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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SACRAMENTO

17 STEVE POIZNER, in his official capacity as
Insurance Commissioner of the State of California,
18
19 Petitioner/Plaintiff,

20 v.
21 MICHAEL C. GENEST, Director of Finance;
BILL LOCKYER, State Treasurer; STATE OF
22 CALIFORNIA; ALL PERSONS INTERESTED IN
THE VALIDITY OF THE SALE OR
23 DISPOSITION OF THE ASSETS AND
LIABILITIES OF THE STATE
24 COMPENSATION INSURANCE FUND
AND/OR THE CONTRACTS IMPLEMENTING
25 SAID SALE OR DISPOSITION; and DOES 1
through 20,
26 Defendants,
27 STATE COMPENSATION INSURANCE FUND,
28 Real Party in Interest.

No.
VERIFIED PETITION FOR WRIT OF
MANDATE; COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF; AND COMPLAINT FOR
DETERMINATION OF INVALIDITY

1 gubernatorial appointee. The voters who enacted that initiative could not have intended that the
2 Commissioner's regulatory duties be given to a non-elected, appointed official. Yet ABX4 12
3 requires that SCIF's assets be sold, and the transaction negotiated by, the Director of Finance, a
4 gubernatorial appointee. Moreover, the statute provides that the sale need not be approved by the
5 Insurance Commissioner, the State elected official with the statutory duties of regulating the
6 insurance industry, ensuring the solvency of insurance companies (including SCIF) and protecting
7 insurance policyholders. This transfer of responsibility from the Insurance Commissioner to the
8 Director of Finance will not further the purposes for which Proposition 103 was adopted—which
9 included making the Insurance Commissioner politically accountable. Accordingly, the statute
10 transferring these responsibilities constitutes an impermissible amendment to that initiative, in
11 violation of Article II, Section 10(c) of the California Constitution.

12

13 **PARTIES**

14 4. Plaintiff ("Plaintiff" or "Commissioner") Steve Poizner is the elected Insurance
15 Commissioner of the State of California and is responsible for regulation of the insurance industry,
16 and enforcement of all statutes and regulations pertaining to insurance, in the State of California. He
17 brings this action in his official capacity.

18 5. Defendant ("Defendant") Michael C. Genest is the State's Director of Finance. He is
19 named in his official capacity. ABX4 12 purports to authorize the Director of Finance to sell, or
20 otherwise obtain value for, SCIF assets and liabilities on behalf of Defendant State of California.

21 6. Defendant Bill Lockyer is the State Treasurer. He is named in his official capacity.
22 ABX4 12 purports to authorize the Treasurer to consult with the Director of Finance in connection
23 with the sale or other disposition of SCIF assets and liabilities authorized therein.

24 7. Defendant State of California is the entity on behalf of which the sale or other
25 transaction authorized by ABX4 12 is to be conducted.

26 8. Additional Defendants are all persons interested in the validity of the sale or other
27 disposition of SCIF assets and liabilities authorized by ABX4 12 and the contracts that will
28 implement that sale or disposition.

1 codified in Insurance Code Section 11774. Accordingly, from 1913 to the enactment of ABX4 12,
2 SCIF's assets have been used solely to pay workers' compensation claims and SCIF's expenses.

3 18. As these statutes demonstrate, SCIF was created solely for the purpose of providing
4 workers' compensation insurance. Accordingly, neither the Boynton Act nor any other provision of
5 law enacted prior to ABX4 12 has ever authorized the use of SCIF assets for purposes unrelated to
6 workers' compensation or authorized SCIF to set rates so as to produce surpluses that could be
7 transferred to the general fund. To the contrary, since 1915 California law has provided that, if
8 SCIF has an excess of assets over liabilities, including reserves and a surplus for catastrophes, the
9 excess may be refunded to SCIF's policy-holders as a dividend or credit. 1915 Cal. Stat. ch. 607,
10 §19 (amending Section 37(c) of the Boynton Act). (A true and correct copy of this statute is
11 attached hereto as Exhibit C.) This provision is currently codified in Insurance Code Section 11776.

12 19. At all times following repayment in or about 1920 of the State loan that provided initial
13 start-up funds for SCIF, SCIF's assets have been derived from premiums paid by employer-
14 policyholders and the income earned on those premiums.

15 20. As a result, SCIF's assets do not belong to the State of California. SCIF's assets need
16 not be invested with the State, but may be invested in "in the same manner as provided for private
17 insurance carriers." Ins. Code §11797. Money in excess of current requirements, and not invested,
18 may be deposited in "financial institutions authorized by law to receive deposits of public moneys."
19 *Id.* §11800. Even if deposited with the State Treasurer, SCIF funds are not "state moneys." *Id.*
20 §11800.2. Both SCIF and the State have treated SCIF's funds as separate from, and not to be
21 commingled with, funds belonging to the State of California.

