

1 Robert W. Hogeboom (061525)  
 Robert J. Cerny (162296)  
 2 BARGER & WOLEN LLP  
 633 West Fifth Street, 47th Floor  
 3 Los Angeles, California 90071  
 Telephone: (213) 680-2800  
 4 Facsimile: (213) 614-7399

5 Attorneys for Plaintiff  
 Pacific Bonding Corporation  
 6  
 7

8 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

PACIFIC BONDING CORPORATION,  
 Plaintiff,  
 vs.  
 JOHN GARAMENDI, Insurance  
 Commissioner of the State of California, and  
 DOES 1 through 5,  
 Defendant.

) CASE NO.: GIC 815786  
 )  
 ) Honorable Ronald L. Styn, presiding  
 )  
 ) **NOTICE OF ENTRY OF JUDGMENT IN**  
 ) **FAVOR OF PLAINTIFF PACIFIC**  
 ) **BONDING CORPORATION**  
 )  
 ) [Cal. R. Ct. 232 and C.C.P § 632]  
 )  
 ) Trial Completed: January 16, 2004

\\bwin6\la\office\10089\016\04pleadings\notice of entry.doc

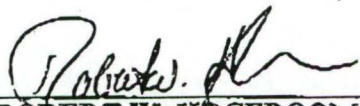
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Judgement was entered in the above-entitled matter on February 25, 2004. A true and correct copy of this Judgment is attached hereto as Exhibit "A." In addition, attached, as Exhibit "B," is the Statement of Decision filed on February 24, 2004.

Dated: February 27, 2004

BARGER & WOLEN LLP

By:   
ROBERT W. HOGEBOOM  
ROBERT J. CERNY  
Attorneys for Plaintiff Pacific Bonding Corporation

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
**(Pacific Bonding Corporation vs. Insurance Commissioner)**  
**(Case No. GIC 815786)**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: Barger & Wolen LLP, 633 West Fifth Street, 47<sup>th</sup> Floor, Los Angeles, California 90071.

On March 1, 2004, I served the foregoing document(s) described as **NOTICE OF ENTRY OF JUDGEMENT IN FAVOR OF PLAINTIFF PACIFIC BONDING CORPORATION**, on the interested parties in this action by placing [ ] the original [X] a true copy thereof enclosed in sealed envelope addressed as stated in the attached mailing list.

Leslie Branman Smith  
OFFICE OF THE ATTORNEY GENERAL  
Suite 1100  
110 West "A" Street  
San Diego, California 92101


Bruce S. Wiener  
Sr. Staff Counsel  
Producer Compliance Bureau  
California Dept. of Insurance  
45 Fremont St., 21<sup>st</sup> Floor  
San Francisco, California 94105

**[X] BY PERSONAL SERVICE**

[X] I caused such envelope to be delivered to a commercial messenger service with instructions to personally deliver same to the offices of the addressee(s) above on this date.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed at Los Angeles, California on **March 1, 2004.**

HELEN PEREZ  
(Name)

  
\_\_\_\_\_  
(Signature)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Robert W. Hogeboom (061525)  
Robert J. Cerny (162296)  
BARGER & WOLEN LLP  
633 West Fifth Street, 47th Floor  
Los Angeles, California 90071  
Telephone: (213) 680-2800  
Facsimile: (213) 614-7399

Attorneys for Plaintiff  
Pacific Bonding Corporation

**F I L E D**

Clerk of the Superior Court

FEB 25 2004

By: P. ASHWORTH, Deputy

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO**

PACIFIC BONDING CORPORATION,  
Plaintiff,

vs.

JOHN GARAMENDI, Insurance  
Commissioner of the State of California, and  
DOES 1 through 5,  
Defendant.

CASE NO.: GIC 815786

Honorable Ronald L. Styn, presiding

**JUDGMENT IN FAVOR OF PLAINTIFF  
PACIFIC BONDING CORPORATION**

[Concurrently filed with Statement of Decision  
as required under Cal. R. Ct. 232]

Trial Completed: January 16, 2004

i:\office\1008901604pleadings\judgment 2-19.doc

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The court trial of this matter was held on January 16, 2004, in Department 62 of the above-entitled Court, the Honorable Ronald L. Styn presiding. Robert W. Hogeboom and Robert J. Cerny of Barger & Wolen LLP appeared on behalf of Plaintiff Pacific Bonding Corporation. Leslie Branman Smith of the California Attorney General's Office and Bruce S. Wiener of the California Department of Insurance appeared on behalf of Defendant John Garamendi, Insurance Commissioner of the State of California.

