

COPY

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Rate Application of)
)
)
ALLSTATE INSURANCE COMPANY)
and ALLSTATE INDEMNITY COMPANY,)
)
Applicants.)
_____)

FILE NO.: PA-2006-00006

FILED
JUL 10 2008
ADMINISTRATIVE HEARING BUREAU

**ORDER ADOPTING PROPOSED DECISION AND
DESIGNATING PORTION OF DECISION AS PRECEDENTIAL**

The proposed decision of Administrative Law Judge Marjorie A. Rasmussen, dated July 3, 2008, is adopted as the Insurance Commissioner's decision in the above-entitled matter. This order shall be effective July 28, 2008. Judicial review of this decision may be had pursuant to Insurance Code sections 1861.08, 1861.09 and 1858.6 and Government Code section 11523. (See, *Economic Empowerment Foundation v. Quackenbush et al.* (1998) 65 Cal.App.4th 1397.) Any party seeking judicial review of this decision shall lodge copies of the request for judicial review and the final judicial order on the request for judicial review with the Administrative Hearing Bureau of the California Department of Insurance.

Additionally, I hereby designate the standard of review discussion on page 12, as precedential.

Persons authorized to accept service on behalf of the Insurance Commissioner are listed below:

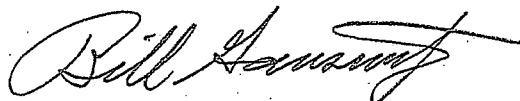
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Any party seeking judicial review of the Insurance Commissioner's decision shall file the original petition for a writ of administrative mandamus with the court and also shall mail copies of the petition and the final Notice of Entry of Judgment and any writ of administrative mandamus to the Administrative Hearing Bureau of the California Department of Insurance.

Dated: July 8, 2008

STEVE POIZNER
Insurance Commissioner



WILLIAM GAUSEWITZ
Counsel to the Commissioner

2. Standard Of Review For Determining Whether An Applicant Qualifies For A Variance And The Amount Or Degree Of A Variance

The amendments to the Regulatory Formula, effective April 3, 2007, clarified the underlying components for determining maximum and minimum earned premiums. However, the amendments did not provide a methodology or guidance for determining whether and to what extent an insurer might qualify for Variance 4.

Barring explicit direction from the legislature or the Insurance Commissioner, the ALJ must apply the Regulatory Formula when determining whether Allstate's rate request is reasonable.³¹ The Insurance Commissioner has held that, when numeric values have not been promulgated for generic factors in the Regulatory Formula for a given line of insurance, "values can be selected using generally accepted actuarial principles, expert judgment and standards of reasonableness."³² By parity of reasoning, the ALJ finds that when the Regulatory Formula does not provide a numeric value or specific methodology for determining whether and to what extent a variance may be granted, the ALJ must adopt an approach that is based on generally accepted actuarial principles, expert judgment and standards of reasonableness.³³

C. Burden Of Proof

Proposition 103 specifically places the burden of proof on the applicant.

Insurance Code section 1861.05, subdivision (b), states that "the applicant shall have the

³¹ Proposed Decision, *In The Matter of the Rate Application of American Healthcare Indemnity Company*, File No. PA02025379, July 24, 2003, p. 9; Corrected Order Adopting Proposed Decision and Designating Portion of Decision as Precedential, Aug. 22, 2003, p. 1.

³² *Id.* pp. 8-9.

³³ *Jurcoane v. Superior Court* (2001) 93 Cal.App.4th 886, 894; *20th Century*, *supra*, 8 Cal.4th at p. 312; *See*, Proposed Decision, *In The Matter of the Rate Application of American Healthcare Indemnity Company*, File No. PA02025379, July 24, 2003, pp. 8-9; Corrected Order Adopting Proposed Decision and Designating Portion of Decision as Precedential, Aug. 22, 2003, p. 1.