22 21. ABX4 12, signed by the Governor on July 28, 2009, upends SCIF's well-established
23 status as a self-supporting entity separate from the State. Among other things, this bill purports to
24 authorize Defendants to sell or otherwise dispose of selected SCIF assets and liabilities for the
25 benefit of the General Fund. Accordingly, the bill authorizes Defendants to take a series of steps to
26 implement the transaction. First, the Director of Finance, in consultation with the Treasurer, and
27 with the concurrence of a majority of the SCIF board of directors, shall select assets and liabilities
28 appropriate for sale or other disposition. Ins. Code §11885(b). Second, the Director of Finance

1 shall prepare a Notice of Request for Qualifications, to be sent to firms currently providing workers'
2 compensation insurance and other entities proposed by the SCIF board of directors. *Id.*
3 §11885(c)(2). Third, in reviewing the responses to the Notice of Request for Qualifications, the
4 Director of Finance, in consultation with the Treasurer, shall select the entity that "will provide the
5 best combination of each of the following: (1) The highest price for the State Compensation
6 Insurance Fund's workers' compensation insurance assets and liabilities or the best value to the
7 General Fund, or both. (2) The greatest security for the payment of the purchase price.
8 (3) Demonstrated competence and professional qualifications for the continued satisfactory
9 performance of the workers' compensation insurance services offered for sale or other disposition."
10 *Id.* §11885(a). These criteria do not include any provision requiring the Director of Finance to
11 protect SCIF's financial position or its current policyholders from the adverse effects of the
12 transaction authorized by the statute. Nor do they require the Director of Finance to consider
13 whether the remaining SCIF business can continue to satisfy existing regulatory requirements
14 relating to solvency, liquidity, competitiveness, and ability to pay claims.

15 22. Had SCIF contracted to sell a sizable portion of its assets and liabilities in the absence of
16 ABX4 12, the sale would have been subject to the jurisdiction and/or approval of the Insurance
17 Commissioner in several respects. In particular, Insurance Code Section 1011(c) gives the
18 Insurance Commissioner power to seek a conservatorship if, without his approval, an insurance
19 company without consent "has transferred, or attempted to transfer, substantially its entire property
20 or business" This phrase has been defined by regulation (10 Cal. Code Regs. §2303.15) as
21 meaning 75% of either the selling or purchasing insurer's premiums or liabilities, unless the transfer
22 is pursuant to a reinsurance agreement, in which case the filing threshold is 50%. In addition, any
23 purchaser of SCIF's assets and liabilities would need (1) to obtain a certificate of authority for class
24 9 workers' compensation if it did not already have one (*see* Ins. Code §§700, 717); and (2) to
25 increase (in the case of an admitted insurer) or establish (in the case of a nonadmitted insurer) a
26 workers' compensation deposit (*see id.* §11691) subject to the approval of the Commissioner.
27 Moreover, if SCIF were to issue indebtedness in the form of securities as part of a transaction
28 authorized by ABX4 12, a securities permit would be required under Insurance Code Sections 820-

1 60. Finally, Insurance Code Sections 738 and 739-739.1 give the Commissioner responsibility for
2 assessing SCIF's financial stability.

3 23. ABX4 12 purports to preempt some or all of the statutes identified in the immediately
4 preceding paragraph, as well as the more general provisions of the Insurance Code giving the
5 Insurance Commissioner authority to enforce the code's requirements, because it expressly removes
6 the Commissioner from the process of approving the transactions purportedly authorized by that
7 statute. Insurance Code Section 11885.5 provides that "[n]otwithstanding any other law, the
8 approval of neither the Attorney General, nor the Insurance Commissioner, nor the Director of
9 General Services is required for execution and implementation of the sale or other disposition of the
10 assets and liabilities of the State Compensation Insurance Fund or any other agreement authorized
11 by this article." ABX4 12 therefore removes from the approval process the one elected state official
12 responsible for preserving the solvency of the insurance industry in California—the Commissioner
13 of Insurance. Instead, ABX4 12 gives approval power to the non-elected Director of Finance, who
14 must coordinate on certain issues with the Treasurer and SCIF's board of directors. SCIF has eleven
15 directors, nine of whom are appointed by the Governor.

16 24. The sale or disposition of SCIF's assets and liabilities authorized by ABX4 12 could
17 have disastrous consequences for SCIF itself, for the buyer or buyers of its assets and liabilities, for
18 other workers' compensation insurers in California, for the hundreds of thousands of businesses in
19 California that purchase workers' compensation insurance from SCIF, and for the overall operation
20 of workers' compensation insurance in California.

