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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

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In the Matter of the Rate Applications of
State Farm General Insurance
Company,
Applicant.

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

CONSUMER WATCHDOG'S MOTION
TO EXCLUDE TESTIMONY AND
FURTHER BRIEFING REGARDING RBC
CALCULATIONS

Hearing Date/Time: April 9, 2025
10:00 a.m.

1 **TO THE ADMINISTRATIVE LAW JUDGE AND TO ALL PARTIES:**

2 PLEASE TAKE NOTICE that Consumer Watchdog hereby moves to strike all portions of the
3 Declaration of Tina Shaw, as well as the portions of the Declaration and oral testimony of David
4 Appel, that rely upon, calculate, or reference Risk-Based Capital (“RBC”) values, ratios, for
5 State Farm General Insurance Company (“Applicant” or “SFG”) on the grounds that:

- 6 1. Insurance Code section 739.8(c) expressly prohibits the use of RBC Instructions or any
7 RBC-derived material in ratemaking or in evidence in a rate proceeding;
- 8 2. Ms. Shaw admits she relied on and used the RBC Instructions published by the National
9 Association of Insurance Commissioners (NAIC) to independently calculate RBC ratios
10 for Applicant;
- 11 3. Ms. Shaw’s calculations and analysis based on RBC values thus violate the statutory bar
12 of section 739.8(c), which applies regardless of whether the RBC Report itself was
13 reviewed or submitted;
- 14 4. The portions of Ms. Shaw’s declaration discussing RBC values are therefore inadmissible
15 as a matter of law, and must be excluded from the hearing record;
- 16 5. Similarly, the portions of Dr. Appel’s declaration discussing State Farm’s RBC ratios, as
17 well as his April 8 testimony on the same, is inadmissible as a matter of law, and must be
18 excluded from the hearing record;
- 19 6. Permitting this evidence would prejudice Consumer Watchdog by introducing statutorily
20 prohibited content into the ratemaking process and undermining the legislative judgment
21 that RBC materials are not to be used in rate proceedings.

22 This Motion is made pursuant to 10 CCR section 2656.1 and the ALJ’s inherent authority to
23 regulate the admission of evidence and ensure a fair and lawful hearing. (See also 10 CCR §
24 2654.1.) Consumer Watchdog requests that this motion be heard **as soon as practicable, but in**
25 **no event later than April 9, 2025**, the next scheduled date of the interim rate hearing
26 proceedings.

1 DATED: April 9, 2025

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3 Respectfully submitted,
4 CONSUMER WATCHDOG

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11 By: /s/ Ryan Mellino
12 Ryan Mellino
13 Attorneys for CONSUMER WATCHDOG

INTRODUCTION

This is a matter of pure statutory consideration—and first impression – for this Court: whether RBC related information can come into an interim ratemaking proceeding. Based on Insurance Code section 739.8(c)'s clear language, Consumer Watchdog asserts it cannot. The statute could not be clearer. It states:

It is the further judgment of the Legislature that the **RBC Instructions**, RBC Reports, Adjusted RBC Reports, RBC Plans, and Revised RBC Plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers, and **shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding, nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write.**"

(Ins. Code § 739.8, subd. (c), emphasis added.) Despite this unambiguous statutory command, Tina Shaw expressly states in her April 2, 2025 declaration that: “I have independently calculated Applicant’s RBC ratios based upon publicly available information in its annual statements, using the **same formula set forth in the RBC Instructions** that are published by the NAIC for property and casualty insurers.” (Shaw Decl. ¶ 10; emphasis added.) Ms. Shaw’s RBC calculations are inextricably linked to the RBC Instructions. Her testimony includes:

- Estimated RBC ratios for Applicant or discussions of these ratios (Shaw Decl. ¶¶ 9-13, 15-18)
- Definitions and interpretations of the RBC Action Control Level (*ibid.*)
- Tables applying the RBC or ACL to derive post-wildfire ratios (*id.* at ¶ 12, 16-18)

Each of these statements constitutes the use of the RBC framework. Although Ms. Shaw did not submit a formal RBC Report from the Illinois Department of Insurance, her “independent” RBC analysis is wholly derived from the RBC Instructions and from an estimated ACL, both of which are part of the statutory prohibition. Section 739.8(c) contains no exception for “independent” analysis based on the same instructions. If this path were permitted, it would circumvent the statute entirely. The RBC calculations are publicly available and can be independently derived, but it would not make sense for a statute to prohibit the Commissioner from using information based on source, rather than prohibit the use of the information itself. The touchstone is not whether RBC information is non-public or confidential, but whether it can

1 be “used by the commissioner for ratemaking [] or considered or introduced as evidence in
2 any rate proceeding,” and the answer is clearly no; it cannot. (Insurance Code § 739.8(c),
3 emphasis added.)

