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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

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 REPLY IN
SUPPORT OF MOTION TO EXCLUDE
TESTIMONY REGARDING RBC
CALCULATIONS**

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

INTRODUCTION

The plain language of Insurance Code section 739.8(c) is clear. It expressly prohibits the use of or consideration of “RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans, and Revised RBC Plans.” (Ins. Code § 739.8(c).) State Farm and the Department argue that there is no prohibition on considering RBC ratios in ratemaking or rate proceedings. (State Farm’s Opposition, p. 1; Department’s Opposition, p. 1.) This is incorrect. As evidenced in Dr. Appel’s Declaration, paragraph 31, RBC ratios are calculated pursuant to an insurer’s Authorized Control Level (ACL) RBC. “Authorized Control Level RBC” is defined in a subsection of the definition of “RBC Level” to mean “the number determined under the risk-based capital formula **in accordance with the RBC Instructions.**” (Ins. Code § 739, subd. (j)(3), emphasis added.). And Ms. Shaw’s Declaration plainly states that she “**calculated Applicant’s RBC ratios ... using the same formula set forth in the RBC Instructions** that are published by the NAIC for property and casualty insurers.”¹ (Shaw Declaration, p. 5, emphasis added.)

Thus, contrary to the Department’s and State Farm’s positions, there is a clear “basis to exclude the RBC ratios under CIC § 739.8(c).” (State Farm’s Opposition, p. 2.) The RBC ratios cannot be calculated without the ACL RBC, which itself must be determined “in accordance with the RBC Instructions.” If the use or consideration of RBC Instructions is prohibited, then information necessarily derived from the use or consideration of those instructions, such as the ACL RBC and the RBC ratios determined using the ACL RBC, must also be excluded. Otherwise, a massive gap would appear in the statute that is contrary to the legislative intent as documented by Consumer Watchdog in its April 9 Motion to Exclude Testimony and Further Briefing.

Therefore, Consumer Watchdog reiterates its request for an order striking the portions of the Appel and Shaw Declarations (and any attached exhibits referencing RBC), testimony (and any exhibits discussed in their testimony referencing RBC) discussing or relying on RBC

¹ See RBC Instructions, Total Adjusted Capital and Comparison to Risk-Based Capital, PR028 – PR034, attached to the Mellino Declaration as Exhibit A. The calculation for an insurers’ RBC ratio is located at PR029, line (22).

1 Instructions or RBC ratios, striking any testimony already provided on this issue, and for an
2 order excluding further testimony on the same.

3 ARGUMENT

4 State Farm's Opposition raises two main arguments to support its claim that RBC ratios
5 are properly introduced into evidence in these proceedings. The Department broadly repeats
6 State Farm's arguments, as well as seeking to impugn Consumer Watchdog's credibility. These
7 arguments will be addressed in turn.

8 I. State Farm Fails to Recognize that RBC Ratios Are Necessarily Calculated Pursuant
9 to the RBC Instructions, which Cannot Be Used or Considered for Ratemaking
10 Purposes.

11 State Farm's arguments based on Insurance Code section 739.8(a) are irrelevant;
12 Consumer Watchdog has not and is not contending that that subdivision, or any issue of public
13 availability versus confidentiality, is the basis for its requests for exclusion here. Therefore,
14 Consumer Watchdog responds to State Farm's exclusion arguments pursuant to Section 739.8(a)
15 only to say they are irrelevant to the key issue here – whether Section 739.8(c) permits RBC
16 information (including RBC ratios) to be considered in ratemaking or rate proceedings.

17 State Farm's only salient argument is that Section 739.8(c) does not include "RBC ratios"
18 as one of the specific defined terms subject to exclusion. (State Farm's Opposition, p. 2.) While
19 it is true that the statute does not include the phrase "RBC ratio," State Farm's view that that
20 alone means the subdivision does not cover RBC ratios fails to consider the statutes as a whole.
21 To reiterate: Section 739.8(c) prohibits the use in ratemaking, and the consideration or
22 introduction into evidence in rate proceedings, of "RBC Instructions, RBC Reports, Adjusted
23 RBC Reports, RBC Plans, and Revised RBC Plans."