21 25. Unless otherwise restrained by this Court, Defendants will comply with ABX4 12 and
22 take the steps enumerated in that statute to sell or otherwise dispose of SCIF's assets, to the
23 detriment of SCIF, its policy-holders and the public interest.

24
25 **FIRST CAUSE OF ACTION**
26 **(Writ of Mandate To Enjoin Violation of Article XIV, Section 4 of the California**
27 **Constitution—Improper Diversion of Money from the Workers' Compensation**
28 **System to the General Fund)**

26. Plaintiff incorporates by reference as though set forth herein each of the preceding

1 allegations of Paragraphs 1 through 25 of this Complaint.

2 27. Article XIV, Section 4 of the California Constitution provides the Legislature with
3 authority “to create, and enforce a complete system of workers’ compensation, by appropriate
4 legislation” A “complete system of workers’ compensation” includes “full provision for
5 adequate insurance coverage against liability to pay or furnish compensation”; and “full provision
6 for regulating such insurance coverage in all its aspects, including the establishment and
7 management of a State compensation insurance fund.” Article XIV, Section 4 further provides that
8 the matters described therein “are expressly declared to be the social public policy of this State,
9 binding upon all departments of state government.” Cal. Const. art. XIV, §4.

10 28. The predecessor of Article XIV, Section 4 was added to the California Constitution in
11 1918 as Article XX, Section 21. Its purpose was to provide a firm constitutional footing for the
12 system of workers’ compensation enacted by the Boynton Act, as enacted in 1913 and amended in
13 1915 and again in 1917, including the creation of the state compensation insurance fund. Indeed,
14 the very first section of the “Workmen’s Compensation, Insurance and Safety Act of 1917” contains
15 a description of the “complete system of workmen’s compensation” that is identical in all relevant
16 respects to the definition of that system contained in Article XX, Section 21, enacted in 1918.
17 Accordingly, one of the ballot arguments submitted in support of the constitutional amendment that
18 added this provision to the constitution stated that it was intended “to sanction, establish and protect
19 the full plan in all essentials where the courts have not already passed upon it.”

20 29. As this history demonstrates, Article XIV, Section 4 gives the Legislature the power to
21 create a “complete system of workers’ compensation” that is similar to the system that existed when
22 that amendment was added to the Constitution. That system included, as one of its constituent
23 elements, a state compensation insurance fund that was self-supporting, whose assets and liability
24 were separate and distinct from those of the State, and whose assets could be used only for the stated
25 purposes of paying workers’ compensation claims and SCIF’s expenses, and paying dividends or
26 credits to SCIF’s policy-holders.

27 30. ABX4 12 purports to require the sale or other disposition of SCIF’s assets, such as a
28 portion of its book of business, for the purpose of increasing state revenue and not for the purposes

1 of advancing the workers' compensation system. ABX4 12's use of SCIF as a cash cow for the
2 State exceeds the limited purposes for which the California Constitution authorized the Legislature
3 to create SCIF as part of the "complete system of workers' compensation." The bill therefore
4 violates Article XIV, Section 4.

5 31. ABX4 12 also violates Article XIV, Section 4 because it removes the sale or other
6 disposition of SCIF assets and liabilities from the system by which workers' compensation
7 insurance—and, indeed, all other forms of insurance—are regulated. It does this in several ways:
8 first, by giving authority to sell SCIF assets and liabilities to the Director of Finance; second, by not
9 requiring the Director of Finance to protect SCIF's financial position or the policyholders whose
10 policies will remain with SCIF after the transaction authorized by the statute; and, third, by
11 eliminating any requirement that SCIF's regulator, the Insurance Commissioner, regulate or
12 otherwise approve the sale of SCIF's business, as he would otherwise be entitled to do absent the
13 provisions of Insurance Code Section 11885.5.

14 32. As the chief insurance regulator in this State, the Commissioner has a beneficial interest
15 in keeping intact the "complete system of workers' compensation" authorized by Article XIV,
16 Section 4. The Commissioner is also charged with the duty of monitoring and regulating SCIF. He
17 therefore has a legally cognizable and beneficial interest in assuring that SCIF not divest itself of its
18 assets unlawfully, violate financial responsibility requirements or otherwise create instability in the
19 workers' compensation insurance market in this State.

20 33. Because the provisions of ABX4 12 that purport to authorize the sale or disposition of
21 SCIF's assets are unconstitutional, Defendants have a clear and ministerial duty not to comply with,
22 or take any steps authorized by, that portion of the bill.

