7 final workshop at which Consumer Watchdog was a vocal participant and challenged the  
8 Department’s consulting relationship with the Milliman actuaries including Ms. Watkins.  
9 (McKennedy Decl., at ¶ 5.)

10 In consulting with Ms. Watkins, the Department relied upon its consulting agreement with  
11 her and Milliman, which contains provisions which expressly safeguard against (1) disclosing  
12 confidential data and work product, and (2) any actual or potential conflicts of interest with the  
13 Department, including the appearance of any such conflict of interest. Specifically, in executing  
14 the agreement on behalf of Milliman, Ms. Watkins’ agreed to the following confidentiality  
15 provision:

16 **Confidentiality of Data and Work Product**

17 No reports, information, inventions, improvements, discoveries, or data obtained,  
18 repaired, assembled, or developed by the Contractor pursuant to this Contract shall  
19 be released, published, or made available to any person (except to the State)  
20 without prior written approval from the State.

21 (McKennedy Decl., at ¶ 6, Ex. 1, at p. 29, ¶ 4).

22 **Actual or Potential Conflicts of Interest**

23 In executing the consulting agreement on behalf of Milliman, Ms. Watkins also agreed to  
24 avoid all actual or potential conflicts of interest with the Department:

1 that its employees and the officers of its governing body shall avoid any actual or  
2 potential conflicts of interest, and that no officer or employee who exercises any  
3 functions or responsibilities in connection with this Agreement shall have any  
4 personal financial interest or benefit which either directly or indirectly arises from  
5 this Agreement.

6 (McKennedy Decl., at ¶ 7, Ex. 1, at p. 30, ¶ 6.)

7 **B. Ms. Watkins Testimony May Conflict with Her Engagement with the Department**

8 On January 13, 2025, the Department's regulations relating to the Standard Net Cost of  
9 Reinsurance (Standard NCOR) were filed pursuant to Government Code section 11343.8 and  
10 became operative. While this portion of her consulting work with the Department may be  
11 completed, Ms. Watkins' engagement with the Department, and her agreement not to publicly  
12 disclose the Department's confidential information, remains steadfastly ongoing. (*See*  
13 McKennedy Decl. at ¶ 8, Ex.1; *see also* 10 Cal. Code Regs, § 2644.25.2 (a) [providing the  
14 Commissioner shall calculate the Standard Net Cost of Reinsurance parameters "from time to  
15 time as conditions warrant."].)

16 Ms. Watkins' April 2, 2025 declaration acknowledges the amended regulations – some of  
17 which she in fact provided consulting services to the Department on – but suggests she is relying  
18 on the rules in effect on the dates the rate applications were initially received by the  
19 Commissioner (*see* Watkins, Decl. ¶ 13). However, the Commissioner's March 14, 2025 Order  
20 Regarding State Farm General Insurance Company's Request for an Emergency Interim Rate  
21 Pending Hearing ("Order") specifically requests this hearing on the stipulation regarding the  
22 interim rate request be "based on updated rate-setting data through the end of the first quarter of  
23 2025." (Order, at p. 2, ¶ 2(b).)

24 Here, especially in light of the fact that Applicant has not yet provided its updated data,

1 the parties have not agreed upon<sup>2</sup>, nor has this Court ruled on, the appropriate regulations.  
2 Moreover, Ms. Watkins' declaration addresses several issues relevant to the SIS regulations (*see*  
3 Watkins Decl. at ¶¶ 39 to 54, regarding catastrophic loss data) and opines on the citations to, and  
4 use of, regulations adopted in December 2024 by Consumer Watchdog's Staff Actuary in support  
5 of its objections as "incorrect" and "not applicable." (*See* Watkins Decl., at ¶ 51.)

6 **C. The Department Has Not Waived Ms. Watkins' Conflict**

7 The Department has not waived any conflicts which may exist by virtue of Ms. Watkins's  
8 consulting agreement and the resulting work she has performed and is performing for the  
9 Department. Yet, after Ms. Watkins began her consulting engagement with the Department, on  
10 or about June 27, 2024 and July 5, 2024, Applicant filed the applications at issue in this  
11 proceeding.

12 The Department is unaware at what date the Applicant hired Ms. Watkins to provide  
13 expert testimony regarding its Applications. In August 2024, Vanessa Wells, counsel for  
14 Applicant State Farm General, requested the Department waive any conflict to allow Applicant to  
15 retain Ms. Watkins as an expert in relation to these applications. The Department informed  
16 Applicant it would not waive the conflict. (McKennedy Decl., at ¶ 9.) At no time did Ms. Watkins  
17 directly contact the Department to discuss her engagement with State Farm General or to seek a  
18 waiver of the conflict. (McKennedy Decl., at ¶ 10.)

