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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Certificates of
Authority of

CALIFORNIA INSURANCE COMPANY
and APPLIED UNDERWRITERS
CAPTIVE RISK ASSURANCE
COMPANY, INC.

Respondents.

File No.: MI-2015-00064

STIPULATED CONSENT CEASE AND
DESIST ORDER

The California Department of Insurance (CDI), Respondent California Insurance Company (CIC) and Respondent Applied Underwriters Captive Risk Assurance Company, Inc. (AUCRA) enter into this Stipulated Consent Cease and Desist Order (Consent Order) and CIC and AUCRA¹ consent to the issuance of this Consent Order by the Insurance Commissioner pursuant to the terms set forth below.

I.

MATTERS IN THIS PROCEEDING

A. CIC and AUCRA each acknowledge service and receipt of the Notice of Hearing and Order to Cease and Desist from Issuance or Renewal of Workers' Compensation Insurance Policies and Collateral/Ancillary Agreements in Violation of Insurance Code §§11658 and 11735 and California Code of Regulations, Title 10, Sections 2251 and 2268 dated June 28, 2016 (the Notice) and acknowledge service and receipt of the Amended Notice of Hearing and Order to Cease and Desist from Issuance or Renewal of Workers' Compensation Insurance Policies and

¹ Nothing in this Consent Order shall be construed as an admission by CDI that CIC and AUCRA are not a single entity for purposes of the Commissioner's Order in *In the Matter of the Appeal of Shasta Linen Supply, Inc.*, CDI File No. AHB-WCA-14-31.

1 Collateral/Ancillary Agreements in Violation of Insurance Code §§11658 and 11735 and
2 California Code of Regulations, Title 10, Sections 2251 and 2268 dated July 13, 2016 (the
3 Amended Notice).

4 B. CIC and AUCRA deny the allegations set forth in the Notice and the Amended Notice
5 but in lieu of proceeding with a hearing on the Amended Notice on July 27, 2016, agree to the
6 terms set forth in this Consent Order.

7 C. The CDI, CIC and AUCRA agree that the terms of this Consent Order do not
8 constitute an admission or agreement by CIC or AUCRA as to matters alleged in the Notice and
9 the Amended Notice.

10 II

11 RECITALS

12 A. The Notice and Amended Notice allege that CIC issued guaranteed cost workers'
13 compensation insurance policies (Guaranteed Cost Policies) that required the employer/insured to
14 enter into a Reinsurance Participation Agreement (RPA) with AUCRA.

15 B. The Insurance Commissioner issued a Decision & Order in *In the Matter of the Appeal*
16 *of Shasta Linen Supply, Inc.*, CDI File No. AHB-WCA-14-31 (*Shasta Linen*), which stated that
17 the RPA issued to Shasta Linen Supply, Inc. in connection with a Guaranteed Cost Policy was
18 illegal and void because it is an unfiled and unapproved collateral agreement that was not filed
19 with the California Workers' Compensation Insurance Rating Bureau (WCIRB) and the CDI in
20 compliance with Insurance Code §§11658 and 11735 and California Code of Regulations, Title
21 10, §2268 and former §2218.

22 C. The Decision and Order in *Shasta Linen* was made precedential pursuant to
23 Government Code §11425.60(b).

24 D. CIC disagrees with the findings in the *Shasta Linen* Decision & Order and it has filed
25 a Verified Petition for a Peremptory Writ of Mandate and Complaint for Declaratory and
26 Injunctive Relief, Los Angeles County Superior Court Case No. BS 163243 (the Writ
27 Proceeding), which challenges the *Shasta Linen* Decision & Order.

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III

DEFINITIONS

A. The term RPA means (i) the RPA form issued to Shasta Linen Supply, Inc. that was the subject of the Decision & Order in *Shasta Linen* for which the current term of the RPA has not expired or (ii) any form of RPA that is substantially similar to the RPA issued to Shasta Linen Supply, Inc. and that is ancillary or collateral to a guaranteed cost workers' compensation insurance policy that covers claims by California workers arising within locations in California and/or employees employed in facilities in California, or workers whose employment is otherwise covered under California workers' compensation laws, regardless of where CIC and an employer entered the contract for which the current term of the RPA has not expired. This definition excludes non-California employees that are covered by a non-California workers' compensation policy.