23 34. Plaintiff has no remedy at law other than this Complaint. He and the public at large will
24 suffer irreparable injury if the sale or other disposition of SCIF assets authorized by ABX4 12 is
25 consummated.

1 other hand, contend that ABX4 12 does not violate that provision. The validity of these provisions
2 is a matter of great public interest that the Court should exercise its discretionary power to resolve.

3 42. The Commissioner therefore seeks a declaration that the provisions of ABX4 12 relating
4 to the sale or disposition of SCIF assets violate Article XIV, Section 4, and are thus unconstitutional.

5
6 **FOURTH CAUSE OF ACTION**
7 **(Petition for Writ of Mandate: Violation of Article II, Section 10(c))**

8 43. Plaintiff incorporates by reference as though set forth herein each of the preceding
9 allegations of Paragraphs 1 through 42 of this Complaint.

10 44. Proposition 103 is a statutory initiative approved by the voters at the general election
11 held on November 8, 1988.

12 45. Article II, Section 10(c) of the California Constitution permits each statutory initiative to
13 establish the requirements, if any, that must be met before the Legislature can amend the initiative.
14 Proposition 103 provides, inter alia, that that initiative may only be amended by the Legislature "to
15 further its purposes."

16 46. Among other things, Proposition 103 enacted Insurance Code Section 12900, which
17 made the office of Insurance Commissioner elective. Prior to that time the Insurance Commissioner
18 had been a gubernatorial appointee who indirectly reported to the Governor through the Secretary of
19 the Business, Transportation and Housing Agency.

20 47. At the time that Proposition 103 was enacted, the Insurance Commissioner was
21 responsible for enforcing the provisions of the Insurance Code and other laws regulating the
22 business of insurance and requiring every insurer, including workers' compensation insurers, to be
23 in full compliance with all of the provisions of that code. Ins. Code §§12921 (a), 12926. These
24 duties continue to exist today.

25 48. As discussed above, ABX4 12 decreases the duties of the Insurance Commissioner by
26 depriving him of approval authority over the sale or disposition of SCIF assets purportedly
27 authorized by that bill. It therefore reduces the duties of the Insurance Commissioner as they existed
28 when Proposition 103 was adopted.

1 authority over the sale or disposition of SCIF assets, even though these provisions are an
2 unconstitutional attempt to amend Proposition 103, in violation of Article II, Section 10(c) of the
3 California Constitution.

4 56. Unless and until enjoined by this Court, Defendants will continue to implement the
5 provisions of ABX4 12 giving the Director of Finance and not the Commissioner authority over the
6 sale or disposition of SCIF assets, and thereby cause great and irreparable injury to the
7 Commissioner, by depriving him of authority that the electorate that approved Proposition 103
8 wanted to repose in an elected and politically accountable Insurance Commissioner.

9 57. Plaintiff has no adequate remedy at law. No award of damages can compensate the
10 Commissioner for the diminished duties of his office caused by enactment of ABX4 12 as an
11 unconstitutional amendment to Proposition 103.

12 58. Plaintiff therefore seeks a preliminary and then a permanent injunction restraining
13 Defendants, and each of them, from any further attempts to implement the provisions of ABX4 12
14 that give the Director of Finance and not the Insurance Commissioner authority over the sale or
15 disposition of SCIF assets.

16
17 **SIXTH CAUSE OF ACTION**
18 **(Declaratory Relief: Violation of Article II, Section 10(c))**

19 59. Plaintiff incorporates by reference as though set forth herein each of the preceding
20 allegations of Paragraphs 1 through 58 of this Complaint.

21 60. An actual controversy has arisen and now exists relating to the rights and duties of the
22 parties herein. Plaintiff contends that the provisions of ABX4 12 giving the Director of Finance and
23 not the Insurance Commissioner authority over the sale or disposition of SCIF assets constitute an
24 impermissible attempt to amend Proposition 103, in violation of Article II, Section 10(c) of the
25 California Constitution. Defendants, on the other hand, contend that these provisions are valid and
26 constitutional. The validity of these provisions is a matter of great public interest that the Court
27 should exercise its discretionary power to resolve.

28 61. Plaintiff therefore seeks a declaration that the provisions of ABX4 12 giving the

1 Director of Finance and not the Insurance Commissioner authority over the sale or disposition of
2 SCIF assets attempt to amend Proposition 103 and are therefore unconstitutional under Article II,
3 Section 10(c).

