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California Life & Health Ins. Cos., America's Health Ins.
6 Plans, American Council of Life Insurers, the California
Chamber of Commerce, and the National Association of
7 Insurance and Financial Advisors-California

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SACRAMENTO

10
11 ASSOCIATION OF CALIFORNIA LIFE &)
HEALTH INSURANCE COMPANIES,)
12 AMERICA'S HEALTH INSURANCE)
PLANS, AMERICAN COUNCIL OF LIFE)
13 INSURERS, the CALIFORNIA CHAMBER)
OF COMMERCE, and the NATIONAL)
14 ASSOCIATION OF INSURANCE AND)
FINANCIAL ADVISORS-CALIFORNIA,)

CASE NO. 05CS01668

SETTLEMENT AGREEMENT

15 Petitioners and Plaintiffs,)
16
17 v.)

Date: July 21, 2006

Time: 11:00 a.m.

Court: Dept. 20

Before: The Hon. Jack Sapunor

18 JOHN GARAMENDI, in his capacity as)
Commissioner of the California Department)
of Insurance; CALIFORNIA)
19 DEPARTMENT OF INSURANCE,)
20

Action Filed: November 30, 2005

Respondents and Defendants.)
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1 Petitioners and Plaintiffs Association of California Life & Health Ins. Cos., America's
2 Health Ins. Plans, American Council of Life Insurers, the California Chamber of Commerce,
3 and the National Association of Insurance and Financial Advisors-California (collectively,
4 "petitioners") and Defendants and Respondents California Department of Insurance and the
5 Insurance Commissioner (collectively, "CDI") do hereby enter into this Settlement
6 Agreement in the above-entitled matter (hereinafter referred to as the "*ACLHIC* litigation") as
7 follows:

8 WHEREAS, on October 3, 2005, CDI issued a letter to California disability insurers in
9 which it stated its intent that all disability insurance policies previously approved and issued
10 in the State of California conform to CDI's current policies with respect to approval of seven
11 types of provisions commonly found in disability insurance policies (a copy of the October 3,
12 2005 letter and addendum are attached hereto for reference as Exhibit A), and

13 WHEREAS, on November 30, 2005, the petitioner trade associations filed this writ of
14 mandate proceeding challenging the authority of CDI to impose these uniform standards on
15 California disability insurers on the grounds that it lacked the authority to do so in the absence
16 of regulations, and on other grounds (a copy of the writ petition filed by petitioners is attached
17 hereto for reference as Exhibit B, and is referred hereinafter as "Petition"), and

18 WHEREAS, the parties have engaged in settlement negotiations during the course of
19 the litigation, and

20 WHEREAS, the parties have reached agreement with respect to the seven standards,

21 IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

22 **General Provisions**

23 1. This Settlement Agreement is entered into by the parties solely for the purpose of
24 reaching a compromise settlement without litigating the issues, and it is the intent of the
25 parties that any conduct or statements made in negotiation hereof shall be inadmissible for
26 any purpose in any proceeding unrelated to the enforcement of the terms of this Settlement
27 Agreement. By entering into this Settlement Agreement, the parties acknowledge and agree
28 that this Settlement Agreement does not constitute an admission by petitioners or any of their

1 individual members that CDI's legal positions in its October 3, 2005 letter and addendum are
2 correct interpretations of the law, or that any currently approved and in-force policies are
3 inconsistent with or in any other manner violate California law.

4 2. For the purposes of this Settlement Agreement, "Insurance Carrier" means any
5 company that markets or sells disability income insurance within the State of California.

6 3. The parties acknowledge and agree that this Settlement Agreement is not binding
7 on any Insurance Carrier, and CDI agrees that it will not assert in any future action against
8 any Insurance Carrier that any of the provisions contained in this Settlement Agreement are
9 res judicata or collateral estoppel.