4 Similarly for Dr. Appel. While less focused on RBC data, he generally testified about
5 RBC ratios, and explained their use in determining solvency risks. This information too, even
6 though he obtained the information from public, or at least non-confidential sources, cannot
7 come into a rate proceeding, for the same reasons.¹

8 ARGUMENT

9 A. The Plain Language of Section 739.8(c)’s Prohibition is Not Limited to the Use of 10 Confidential Information

11 State Farm appears to have taken the position that the statute would only prohibit the use
12 of “confidential” information in the ratemaking process. But nothing in the text of the statute
13 itself places such a limit on the prohibition, which reflects a policy choice that such information
14 is not appropriate for use in ratemaking – not merely a prohibition on using non-public or
15 “confidential” information.

16 The issue of confidentiality is addressed in subsection (a) of the statute. Section 739.8(a)
17 governs confidentiality with an exception for disclosure by the commissioner in an enforcement
18 action:

19 a) All RBC Reports, to the extent the information within those reports is not
20 required to be set forth in a publicly available annual statement schedule, and
21 RBC Plans, including the results or report of any examination or analysis of
22 an insurer performed pursuant to those plans, and any Corrective Order
23 issued by the commissioner pursuant to examination or analysis, with respect
24 to any domestic insurer or foreign insurer, that are filed with the
25 commissioner constitute information that might be damaging to the insurer if made
26 available to its competitors, and therefore shall be kept confidential by the
27 commissioner. This information shall not be made public or be subject to
28 subpoena, other than by the commissioner and then only for the purpose of
enforcement actions taken by the commissioner pursuant to this chapter or
any other provision of the insurance laws of this state.”

1 The parties have already argued whether an interim rate proceeding is a type of rate proceeding – a question that Consumer Watchdog maintains is answered, as a matter of a common sense, in the name of the proceeding.

1 (Emphasis added.) The final sentence of subdivision (a) notes that RBC reports² (to the extent
2 the info is not required to be publicly available in an annual statement) and RBC plans shall not
3 be publicly disclosed and shall not be subject to subpoena except by the commissioner, but only
4 for the purpose of enforcement actions taken by the commissioner.

5 This is not an enforcement action. It is a rate proceeding, so subdivision (c) applies to
6 prohibit the introduction into evidence of “RBC Instructions, RBC Reports, Adjusted RBC
7 Reports, RBC Plans, and Revised RBC Plans.” Nothing in either subdivision (a) nor subdivision
8 (c) implies that this prohibition is based on confidentiality concerns.

9 **B. The Statute’s Legislative History Expressly Support Prohibition of RBC-Related
10 Data in Ratemaking Regardless of Confidentiality Concerns**

11 The legislative history of Section 739.8 provides further support for Consumer
12 Watchdog’s reading of these provisions. Subdivision (c) of that statute, which has not been
13 altered since it was adopted in 1996, was amended on June 4, 1995 by the Assembly during the
14 legislative process to include the following language: “This subdivision does not preclude the
15 introduction or consideration of the RBC instructions, RBC Reports, Adjusted RBC Reports,
16 RBC Plans, or Revised RBC Plans in any rate proceeding in which the insurer or affiliate places
17 its financial condition at issue.”³ (S.B. 1179 as amended June 4, 1995 [attached to the
18 concurrently-filed Mellino Declaration as **Exhibit B**.]) The cited language – if adopted – would
19 have allowed the RBC Instructions to be considered in this proceeding – it is directly on point.

20 But that language was rejected. It was deleted from the final version of the bill. The
21 June 25, 1995 Report of the Assembly Committee on Insurance describes arguments in
22 opposition, which stated “that the amendments taken on June 4th essentially **negate the**
23 **protection against misuse of RBC analysis results for any purpose other than solvency**
24 **regulation**. This amendment makes the bill inconsistent with the national model because it
25 **eliminates protections specifically prohibiting the use of RBC analysis results in rate-making.**”

27 ² An “RBC report” is a “report of [an insurer’s] RBC levels.” (Ins. Code § 739.2, subd. (a).)

28 ³ The rest of the language in proposed Section 739.8(c) was identical to the statute ultimately
adopted and now in effect.

1 (Attached as **Exhibit C** to the Mellino Declaration, emphasis added.) The arguments were
2 further detailed: “SB 1179 originally precluded the DOI from considering RBC analysis in rate
3 hearings. The June 4th amendment, according to opponents, has eliminated that preclusion.
4 Every organization that has voiced opposition to this bill would remove their opposition if the
5 sponsor agrees to strike the June 4th amendment.” In other words: the opponents, including
6 State Farm itself,⁴ argued against the inclusion of language allowing the “introduction or
7 consideration of the RBC Instructions … in any rate proceeding in which the insurer … places its
8 financial condition at issue” and expressly opposed the bill unless that language was deleted.