4
5 **SEVENTH CAUSE OF ACTION**
6 **(Determination of Invalidity of Sale Or Disposition Of SCIF Assets And Contracts**
7 **Implementing Same: Violation of Article XIV, Section 4)**

8 62. Plaintiff incorporates by reference as though set forth herein each of the preceding
9 allegations of Paragraphs 1 through 61 of this Complaint.

10 63. Government Code Section 17700 authorizes the State, or any department or agency of
11 the State, to bring a validation action "pursuant to Chapter 9 (commencing with Section 860) of
12 Title 10 of Part 2 of the Code of Civil Procedure" in order to determine the validity of its
13 "contracts," among other things. Gov't Code §17700 (a). Code of Civil Procedure Section 863
14 specifies that in situations where the state or a state agency could bring a validation action, "any
15 interested person may bring an action . . . to determine the validity of the matter."

16 64. The provisions of ABX4 12 that authorize the sale or other disposition of SCIF assets on
17 behalf of Defendant State of California to benefit the General Fund are invalid because they violate
18 Article XIV, Section 4. Hence, any contracts authorized by those provisions are likewise invalid for
19 the same reason.

20 65. Plaintiff does not believe that these contracts are either subject to validation pursuant to
21 Government Code Section 17700 or presently in existence within the meaning of Code of Civil
22 Procedure Section 864. Nevertheless, because the law in this area is shifting, complex and
23 uncertain, the Commissioner seeks a determination pursuant to Code of Civil Procedure Section 863
24 that these contracts, and the statutory provisions authorizing the State to enter into them, are invalid.

25 66. Plaintiff is an "interested party" within the meaning of Code of Civil Procedure Section
26 863.

27 **PRAYER**

28 WHEREFORE, Plaintiff prays that judgment be entered against Defendants and each of them

1 as follows:

2 1. On the First Cause of Action, for a writ of mandate restraining Defendants from selling
3 or otherwise disposing of SCIF's assets and liabilities for the benefit of the State's General Fund or
4 any other purpose that is not related to the operation of the workers' compensation system;

5 2. On the Second Cause of Action, for a preliminary and then a permanent injunction
6 restraining Defendants from selling or otherwise disposing of SCIF's assets and liabilities for the
7 benefit of the State's General Fund or any other purpose that is not related to the operation of the
8 workers' compensation system;

9 3. On the Third Cause of Action, for a declaration that Defendants may not sell or
10 otherwise dispose of SCIF's assets and liabilities for the benefit of the State's General Fund or any
11 other purpose that is not related to the operation of the workers' compensation system;

12 4. On the Fourth Cause of Action, for a writ of mandate restraining Defendants from
13 implementing the provisions of ABX4 12 that transfer the powers of the Insurance Commissioner to
14 the Director of Finance in relation to the sale or disposition of SCIF assets;

15 5. On the Fifth Cause of Action, for a preliminary and then a permanent injunction
16 restraining Defendants from implementing the provisions of ABX4 12 that transfer the powers of
17 the Insurance Commissioner to the Director of Finance in relation to the sale or disposition of SCIF
18 assets;

19 6. On the Sixth Cause of Action, for a declaration that the provisions of ABX4 12 that
20 transfer the powers of the Insurance Commissioner to the Director of Finance in relation to the sale
21 or disposition of SCIF assets unconstitutionally amend Proposition 103 and are therefore invalid;

22 7. On the Seventh Cause of Action, for a declaration that the provisions of ABX4 12
23 purporting to authorize Defendants to sell or otherwise dispose of SCIF's assets and liabilities for
24 the benefit of the State's General Fund, and the contracts authorized by those provisions, conflict
25 with Article XIV, Section 4 and are therefore unconstitutional and/or invalid.

26 8. For costs of suit incurred herein;

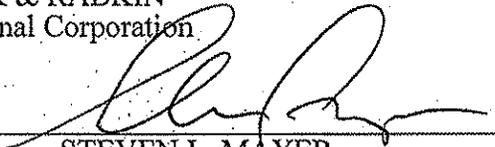
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9. For such other and further relief as the Court deems proper.

DATED: August 27 2009.

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By: 
STEVEN L. MAYER

Attorneys for Petitioner and Plaintiff STEVE
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VERIFICATION

I, Steven L. Mayer, declare:

I am one of the attorneys for Petitioner/Plaintiff Steve Poizner in this action. I have read the foregoing Verified Petition For Writ Of Mandate; Complaint For Injunctive And Declaratory Relief; And Complaint For Determination Of Invalidity. I am informed and believe that the matters stated therein are true and on that ground, I allege that the matters stated therein are true. I further declare that the Petitioner/Plaintiff is absent from the county in which I have my office.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 27th day of August, 2009, in San Francisco, California.


STEVEN L. MAYER

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