10 4. The parties acknowledge and agree that an Insurance Carrier may assert the
11 provisions of this Settlement Agreement in any action or proceeding brought by such
12 Insurance Carrier to challenge the disapproval of a policy form or to defend an action or
13 proceeding brought by CDI to withdraw approval of a policy form whose provisions are
14 alleged by the Insurance Carrier to be consistent with the terms of this Settlement Agreement.
15 The parties further acknowledge and agree that the petitioner trade associations may raise the
16 same or similar arguments in amicus briefs filed in connection with any proceedings
17 involving Insurance Carriers challenging the disapproval of a policy form or defending an
18 action brought by CDI to withdraw approval of a policy form whose provisions are alleged by
19 the Insurance Carrier to be consistent with the terms of this Settlement Agreement.

20 5. The resolution of claims as set forth below establishes agreements in principle
21 with respect to provisions that address certain issues contained in the October 3, 2005 letter
22 and addendum. CDI agrees that it will approve provisions in submitted policy forms that are
23 the same as, provide the same coverage as, or are more favorable to the insured individual or
24 policyholder under the policy than, the provisions set forth below; provided, however, that
25 CDI is not obligated to approve any provision as to which there has been a change in
26 applicable law by statute, regulation, or judicial decision. CDI agrees that if an Insurance
27 Carrier submits an amendment or modification of an existing policy form to CDI solely to
28 conform provisions to any of the terms of this Settlement Agreement, CDI will not require the

1 amendment or removal of any previously approved provisions not the subject of this
2 Settlement Agreement as a condition of approval of the amended policy form. CDI further
3 agrees that if an Insurance Carrier submits a new policy form for approval, CDI will not
4 disapprove any provisions of the submitted policy form that are consistent with the terms of
5 this Settlement Agreement or previously approved provisions not subject to this Settlement
6 Agreement.

7 6. Consistent with Insurance Code section 10291.5(i), the provisions set forth below
8 are not intended to prescribe a standard form of disability policy.

9 7. CDI agrees that it will not issue any notices of withdrawal of approval to any
10 Insurance Carrier for at least 30 days after the effective date of this Settlement Agreement,
11 during which time Insurance Carriers may submit to CDI a written notice of their intent to file
12 amendments to their existing policy forms, or to file new policy forms, that contain language
13 as provided in this Settlement Agreement (a "Carrier Notice"). If a timely Carrier Notice is
14 received from an Insurance Carrier, CDI agrees it will not issue any notice of withdrawal of
15 approval to such Insurance Carrier with respect to the issues identified in the Carrier Notice
16 until at least 60 days after the effective date of this Settlement Agreement, during which time
17 the Insurance Carrier may submit its proposed new or amended policy form(s) for the purpose
18 of incorporating language as provided in this Settlement Agreement. CDI may issue notices
19 of intent to withdraw with respect to any policy form or as to any issue for which no Carrier
20 Notice is received within 30 days after the effective date of this Settlement Agreement, or no
21 proposed new or amended policy form(s) are submitted within 60 days after the effective date
22 of this Settlement Agreement.

23 8. The parties agree that it is the intent of the parties that new and amended
24 policies consistent with the terms of this Settlement Agreement will be in place by
25 December 20, 2006, or roughly five months from the effective date of this Settlement
26 Agreement. As set forth in paragraph 7, above, the parties have agreed that Insurance
27 Carriers may submit new or amended policy forms to CDI within 60 days of the effective date
28 of this Settlement Agreement. CDI acknowledges that Insurance Carriers need at least 60

1 days from the date of approval of an amendment or new policy form to implement the
2 changes. The parties therefore agree that (1) CDI will not issue notices of withdrawal of
3 approval as to any existing policy form, and the Insurance Carrier may continue to issue an
4 existing policy form (i) if the applicable amendment or new policy form conforms to the
5 terms of this Settlement Agreement with respect to all issues, (ii) while the applicable
6 amendment or new policy form is under review, and (iii) for applications received or
7 proposals issued before December 20, 2006 or 60 days after the Insurance Carrier receives
8 notice that the policy form has been approved, whichever is later, (2) CDI will not require the
9 amendment or removal of any other provisions in the existing policy form as a condition of
10 approval of the amended policy form, (3) CDI will not require as a condition of approval of
11 any new policy form the removal of any other provisions previously approved that are not
12 subject to this Settlement Agreement, (4) the amendments or new policy form will not apply
13 to non-cancelable or guaranteed renewable individual disability income insurance disability
14 policies for which applications have been received, proposals have been issued, or that are
15 already in-force as of December 20, 2006 or 60 days after the Insurance Carrier receives
16 notice that the policy form has been approved, whichever is later, and (5) the amendments or
17 new policy form will apply only prospectively to in-force group disability income insurance
18 policies with renewal dates, at the first rate change date next following December 20, 2006 or
19 60 days after the Insurance Carrier receives notice that the policy form has been approved,
20 whichever is later.

