FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

EILEEN-GAYLE COLEMAN and ROBERT CASTRO, on behalf of themselves and all others similarly situated,

Plaintiffs - Appellants,

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION and USAA GENERAL INDEMNITY COMPANY,

Defendants - Appellees.

No. 25-793

D.C. No. 3:21-cv-00217-RSH-KSC
Southern District of California, San Diego

ORDER CERTIFYING QUESTION TO THE SUPREME COURT OF CALIFORNIA

Filed September 10, 2026

Before: FRIEDLAND, FORREST, and TUNG, Circuit Judges.

SUMMARY*

Certification to California Supreme Court

The panel certified to the California Supreme Court the following questions:

(1) Does section 1861.16(b) of the California Insurance Code prohibit insurers that provide insurance under Code section 11628(f)(1) from offering lower rates to servicemembers of higher rank, but higher rates to those of lower rank? If not, does section 11628(f)(1) nevertheless constitute an invalid legislative amendment under *Amwest Surety Insurance Co. v. Wilson*, 11 Cal. 4th 1243 (1995), or other California law?

(2) Do sections 1860.1 and 1860.2 of the California Insurance Code establish a filed-rate doctrine that impliedly limits the ability of plaintiffs to recover under the business laws identified by section 1861.03? If so, is the standard distinct from the one articulated for public utilities regulation in *Waters v. Pacific Telephone Co.*, 523 P.2d 1161, 1162 (Cal. 1974), and does it preclude

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

liability even where a challenge does not center on the appropriateness of the rates themselves?

ORDER

We respectfully ask the Supreme Court of California to exercise its discretion to decide the certified questions set forth in Section II of this order. This case presents novel state-law questions about the interaction between various California Insurance Code provisions implicating insurance coverage for military servicemembers in California. The parties do not dispute that nearly 200,000 California policyholders are affected by this litigation.

I. Administrative Information

We provide the following information in accordance with California Rule of Court 8.548(b)(1). The caption of this case is:

No. 25-793

EILEEN GAYLE COLEMAN AND ROBERT CASTRO, on behalf of themselves and all others similarly situated, Plaintiffs-Appellants

v.

UNITED SERVICES AUTOMBILE ASSOCIATION AND USAA GENERAL INDEMNITY COMPANY, Defendants-Appellees

The names and addresses of counsel for the parties are:

For Plaintiffs-Appellants: Cyrus Mehri and Michael Lieder, Mehri & Skalet, PLLC, 2000 K Street NW, Suite 325, Washington, D.C. 20006; Harvey Rosenfield and Benjamin Powell, Consumer Watchdog, 6330 South San Vincente Blvd., Suite 250, Los Angeles, CA 90048; Jay Angoff, Angoff Law, 5808 Connecticut Avenue, Chevy Chase, MD 20815; Gary Mason, Mason LLP, 5335 Wisconsin Avenue NW, Suite 640, Washington, D.C. 20015; Matthew A. Seligman, Grayhawk Law, P.C., 3015 Main Street, Suite 330, Santa Monica, CA 90405.

For Defendants-Appellees: Kahn A. Scolnick, Daniel R. Adler, and James A. Tsouvalas, Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071.

We designate Eileen Gayle Coleman and Robert Castro as the petitioners if our request for certification is granted. They are the appellants before our court.

II. Certified Questions

We certify the following questions to the Supreme Court of California:

(1) Does section 1861.16(b) of the California Insurance Code prohibit insurers that provide insurance under

Code section 11628(f)(1) from offering lower rates to servicemembers of higher rank, but higher rates to those of lower rank? If not, does section 11628(f)(1) nevertheless constitute an invalid legislative amendment under *Amwest Surety Insurance Co. v. Wilson*, 11 Cal. 4th 1243 (1995), or other California law?