After full consideration of the evidence presented at trial as well as all papers submitted by counsel prior to trial, the Court found that Plaintiff Pacific Bonding Corporation is entitled to judgment for the reasons set forth in the Court's Statement of Decision.

NOW, THEREFORE, IT IS ORDERED that Judgment be entered in favor of Plaintiff Pacific Bonding Corporation and against Defendant John Garamendi, Insurance Commissioner of the State of California declaring invalid section 2054.4 of Title 10, California Code of Regulations. The Insurance Commissioner of the State of California is enjoined from enforcing or ordering the enforcement of regulation section 2054.4.

DATED: FEB 25 2004, 2004

**RONALD L. STYN**  
\_\_\_\_\_  
HONORABLE RONALD L. STYN  
JUDGE OF THE SAN DIEGO SUPERIOR COURT

1 Respectfully Submitted By:

2   
3

4 ~~Robert W. Hogeboom (061525)~~  
5 Robert J. Cerny (162296)  
6 BARGER & WOLEN LLP  
7 633 West Fifth Street, 47th Floor  
8 Los Angeles, California 90071  
9 Telephone: (213) 680-2800  
10 Facsimile: (213) 614-7399

11 Attorneys for Plaintiff  
12 Pacific Bonding Corporation  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
**(Pacific Bonding Corporation vs. Insurance Commissioner)**  
**(Case No. GIC 815786)**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: Barger & Wolen LLP, 633 West Fifth Street, 47<sup>th</sup> Floor, Los Angeles, California 90071.

On February 20, 2004, I served the foregoing document(s) described as **JUDGMENT IN FAVOR OF PLAINTIFF PACIFIC BONDING CORPORATION** on the interested parties in this action by placing [ ] the original [X] a true copy thereof enclosed in sealed envelope addressed as stated in the attached mailing list.

Leslie Branman Smith  
OFFICE OF THE ATTORNEY GENERAL  
Suite 1100  
110 West "A" Street  
San Diego, California 92101

Bruce S. Wiener  
Senior Staff Counsel  
Producer Compliance Bureau  
California Dept. of Insurance  
45 Fremont St., 21<sup>st</sup> Floor  
San Francisco, CA 94105

**[X] BY PERSONAL SERVICE**

[X] I caused such envelope to be delivered to a commercial messenger service with instructions to personally deliver same to the offices of the addressee(s) above on this date.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed at Los Angeles, California on February 20, 2004.

Helen Perez  
(Name)

*Helen Perez*  
\_\_\_\_\_  
(Signature)

1 Robert W. Hogeboom (061525)  
 Robert J. Cerny (162296)  
 2 BARGER & WOLEN LLP  
 633 West Fifth Street, 47th Floor  
 3 Los Angeles, California 90071  
 Telephone: (213) 680-2800  
 4 Facsimile: (213) 614-7399

**F I L E D**  
 Clerk of the Superior Court

**FEB 24 2004**

By: P. ASHWORTH, Deputy

5 Attorneys for Plaintiff  
 Pacific Bonding Corporation  
 6  
 7

8 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

PACIFIC BONDING CORPORATION, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOHN GARAMENDI, Insurance )  
 Commissioner of the State of California, and )  
 DOES 1 through 5, )  
 )  
 Defendant. )

CASE NO.: GIC 815786  
 Honorable Ronald L. Styn, presiding  
**STATEMENT OF DECISION**  
 [Cal. R. Ct. 232 and C.C.P § 632]  
 [Filed concurrently with Judgment]  
 Trial Completed: January 16, 2004

\\bwlao\ao\office\10089\016\04pleadings\statement of decision [final] 2-19.doc



STATEMENT OF DECISION

In this action, Plaintiff Pacific Bonding Corporation seeks a declaration that section 2054.4<sup>1</sup> is invalid and an injunction preventing the Defendant Commissioner of Insurance from enforcing it. Plaintiff asserts two arguments:

1. There is no statutory basis for section 2054.4 in Insurance Code sections 1800 – 1823 (the bail statutes)<sup>2</sup> rendering the regulation void; and

2. Section 2054.4 is an anti-rebate statute that was repealed by implication by Proposition 103’s repeal of Division 1, Part 2, Chapter 1, Article 5 of the Insurance Code (the anti-rebate laws).