21 9. In consideration for the agreements made by CDI, petitioners agree to dismiss
22 this action without prejudice.

23 Resolution of Claims

24 Discretionary Clause Standard

25 10. Petitioners' first amended verified petition for writ of mandate and complaint for
26 injunctive and declaratory relief challenges paragraph 1 of the October 3, 2005 addendum on
27 the grounds that CDI's position regarding the use of discretionary clauses is not consistent

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1 with California law and constitutes an invalid underground regulation. (See Petition, ¶¶24-39,
2 74-101.) CDI denies these allegations.

3 11. There is currently pending in the Superior Court of the State of California, County
4 of San Francisco, a case entitled *Hartford Life Ins. Co. v. State of California*, Case No. CPF-
5 05-505218 (hereinafter referred to as the "*Hartford* litigation"), in which Hartford is
6 challenging CDI's authority to withdraw approval of certain disability income insurance
7 policy forms on the grounds, among others, that the forms contain discretionary clauses that
8 CDI finds objectionable. Because of the similarity of the issues concerning the use of
9 discretionary clauses in disability income insurance policy forms, a notice of related case was
10 filed by petitioners in this case and the *Hartford* litigation advising the respective courts of the
11 pendency of the other action. The discretionary clause issue was fully briefed and argued by
12 the parties in the *Hartford* litigation; the Honorable James L. Warren of the San Francisco
13 County Superior Court issued a proposed Statement of Decision, filed June 8, 2006. Hartford
14 filed objections to the proposed Statement of Decision on or about June 23, 2006, and the
15 matter remains under submission with the trial court.

16 12. If the *Hartford* trial court, a California appellate court, the California Supreme
17 Court, or United States Supreme Court upholds Hartford's challenge to CDI's authority to
18 withdraw approval of certain disability income insurance policy forms on the grounds that the
19 forms contain discretionary clauses, then, CDI agrees it will not issue notices of withdrawal of
20 approval of any Insurance Carrier policies on the grounds that they contain a discretionary
21 clause. If the trial court in *Hartford* finds in favor of CDI on the discretionary clause issue,
22 and a court issues a stay of the trial court decision pending appeal, CDI agrees it will not issue
23 notices of withdrawal of approval of any Insurance Carrier policies on the grounds that they
24 contain a discretionary clause while any such stay is in effect.

25 13. If any Insurance Carrier chooses to submit for approval policy forms or
26 amendments to policy forms for the purpose of removing discretionary clauses, it may file a
27 Carrier Notice within the timelines set forth in paragraph 7, above. Upon the submission of a
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1 Carrier Notice with respect to removal of discretionary clauses, the provisions of paragraphs 7
2 and 8 above shall apply.

3 14. For the purposes of this Settlement Agreement, "discretionary clause" is defined as
4 an express policy provision that has the effect of conferring discretion on an Insurance Carrier
5 or other claim administrator to determine entitlement to benefits or interpret policy language
6 that, in turn, could lead to a deferential standard of review. The parties agree that provisions
7 that give Insurance Carriers authority to determine whether satisfactory evidence of disability
8 has been submitted or other discretion to interpret the policy pursuant to its language and
9 applicable California law, and not giving rise to a deferential standard of judicial review are
10 not "discretionary clauses" within the meaning of this Settlement Agreement and are
11 permissible under California law.