(2) Do sections 1860.1 and 1860.2 of the California Insurance Code establish a filed-rate doctrine that impliedly limits the ability of plaintiffs to recover under the business laws identified by section 1861.03? If so, is the standard distinct from the one articulated for public utilities regulation in *Waters v. Pacific Telephone Co.*, 523 P.2d 1161, 1162 (Cal. 1974), and does it preclude liability even where a challenge does not center on the appropriateness of the rates themselves?

We certify these questions pursuant to California Rule of Court 8.548. The answers to these questions will determine the outcome of the appeal currently pending in our court. We will accept and follow the decision of the Supreme Court of California on these questions. Our phrasing of the questions should not restrict the Supreme Court of California's consideration of the issues involved.

III. Statement of Relevant Facts

Plaintiffs are a class of automobile insurance policyholders of USAA General Indemnity Co. ("GIC"). Defendants, including GIC and United Services, are wholly owned affiliate insurers in the United Services Automobile Association ("USAA") family that sell automobile insurance in California to military servicemembers. USAA's underwriting guidelines assign would-be insureds to one of its affiliates on the basis of their military rank. United Services insures higher-ranking servicemembers (officers and enlisted members in paygrades E-7 and above—referred to as "officers" in this order), whereas GIC insures lower-ranking servicemembers (enlisted members in paygrades E-6 and below—referred to as "enlisted members"). United Services offers to its policyholders higher "good driver" policy discounts than GIC does to its policyholders.

Plaintiffs, all of whom are current or former enlisted members, sued Defendants in federal court, alleging that Defendants violated the California Insurance Code by failing to offer Plaintiffs the lower rates offered to higher-ranked military members. Plaintiffs sought both forward-looking relief (injunctive relief preventing Defendants from continuing to charge higher rates to enlisted members than officers) and backward-looking refunds.

This case concerns the interaction between two provisions of the Insurance Code: section 1861.16(b) and section 11628(f)(1). We provide a brief background and description of those provisions here. Nearly forty years ago, California voters passed Proposition 103, which added several provisions to the California Insurance Code (most relevant here, Code sections 1861.01 through 1861.14). One of those Code provisions requires that automobile insurers offer a "good driver" discount to any person who meets the "good driver" criteria set forth in the Code. *See* Cal. Ins. Code § 1861.02. A few years later, the California Legislature enacted section 1861.16(b) to close a perceived loophole in Proposition 103 that would have allowed insurers to arrange the structure of their corporate subsidiaries to steer certain policyholders who received "good driver" discounts to higher-priced affiliates. Addressing that issue, section 1861.16(b) requires an insurer—if the insurer is part of a group of other insurers with common ownership or operating in the State under common management or control—to provide the lowest coverage rate for a "good driver" policy from among the group of insurers. In relevant part, section 1861.16(b) states:

> An agent or representative representing one or more insurers having common ownership or operating in California under common management or control shall offer, and the insurer shall sell, a good driver discount policy to a good driver from an insurer within that common ownership, management, or control group, which offers the lowest rates for that coverage.

Cal. Ins. Code § 1861.16(b).

Later still, the Legislature passed Code section 11628(f)(1), which exempts insurers who provide services to military servicemembers from certain Code requirements. In relevant part, section 11628(f)(1) states:

> [N]othing in this section or in Article 10 (commencing with Section 1861.01) of

> Chapter 9 of Part 2 of Division 1 or in any other provision of this code, shall prohibit an insurer from limiting the issuance or renewal of insurance . . . to persons who engage in, or have formerly engaged in, governmental or military service or segments of categories thereof, and their spouses, dependents, direct descendants, and former dependents or spouses.

Cal. Ins. Code § 11628(f)(1).

Plaintiffs contend that they are entitled to the lowest rate offered among the affiliates of USAA. In particular, Plaintiffs argue that, under section 1861.16(b), Defendants are required to offer Plaintiffs the lower rate provided by United Services (which only covers officers), regardless of Plaintiffs' lower military rank. Defendants disagree, arguing that they are not subject to that requirement because section 11628(f)(1) states that "nothing" in "Article 10" (which includes section 1861.16(b)) "shall prohibit" Defendants from issuing insurance to persons who engage, or have formerly engaged, in "military service or *segments of categories thereof*." Cal. Ins. Code § 11628(f)(1) (emphasis added). And here, Defendants argue, GIC permissibly limited its issuance to a segment of the military (enlisted members), and United Services permissibly limited its issuance to another segment of the military (officers).