The Defendant argues that section 2054.4 supplements,<sup>3</sup> interprets and makes specific Insurance Code section 1800 and therefore is a proper regulation prohibiting a nonlicensee from receiving compensation for activity for which the law requires a license. Defendant also argues that Proposition 103 did not repeal section 2054.4, as that initiative did not mention the bail business.<sup>4</sup>

All of the evidence in this case, including the legislative counsel’s opinion and declarations of expert witnesses, was admitted and considered.

This court recognizes that the test for the validity of a regulation is found in Government Code section 11342.2, which provides as follows:

“11342.2. Whenever by the express or implied terms of any statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carryout the provisions of the statute. No regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”

<sup>1</sup> Section 2054.4 of Title 10 California Code of Regulations.

<sup>2</sup> All statutory references are to the California Insurance Code unless expressly designated otherwise.

<sup>3</sup> The Government Code uses the term *interprets* rather than “supplements.” See Cal. Gov’t Code section 11342.2.

<sup>4</sup> See Defendant Trial Brief, p. 4.

1 The court further recognizes that under Insurance Code section 1812, the Commissioner  
 2 has authority to "make reasonable rules necessary, advisable or convenient for the administration  
 3 and enforcement of the provisions of this chapter." The provisions "of this chapter" consist of  
 4 Insurance Code sections 1800-1823.

5 The Defendant argues that the statutory basis for section 2054.4 is Insurance Code  
 6 section 1800.<sup>5</sup> That section prohibits the solicitation of bail without a license. The statute further  
 7 defines "solicitation" as including "arranging for bail" for compensation. In that regard,  
 8 section 1800 is similar to other licensing statutes of the Insurance Code. By comparison,  
 9 section 2054.4 is akin to anti-rebating statutes, in that it prohibits any person from receiving  
 10 commissions "on bail or the transaction of bail unless licensed."<sup>6</sup> It further prohibits a bail licensee  
 11 from paying non-licensees "any commissions or other valuable consideration on or in connection  
 12 with a bail transaction." [Therefore, the purpose of the regulation in prohibiting rebates differs from  
 13 the purpose of section 1800 in requiring a license for the solicitation of bail.]

14 In addition, in comparing the language of regulation section 2054.4 to Insurance Code  
 15 section 1800, the court finds that the prohibitions in section 2054.4 are broader than those in  
 16 section 1800. Section 2054.4 prohibits both the receipt and payment of compensation by and to  
 17 Any unlicensed person "on bail" or "in connection with a bail transaction." This would include the  
 18 payment to or receipt by a customer of any valuable consideration, normally described as a rebate.  
 19 Section 1800, by contrast, is a licensing provision, which prohibits the solicitation of bail without a  
 20 license. Section 1800(b) defines "solicitation" as including "arranging for bail" for remuneration.  
 21 The prohibitory language of section 2054.4 is not dependent on whether the unlicensed recipient  
 22 solicits bail in violation of the licensing requirement of section 1800. Rather, section 2054.4 is

23  
 24  
 25  
 26  
 27 <sup>5</sup> While the Commissioner must have general authority to promulgate regulations, each regulation  
 28 must have a statutory basis, or "reference," defined in Gov't Code section 11349(e) as the provision  
 of law which the regulation "implements, interprets or makes specific."

1 dependent on the mere payment or receipt of money by or to the unlicensed person, without regard  
2 to the activity of the unlicensed recipient.