19 Despite the Department's refusal to waive the conflict, on April 1, 2025, Department  
20 attorneys first learned that Applicant had retained Ms. Watkins to provide expert testimony in this  
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23 <sup>2</sup> Per 10 Cal. Code Regs, § 2644.28, the Applications at issue here are subject to the ratemaking regulations in effect  
24 at the time the Applications were submitted, i.e., June-July 2024. However, given that the Commissioner has ordered  
25 Applicant to submit revised Applications based upon updated data through the first quarter of 2025, the parties may  
wish to stipulate, and/or the Administrative Law Judge may wish to order, that the applicable regulations are those  
that are in effect at the time the Applicant submits the updated Applications.

1 matter. After meeting and conferring on April 2, 2025, Department attorneys informed  
2 Applicant's attorneys that they believed this created a conflict of interest and therefore would  
3 object to Applicant's submission of Ms. Watkins' declaration in support of the April 8<sup>th</sup> hearing.  
4 McKennedy Decl., at ¶¶ 11-12, Ex. 2.) Despite the Department's objections, Applicant submitted  
5 Ms. Watkins' declaration in support of its interim rate increase request on the same day, April 2,  
6 2025. Thereafter, Department counsel had a conversation with Ms. Watkins to remind her of her  
7 contractual duty of confidentiality and conflict of interest prohibition. Ms. Watkins indicated she  
8 understood her contractual obligations and did not intend to violate them. (McKennedy Decl., at ¶  
9 13.) But again, no one in the Department has waived Ms. Watkins' conflict of interest.

10 Department counsel subsequently met and conferred with counsel for Intervenor and  
11 Applicant on April 5, 2025, and expressed the Department's intent to limit and/or exclude the  
12 testimony of Ms. Watkins unless Consumer Watchdog would agree not to cross-examine Ms.  
13 Watkins regarding Department-confidential information. Counsel for Consumer Watchdog  
14 indicated he would take the matter under advisement, but no agreement has yet been reached.  
15 (McKennedy Decl., at ¶ 14.)

### 16 III. ARGUMENT

#### 17 18 A. This Court Has Discretion to Exclude a Witness or Limit the Areas of Testimony 19 When There is a Conflict of Interest

20 Under Government Code section 11512, subdivision (b), when the Administrative Law  
21 Judge (ALJ) hears the case, the ALJ "shall exercise all powers relating to the conduct of the  
22 hearing," which includes admitting or excluding evidence. (*Podiatric Med. Bd. of California v.*  
23 *Superior Ct. of City & Cnty. of San Francisco* (2021) 62 Cal. App. 5th 657, 666. The power to  
24 disqualify a retained expert based on a conflict of interest derives from this inherent power. (*See*

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1 *Kirk v. First American Title Ins. Co.* (2010) 183 Cal.App.4th 776, 792 (applying standard for  
2 attorney disqualification); *see also Western Digital Corp. v. Superior Court* (1998) 60  
3 Cal.App.4th 1471 (applying standards for attorney disqualification to motion to disqualify expert  
4 witness).)

5 When determining whether to disqualify, the Court must balance the client’s right to their  
6 choice of retained expert against the need to maintain ethical standards of professional  
7 responsibility. (*In re Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 586.) “The  
8 paramount concern must be to preserve public trust in the scrupulous administration of justice.”  
9 (*Ibid.*)

10 Under California law, conflicts of interest are evaluated under a two-step process. First,  
11 the party seeking disqualification must show the witness it seeks to disqualify possesses  
12 confidential information materially related to the proceedings. (*In re Complex Asbestos Litigation*  
13 (1991) 232 Cal.App.3d 572, 596.) Importantly, “the party should not be required to disclose the  
14 actual information contended to be confidential. (*Ibid.*) However, the court should be provided  
15 with the nature of the information and its material relationship to the proceeding.” (*Ibid.*; *see also*  
16 *Shadow Traffic Network v. Superior Court* (1994) 24 Cal.App.4th 1067, 1084-85.)

17 Once this showing has been made, “a rebuttable presumption arises that the information  
18 has been used or disclosed in the current employment.” (*Ibid.*) This is a matter of necessity – the  
19 party seeking disqualification cannot know what confidential information was actually disclosed.  
20 (*In re Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 596; *Shadow Traffic Network v.*  
21 *Superior Court* (1994) 24 Cal.App.4th 1067, 1084-85.)