Defendants moved to dismiss the case. In the district court, Judge Bencivengo denied Defendants' motion. The district court ruled that "[w]hile section 11628(f)(1) may authorize limiting the issuance of insurance to military members of a particular status or pay grade, nothing in the provision indicates that an insurer adopting such a practice need not comply with section 1861.16(b)." 3-ER-291. The case was then transferred to another district judge, Judge Huie, and the parties filed cross motions for summary judgment.

Arriving at a different conclusion from Judge Bencivengo, Judge Huie granted Defendants' motion and denied Plaintiffs' motion. Judge Huie concluded that Defendants did *not* need to comply with section 1861.16(b). In his view, section 11628(f)(1) "ensure[s] that certain other laws (including Section 1861.16(b)) do not prohibit an insurer from choosing to provide insurance only to members of the military or certain segments of the military, precisely what USAA does here." 1-ER-13.

The district court then rejected Plaintiffs' alternative argument that, assuming Defendants are right that section 11628(f)(1) excuses section 1861.16(b)'s requirement, section 11628(f)(1) still could not be given effect. Plaintiffs argued that section 1861.16(b) was part of Proposition 103, which "shall not be amended by the Legislature except to further its purposes." *Found. for Taxpayer & Consumer Rts. v. Garamendi*, 34 Cal. Rptr. 3d 354, 357 (Ct. App. 2005). According to Plaintiffs, section 11628(f)(1) amended Proposition 103 in a way that did *not* further the Proposition's "purposes," so it was invalid. The district court disagreed, concluding that section 1861.16(b) was not part of Proposition 103, so section 11628(f)(1) did not amend Proposition 103 at all. And "[b]ecause Section 11628(f)(1) [did] not amend Proposition 103," the district court further reasoned, it "ha[d] no occasion to consider whether such amendment 'further[s] the purposes' of Proposition 103." 1-ER-16.

Plaintiffs timely appealed the district court's decision. Plaintiffs requested that our court reverse the district court's judgment and direct entry of judgment for Plaintiffs on issues of liability, while reserving damages for trial. Plaintiffs requested, in the alternative, that our court certify controlling questions of state law to the Supreme Court of California. We heard oral argument on June 25, 2026.

IV. Explanation of Certification Request

No controlling California precedent has answered the proposed certified questions here, which are dispositive in this matter. We certify them because each involves conflicting policies that "the California Supreme Court, rather than a federal court, is better suited [to] reconcil[e]." *Li v. ArcSoft, Inc.*, 160 F.4th 1063, 1067 (9th Cir. 2025).

A.

The first question we certify concerns a novel issue the California courts have not answered: Does section 1861.16(b) of the California Insurance Code prohibit insurers that provide insurance under Code section 11628(f)(1) from offering lower rates to servicemembers of higher rank, but higher rates to those of lower rank? If not, does section 11628(f)(1) nevertheless constitute an invalid legislative amendment under *Amwest Surety Insurance Co. v. Wilson*, 11 Cal. 4th 1243 (1995), or other California law?

Section 1861.16(b) of the Insurance Code was intended to close a loophole in Proposition 103, which would have otherwise allowed affiliates within an insurance group with common control to steer "good driver" policyholders to higher-priced affiliates.

No one disputes that section 11628(f)(1) provides an exception of some kind—without this section, Proposition

103 would have mandated that insurers, which hitherto offered services primarily to current and former members of the military, offer a "good driver" policy to *anyone* who meets the statutory criteria. Section 11628(f)(1) thus allows insurers (like the USAA) to retain their model of servicing current and former military members. But at issue here is whether section 11628(f)(1) *also* exempts the USAA from the requirement to offer the best discount to those members and thus allows the USAA to offer different rates to different members through a subsidiary structure—one that section 1861.16(b) sought to preclude in other contexts.