12 **The Definition of Disability**

13 15. Petitioners' first amended verified petition for writ of mandate and complaint for
14 injunctive and declaratory relief challenges paragraph 2 of the October 3, 2005 addendum on
15 the grounds that CDI's position that all Insurance Carriers must use certain prescribed
16 language to describe the concept of total disability in disability income insurance policy forms
17 is not authorized under California law and is an invalid underground regulation. (See Petition,
18 ¶¶40-43, 74-101.) CDI denies these allegations.

19 16. CDI agrees that in the absence of a change in the governing law by statute,
20 regulation or judicial decision, it will not withdraw or deny approval of disability income
21 insurance policy provisions that define the total and partial/residual disability concepts using
22 language agreed to in the California Settlement Agreement, dated October 2005, between
23 Unum Life Ins. Co. of America, Provident Life and Accident Ins. Co., and the Paul Revere
24 Life Ins. Co. (collectively, "Unum/Provident"), on the one hand, and CDI, on the other hand,
25 in the Matter of the Certificates of Authority of Unum/Provident before the Insurance
26 Commissioner of the State of California, Files Nos. DISP05045984, DISP05045985,
27 DISP05045986 ("Unum/Provident Settlement Agreement") or language approved for use in
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1 the policy forms approved for use pursuant to the Unum/Provident Settlement Agreement
2 (“Unum/Provident Settlement approved policy forms”).

3 17. In addition, CDI agrees that in the absence of a change in the governing law by
4 statute, regulation or judicial decision, it will not withdraw or deny approval of disability
5 income insurance policy forms, and will approve disability income insurance policy forms
6 that describe total or partial/residual disability concepts using the following language:

7 **17.A. Total Disability – Own Occupation**

8 The following alternative definitions will be approved by CDI, in the absence of a
9 change in the governing law by statute, regulation or judicial decision:

10 17.A.1. “Total Disability” means that as a result of
11 sickness or injury you are unable to perform with reasonable
12 continuity the substantial and material acts necessary to pursue
your usual occupation in the usual or customary way.

13 17.A.2. “Total Disability” means that as a result of
14 sickness or injury you are unable to perform with reasonable
15 continuity the substantial and material acts necessary to pursue
your usual occupation and you are not working in your usual
occupation.

16 17.A.3. “Total Disability” means that as a result of
17 sickness or injury you are not able to perform with reasonable
18 continuity the substantial and material acts necessary to perform
your usual occupation in the usual and customary way and you
choose not to work at any occupation.

19 Note: The following language must be used with 17.A.2 and
may be used with 17.A.3 at the option of the Insurance Carrier:

20 “‘Usual occupation’ means any employment, business, trade or
21 profession and the substantial and material acts of the occupation
[the insured] was regularly performing [for the employer] when
22 the disability began. Usual occupation is not necessarily limited
to the specific job [the insured] performed [for the employer].”

23 or

24 “‘Usual occupation’ may be interpreted to mean the
25 employment, business, trade or profession that involves the
substantial and material acts of the occupation [the insured]
26 was regularly performing [for the employer] when disability
began. Usual occupation is not necessarily limited to the
27 specific job [the insured] performed [for the employer].”

28 Note: 17.A.2 and 17.A.3 are only permissible in policy forms
that include a partial or residual definition under which the
insured may qualify for benefits 17.A.3 is only permissible in

individual policy forms that include a partial or residual definition of disability under which the insured may qualify for benefits.

Note: Any policy containing 17.A.3 must include the following language in a prominent place in the policy, outline of coverage or certification, and application:

“If you choose to work at any job, you will not be considered totally disabled under this policy, but you may qualify for [partial or residual] disability benefits.”

17.B. Total Disability – Own Occupation – Substantial and Material Acts Definitions

The following alternative definitions will be approved by CDI, in the absence of a change in the governing law by statute, regulation or judicial decision:

17.B.1. “Substantial and material acts” means acts that are normally required for the performance of your usual occupation and cannot be reasonably omitted or modified.

17.B.2. “Substantial and material acts” means the important tasks, functions and operations generally required by employers from those engaged in your usual occupation that cannot be reasonably omitted or modified.