3           The first sentence of regulation section 2054.4 prohibits "any person" from receiving  
4 commission "on bail." This broad language would prohibit, for example, a customer from receiving  
5 a rebate related to a bail transaction as commission is not defined or limited to a payment for  
6 solicitation of bail. The regulation would therefore prohibit a person from receiving compensation  
7 even if the recipient did not solicit insurance in violation of section 1800. Likewise, the  
8 regulation's second sentence prohibits a licensee from paying any consideration to an unlicensed  
9 person "in connection with" a bail transaction. Payments would therefore be prohibited even if the  
10 recipient did not violate section 1800's prohibition against solicitation of bail without a license.  
11 Accordingly, both the first and second sentences of the regulation are broader than the language of  
12 section 1800. Therefore, the regulation is inconsistent with and expands the scope of section 1800,  
13 and is void under Government Code section 11342.2.  
14

15  
16           The Defendant argues that if there is inconsistency between section 2054.4 and  
17 section 1800, it is found only in the words "in connection with a bail transaction," and therefore  
18 only those words should be stricken. The court disagrees. A court cannot rewrite a regulation to  
19 make it consistent with a statute. For example, by striking the phrase "on or in connection with a  
20 bail transaction" in the second sentence, language would have to be inserted to make the prohibition  
21 of section 2054.4 consistent with a solicitation which is the requirement of section 1800. As noted,  
22 the court does not have that power. *See e.g., California Teachers Ass'n v. California Comm'n on*  
23 *Teacher Credentialing*, 111 Cal. App. 4th 1001, 1011 (2003). It is well recognized that the judicial  
24 role in a democratic society is limited to the interpretation of laws, while the writing of laws  
25  
26

27  
28 <sup>6</sup> See Cal. Ins. Code § 12404(a) (applicable to title insurance) and former sections 750-755  
(formerly applicable to insurance generally).

1 belongs to the people and political branches. See e.g., *California Teachers Assn. v. Governing Bd.*  
2 *of Rialto Unified School Dist.*, 14 Cal. 4th 627, 633 (1997).

3 As section 2054.4 enlarges the scope of section 1800, the court is obligated to strike it  
4 down. *Dyna-Med, Inc. v. Fair Employment and Housing Comm'n*, 43 Cal. 3d 1379, 1389 (1987).  
5 Although the court has no discretion with respect to entirely inconsistent regulations, the court does  
6 have the authority to strike down only those provisions that are inconsistent with the authorizing  
7 statute, leaving in place provisions that do not conflict with the statute. See e.g., *Pulaski v.*  
8 *California Occupational Safety and Health Standards Bd.*, 75 Cal. App. 4th 1315, 1341-42 (1999).

9 However, as noted previously, the first two sentences of section 2054.4 conflict with and enlarge  
10 the scope of section 1800. Therefore, the court must invalidate section 2054.4 in its entirety.

11  
12 Having decided that section 2054.4 is broader in scope than section 1800 and that  
13 Defendant could provide no other statutory basis for the regulation, the court recognizes the  
14 similarities in language in section 2054.4 to that of former sections 752 and 755 of the Insurance  
15 Code which broadly prohibited unlawful rebates. In fact, the language in section 2054.4 is almost  
16 identical to former sections 752 and 755.<sup>7</sup> Since there is no statutory basis in section 1800-1823 for  
17 regulation section 2054.4, and because the language of the regulation tracks the language of former  
18 sections 752 and 755, the court finds that former sections 752 and 755 were the statutory basis for  
19 the regulation. Therefore, the court further concludes that the repeal of former sections 750 *et seq.*  
20 of the Insurance Code repealed the statutory basis for section 2054.4.

21  
22  
23 The court recognizes that the Commissioner has the power to resolve his concerns by  
24 promulgating a regulation consistent with section 1800 pursuant to the Administrative Procedures

25  
26 <sup>7</sup> Former section 752 prohibited any insured from knowingly receiving any unlawful rebate.  
27 Former section 755 prohibited payment of any commission or other valuable consideration on  
28 insurance business to other than a licensed insurance agent. The first sentence of section 2054.4  
tracks former section 752 and the second sentence tracks former section 755. Section 750 includes  
as an unlawful rebate the premium, part of the premium and the broker's commission. Sections  
750-755 were repealed by Proposition 103 approved on Nov. 8, 1988.

1 Act. Further remedies would be a matter for the Legislature. Based on Government Code section  
 2 11342.2, this court finds that section 2054.4 is invalid and enjoins the California Insurance  
 3 Commissioner from enforcing it.

4 DATED: FEB 24 2004, 2004

5  
 6 **RONALD L. STYN**

7 HONORABLE RONALD L. STYN  
 8 JUDGE OF THE SAN DIEGO SUPERIOR COURT  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28