Two federal district court judges have arrived at opposite conclusions on that question. And no California precedent guides this court in deciding it. The answer has significant public policy ramifications for hundreds of thousands of California policyholders and insurers operating in California. These considerations counsel in favor of certification.

Moreover, even assuming that section 11628(f)(1) excuses compliance with section 1861.16(b)—as Judge Huie held—that raises another difficult question of state law: Would section 11628(f)(1) be considered an invalid legislative amendment to Proposition 103? The Supreme Court of California's decision in *Amwest Surety Insurance Co.* held that legislative amendments to Proposition 103 that do "not further the purposes of Proposition 103" are invalid. *Id.* at 1265. That inquiry implicates a further threshold question: whether section 1861.16(b), which section 11628(f)(1) purports to amend, is even *part* of Proposition 103.

Judge Huie answered this last question in the negative. In his view, section 11628(f)(1) is not an invalid legislative enactment, because it did not amend Proposition 103 in the first place. Proposition 103, when it was originally approved in 1988, did not contain section 1861.16(b). It contained sections 1861.01 through 1861.14. For this reason, Judge Huie concluded that 1861.16(b) was not part of Proposition 103. But section 1861.16(b) was enacted to close a perceived loophole created by Proposition 103, and thus might be viewed as an *amendment* to Proposition 103. And if section 1861.16(b) were viewed as an amendment, then, once in effect, it might also be viewed as *part* of Proposition 103. The validity of these inferences turns on intricate matters of state law (in particular, the law governing Propositions, the process of amending Propositions, and what is deemed to be incorporated into a Proposition), which the Supreme Court of California may be better suited to address in the first instance.

B.

The second question, on which there is a split of authority among the California Courts of Appeal and no controlling precedent from the California Supreme Court, relates to relief. Plaintiffs seek (1) an injunction that prospectively bars Defendants from charging higher rates to enlisted members; and (2) disgorgement or restitution in the form of refunds. The certified question is: Do sections 1860.1 and 1860.2 of the California Insurance Code establish a filed-rate doctrine that impliedly limits the ability of plaintiffs to recover under the business laws identified in section 1861.03? If the answer is yes, is the standard for this doctrine distinct from that articulated in *Waters v. Pacific Telephone Co.*, 523 P.2d 1161, 1162 (Cal. 1974), for public utilities regulation?

It appears that resolving this issue requires reconciliation of three overlapping and seemingly contradictory provisions in the California Insurance Code. Section 1860.1 provides that "[n]o act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this State heretofore or hereafter enacted which does not specifically refer to insurance." We understand section 1860.1 to offer protection to insurers whose rates are approved by the State's insurance commissioner. And this seems to be confirmed by section 1860.2, which explains that "[t]he administration and enforcement of this chapter shall be governed solely by the provisions of this chapter." But section 1861.03, which was added by Proposition 103, states that "[t]he business of insurance shall be subject to the laws of California applicable to any other business, including, but not limited to, civil rights laws . . . , and the antitrust and unfair business practices laws." As a textual matter, it is not obvious how to square section 1861.03 with the other two provisions.

Reconciling these provisions is difficult on several levels. First, setting aside section 1861.03's statement making insurance subject to other laws governing businesses, it is unclear what immunity sections 1860.1 and 1860.2 confer on insurers. Although the California Supreme Court briefly addressed sections 1860.1 and 1860.2 in *Villanueva v. Fidelity Nat'l Title Co.*, 482 P.3d 989 (Cal. 2021), that decision focused on *unfiled* rates and the title insurance provisions of the California Insurance Code and thus is not particularly instructive. *See id.* Another decision by the California Supreme Court addressing a different rate-regulated business might provide guidance. In *Waters*, the Court limited the immunity of businesses subject to the state's public utility commission to situations where allowing relief would "hinder or frustrate the [regulator]'s declared supervisory and regulatory policies." 523 P.2d at 1162. *Waters* dealt with a provision similar to sections 1860.1 and 1860.2—section 1759 of the Public Utilities Code—which provided that "[n]o court of this State, except the Supreme Court to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties." 1951 Cal. Stat. 2091 (codified as amended at Cal. Pub. Util. Code § 1759). It is unclear whether the reasoning in *Waters* is relevant to sections 1860.1 and 1860.2 or whether these provisions should be read differently than section 1759.