Note: The following language must be used in connection with 17.B.2:

“In determining what ‘substantial and material acts’ are necessary to pursue your usual occupation, we will first look at the specific duties required by your [employer or job]. If you are unable to perform one or more of these duties with reasonable continuity, we will then determine whether those duties are customarily required of other [employees or individuals] engaged in your usual occupation. If any specific, material duties required of you by your [employer or job] differ from the material duties customarily required of other [employees or individuals] engaged in your usual occupation, then we will not consider those duties in determining what ‘substantial and material acts’ are necessary to pursue your usual occupation.”

17.C. Total Disability – Any Occupation

The following alternative definitions will be approved by CDI, in the absence of a change in the governing law by statute, regulation or judicial decision:

17.C.1. “Total Disability” means that as a result of sickness or injury you are not able to engage with reasonable continuity in any occupation in which you could reasonably be expected to perform satisfactorily in light of your age, education, training, experience, station in life, and physical and mental capacity ...

1 17.C.2. "Total Disability" means that as a result of
2 sickness or injury you are not able to engage with reasonable
3 continuity in any occupation in which you could reasonably be
4 expected to perform satisfactorily in light of your age, education,
5 training, experience, station in life, and physical and mental
6 capacity [and you choose not to work at any occupation] ...

7 Note: The bracketed language is only permissible in individual
8 disability income policy forms that include a partial or residual
9 definition of disability under which the insured may qualify for
10 benefits.

11 Note: Any policy containing the bracketed language must
12 include the following language in a prominent place in the policy,
13 outline of coverage or certification, and application:

14 "If you choose to work at any job, you will not be considered
15 totally disabled under this policy, but you may qualify for [partial
16 or residual] disability benefits."

17 Note: The following provision may follow 17.C.1 or 17.C.2:

18 "... that exists within any of the following locations: (i) a
19 reasonable distance or travel time from your residence in light of
20 the commuting practices of your community; or (ii) a distance or
21 travel time equivalent to the distance or travel time you traveled
22 to work before becoming disabled; or (iii) the regional labor
23 market, if you reside or resided prior to becoming disabled in a
24 metropolitan area."

25 **17.D. Partial/Residual Disability – Insured Working**

26 The following alternative definitions will be approved by CDI, in the absence of a
27 change in the governing law by statute, regulation or judicial decision:

28 17.D.1. "Partial or Residual Disability" means you are
not Totally Disabled and that while actually working in your
[usual, own or regular] occupation, as a result of sickness or
injury you are unable to earn 80% or more of your pre-disability
earnings.

Note: Pre-disability earnings must be adjusted for inflation using
an index such as the CPI.

17.D.2. "'Partial or Residual Disability' means you are
not Totally Disabled and that while actually working in an
occupation, as a result of sickness or injury, you are unable to
engage with reasonable continuity in that or any other occupation
in which you could reasonably be expected to perform
satisfactorily in light of your age, education, training, experience,
station in life, and physical and mental capacity."

Note: Pre-disability earnings must be adjusted for inflation using
an index such as the CPI.

1 17.D.3. "Partial or Residual Disability" means you are
2 not Totally Disabled and that while actually working in an
3 occupation, as a result of sickness or injury you are unable to
4 earn 80% of more of your pre-disability earnings.

5 Note: This definition must be used in a individual disability
6 income insurance policy that uses the 17.A.3 definition of total
7 disability.

8 Note: Pre-disability earnings must be adjusted for inflation using
9 an index such as the CPI.

10 **The Additional Benefit Trigger Standard**

11 18. Petitioners' first amended verified petition for writ of mandate and complaint for
12 injunctive and declaratory relief challenges paragraph 3 of the October 3, 2005 addendum on
13 the grounds that CDI's prohibition on the use of what CDI characterizes as "additional benefit
14 triggers" is not authorized under California law and is an invalid underground regulation.
15 (See Petition, ¶¶44-47, 74-101.) CDI denies these allegations.