24 As noted above, RBC ratios are calculated using an insurer's Authorized Control Level
25 RBC, which is "determined under the risk-based capital formula in accordance with the RBC
26 Instructions." (Ins. Code § 739, subd. (j)(3).) In other words: RBC ratios cannot be determined
27 without the use or consideration of the RBC Instructions necessary to determine the ACL RBC
28 that is a component of the RBC ratio calculation. Because the RBC ratios can be derived only

1 through the use or consideration of the RBC Instructions, the RBC ratios cannot be used or
2 considered in ratemaking proceedings, or else the rule would be swallowed up.

3 While Dr. Appel's Declaration does not expressly state whether he used or considered the
4 RBC Instructions (contrary to Ms. Shaw's Declaration), State Farm's Opposition represents that
5 he did not "consult or rely on NAIC [aka RBC] instructions. Instead ... he calculated the RBC
6 ratio by looking up two publicly available numbers in State Farm General's annual statements
7 and dividing those two numbers to determine the RBC ratio." (State Farm's Opposition, p. 3.)
8 But the RBC ratio calculated necessarily relied on the RBC Instructions – it is a product of
9 calculations and determinations that rely on or are found in the RBC Instructions.

10 While Consumer Watchdog does not doubt that Dr. Appel was familiar with the RBC
11 Instructions and formulas without having to expressly refer to them while drafting his declaration
12 given his extensive experience, this still constitutes "consideration" of the RBC Instructions. It
13 would entirely defeat the statutory purpose evidenced from the plain language and legislative
14 history to preclude the direct use or consideration of RBC Instructions in ratemaking but to also
15 allow someone with pre-existing knowledge of the RBC Instructions to perform calculations or
16 determinations derived from those instructions. Were that the law, any party would be able to
17 effectively "use" or "consider" the RBC Instructions in ratemaking so long as their expert
18 witness was already familiar with the relevant RBC Instructions.²

19 State Farm's statement that "summary of Senate Bill No. 1179, which was adopted
20 as CIC § 739.8, applies to the 'annual risk-based capital *report*'" (State Farm Opposition, p. 3,
21 emphasis in original) in no way distinguishes, contradicts, or limits Consumer Watchdog's
22 analysis of the legislative history of Senate Bill 1179. State Farm did not respond to or comment
23 on its previous opposition to a rejected proposal that would have expressly allowed the
24 consideration of RBC information in ratemaking proceedings involving an insurer's financial
25 condition, nor did State Farm respond to the evidence that the model act upon which California's
26

27 ² The Department's similar argument that Ms. Shaw already knew how to calculate RBC ratios
28 and so did not need to directly consult the RBC Instructions in this proceeding should be rejected
for the same reasons.

1 Risk-Based Capital statutes are based was likewise designed and intended to preclude the
2 consideration of RBC information in ratemaking.

3 II. The Department Similarly Fails to Consider the Broad Scope of the Exclusion of
4 RBC Information in Ratemaking and Rate Proceedings.

5 The Department's Opposition largely repeats the same arguments made by State Farm.
6 To be clear, the three subdivisions of Section 739.8 all perform different functions. Subdivision
7 (a) is a confidentiality provision applying to RBC Reports and RBC Plans. Subdivision (b)
8 applies directly to RBC ratios (which are "comparison[s] of an insurer's Total Adjusted Capital
9 to any of its RBC Levels"), states such ratios are "a regulatory tool that may indicate the need for
10 possible corrective action" and are "not intended as a means to rank insurers generally," and
11 broadly prohibits the publication of information "with regard to the RBC Levels of any insurer,
12 or of any component derived in the calculation." Subdivision (c) functions so as to broadly
13 prohibit the use or consideration of RBC information in ratemaking or rate proceedings. It is not
14 a confidentiality provision (RBC Instructions are clearly not confidential) but is instead an
15 evidentiary exclusion provision. Subdivision (c) is meaningfully broader than subdivision (a)
16 through its application to RBC Instructions. In short, each subdivision performs its own
17 function; subdivision (c) is the relevant provision here that excludes consideration of RBC
18 information for ratemaking or in rate proceedings.

