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Attorneys for Petitioners and Plaintiffs 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 Association of Insurance and Financial Advisors-California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

ASSOCIATION OF CALIFORNIA LIFE & HEALTH INSURANCE COMPANIES, AMERICA'S HEALTH INSURANCE PLANS, AMERICAN COUNCIL OF LIFE INSURERS, the CALIFORNIA CHAMBER OF COMMERCE, and the NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS-CALIFORNIA, Petitioners and Plaintiffs, v. JOHN GARAMENDI, in his capacity as Commissioner of the California Department of Insurance; CALIFORNIA DEPARTMENT OF INSURANCE, Respondents and Defendants.	CASE NO. 05CS01668 **SETTLEMENT AGREEMENT** Date: July 21, 2006 Time: 11:00 a.m. Court: Dept. 20 Before: The Hon. Jack Sapunor Action Filed: November 30, 2005

Petitioners and Plaintiffs 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 Association of Insurance and Financial Advisors-California (collectively, "petitioners") and Defendants and Respondents California Department of Insurance and the Insurance Commissioner (collectively, "CDI") do hereby enter into this Settlement Agreement in the above-entitled matter (hereinafter referred to as the "*ACLHIC* litigation") as follows:

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

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

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

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

IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

General Provisions

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

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

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

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

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

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

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

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

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

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

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

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

Resolution of Claims

Discretionary Clause Standard

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

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

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

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

13. If any Insurance Carrier chooses to submit for approval policy forms or amendments to policy forms for the purpose of removing discretionary clauses, it may file a Carrier Notice within the timelines set forth in paragraph 7, above. Upon the submission of a

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Carrier Notice with respect to removal of discretionary clauses, the provisions of paragraphs 7 and 8 above shall apply.

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

The Definition of Disability

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

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

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the policy forms approved for use pursuant to the Unum/Provident Settlement Agreement ("Unum/Provident Settlement approved policy forms").

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

17.A. Total Disability – Own 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.A.1. "Total Disability" means that as a result of sickness or injury you are unable to perform with reasonable continuity the substantial and material acts necessary to pursue your usual occupation in the usual or customary way.
>
> 17.A.2. "Total Disability" means that as a result of sickness or injury you are unable to perform with reasonable continuity the substantial and material acts necessary to pursue your usual occupation and you are not working in your usual occupation.
>
> 17.A.3. "Total Disability" means that as a result of sickness or injury you are not able to perform with reasonable 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.
>
> 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:
>
> "'Usual occupation' means any employment, business, trade or profession and the substantial and material acts of the occupation [the insured] was regularly performing [for the employer] when the disability began. Usual occupation is not necessarily limited to the specific job [the insured] performed [for the employer]."
>
> or
>
> "'Usual occupation' may be interpreted to mean the employment, business, trade or profession that involves the substantial and material acts of the occupation [the insured] was regularly performing [for the employer] when disability began. Usual occupation is not necessarily limited to the specific job [the insured] performed [for the employer]."
>
> 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 ...

17.C.2. "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 [and you choose not to work at any occupation] ...

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

Note: Any policy containing the bracketed language 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."

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

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

17.D. Partial/Residual Disability – Insured Working

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.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.

17.D.3. "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 earn 80% of more of your pre-disability earnings.

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

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

The Additional Benefit Trigger Standard

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

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

20. CDI agrees that it will not withdraw approval of previously-approved disability income insurance policy forms or refuse to approve disability income insurance policy forms on the grounds that they contain additional benefit triggers unless and until it has adopted 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);

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

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

(j) Sick pay;

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

(l) Salary continuation;

(m)Personal time off; and

(n) Annual leave pay.

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

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

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

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

After 12 months, the amount of offset maybe 40% to 100% of the work earnings actually received.

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

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

(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);

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

(a) Social Security normal retirement age benefits;

(b) Public and private disability retirement benefits;

(c) PERS and private normal retirement age benefits;

(d) Disability earnings, i.e., earnings received for work performed while disabled; and

(e) Worker's Compensation permanent disability benefits.