16 19. CDI is now giving consideration to the promulgation of regulations pursuant to the
17 California Administrative Procedures Act with respect to additional benefit triggers such as
18 those identified in paragraph 3 of the October 3, 2005 addendum. To that end, on March 16,
19 2006, CDI issued an "Invitation to Prenotice Public Discussions on Proposed Regulations" to
20 "Certain Interested and Affected Parties" concerning the Commissioner's possible adoption of
21 regulations that "would prohibit insurers from adding benefit triggers, or conditions, to the
22 payment of benefits...." Pursuant to the March 16, 2006 notice, a workshop was held on
23 April 18, 2006 to discuss the concerns of CDI and interested parties about additional benefit
24 triggers.

25 20. CDI agrees that it will not withdraw approval of previously-approved disability
26 income insurance policy forms or refuse to approve disability income insurance policy forms
27 on the grounds that they contain additional benefit triggers unless and until it has adopted
28 regulations governing the use of additional benefit triggers. In consideration of this
Settlement Agreement, petitioners agree to dismiss without prejudice their challenge to
paragraph 3 of CDI's October 3, 2005 addendum.

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Offsets

21. Petitioners' first amended verified petition for writ of mandate and complaint for injunctive and declaratory relief challenges paragraph 4 of the October 3, 2005 addendum on the grounds that CDI's position that benefit reductions by offset are permissible only: (1) when the insured has actually received other income, and (2) when the other income is paid in compensation for the same loss as the benefits under the contract, is not authorized under California law and is an invalid underground regulation. (See Petition, ¶¶48-54.) CDI denies these allegations.

22. CDI agrees that in the absence of a change in the governing law by statute, regulation or judicial decision, it will approve new policy forms and will not issue notices of withdrawal of approval of policy forms that provide for benefit reductions by offset for amounts actually paid as a result of the same disability (*i.e.*, while disability income benefits would be payable, but excluding amounts awarded and received prior to becoming disabled). The types of benefits that may qualify for such reductions include:

(a) Primary (insured) and dependents (children and/or spouse) disability benefits under SSA, Canadian Pension Plan, Quebec Pension Plan, or any similar plan or act (e.g., Railroad Retirement Act);

(b) Temporary disability benefits under a workers compensation law;

(c) Amounts received under any other occupational disease law or similar act (e.g., Longshoremen's and Harbor Worker's Act, Maritime Doctrine of Maintenance, Wages and Cure);

(d) Disability benefits under the Jones Act;

(e) Disability benefits under any state compulsory/statutory benefit law (e.g., state disability income benefits);

(f) Disability benefits under any government retirement system (e.g., CalPERS);

(g) Disability benefits under the insured's employer's retirement plan (e.g., private employer retirement plans);

///

1 (h) Third party liability payments by judgment, settlement or otherwise (less
2 attorneys' fees);

3 (i) Retirement benefits under: (i) SSA, Canadian Pension Plan, Quebec Pensions
4 Plan, or any similar plan or act (e.g., Railroad Retirement Act); and (ii) the insured's
5 employer's retirement plan (e.g., private employer retirement plans);

6 (j) Sick pay;

7 (k) Amounts received by compromise or settlement of any claim for permitted
8 offsets (less attorneys' fees);

9 (l) Salary continuation;

10 (m) Personal time off; and

11 (n) Annual leave pay.

12 23. CDI agrees that in the absence of a change in the governing law by statute,
13 regulation or judicial decisions, it will approve new policy forms and will not issue notices of
14 withdrawal of approval of policy forms that allow for benefit reductions by offset for earnings
15 actually paid from work while disabled, provided:

16 (a) that for no less than the first twelve months benefits are payable while working, the
17 amount of offset shall be limited to the amount of work earnings that, when added to the
18 disability benefit payable, exceed 100% of the insured's pre-disability earnings;

19 (b) only those earnings from work the insured performs for his/her employer or from
20 another employer for which the insured becomes employed after the insured's disability
21 began shall be included in the offset; and

22 (c) Pre-disability earnings must be adjusted for inflation using an index such as the
23 CPI.