19 The Department's Opposition narrowly represents Section 739.8(c) as "only exclud[ing]
20 'RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans, and Revised RBC Plans.'" (Department's Opposition, pp. 2, 3.) But as Consumer Watchdog has explained, that subdivision
21 does not merely exclude those specific documents – it prohibits the "use[] by the commissioner
22 for ratemaking [or] consider[ation] or introduc[tion] as evidence in any rate proceeding" of those
23 documents. Calculating the RBC ratios necessarily requires the use or consideration of the RBC
24 Instructions, which is expressly prohibited by subdivision (c).

25 A. The Department's Unwarranted, Unjustified Criticisms of Consumer Watchdog's
26 Credibility Should Be Disregarded.

27 The Department finally attempts to impugn Consumer Watchdog's position by pointing
28 to a single sentence and a footnote in the Declaration of Allan Schwartz provided in the 2015

1 State Farm rate hearing that discussed State Farm's ACL RBC level. (State Farm's Opposition,
2 Exh. B [pp. 31-32].) This information was provided in one of six bullet points commenting on
3 State Farm's financial integrity, which had been put at issue by State Farm's confiscation
4 variance claim. It was not a major component of Mr. Schwartz's Declaration, in contrast to the
5 extended discussions of RBC issues in Dr. Appel's and Ms. Shaw's declarations and testimony.

6 Most importantly, nothing prohibits a party from reevaluating a legal position a decade
7 after it was previously asserted, particularly where the argument was not well developed before,
8 there is no guiding case law on the statute being interpreted, new attorneys are looking at issues
9 afresh, and the issue has been raised rarely and sporadically. The Parties in the previous
10 proceeding did not brief or extensively analyze the RBC issues, given the limited scope of the
11 discussion in Mr. Schwartz's declaration.

12 And as the Department's Exhibit B reflects, State Farm has also changed its position
13 between the two proceedings.³ Consumer Watchdog does not object to its doing so, and
14 Consumer Watchdog believes State Farm has done nothing improper in altering a scantily briefed
15 legal position from a decade ago to oppose the Schwartz Declaration footnote related to RBC in
16 2015, where they support the introduction of RBC evidence now. But if the Department feels it
17 must question the credibility of one party and their counsel in this proceeding, then it should
18 equally state on the record that it is calling into question State Farm's credibility. The
19 Department has claimed in this proceeding, in responding to claims that it was supporting State
20 Farm, rather than just the stipulations, that "it does not take sides," but it is clearly being
21 inconsistent here to support State Farm and attack Consumer Watchdog. Otherwise, the
22 Department should withdraw its baseless credibility attack.

23 Ultimately, this court should independently assess the parties' legal positions based on
24 their briefed arguments here.

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28 ³ At that time, State Farm's counsel claimed: "There's a California statute that says risk-based
capital information shall not be used by the Commissioner for rate-making." (State Farm's
Opposition [Exh. B, pp. 1176-77].)

1 **CONCLUSION**

2 For the reasons stated above, Consumer Watchdog reiterates its requests that the
3 Administrative Law Judge issue an order:

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

14 This motion should be heard as soon as practicable, and no later than April 10, 2025.

15 DATED: April 10, 2025

16 Respectfully submitted,

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18 Pamela Pressley
19 William Pletcher
20 Benjamin Powell
21 Ryan Mellino
22 CONSUMER WATCHDOG

23 By: /s/ Ryan Mellino
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25 Attorneys for CONSUMER WATCHDOG
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State of California, City of Los Angeles, County of Los Angeles

On April 10, 2025, I caused service of true and correct copies of the document entitled

upon the persons named in the attached service list, in the following manner:

- I declare under penalty of perjury that the foregoing is true and correct. Executed on April 10, 2025 at Los Angeles, California.

Kaitlyn Gentile

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