22 To rebut this presumption, the party seeking to introduce testimony of the challenged  
23 witness “has the burden of showing that the practical effect of formal screening has been  
24 achieved. The showing must satisfy the trial court that the [witness] has not had and will not have



1 any involvement with the litigation, or any communication with attorneys or co-employees  
2 concerning the litigation, that would support a reasonable inference that the information has been  
3 used or disclosed.” (*Asbestos Litigation, supra*, 232 Cal.App.3d at p. 596.)

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5 **B. Ms. Watkins Testimony Should Be Limited, or Excluded, Because Applicant  
6 Cannot Show There Is No Conflict of Interest**

7 Here, the Department can establish Ms. Watkins possesses confidential information  
8 material to the proceedings. Ms. Watkins’ engagement with the Department is directly related to  
9 the development and analysis of regulations related to ratemaking. In the course of this  
10 engagement, she has conferred with Department staff and attorneys and learned confidential  
11 information, including information protected by the attorney-client and attorney work product  
12 privileges, deliberative process, and Insurance Code sections 735.5 and 12919. The terms of the  
13 engagement expressly require the Milliman firm, and Ms. Watkins, to maintain that information  
14 in confidence and expressly provide they “shall avoid any actual or potential conflicts of interest.”  
15 (McKennedy Decl., at ¶¶6-7.) Accordingly, this establishes a rebuttable presumption that the  
16 Department disclosed confidential information to Ms. Watkins.

17 Under the facts of this case, Applicant cannot rebut the presumption that her testimony  
18 should be excluded or limited. While, in the Department’s view, Ms. Watkins’ April 2, 2025  
19 Declaration does not divulge confidential information, and Ms. Watkins has asserted she does not  
20 intend to violate her contractual obligations, the Department’s concern extends to any testimony  
21 which may be offered at the hearing on the stipulation regarding the requested interim rate. For  
22 example, Intervenor may seek to discover confidential information on cross-examination, or may  
23 attempt to impute Ms. Watkins’ confidential knowledge to Applicant. No facts establish any  
24 effort to screen Ms. Watkins from her conflicting interests or ensure that she does not reveal  
25 confidential information to Applicant learned during the course of her engagement with the

1 Department. Importantly, and unlike in *Western Digital Corp. v. Superior Court* (1998) 60  
2 Cal.App.4th 1471, there is no “ethical wall.” State Farm General’s testifying expert – Nancy  
3 Watkins – is the very same principal of the Milliman firm who signed the contract with the  
4 Department, and she has been, and continues to be, the lead actuary for the consulting services  
5 provided to the Department.

6 Other factors strongly weigh in favor of this Court exercising its discretion to exclude, or  
7 limit the scope of, Ms. Watkins’ testimony. First, the terms of Ms. Watkins’ engagement with the  
8 Department – to provide consulting services on rulemaking and rate regulation – directly impact  
9 this rate proceeding. As just one example, the terms of Ms. Watkins’ engagement include to  
10 advise the Department on the “direct costs and benefits of the regulation on insurers business  
11 practices.” Second, Ms. Watkins entered into her engagement with the Department before  
12 Applicant filed the rate applications at issue here. It is thus a matter of common sense that she  
13 should not be allowed to opine on the very issues she currently advises the Department on – the  
14 impact of the costs of reinsurance on ratemaking. (See *Wang Laboratories, Inc. v. Toshiba Corp.*  
15 (E.D. Va. 1991) 762 F.Supp 1246, 1248 [“No one would seriously contend that a court should  
16 permit a consultant to serve as one party’s expert where it is undisputed that the consultant was  
17 previously retained as an expert by the adverse party in the same litigation and had received  
18 confidential information from the adverse party pursuant to the earlier retention.”] [cited by  
19 *Shadow Traffic Network v. Superior Court* (1994) 24 Cal.App.4th 1067, 1080, fn. 9].)

20 Finally, Applicant itself was aware of the conflict or potential conflict, when it requested  
21 that the Department waive any potential conflict. Although the Department declined to do so,  
22 State Farm General nevertheless decided to retain Ms. Watkins, and thereafter, take its chances.

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**IV. CONCLUSION**

For the reasons set forth above, the Department respectfully asks this Court to limit or exclude the testimony of Nancy Watkins, State Farm’s designated expert witness. Ms. Watkins should not be allowed to testify, and no testimony should be elicited on cross-examination, related to reinsurance, reinsurance regulations, ratemaking regulations, confidential industry data, or the scope of her engagement with the Department.

Dated: April 7, 2025

*CALIFORNIA DEPARTMENT OF  
INSURANCE*

By:

*Nikki McKennedy*

Nikki S. McKennedy  
*Attorneys for the California Department of  
Insurance*