24 After 12 months, the amount of offset may be 40% to 100% of the work earnings
25 actually received.

26 24. CDI agrees that it will approve new policy forms and will not issue notices of
27 withdrawal of approval of policy forms containing provisions that allow the Insurance Carrier
28 to estimate and deduct reductions in benefits as offsets for the following types of benefits,

1 subject to a change in the governing law by statute, regulation or judicial decision, provided,
2 (1) the policy contains a clear provision notifying the insured of his or her obligation to apply
3 for such benefits, (2) the insured has not applied for those benefits or has failed to pursue
4 them with reasonable diligence, and (3) the Insurance Carrier has a reasonable, good faith
5 belief that the insured is entitled to such benefits and a means of reasonably estimating the
6 amount payable:

- 7 (a) Primary (insured) and dependents (children and/or spouse) disability benefits
8 under SSA, Canadian Pension Plan, Quebec Pension Plan, or any similar plan
9 or act (e.g., Railroad Retirement Act);
- 10 (b) Temporary disability benefits under a workers compensation law;
- 11 (c) Amounts received under any other occupational disease law or similar act
12 (e.g., Longshoremen's and Harbor Worker's Act, Maritime Doctrine of
13 Maintenance, Wages and Cure);
- 14 (d) Disability benefits under the Jones Act;
- 15 (e) Disability benefits under any state compulsory/statutory benefit law (e.g., state
16 disability income benefits);

17 25. In addition, CDI agrees to promulgate regulations to address the issue of whether
18 Insurance Carriers should be able to estimate and deduct for the following benefits:

- 19 (a) Social Security normal retirement age benefits;
- 20 (b) Public and private disability retirement benefits;
- 21 (c) PERS and private normal retirement age benefits;
- 22 (d) Disability earnings, i.e., earnings received for work performed while disabled;
- 23 and
- 24 (e) Worker's Compensation permanent disability benefits.

25 However, if CDI has failed to issue a notice of proposed rulemaking on or before
26 December 1, 2006, or if CDI fails to adopt final regulations on these issues on or before
27 November 30, 2007, and in the absence of any other change in governing law by statute or
28 judicial decision, Insurance Carriers may submit and CDI shall not refuse to approve policy

1 forms allowing for the estimation and deduction of the five categories of benefits set forth in
2 this paragraph and CDI shall not issue notices of withdrawal of approval on the grounds that a
3 policy form allows the Insurance Carrier to estimate and deduct with respect to these five
4 categories of benefits.

5 **Pre-Existing Condition**

6 26. Petitioners' first amended verified petition for writ of mandate and complaint for
7 injunctive and declaratory relief challenges paragraph 5 of the October 3, 2005 addendum on
8 the grounds that CDI's position that the definition of pre-existing condition must make clear
9 that a condition or disease was diagnosed or actually pre-existed the effective date of the
10 contract is not authorized under California law and is an invalid underground regulation. (See
11 Petition, ¶¶55-69.) CDI denies these allegations.

12 27. CDI agrees that it will approve new policy forms and will not issue notices of
13 withdrawal of approval of policy forms that contain the following definition of pre-existing
14 condition, in the absence of a change in the governing law by statute, regulation or judicial
15 decision:

16 "You are not covered for a disability caused or substantially
17 contributed to by a pre-existing condition or medical or
18 surgical treatment of a pre-existing condition. You have a pre-
existing condition if:

19 "(a)(1) You received medical treatment, care or services for a
20 diagnosed condition or took prescribed medication for a
21 diagnosed condition in the [number not to exceed 24] months
immediately prior to the effective date of coverage under this
contract, or

22 "(2) You suffered from a physical or mental condition,
23 whether diagnosed or undiagnosed, which was misrepresented
24 or not disclosed in your application (i) for which you received
25 a physician's advice or treatment within [a period not to exceed
two years] before the date of issue, or (ii) which caused
symptoms within [a period not to exceed one year] before the
date of issue for which a prudent person would usually seek
medical advice or treatment, and

26 "(b) the disability caused or substantially contributed to by
27 the condition begins in the first [number not to exceed 24]
months after the effective date of coverage under this contract."
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benefits, workplace modification benefits, and other benefits that have been allowed by CDI in the past even though payments are not made directly to the insured employee.