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

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

Pre-Existing Condition

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

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

> "You are not covered for a disability caused or substantially contributed to by a pre-existing condition or medical or surgical treatment of a pre-existing condition. You have a pre-existing condition if:
>
> "(a)(1) You received medical treatment, care or services for a diagnosed condition or took prescribed medication for a diagnosed condition in the [number not to exceed 24] months immediately prior to the effective date of coverage under this contract, <u>or</u>
>
> "(2) You suffered from a physical or mental condition, whether diagnosed or undiagnosed, which was misrepresented or not disclosed in your application (i) for which you received 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, <u>and</u>
>
> "(b) the disability caused or substantially contributed to by the condition begins in the first [number not to exceed 24] months after the effective date of coverage under this contract."

Compulsory Uniform Provisions

28. Petitioners' first amended verified petition for writ of mandate and complaint for injunctive and declaratory relief challenges paragraph 6 of the October 3, 2005 addendum on the grounds that CDI's position that disability income insurance policies must contain the compulsory uniform provisions is inconsistent with California law. (*See* Petition, ¶¶60-64.) CDI denies these allegations.

29. The parties acknowledge that Insurance Code section 10350 provides that an Insurance Carrier "may, at its option, substitute for one or more [compulsory standard] provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary."

30. CDI agrees that before it issues a notice of withdrawal of approval on the grounds that it believes that an existing policy contains alternate wording for a compulsory standard provision that is less favorable to the insured or on the grounds that it disagrees with the order of the compulsory or alternate provisions, it will give the Insurance Carrier notice and a written explanation why it intends to disapprove the policy and a reasonable opportunity to explain or negotiate a change to the disputed language.

Direct Payment of Benefits

31. Petitioners' first amended verified petition for writ of mandate and complaint for injunctive and declaratory relief challenges paragraph 7 of the October 3, 2005 addendum on the grounds that CDI's position that all benefits must be paid directly to the insured employee, are not authorized under California law and is an invalid underground regulation. (*See* Petition, ¶¶65-69.) CDI denies these allegations.

32. The parties disagree whether title 10, California Code of Regulations, section 2232.24 requires all claims to be paid to the insured employee. In the meantime, CDI has concluded that pension contribution benefits, which are paid to an employee benefit account and not directly to the insured employee, should be allowed. Petitioners believe that Insurance Carriers and employers or individuals should be able to contract for policies that contain key person benefits, buy-sell benefits, survivor benefits, business overhead expense

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, President

Dated: July ___, 2006

AMERICA'S HEALTH INSURANCE PLANS

By_____

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Dated: July ___, 2006

ASSOCIATION OF CALIFORNIA LIFE & HEALTH INSURANCE COMPANIES

By_____
Brad Wenger, President

Dated: July 17, 2006

AMERICA'S HEALTH INSURANCE PLANS

By_____
Daniel Leonard, Executive Vice President

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Dated: July 14, 2006

AMERICAN COUNCIL OF LIFE INSURERS

By _____
John Mangan, Regional Vice President

Dated: July ___, 2006

THE CALIFORNIA CHAMBER OF COMMERCE

By _____
Allan Zaremberg, President and CEO

Dated: July ___, 2006

THE NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS - CALIFORNIA

By _____
David V. Dellinger, Executive Vice President

Approved as to Form:

GREENBERG TRAURIG, LLP

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 Association of Insurance and Financial Advisors-California

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Dated: July ___, 2006

AMERICAN COUNCIL OF LIFE INSURERS

By_____
John Mangan, Regional Vice President

Dated: July 14, 2006

THE CALIFORNIA CHAMBER OF COMMERCE

By_____
Allan Zaremberg, President and CEO

Dated: July ___, 2006

THE NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS - CALIFORNIA

By_____
David V. Dellinger, Executive Vice President

Approved as to Form:

GREENBERG TRAURIG, LLP

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 Association of Insurance and Financial Advisors-California

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Dated: July ___, 2006

AMERICAN COUNCIL OF LIFE INSURERS

By_____
John Mangan, Regional Vice President

Dated: July ___, 2006

THE CALIFORNIA CHAMBER OF COMMERCE

By_____
Allan Zaremberg, President and CEO

Dated: July 14, 2006

THE NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS - CALIFORNIA

By David V. Dellinger
David V. Dellinger, Executive Vice President

Approved as to Form:

GREENBERG TRAURIG, LLP

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 Association of Insurance and Financial Advisors-California

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Dated: July 17, 2006

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

By _____
Gary Cohen, Chief Counsel

Approved as to Form:

BILL LOCKYER
ATTORNEY GENERAL

By _____
Michael Cornez, Deputy Attorney General
Attorneys for Respondents

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