Second, the California Courts of Appeal have divided over whether to recognize a filed-rate doctrine in the context of the Insurance Code given the tension among the three sections. In *Fogel v. Farmers Group, Inc.*, 74 Cal. Rptr. 3d 61, 75 (Ct. App. 2008), the California Court of Appeal held that it does not make sense to recognize a filed-rate doctrine in the insurance context because "insurers are allowed to rebate excess premiums to their policyholders" and that there was no authority suggesting that "the filed rate doctrine applied in the context of a rate approved by a *state* regulatory agency." But this reasoning was rejected by a different California Court of Appeal decision issued two years later, *MacKay v. Superior Court*, 115 Cal. Rptr. 3d 893, 910 & n.18 (Ct. App. 2010), which relied on out-of-state precedent to recognize a filed-rate doctrine and disagreed with *Fogel*'s focus on the possibility of an insurer rebating excess premiums to customers. In *Villanueva*, the California

Supreme Court discussed *MacKay* and *Fogel* but did not resolve the tension between them. *Villanueva*, 482 P.3d at 996–1002. And although *MacKay* has been cited more than *Fogel*, we do not view that as "convincing evidence that the state's supreme court likely would not follow [*Fogel*]." *Hayes v. County of San Diego*, 658 F.3d 867, 870 (9th Cir. 2011) (quoting *Ryman v. Sears, Roebuck & Co.*, 505 F.3d 993, 994 (9th Cir. 2007)).

Third, even if we were to recognize that a filed-rate doctrine applies in the insurance context, it is not possible for us to predict what the governing test would be under California law. The cases that have recognized a filed-rate doctrine in this context have typically involved challenges concerning excessive rates. For example, in *Davis v. CSAA Insurance Exchange*, 336 Cal. Rptr. 3d 789, 792–93 (Ct. App. 2025), the plaintiffs challenged insurance rates charged during the COVID-19 pandemic as "excessive" because insured individuals were driving less and there were fewer traffic accidents. The plaintiffs contended that they were statutorily entitled to a refund of the premiums during this period, even though the premiums were collected under rates that had been approved by the insurance commissioner. *Id.* The Court of Appeal rejected the plaintiffs' argument. The court concluded that the plaintiffs could not recover refunds because the purportedly "excessive" rates were approved by the insurance commissioner. *Id.* at 795, 801. Although potentially instructive if California law were to include a filed-rate doctrine that protects insurers, it is unclear whether the analysis in *Davis* would extend to challenges that do not center on the appropriateness of the rates themselves.

For all these reasons, we conclude that these complex issues of California insurance law are best resolved by a state authority.

V. Supporting Materials

The clerk of this court is hereby directed to file in the Supreme Court of California, under official seal of the United States Court of Appeals for the Ninth Circuit, copies of all relevant briefs and excerpts of the record, and an original and ten copies of this order and request for certification, along with a certification of service on the parties, pursuant to California Rule of Court 8.548(c), (d).

* * *

This case is withdrawn from submission. Further proceedings before us are stayed pending final action by the Supreme Court of California. The clerk is directed to administratively close this docket, pending further order from this court. The parties shall notify the clerk of this court within seven days after the Supreme Court of California accepts or rejects certification, and again within seven days if that court accepts certification and subsequently renders an opinion. This panel retains jurisdiction over further proceedings in this court.

IT IS SO ORDERED.