9 The Legislature was persuaded by the opponents’ arguments, with the language
10 permitting consideration of RBC Instructions in ratemaking when financial condition is at issue
11 struck from the July 1, 1995 amendment in the Assembly. (Attached as **Exhibit D** to the Mellino
12 Declaration.) Notably, none of the four opponents listed in the June 25 Report were listed as
13 opponents in subsequent reports, reflecting that the use of RBC information in rate hearings was
14 their primary concern.

15 The “national model” noted above is further instructive. California’s “Risk-Based
16 Capital for Insurers” statutes (Ins. Code § 739 et seq.) were promulgated in response to and
17 modeled after the NAIC’s 1993 adoption of the “Risk-Based Capital for Insurers Model Act.”
18 (See “Risk-Based Capital (RBC) for Insurers Model Act,” National Association of Insurance
19 Commissioners, Spring 2021, p. ST-312-2 [California has “adopted the most recent version of
20 the NAIC [Risk-Based Capital for Insurers] model in a substantially similar manner”] [attached
21 as **Exhibit E** to the Mellino Declaration].) As documented in a paper detailing and explaining
22 the NAIC’s adoption of the model act, one of the “five potential uses of the risk-based capital
23 standards” is “Rate-Making: The risk-based capital formula might be used to determine the
24 needed capital for a ‘return on equity’ rate filing.” (Sholom Feldblum, *NAIC Property/Casualty*
25 *Insurance Company Risk-Based Capital Requirements*, Proceedings of the Casualty Actuarial
26

27 ⁴ The four opponents listed in the report are State Farm Insurance Company, Farmers Insurance
28 Group, Association of California Insurance Companies, and Personal Insurance Federation. (See
June 25, 1995 Assembly Committee on Insurance analysis on Senate Bill 1179, p. 4 [Exh. C].)

1 Society, 1996, Volume LXXXIII, p. 386 [attached as **Exhibit A** to the Mellino Declaration].)

2 However, such use was:

3 expressly prohibited by the NAIC, as illustrated by the June 1993 statement of the NAIC
4 Working Group: Since the formula is intended to identify insurers that require regulatory
5 attention and does not purport to compute a target level of capital, the Working Group
6 does not believe the results of this formula should be used in setting or reviewing
7 premium rates or in determining an appropriate rate of return for an insurer. Furthermore,
8 this formula should not be used to rate insurers, as many other factors must be taken into
9 consideration in such an evaluation.

10 (Id. at pp. 386-87.)

11 In sum, the Legislature considered and rejected the exact argument advanced by State
12 Farm and the Department here – that because State Farm’s financial condition is (allegedly) at
13 issue,⁵ RBC Instructions or analysis can be considered in ratemaking. State Farm agreed with
14 that decision at the time; the law has not changed, only State Farm’s own interests. If the
15 statutory language was not plain enough, the history of both the NAIC Model Act and
16 California’s adoption thereof conclusively demonstrate the Legislature’s clear choice against
17 permitting RBC information in the ratemaking process.

CONCLUSION

18 For the reasons stated above, Consumer Watchdog respectfully requests that the
19 Administrative Law Judge issue an order:

1. **Striking** all paragraphs of Tina Shaw’s declaration that reference, rely on, or derive
2 content from RBC values, RBC ratios, Action Control Levels (ACLs), or the RBC
3 Instructions;
2. **Striking** all paragraphs of David Appel’s declaration that discuss State Farm’s RBC
3 ratios, and all his testimony on the same;
3. **Excluding** all argument or evidence from State Farm and the Department of Insurance at
4 the hearing commenced on April 8, 2025 that references or depends upon such material;
4. **Admonishing** the parties that section 739.8(c) bars such materials from consideration in
4 this rate proceeding.

25 This motion should be heard as soon as practicable, and no later than April 9, 2025.

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28⁵ If Consumer Watchdog’s position that financial condition evidence is irrelevant in this
proceeding is adopted, RBC information would clearly be irrelevant as well.

1 DATED: April 9, 2025

Respectfully submitted,

2 Harvey Rosenfield
3 Pamela Pressley
4 William Pletcher
5 Benjamin Powell
6 Ryan Mellino
7 CONSUMER WATCHDOG

8 By: /s/ Ryan Mellino

9
10 Ryan Mellino
11 Attorneys for CONSUMER WATCHDOG