33. CDI agrees that it will not withdraw or deny approval of disability income insurance policies on the grounds that the benefits contained therein are not paid directly to the insured employee unless and until such benefits are inconsistent with future regulations that are adopted pursuant to the California Administrative Procedures Act in the absence of a change in governing law by statute or judicial decision.

Additional Provisions

34. This Settlement Agreement shall be deemed to have been drafted equally by all parties hereto. Accordingly, the parties agree that any and all rules of construction to the effect that ambiguity is to be construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.

35. This Settlement Agreement may be executed in counterparts.

36. This Court shall retain jurisdiction to hear any disputes arising out of this Settlement Agreement.

37. The effective date of this Settlement Agreement is July 21, 2006.

Dated: July 14, 2006

**ASSOCIATION OF CALIFORNIA LIFE &
HEALTH INSURANCE COMPANIES**

By Brad Wenger
Brad Wenger, President

Dated: July __, 2006

AMERICA'S HEALTH INSURANCE PLANS

By _____

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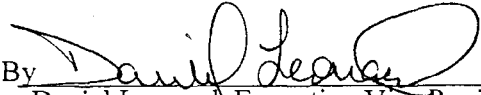
17
18 Dated: July __, 2006

**ASSOCIATION OF CALIFORNIA LIFE &
HEALTH INSURANCE COMPANIES**

19
20
21 By _____
Brad Wenger, President

22
23 Dated: July 17, 2006

AMERICA'S HEALTH INSURANCE PLANS

24
25 By  _____
Daniel Leonard, Executive Vice President

26
27 ///

28 ///

1 Dated: July 14, 2006

AMERICAN COUNCIL OF LIFE INSURERS

2
3 By John Mangan
4 John Mangan, Regional Vice President

5 Dated: July __, 2006

**THE CALIFORNIA CHAMBER OF
COMMERCE**

6
7
8 By _____
9 Allan Zaremborg, President and CEO

10 Dated: July __, 2006

**THE NATIONAL ASSOCIATION OF
INSURANCE AND FINANCIAL ADVISORS
- CALIFORNIA**

11
12
13 By _____
14 David V. Dellinger, Executive Vice President

15
16 Approved as to Form:

GREENBERG TRAURIG, LLP

17
18 By Gene Livingston
19 Kathryn Doi
20 Attorneys for Petitioners
21 Association of California Life & Health Ins.
22 Cos., America's Health Ins. Plans, American
23 Council of Life Insurers, the California
24 Chamber of Commerce, and the National
25 Association of Insurance and Financial
26 Advisors-California

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1 Dated: July __, 2006

AMERICAN COUNCIL OF LIFE INSURERS

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By _____
John Mangan, Regional Vice President

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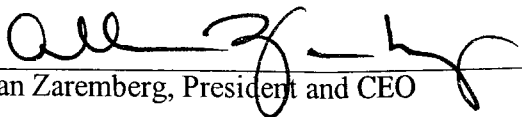
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Dated: July 14, 2006

**THE CALIFORNIA CHAMBER OF
COMMERCE**

7

8

By 
Allan Zaremberg, President and CEO

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**THE NATIONAL ASSOCIATION OF
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- CALIFORNIA**

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David V. Dellinger, Executive Vice President

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Approved as to Form:

GREENBERG TRAURIG, LLP

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18

19

By _____
Gene Livingston
Kathryn Doi
Attorneys for Petitioners
Association of California Life & Health Ins.
Cos., America's Health Ins. Plans, American
Council of Life Insurers, the California
Chamber of Commerce, and the National
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AMERICAN COUNCIL OF LIFE INSURERS

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1 Dated: July 17, 2006

**JOHN GARAMENDI, in his capacity as
Commissioner of the California Department
of Insurance, and CALIFORNIA
DEPARTMENT OF INSURANCE**

2
3
4 By 
5 Gary Cohen, Chief Counsel

6 Approved as to Form:

7 **BILL LOCKYER**
8 **ATTORNEY GENERAL**

9
10 By Michael Comez, Deputy Attorney General
11 Attorneys for Respondents

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