B. The term "Policy" or Policies" means (i) a Guaranteed Cost Policy or Policies for which an RPA is in force as of July 1, 2016 (that is, the current term of the RPA has not expired) and (ii) Guaranteed Cost Policies that cover claims by California workers, arising within locations in California and/or employees employed in facilities in California or workers whose employment is otherwise covered under California workers' compensation laws, regardless of where CIC and an employer entered the contract, for which the RPA expired between the date of the Notice and the date of this Consent Order (hereinafter, "California Policy"). This definition excludes non-California employees that are covered by a non-California workers' compensation policy.

IV

AGREEMENT

A. CIC and AUCRA will cease and desist from issuing new RPAs or renewing existing RPAs with respect to a California Policy until such time as the RPA has been submitted to the WCIRB and the CDI in compliance with the requirements of Insurance Code §11658 and §11735 and all other applicable statutes and regulations, and the RPA has not been disapproved.

B. Notwithstanding Paragraph IV (A) above, CIC may renew a Policy issued in connection with an RPA in force as of July 1, 2016.

1 C. Arbitrations under either an RPA that is currently an in-force RPA or a past RPA
2 entered into or issued in California will take place in California.

3 D. CIC and AUCRA will not apply run-off loss development factors to any Policy at any
4 time, including upon termination, cancellation or nonrenewal of the RPA or upon termination,
5 cancellation or nonrenewal of the Policy. The term "run-off loss development factor" means the
6 run-off loss development factor referred to in RPA Schedule 1, Paragraph 4.

7 E. CDI actuaries, on the one hand, and CIC and AUCRA actuaries on the other hand, will
8 immediately meet and confer for the purpose of determining and agreeing upon modified loss
9 development factors (LDFs) to be used in connection with the Policies. Upon agreement among
10 the actuaries as to modified LDFs, which may include the current LDFs, those LDFs will apply to
11 the Policies and RPAs.

12 F. If CDI actuaries and CIC and AUCRA actuaries are able to agree on modified LDFs,
13 as referred to in Paragraph (IV) (E), then no hearing will be held on the Amended Notice, and this
14 matter will be concluded. If the CDI actuaries and CIC and AUCRA actuaries are unable to agree
15 on modified LDFs, or if the Insurance Commissioner does not approve an agreement by the
16 parties, the hearing on the Amended Notice will proceed on September 2 and September 9, 2016,
17 or such other or continued hearing date agreed upon by CDI, CIC, AUCRA, and the
18 Administrative Hearing Bureau (AHB), or as set by AHB.

19 G. If an agreement among actuaries as specified in Paragraph IV (F) is not reached, CIC
20 and AUCRA agree that nonetheless the amendments to RPAs that are specified in Paragraph IV
21 (C) and IV (D) of this Consent Order will nevertheless remain in force.

22 H. Notwithstanding Article IV. A, AUCRA may issue or renew RPAs and CIC may issue
23 or renew Guaranteed Cost Policies in connection with RPAs if a final judgment has been entered
24 in the Writ Proceeding which determines that (i) the RPA is not a collateral or ancillary
25 agreement subject to the requirements of Insurance Code §11658 and applicable regulations; (ii)
26 the RPA is not subject to the filing requirements of Insurance Code §11735; and (iii) the RPA is
27 not otherwise subject to filing requirements of the Insurance Code.

28

1 I. If CIC or AUCRA obtain a preliminary injunction in the Writ Proceeding on the
2 grounds specified in Paragraph IV (H), above, CIC and AUCRA agree to meet and confer with
3 the CDI to determine whether such relief should cause the parties to agree to stay this Consent
4 Order pending the outcome of the Writ Petition on the merits. CIC and AUCRA acknowledge
5 that the CDI does not concede that injunctive relief is an appropriate remedy in the Writ
6 Proceeding.

7 J. If a final judgment of the nature specified in Paragraph IV (H) above is entered, CIC
8 and AUCRA nonetheless agree that the amendments to RPAs that are specified in Paragraph
9 IV(C) and IV(D) of this Consent Order will remain in force, and (ii) if CDI actuaries and CIC and
10 AUCRA actuaries agree upon loss development factors as provided for in Paragraph IV(E)
11 below, the agreed upon loss development factors will continue to apply to any RPA currently in
12 force at the time of this Consent Order.

13 K. CIC and AUCRA will recalendar the date for hearing on the Notice of Motion and
14 Motion for Stay of Administrative Order filed in the Writ Proceeding (Motion for Stay) for on or
15 after September 30, 2016. If a hearing on the Amended Notice has not concluded by September
16 30, 2016, and has not otherwise been settled, CIC and AUCRA will continue the hearing date on
17 the Motion for Stay by thirty days, and such additional time thereafter as will ensure that a
18 renounce of the hearing would both be served after the hearing on the merits of the Amended
19 Notice has concluded, and comply with sections 1005 and 1013 of the Code of Civil Procedure.
20 Furthermore, prior to such renounce, CDI, on the one hand, and CIC and AUCRA on the other
21 hand, will confer as to the relief sought by CIC and AUCRA in the Motion for Stay to ensure that
22 any stay order that may be issued does not modify or negate any of the terms of this Consent
23 Order.

24 L. This Consent Order only pertains to the proceeding noticed and matters set forth in the
25 Amended Notice and it does not pertain to the Writ Petition or *Shasta Linen*, and nothing in this
26 Consent Order constitutes a waiver of CIC's or AUCRA's rights to pursue the Writ Proceeding or
27 other relief pertaining to *Shasta Linen* (except as limited by Paragraph H above.)
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1 M. Nothing in this Consent Order prevents CIC from issuing standalone Guaranteed Cost
2 Policies that have been submitted to the WCIRB and the CDI and which have not been
3 disapproved. The term "standalone" means a Guaranteed Cost Policy for which no RPA is
4 entered into.

5 N. Nothing in the Consent Order limits or affects the rights of the Insurance
6 Commissioner in connection with the Writ Petition or *Shasta Linen* and, except as otherwise
7 specified in Article IV. D, E, F, and J above, nothing in this Stipulated Agreement affects or
8 limits the powers or rights of the Insurance Commissioner to contend or declare that RPAs (other
9 than RPAs that are filed with the WCIRB and the CDI and that are not disapproved) are
10 unenforceable, void, voidable, or illegal and nothing limits the powers or rights of the Insurance
11 Commissioner to initiate or make any investigation, to institute any legal or administrative
12 proceeding, to take any action permitted by law, and to seek and obtain all relief and remedies
13 (including any fines or penalties), or to adjudicate the rights of others, as otherwise permitted by
14 law.

15 O. This Consent Order only applies to policies and RPAs covering loss exposures in
16 California, claims arising within locations in California and California workers. The Consent
17 Order is not intended to impact policies or RPAs relating to risks covered outside of California.

18 P. This Consent Order may be executed in counterparts, each of which shall constitute a
19 duplicate original. Execution by facsimile or by electronically transmitted signature shall be fully
20 and legally binding.

21 Q. CIC and AUCRA acknowledge that this Consent Order is a public record pursuant to
22 Government Code §6250 *et seq.* Pursuant to Insurance Code §12968, this Consent Order will be
23 posted on the CDI's internet website.

24 R. This Consent Order will be interpreted and construed in accordance with California
25 law, without regard to choice-of-law considerations.

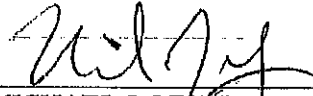
26 S. Respondents acknowledge that Insurance Code §12921(b) (1) requires the Insurance
27 Commissioner to approve the final settlement of this matter. The terms of this Consent Order are
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1 contingent upon the Insurance Commissioner's approval, which shall be evidenced by the Order
2 in substantially the form and content as set forth on page 8 hereof.

3 The CDI and Respondents CIC and AUCRA execute this Consent Order as follows:

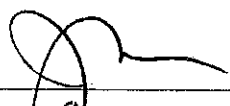
4 Date: August 25, 2016

CALIFORNIA DEPARTMENT OF INSURANCE

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6 By: 
7 MICHAEL J. LEVY
8 DEPUTY GENERAL COUNSEL

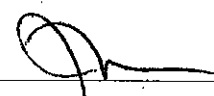
9 Date: August 25, 2016

CALIFORNIA INSURANCE COMPANY

10
11 By: 
12 _____
13 Secretary
14 Title

15
16
17 Date: August 25, 2016

APPLIED UNDERWRITERS CAPTIVE RISK
ASSURANCE COMPANY, INC.

18
19 By: 
20 _____
21 Secretary
22 Title

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